

MEMORANDUM

TO: Ahlers & Cooney, P.C. Attorneys
Clients of Ahlers & Cooney, P.C.

FROM: Gordon Greta

RE: Impact of CHAPTER 26 PUBLIC CONSTRUCTION BIDDING (f/k/a HF 2713:
AN ACT CHANGING THE BID THRESHOLD REQUIREMENT FOR
CERTAIN PUBLIC IMPROVEMENT CONTRACTS AND PROVIDING FOR
AN EFFECTIVE DATE)

DATE: December 8, 2008

THE OVERALL IMPACT NEW CHAPTER 26

The changes wrought by NEW CHAPTER 26 are myriad and significant. In addition to establishing a new Code CHAPTER 26 PUBLIC CONSTRUCTION BIDDING effective for contracts entered into on or after January 1, 2007, several other sections of the Iowa Code are affected directly, indirectly to the extent they are made to interact with new CHAPTER 26, or are repealed, to wit (in the order as referenced in new CHAPTER 26):

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|--------------------------------------|--|---|
| 1. Chapter 419 | 20. Section 297.7 | 36. Section 357A.12 |
| 2. Chapter 388 | 21. Section 287.8 | 37. Sections 384.95
through 384.102
(reference
stricken)(sections
repealed) |
| 3. Chapter 357A | 22. Section 314.1 | 38. Section 364.4 |
| 4. Section 314.1B | 23. Section 309.40 | 39. Division VI of
Chapter 384
(reference stricken) |
| 5. Section 362.3 | 24. Section 310.14 | 40. Section 384.20 |
| 6. Chapter 542B | 25. Section 313.10 | 41. Section 384.103 |
| 7. Chapter 544A | 26. Section 384.96
(reference stricken) | 42. Section 390.3 |
| 8. Sections 384.80
through 384.94 | 27. Section 309.40A | 43. Section 904.314 |
| 9. Chapter 573 | 28. Section 384.95
(reference stricken) | 44. Section 904.315 |
| 10. Section 8A.311 | 29. Section 384.103 | |
| 11. Section 28J.9 | 30. Section 314.1A | |
| 12. Section 35A.10 | 31. Section 330A.12 | |
| 13. Chapter 8A | 32. Chapter 73A
(reference stricken) | |
| 14. Section 73A.1 | 33. Section 331.341 | |
| 15. Section 73A.2 | 34. Section 73.2
(reference stricken) | |
| 16. Section 73A.18 | 35. Section 357.14 | |
| 17. Section 161C.2 | | |
| 18. Section 218.58 | | |
| 19. Section 262.34 | | |

In short, it is no exaggeration to say that competitive bidding on public improvements in Iowa is a whole new ballgame.

The purpose of the table below is to itemize the statutory changes brought about with new CHAPTER 26, and to describe how the rules and practices will be different from pre-2007 rules and practices for public improvement contracts entered into on or after January 1, 2007 (the effective date of Chapter 26).

This memorandum is organized in the form of a series of questions and summary answers, see INDEX OF ISSUES, below, that officials are likely to have about Chapter 26. After most questions and summary answers, there is a citation ([printed in blue and underlined](#)) that is a hyperlink which, if clicked upon, will take the user to the code provision for further review of the code language as a whole. Clicking on any [Return to INDEX](#) hyperlink in the code language will bring the user back to the INDEX OF ISSUES.

CAVEAT

The brief summaries of each change and related comments must necessarily leave out some details; accordingly, it is always best to refer to the full text of new CHAPTER 26. Also, it is crucial to consult with the City Attorney before undertaking any significant action under Chapter 26.

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INDEX OF ISSUES

QUESTION	ANSWER	CITE to Chapter 26
01. What is the “estimated total cost of a public improvement?”	"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 or engineering design services and inspection.	§ 26.2(1)
02. How is the estimated total cost of a public improvement to be established?	A governmental entity shall have an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect registered under chapter 544A prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement.	§ 26.3(2)
03. What is a “governmental entity?”	"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.	§ 26.2(2)
04. What is a “public improvement?”	"Public improvement" means 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	§ 26.2(3)

