



City Council Special Workshop

May 1, 2023 - 6:00 PM OR IMMEDIATELY FOLLOWING THE CITY COUNCIL MEETING

City Hall - Council Chambers
101 W 4th St S
Newton, IA 50208

Call to Order

1. Roll Call

Presentation

2. Iowa Code Chapter 26 - City Attorney, Matt Brick
3. Bids, Quotes, and Contracts for Public Improvement Projects, Services and Purchases - City Staff

Mayor/Council Comments

Adjourn

The City of Newton is pleased to provide reasonable accommodations, in compliance with the Americans with Disabilities Act, for those individuals or groups who require assistance to be able to participate in the public meeting. Should special accommodations be required, please contact the City Clerk's Office at least 48 hours in advance of the meeting, at 641-792-2787 to arrange for accommodations to be provided.

Find us online: www.newtongov.org

CHAPTER 26

PUBLIC CONSTRUCTION BIDDING

Referred to in [§8A.311](#), [35A.10](#), [218.58](#), [256F.4](#), [297.7](#), [314.1B](#), [330A.12](#), [331.341](#), [357.14](#), [357A.12](#), [384.37](#), [384.53](#), [384.103](#), [386.6](#), [386.7](#), [390.3](#), [418.4](#)

Guaranteed maximum price contracts, see chapter [26A](#)
Labor and materials on public improvements; see also [chapter 573](#)

26.1	Short title.	26.10	Opening and considering bids.
26.2	Definitions.	26.11	Delegation of authority.
26.3	Competitive bids for public improvement contracts.	26.12	When hearing necessary.
26.4	Architectural, landscape architectural, and engineering services — exemptions — prohibitions.	26.13	Early release of retained funds. Repealed by 2018 Acts, ch 1097, §6.
26.5	Prohibited contracts.	26.14	Competitive quotations for public improvement contracts.
26.6	Donated funds.	26.14A	Alternative procedures.
26.7	Notice to bidders.	26.15	Structure demolition project.
26.8	Bid security.	26.16	Prequalification requirements prohibited.
26.9	Award of contract.		

26.1 Short title.

[This chapter](#) shall be known and may be cited as the “*Iowa Construction Bidding Procedures Act*”.

[2006 Acts, ch 1017, §1, 42, 43](#)

26.2 Definitions.

As used in [this chapter](#), unless the context clearly indicates otherwise:

1. “*Estimated total cost of a public improvement*” or “*estimated total cost*” means the estimated total cost to the governmental entity to construct a public improvement, including cost of labor, materials, equipment, and supplies, but excluding the cost of architectural, landscape architectural, or engineering design services and inspection.

2. “*Governmental entity*” means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation.

3. *a.* “*Public improvement*” means a building or construction work that is constructed under the control of a governmental entity and for which either of the following applies:

(1) Has been paid for in whole or in part with funds of the governmental entity.

(2) A commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity.

b. “*Public improvement*” includes a building or improvement constructed or operated jointly with any other public or private agency, but excludes all of the following:

(1) Urban renewal demolition and low-rent housing projects.

(2) Industrial aid projects authorized under [chapter 419](#).

(3) Emergency work or repair or maintenance work performed by employees of a governmental entity.

(4) A highway, bridge, or culvert project.

(5) Construction or repair or maintenance work performed for a city utility under [chapter 388](#) when such work is performed by its employees or when such work relates to existing utility infrastructure or establishing connections to existing utility infrastructure. For purposes of this subparagraph, “*utility infrastructure*” includes facilities used for the storage, collection, disposal, treatment, generation, transmission, or distribution of water, sewage, waste, electricity, gas, or telecommunications service.

(6) Construction or repair or maintenance work performed for a rural water district under [chapter 357A](#) by its employees.

4. “*Repair or maintenance work*” means 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.

5. “*Under the control of a governmental entity*” includes determining the construction work to be performed or establishing the specifications for a building or construction work to be occupied by the governmental entity.