QUESTION	ANSWER	CITE to Chapter 26
	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.	
05. What is “repair or maintenance work?”	"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.	§ 26.2(4)
06. Are architectural or engineering design services procured for a public improvement subject to competitive bidding?	No.	§ 26.4
07. Are privately funded “public improvements” subject to competitive bidding?	No	§ 26.6
08. What is the cost threshold above which competitive bidding requirements apply?	One hundred thousand dollars (\$100,000), or the adjusted competitive bid threshold established in section 314.1B (horizontal and vertical infrastructure).	§ 26.3(1)
09. Can a public improvement be subdivided so each part costs less than \$100,000?	No.	§ 26.5
10. How and when must a public improvement project be advertised for bids?	Publish a notice to bidders at least once, not less than 4 nor more than 45 days before the date for filing bids in a newspaper published at least once weekly and having general circulation in the geographic area served by the governmental entity. Additionally, the governmental entity may publish a notice in a relevant	§ 26.3(1)

11. What information must the bid notice contain?

contractor organization publication and a relevant contractor plan room service with statewide circulation, provided that a notice is posted on a website sponsored by either a governmental entity or a statewide association that represents the governmental entity.

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

[§ 26.7](#)

The notice *MAY* contain 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. 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

QUESTION	ANSWER	CITE to Chapter 26
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	<p>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.</p>	
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<p>12. What bid security is required?</p>	<ul style="list-style-type: none"> • 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. • 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. 	<p>§ 26.8</p>
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<p>13. On what basis must a contract be awarded?</p>	<p>The contract must be awarded to the lowest responsive, responsible bidder.</p>	<p>§ 26.9</p>
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<p>14. How are bids to be opened and</p>	<ul style="list-style-type: none"> • The date and time that each bid is 	<p>§ 26.10</p>
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QUESTION**ANSWER****CITE to
Chapter 26**

considered?

received by the governmental entity, together with the name of the person receiving the bid, shall be recorded on the envelope containing the bid. 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.
- 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

QUESTION	ANSWER	CITE to Chapter 26
15. How may a governmental entity's authority with respect to opening bids be delegated?	<p>sooner.</p> <p>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.</p>	§ 26.11
16. When is a hearing necessary?	<p>When the estimated total cost of a public improvement exceeds the competitive bid threshold in section 26.3, or as adjusted in section 314.1B</p>	§ 26.12
17. How does Chapter 26 affect Chapter 573 claims?	<p>It almost entirely displaces the early release of retained funds provisions of Chapter 573</p>	§ 26.13
18. What are “competitive quotations” and when may they be used?	<p>Chapter 26 creates a third heretofore unknown category of public improvement contracts with a lesser degree of award rigor than contracts over \$100,000, but a greater degree of award rigor than contracts of a value requiring no formal process under Chapter 26.</p> <ul style="list-style-type: none"> • The ranges of value for contracts subject to “competitive quotation” provisions differ for various kinds of entities. • A county or county hospital must get competitive quotations for a contract of a value between \$67,000 and \$100,000. • A city, or a city hospital, or a school district, or an aviation authority created within a city, having a population of fifty thousand or more must get competitive quotations for 	§ 26.14

QUESTION	ANSWER	CITE to Chapter 26
	<p>a contract of a value between \$51,000 and \$100,000.</p> <ul style="list-style-type: none"> • A city, or a city hospital, or a school district with a population of less than fifty thousand, and any other kind of governmental entity not included in any other category, must get competitive quotations for a contract of a value between \$36,000 and \$100,000. • A governmental entity must make a “good faith effort” to obtain at least two competitive quotations for any such project. 	
<p>19. What are “structure demolition projects?”</p>	<p>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.</p>	<p>§ 26.15</p>
<p>20. What other provisions of the Iowa Code have references to the \$25,000 threshold that are altered to \$100,000 (except as may be adjusted under §314.1B) by Chapter 26?</p>	<ul style="list-style-type: none"> • §8A.311(10)(a) • §28J.9(18)(b) • §35A.10(2) & (3) • §73A.2 • §73A.18 • §161C.2(1)(b) • §218.58(2)–(4) • §331.341(4) • §904.315 	
<p>21. How does Chapter 26 affect “§73A.1 PUBLIC CONTRACTS AND BONDS definitions?”</p>	<p>§73A.1 is amended to remove “school corporation” from the definition of “municipality.”</p>	
<p>22. How does Chapter 26 affect “§73A.18 PUBLIC CONTRACTS AND BONDS When bids required - advertisement - deposit?”</p>	<p>The following language is struck from current §73A.18: “This section does not apply to the construction, erection, demolition, alteration or repair of a public improvement when the contracting procedure for the doing of the work is provided for in</p>	

QUESTION	ANSWER	CITE to Chapter 26
23. How does Chapter 26 affect “§218.58(2)-(4) INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT Construction, repair, and improvement projects - emergencies – rules?”	another provision of law.” §218.58 is amended to require the department of administrative services to comply with the new law, except that §26.12 exempts all state agencies from the requirement to conduct public hearings.	
24. How does Chapter 26 affect “§262.34(4) BOARD OF REGENTS Improvements - advertisement for bids – disclosures?”	§262.34(4) is amended to remove language about retainages being handled in accordance with Chapter 573, and instead subjects retainages to the early release provisions of §26.13.	
25. How does Chapter 26 affect “§297.7(1) SCHOOL HOUSES AND SCHOOL HOUSE SITES Construction, renovation and repair of school buildings - review of plans - aviation programs?”	§297.7(1) is amended to make the construction of school buildings and related public improvements subject to new Chapter 26.	
26. How does Chapter 26 affect “§297.8 SCHOOL HOUSES AND SCHOOL HOUSE SITES Emergency repairs?”	§297.8 is amended to make emergency repairs subject to new Chapter 26 under certain circumstances.	
27. How does Chapter 26 affect “§314.1(2) ADMINISTRATIVE PROVISIONS FOR HIGHWAYS Bidding procedures - basis for awarding contracts?”	§314.1(2) is amended to delete reference to §384.96 CITY FINANCE Sealed bids from the list of statutes subject to §314.1(2).	
28. How does Chapter 26 affect “§314.1A ADMINISTRATIVE PROVISIONS FOR HIGHWAYS Detailed cost accountings by cities and counties – rules?”	<ul style="list-style-type: none"> • §314.1A is amended to extend its applicability to bridges and culverts in addition to highways. • §314.1A is further amended to authorize creation of separate “horizontal” and “vertical” infrastructure advisory committees where previously there was a single committee. • §314.1A is amended to authorize the department of transportation to adopt rules prescribing the manner by which governmental entities shall administer section 26.14 	

QUESTION	ANSWER	CITE to Chapter 26
29. How does Chapter 26 affect “§314.1B ADMINISTRATIVE PROVISIONS FOR HIGHWAYS Bid threshold subcommittee - adjustments - notice?”	<p>concerning public improvement quotations.</p> <ul style="list-style-type: none"> • §314.1B is amended to create a separate “horizontal infrastructure” committee for highway, bridge or culvert projects, and clarifies that three members must be representatives of “cities and counties.” • §314.1B is further amended to create a separate “vertical infrastructure” committee; “vertical infrastructure” is not defined. 	
30. How does Chapter 26 affect §330A.12 AVIATION AUTHORITIES Award of contracts?”	§330A.12 is amended to make new Chapter 26 applicable to aviation authorities.	
31. How does Chapter 26 affect §331.341(1) & (2) COUNTY HOME RULE IMPLEMENTATION Contracts?”	§331.341(1) & (2) are amended to make new Chapter 26 applicable to counties.	
32. How does Chapter 26 affect “§357.14 WATER DISTRICTS Bid for construction?”	§357.14 is amended to make new Chapter 26 applicable to water districts governed by county boards of supervisors.	
33. How does Chapter 26 affect “§357A.12 RURAL WATER DISTRICTS Plans, specifications, and procedures?”	§357A.12 is amended to make new Chapter 26 applicable to rural water districts govern by boards of directors.	
34. How does Chapter 26 affect “§364.4(4)(i) POWERS AND DUTIES OF CITIES Property and services outside of city - lease-purchase – insurance?”	§364.4(4)(i) is amended to incorporate references to new Chapter 26.	
35. How does Chapter 26 affect “§384.20 CITY FINANCE Separate Accounts?”	§384.20 is amended to incorporate references to new Chapter 26.	
36. How does Chapter 26 affect “§384.103(2) CITY FINANCE Bonds authorized?”	§384.103(2) is amended to incorporate references to new Chapter 26.	
37. How does Chapter 26 affect “§390.3 JOINT ELECTRICAL UTILITIES Hearing - exception to general	§390.3 is amended to incorporate references to new Chapter 26.	