2006 Acts, ch 1017, §2, 42, 43; 2007 Acts, ch 144, §1, 2; 2018 Acts, ch 1075, §2, 3, 12, 13; 2018 Acts, ch 1172, §71, 72; 2019 Acts, ch 59, §17; 2020 Acts, ch 1092, §1, 2

Referred to in §8.46, 26A.1, 260C.38, 278.1, 297.7, 298.3, 314.1A, 314.1B, 331.341, 364.4, 384.20

2018 amendments apply to lease-purchase contracts entered into on or after April 4, 2018; 2018 Acts, ch 1075, §12, 13; 2018 Acts, ch 1172, §71, 72

26.3 Competitive bids for public improvement contracts.

1. If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or the adjusted competitive bid threshold established in [section 314.1B](#), the governmental entity shall advertise for sealed bids for the proposed public improvement by posting a notice to bidders not less than thirteen and not more than forty-five days before the date for filing bids in a relevant contractor plan room service with statewide circulation, in a relevant construction lead generating service with statewide circulation, and on an internet site sponsored by either a governmental entity or a statewide association that represents the governmental entity. If circumstances beyond the control of the governmental entity cause a scheduled bid letting to be postponed and there are no changes to the project’s contract documents, a notice to bidders of the revised date shall be posted not less than four and not more than forty-five days before the revised date for filing bids in a relevant contractor plan room service with statewide circulation, in a relevant construction lead generating service with statewide circulation, and on an internet site sponsored by either a governmental entity or a statewide association that represents the governmental entity.

2. A governmental entity shall have an engineer licensed under [chapter 542B](#), a landscape architect licensed under [chapter 544B](#), or an architect licensed under [chapter 544A](#) prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement. A governmental entity shall ensure that a sufficient number of paper copies and, if available, electronic and digital copies of the project’s contract documents, including all drawings, plans, specifications, and estimated total costs of the proposed public improvement are made available for distribution at no charge to prospective bidders, subcontractor bidders, suppliers, and plan room services. If a deposit is required as part of a paper contract documents distribution policy by the public owner, the deposit shall not exceed two hundred fifty dollars per set which shall be refunded upon return of the contract documents within fourteen days after award of the project. If the contract documents are not returned in a timely manner and in a reusable condition, the deposit shall be forfeited. The governmental entity shall reimburse the landscape architect, architect, or professional engineer for the actual costs of preparation and distribution of plans and specifications.

3. [Sections 26.4 through 26.12](#) apply to all competitive bidding pursuant to [this section](#).

2006 Acts, ch 1017, §3, 42, 43; 2007 Acts, ch 144, §3; 2009 Acts, ch 179, §107; 2010 Acts, ch 1184, §90; 2013 Acts, ch 90, §16; 2015 Acts, ch 7, §1; 2016 Acts, ch 1009, §1; 2017 Acts, ch 54, §14; 2017 Acts, ch 131, §7; 2018 Acts, ch 1097, §1

Referred to in §8.46, 8A.311, 26.4, 26.5, 26.12, 26.14, 26.14A, 28J.9, 35A.10, 73A.2, 73A.18, 105.11, 161C.2, 218.58, 260C.38, 273.2, 273.3, 273.14, 278.1, 297.8, 298.3, 314.1, 314.1B, 330A.12, 331.341, 357.14, 364.4, 904.314, 904.315

26.4 Architectural, landscape architectural, and engineering services — exemptions — prohibitions.

1. Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to [sections 26.3](#) and [26.14](#).

2. Fee-based selection of an architect, landscape architect, or engineer for a public improvement shall be prohibited.

2006 Acts, ch 1017, §4, 42, 43; 2007 Acts, ch 144, §4; 2022 Acts, ch 1122, §1

Referred to in §26.3, 314.1

Section amended

26.5 Prohibited contracts.

If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or as established in [section 314.1B](#), a governmental entity shall not divide the public improvement project into separate parts, regardless of intent, if a resulting part of the public improvement project is not let in accordance with [section 26.3](#).