QUESTION	ANSWER	CITE to Chapter 26
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| <p>statutes?”</p> <p>38. How does Chapter 26 affect “§904.314 DEPARTMENT OF CORRECTIONS Plans and specifications for improvements?”</p> | <ul style="list-style-type: none"> • §904.314 is amended to make Chapter 26 applicable to the Department of Corrections. • §904.314 is further amended to allow plans and specifications for public improvements by the Department of Corrections to be prepared by a “competent...engineer” as well as by a “competent architect.” | |
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CHAPTER 26 PUBLIC CONSTRUCTION BIDDING

See also chapter 573

Chapter is effective January 1, 2007, and applies to public improvement contracts entered into on or after that date; 2006 Acts, ch 1017, §42, 43

- 26.1 SHORT TITLE.
 - 26.2 DEFINITIONS.
 - 26.3 COMPETITIVE BIDS FOR PUBLIC IMPROVEMENT CONTRACTS.
 - 26.4 EXEMPTIONS FROM COMPETITIVE BIDS AND QUOTATIONS.
 - 26.5 PROHIBITED CONTRACTS.
 - 26.6 DONATED FUNDS.
 - 26.7 NOTICE TO BIDDERS.
 - 26.8 BID SECURITY.
 - 26.9 AWARD OF CONTRACT.
 - 26.10 OPENING AND CONSIDERING BIDS.
 - 26.11 DELEGATION OF AUTHORITY.
 - 26.12 WHEN HEARING NECESSARY.
 - 26.13 EARLY RELEASE OF RETAINED FUNDS.
 - 26.14 COMPETITIVE QUOTATIONS FOR PUBLIC IMPROVEMENT CONTRACTS.
 - 26.14A ALTERNATIVE PROCEDURES.
 - 26.15 STRUCTURE DEMOLITION PROJECT.
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26.1 SHORT TITLE.

This chapter shall be known and may be cited as the "*Iowa Construction Bidding Procedures Act*".

Section History: cent Form

2006 Acts, ch 1017, §1, 42, 43

26.2 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise:

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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.

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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.

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3. "*Public improvement*" means 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.

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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.

Section History: Recent Form

2006 Acts, ch 1017, §2, 42, 43; 2007 Acts, ch 144, § 1, 2
Referred to in § 297.7, 314.1A, 314.1B, 331.341, 364.4, 384.20

26.3 COMPETITIVE BIDS FOR PUBLIC IMPROVEMENT

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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 publishing a notice to bidders. The notice to bidders shall be published at least once, not less than four and not more than forty-five days before the date for filing bids, in a newspaper published at least once weekly and having general circulation in the geographic area served by the governmental entity. Additionally, the governmental entity may publish a notice in a relevant contractor organization publication and a relevant contractor plan room service with statewide circulation, provided that a notice is posted on a website sponsored by either a governmental entity or a statewide association that represents the governmental entity.

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2. A governmental entity shall have an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect registered under chapter 544A prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement.

3. Sections 26.4 through 26.13 apply to all competitive bidding pursuant to this section.

Section History: Recent Form

2006 Acts, ch 1017, §3, 42, 43; 2007 Acts, ch 144, §3
Referred to in § 8A.311, 26.4, 26.5, 26.12, 26.14, 26.14A, 28J.9, 35A.10, 73A.2, 73A.18, 161C.2, 218.58, 297.8, 314.1, 314.1B, 330A.12, 331.341, 357.14, 904.314, 904.315

26.4 EXEMPTIONS FROM COMPETITIVE BIDS AND

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QUOTATIONS.

Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to sections 26.3 and 26.14.

Section History: Recent Form

2006 Acts, ch 1017, §4, 42, 43; 2007 Acts, ch 144, §4
Referred to in § 26.3, 314.1

26.5 PROHIBITED CONTRACTS.

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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.

Section History: Recent Form

2006 Acts, ch 1017, §5, 42, 43
Referred to in § 26.3, 314.1

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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.

Section History: Recent Form

2006 Acts, ch 1017, §6, 42, 43
Referred to in § 26.3, 314.1

26.7 NOTICE TO BIDDERS.

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1. The notice to bidders shall adequately notify a potential bidder of a proposed bid and shall include the following items:
 - a. The time and place 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 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.
3. 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.

Section History: Recent Form

2006 Acts, ch 1017, §7, 42, 43
Referred to in § 26.3, 314.1

26.8 BID SECURITY.

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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.

Section History: Recent Form

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.

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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.

Section History: Recent Form

2006 Acts, ch 1017, §9, 42, 43
Referred to in § 26.3, 26.10, 26.14, 314.1

26.10 OPENING AND CONSIDERING BIDS.

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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. 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.

Section History: Recent Form

2006 Acts, ch 1017, §10, 42, 43; 2007 Acts, ch 144, §6
Referred to in § 26.3, 314.1

26.11 DELEGATION OF AUTHORITY.

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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.

Section History: Recent Form

2006 Acts, ch 1017, §11, 42, 43; 2007 Acts, ch 144, §7
Referred to in § 26.3, 314.1

26.12 WHEN HEARING NECESSARY.

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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. 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.

Section History: Recent Form

2006 Acts, ch 1017, §12, 42, 43
Referred to in § 26.3, 314.1, 364.4, 384.20

26.13 EARLY RELEASE OF RETAINED FUNDS.

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Payments made by a governmental entity or the state department of transportation for the construction of public improvements and highway, bridge, or culvert projects shall be made in accordance with the provisions of chapter 573, except as provided in this section. For purposes of this section, "department" means the state department of transportation.

1. At any time after all or any part of the work on the public improvement or highway, bridge, or culvert project is substantially completed, the contractor may request the release of all or part of

the retained funds owed. The request shall be accompanied by a sworn statement of the contractor that, ten calendar days prior to filing the request, notice was given as required by subsection 7 to all known subcontractors, sub-subcontractors, and suppliers.

2. Except as provided under subsection 3, upon receipt of the request, the governmental entity or the department shall release all or part of the retained funds. Retained funds that are approved as payable shall be paid at the time of the next monthly payment or within thirty days, whichever is sooner. If partial retained funds are released pursuant to a contractor's request, no retained funds shall be subsequently held based on that portion of the work. If within thirty days of when payment becomes due the governmental entity or the department does not release the retained funds due, interest shall accrue on the amount of retained funds at the rate of interest that is calculated as the prime rate plus one percent per year as of the day interest begins to accrue until the amount is paid.

3. If labor and materials are yet to be provided at the time the request for the release of the retained funds is made, an amount equal to two hundred percent of the value of the labor or materials yet to be provided, as determined by the governmental entity's or the department's authorized contract representative, may be withheld until such labor or materials are provided. For purposes of this section, "*authorized contract representative*" means the person chosen by the governmental entity or the department to represent its interests or the person designated in the contract as the party representing the governmental entity's or the department's interest regarding administration and oversight of the project.

4. An itemization of the labor or materials yet to be provided, or the reason that the request for release of retained funds is denied, shall be provided to the contractor in writing within thirty calendar days of the receipt of the request for release of retained funds.

5. For purposes of this section, "*substantially completed*" means the first date on which any of the following occurs:

a. Completion of the public improvement project or the highway, bridge, or culvert project or when the work on the public improvement or the highway, bridge, or culvert project has been substantially completed in general accordance with the terms and provisions of the contract.

b. The work on the public improvement or on the designated portion is substantially completed in general accordance with the terms of the contract so that the governmental entity or the department can occupy or utilize the public improvement or designated portion of the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

c. The public improvement project or the highway, bridge, or culvert project is certified as having been substantially completed by either of the following:

(1) The architect or engineer authorized to make such certification.

(2) The authorized contract representative.

d. The governmental entity or the department is occupying or utilizing the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

6. The contractor shall release retained funds to the subcontractor or subcontractors in the same manner as retained funds are released to the contractor by the governmental entity or the department. Each subcontractor shall pass through to each lower tier subcontractor all retained fund payments from the contractor.

7. Prior to applying for release of retained funds, the contractor shall send a notice to all known subcontractors,

sub-subcontractors, and suppliers that provided labor or materials for the public improvement project or the highway, bridge, or culvert project. The notice shall be substantially similar to the following:

"NOTICE OF CONTRACTOR'S REQUEST FOR EARLY RELEASE OF RETAINED FUNDS

You are hereby notified that [name of contractor] will be requesting an early release of funds on a public improvement project or a highway, bridge, or culvert project designated as [name of project] for which you have or may have provided labor or materials. The request will be made pursuant to Iowa Code section 26.13. The request may be filed with the [name of governmental entity or department] after ten calendar days from the date of this notice. The purpose of the request is to have [name of governmental entity or department] release and pay funds for all work that has been performed and charged to [name of governmental entity or department] as of the date of this notice. This notice is provided in accordance with Iowa Code section 26.13."

Section History: Recent Form

2006 Acts, ch 1017, §13, 42, 43; 2007 Acts, ch 144, §8
Referred to in § 26.3, 314.1

26.14 COMPETITIVE QUOTATIONS FOR PUBLIC IMPROVEMENT

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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 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.

Section History: Recent Form

2006 Acts, ch 1017, §14, 42, 43; 2007 Acts, ch 144, § 9
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.

Section History: Recent Form

2007 Acts, ch 144, §10

26.15 STRUCTURE DEMOLITION PROJECT.

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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.

Section History: Recent Form

2006 Acts, ch 1017, §15, 42, 43