2006 Acts, ch 1017, §5, 42, 43

Referred to in §26.3, 314.1

26.6 Donated funds.

If private funds are offered to a governmental entity for a building or an improvement to be used by the public and such funds are conditioned upon private construction of the building or improvement, [this chapter](#) shall not apply to the project if the governmental entity does not contribute any funds to such construction.

2006 Acts, ch 1017, §6, 42, 43

Referred to in §26.3, 314.1

26.7 Notice to bidders.

1. The notice to bidders shall adequately notify a potential bidder of a proposed bid and shall include the following items:

- a. The time, place, and manner for filing sealed proposals.
- b. The time and place sealed proposals will be opened and considered on behalf of the governmental entity.
- c. The general nature of the public improvement on which bids are requested.
- d. In general terms, when the work must be commenced and completed.
- e. That each bidder shall accompany the bid with a bid security as defined in [section 26.8](#) and as specified by the governmental entity.
- f. Any further information which the governmental entity deems pertinent.

2. The notice to bidders may provide that bids may be received in an electronic format as determined by the governmental entity.

3. The notice to bidders may provide that bids will be received for the furnishing of all labor and materials and furnishing or installing equipment under one contract, or for parts thereof in separate sections.

4. On public improvements to be financed wholly or partially by special assessments against benefited property, the governmental entity, in the notice to bidders, may request aggregate bids for all projects included in any resolution of necessity, notwithstanding variations in the sizes of the improvements and notwithstanding that some parts of the improvements are assessable and some nonassessable, and may award the contract to the lowest responsive, responsible bidder submitting the lowest aggregate bid.

2006 Acts, ch 1017, §7, 42, 43; 2022 Acts, ch 1018, §1, 2

Referred to in §26.3, 26.10, 314.1

Subsection 1, paragraph a amended

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

26.8 Bid security.

1. Each bidder shall accompany its bid with a bid security as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governmental entity, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bid security shall be in an amount fixed by the governmental entity, and shall be in the form of a cashier's check or certified check drawn on a state-chartered or federally chartered bank, or a certified share draft drawn on a state-chartered or federally chartered credit union, or the governmental entity may provide for a bidder's bond with

corporate surety satisfactory to the governmental entity. The bidder's bond shall contain no conditions except as provided in [this section](#).

2. The governmental entity shall fix the amount of bid security prior to ordering publication of the notice to bidders and such amount must equal at least five percent, but shall not exceed ten percent, of either the estimated total contract cost of the public improvement or the amount of each bid.

[2006 Acts, ch 1017, §8, 42, 43; 2007 Acts, ch 144, §5](#)

Referred to in [§26.3, 26.7, 314.1](#)

26.9 Award of contract.

1. The contract for the public improvement must be awarded to the lowest responsive, responsible bidder. However, contracts relating to public utilities or extensions or improvements thereof, as described in [sections 384.80 through 384.94](#), may be awarded by the city as it deems to be in the best interests of the city. [This section](#) shall not be construed to prohibit a governmental entity in the award of a contract for a public improvement or a governing body of a city utility from providing, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if the availability of the enhancement payments is included in the notice to bidders, the enhancement payments are competitively neutral to potential bidders, the enhancement payments are considered as a separate item in the public hearing on the award of contract, and the total value of the enhancement payments does not exceed ten percent of the value of the contract.

2. A governmental entity shall not require a potential bidder on a public improvement to provide any information which the potential bidder may deem to be confidential or proprietary as a requirement for being deemed a responsive, responsible bidder. [This subsection](#) shall not be construed to prohibit a governmental entity from obtaining information from the lowest responsive bidder to determine the bidder's responsibility relating to the bidder's experience, number of employees, and ability to finance the cost of the public improvement. However, a governmental entity shall require nonresident bidders to comply with [section 73A.21, subsection 4](#).

[2006 Acts, ch 1017, §9, 42, 43; 2017 Acts, ch 65, §1, 9, 10](#)

Referred to in [§26.3, 26.10, 26.14, 314.1](#)

26.10 Opening and considering bids.

1. The date and time that each bid is received by the governmental entity, together with the name of the person receiving the bid, shall be recorded on the envelope containing the bid. If bids are received in an electronic format as provided in [section 26.7](#), the governmental entity shall electronically record the date and time each bid is received. All bids received after the deadlines for submission of bids as stated in the project specifications shall not be considered and shall be returned to the late bidder unopened. The governmental entity shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. The governmental entity may, by resolution, award the contract for the public improvement to the bidder submitting the lowest responsive, responsible bid, determined as provided in [section 26.9](#), or the governmental entity may reject all bids received, fix a new date for receiving bids, and order publication of a new notice to bidders. The governmental entity shall retain the bid security furnished by the successful bidder until the approved contract form has been executed, a bond has been filed by the bidder guaranteeing the performance of the contract, and the contract and bond have been approved by the governmental entity. The provisions of [chapter 573](#), where applicable, apply to contracts awarded under [this chapter](#).

2. The governmental entity shall promptly return the checks or bidder's bonds of unsuccessful bidders to the bidders as soon as the successful bidder is determined or within thirty days, whichever is sooner.

[2006 Acts, ch 1017, §10, 42, 43; 2007 Acts, ch 144, §6; 2022 Acts, ch 1018, §3](#)

Referred to in [§26.3, 314.1](#)

Subsection 1 amended

26.11 Delegation of authority.

When bids are required for any public improvement, the governmental entity may delegate, by motion, resolution, or policy to the city manager, clerk, engineer, or other public officer, as applicable, the duty of receiving and opening bids and announcing the results. The officer shall report the results of the bidding with the officer's recommendations to the next regular meeting of the governmental entity's governing body or at a special meeting called for that purpose.

[2006 Acts, ch 1017, §11, 42, 43; 2007 Acts, ch 144, §7](#)

Referred to in [§26.3, 314.1](#)

26.12 When hearing necessary.

If the estimated total cost of a public improvement exceeds the competitive bid threshold in [section 26.3](#), or as adjusted in [section 314.1B](#), the governmental entity shall not enter into a contract for the public improvement until the governmental entity has held a public hearing and has approved the proposed plans, specifications, and form of contract, and estimated total cost of the public improvement. Notice of the hearing must be published as provided in [section 362.3](#) and shall include a description of the public improvement and its location. At the hearing, any interested person may appear and file objections to the proposed plans, specifications, contract, or estimated cost of the public improvement. After hearing objections, the governmental entity shall by resolution enter its decision on the plans, specifications, contract, and estimated cost. [This section](#) does not apply to the state.

[2006 Acts, ch 1017, §12, 42, 43; 2016 Acts, ch 1009, §2](#)

Referred to in [§26.3, 314.1, 314.2, 384.20](#)

26.13 Early release of retained funds. Repealed by 2018 Acts, ch 1097, §6. See [§573.28](#).**26.14 Competitive quotations for public improvement contracts.**

1. Competitive quotations shall be required for a public improvement having an estimated total cost that exceeds the applicable threshold amount provided in [this section](#), but is less than the competitive bid threshold established in [section 26.3](#).

2. Unless the threshold amounts are adjusted pursuant to [section 314.1B](#), the following threshold amounts shall apply:

- a. Sixty-seven thousand dollars for a county, including a county hospital.
- b. Fifty-one thousand dollars for a city having a population of fifty thousand or more.
- c. Fifty-one thousand dollars for a school district having a population of fifty thousand or more.
- d. Fifty-one thousand dollars for an aviation authority created within a city having a population of fifty thousand or more.
- e. Thirty-six thousand dollars for a city having a population of less than fifty thousand, for a school district having a population of less than fifty thousand, and for any other governmental entity.
- f. The threshold amount applied to a city applies to a city hospital.

3. a. When a competitive quotation is required, the governmental entity shall make a good faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Good faith effort shall include advising all contractors who have filed with the governmental entity a request for notice of projects. The governmental entity shall provide such notice in a timely manner so that a requesting contractor will have a reasonable opportunity to submit a competitive quotation. Quotations may be obtained from contractors after the governmental entity provides a description of the work to be performed, including the plans and specifications prepared by an architect, landscape architect, or engineer, if required under [chapter 542B, 544B, or 544A](#), and an opportunity to inspect the work site. The contractor shall include in the quotation the price for labor, materials, equipment, and supplies required to perform the work. If the work can be performed by an employee or employees of the governmental entity, the governmental entity may file a quotation for the work to be performed in the same manner as a contractor. If the governmental entity receives no quotations after making a good faith effort to obtain

quotations from at least two contractors regularly engaged in such work, the governmental entity may negotiate a contract with a contractor regularly engaged in such work.

b. The governmental entity shall designate the time, place, and manner for filing quotations, which may be received by mail, facsimile, or electronic mail. The governmental entity shall award the contract to the contractor submitting the lowest responsive, responsible quotation subject to [section 26.9](#), or the governmental entity may reject all of the quotations. The unconditional acceptance and approval of the lowest responsive, responsible quotation shall constitute the award of a contract. The governmental entity shall record the approved quotation in its meeting minutes. The contractor awarded the contract shall not commence work until the contractor's performance and payment bond has been approved by the governmental entity. A governmental entity may delegate the authority to award a contract, to execute a contract, to authorize work to proceed under a contract, or to approve the contractor's performance and payment bond to an officer or employee of the governmental entity. A quotation approved outside a meeting of the governing body of a governmental entity shall be included in the minutes of the next regular or special meeting of the governing body.

c. If a public improvement may be performed by an employee of the governmental entity, the amount of estimated sales and fuel tax and the premium cost for the performance and payment bond which a contractor identifies in its quotation shall be deducted from the contractor's price for determining the lowest responsive, responsible quotation. If no quotations are received to perform the work, or if the governmental entity's estimated cost to do the work with its employee is less than the lowest responsive, responsible quotation received, the governmental entity may authorize its employee or employees to perform the work.

[2006 Acts, ch 1017, §14, 42, 43; 2007 Acts, ch 144, §9; 2009 Acts, ch 133, §10](#)

Referred to in [§26.4, 26.14A, 314.1A, 314.1B](#)

26.14A Alternative procedures.

1. When competitive quotations are required under [section 26.14](#) for a public improvement, the governmental entity may proceed, in lieu of competitive quotations, as if the estimated total cost of the public improvement exceeds the competitive bid threshold under [section 26.3](#).

2. If the total estimated cost of the public improvement does not warrant either competitive quotations under [section 26.14](#) or competitive bidding under [section 26.3](#), the governmental entity may nevertheless proceed with competitive quotations or competitive bidding for the public improvement.

[2007 Acts, ch 144, §10](#)

26.15 Structure demolition project.

A governmental entity may enter into annual contracts with multiple contractors for structure demolition projects, with each project having a total estimated cost of one hundred thousand dollars or less, or each project having a total estimated cost equal to or less than the competitive bid threshold as established in [section 314.1B](#). The governmental entity shall solicit contractors by publishing a notice as provided in [section 362.3](#). A contractor is eligible to perform structure demolition work for the governmental entity after the contractor executes an annual demolition contract in a form satisfactory to the governmental entity, including a bond and insurance. For the twelve-month period following execution of the contract or contracts, the governmental entity may obtain competitive proposals from each eligible contractor as necessary for the demolition of structures. The contractor submitting the lowest responsible proposal shall enter into a contract addendum to perform the work.

[2006 Acts, ch 1017, §15, 42, 43](#)

26.16 Prequalification requirements prohibited.

A governmental entity shall not by ordinance, rule, or any other action relating to contracts for public improvements for which competitive bids are required by [this chapter](#) impose any 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. However, a governmental entity shall require nonresident bidders to comply with [section 73A.21, subsection 4](#).

[2017 Acts, ch 65, §2, 9, 10](#)