

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 180
“Quotation Process for Governmental Entities for
Public Improvement for Vertical Infrastructure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 314.1A
State or federal law(s) implemented by the rulemaking: Iowa Code sections 26.2, 26.14, 314.1A,
314.1B, 573.2 and 573.28

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 11, 2024
1 to 1:30 p.m.

[Microsoft Teams link](#)
Or dial: 515.817.6093
Conference ID: 572 562 717

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Veronica Tolander
800 Lincoln Way
Ames, Iowa 50010
Email: veronica.tolander@iowadot.us

Purpose and Summary

This proposed chapter establishes the process by which governmental entities are to obtain and evaluate competitive quotations relating to public improvement projects for vertical infrastructure. The intended benefit is to ensure competition and equal opportunity through a standardized process and to keep vendors accountable by permitting retained funds.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed chapter does not create additional costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed chapter does not create additional benefits for any class of persons.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The proposed chapter does not have a quantitative impact.
 - Qualitative description of impact:
The proposed chapter does not have a qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of the proposed chapter is consistency and transparency of the process to ensure competition when governmental entities seek quotations for public improvement projects on vertical infrastructure. The cost of inaction is lack of competition and equal opportunity in the solicitation of quotes. There is no benefit of inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules. To be compliant with competitive bidding, the chapter clarifies when bids are to be formally or informally obtained.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider alternatives to the proposed rules. The Department is required by the Iowa Code to adopt rules prescribing how governmental entities need to administer competitive quotations for public improvement projects.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternatives to the proposed rules were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 180 and adopt the following **new** chapter in lieu thereof:

CHAPTER 180 QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR PUBLIC IMPROVEMENT FOR VERTICAL INFRASTRUCTURE

761—180.1(26,314) Purpose and contact information.

180.1(1) The purpose of these rules is to prescribe the manner by which governmental entities are to administer competitive quotations for contracts pertaining to a public improvement for vertical infrastructure, in accordance with Iowa Code section 26.14.

180.1(2) Questions regarding this chapter may be directed to the Resources and Acquisitions Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1170.

761—180.2(26,314) Definitions.

“Estimated total cost” means the same as defined in Iowa Code section 26.2.

“Governmental entity” means the same as defined in Iowa Code section 26.2.

“Public improvement for vertical infrastructure” is a “public improvement” as defined in Iowa Code section 26.2(3) “a” and “b” but excludes those improvements in Iowa Code section 26.2(3) “b”(1) through 26.2(3)(6).

“Responsible quotation” means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

“Responsive quotation” means a quotation in which the contractor agrees to do everything required by the governmental entity’s solicitation of quotations and by the plans and specifications and other related documents without any conditions, qualifications or exclusions.

761—180.3(314,573) Solicitation of quotations.

180.3(1) A governmental entity is to solicit competitive quotations for a public improvement for vertical infrastructure when the estimated total cost of the public improvement for vertical infrastructure exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department’s website at www.iowadot.gov.

180.3(2) The governmental entity is to 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. Quotations are to be obtained by means of either an oral or a written solicitation directed to not less than two contractors.

180.3(3) Each solicitation is to include a description of the work to be performed, and plans and specifications for the work prepared by an architect or engineer if required by Iowa Code chapter 542B or 544A (additional guidelines can be found in 193B—Chapter 5 or rule 193C—1.5(542B)). In its solicitation, the governmental entity is to advise each contractor that it has an opportunity to inspect the work site. Each contractor requesting to inspect the work site is to be provided an equal and adequate opportunity to do so.

180.3(4) Additional information deemed pertinent by the governmental entity, or requested by a contractor, may be provided by the governmental entity if the same information is provided to all contractors from which quotations are solicited. If the information is provided in written form to a contractor, it is to be provided in the same form to all contractors from which quotations are solicited.

180.3(5) In its solicitation, the governmental entity is to:

a. Specify the required form and content of quotations (more information can be found in rule 761—180.5(314)).

b. Request quotations to be filed by a particular time, at a particular location and with a particular office or representative of the governmental entity.

c. Establish the acceptable method(s) for delivery of quotations. The governmental entity may specify any or all of the following methods of delivery: mail, electronic mail, or delivery in-hand.

180.3(6) In accordance with Iowa Code section 573.2, the governmental entity is to utilize the solicitation to inform quoting contractors that the awarded contractor is to provide a performance and payment bond to secure the performance and timely completion of the work and to secure the payment of subcontractors and suppliers.

180.3(7) In its solicitation, the governmental entity may stipulate that each quoting contractor:

a. Provide along with its quotation a bid bond, or other bid security or evidence of its responsibility, to assure that it will enter into a contract to perform the work and that it will provide the necessary performance and payment bond.

b. Commit to the execution of a contract for the work.

c. Commit to commencement and completion dates for the work as directed by the governmental entity.

d. File evidence of insurance, as specified by the governmental entity, with its quotation, or commit to filing such evidence of insurance upon award of the contract to perform the work.

180.3(8) In its solicitation, the governmental entity may provide that it will issue special sales tax exemption certificates to contractors and subcontractors, pursuant to Iowa Code section 423.3(80).

761—180.4(314) Submission of competitive quotation by governmental entity. The governmental entity may itself file a competitive quotation to perform the work. The governmental entity's quotation is to be filed in the same manner as quotations are to be filed by contractors except as provided in subrule 180.5(3).

761—180.5(314) Form and content of competitive quotations.

180.5(1) A competitive quotation filed by a contractor or by the governmental entity is to be in writing and include the total price for labor, equipment, materials and supplies necessary to perform the work. A contractor may include in its quotation or in individual quotation items a breakdown of costs for labor, materials, equipment and supplies. Competitive quotations filed by contractors are to include all other information, documentation or commitments requested by the governmental entity in its solicitation of quotations.

180.5(2) If the governmental entity in its solicitation indicates its intention to file a competing quotation, contractors are to also separately identify in their quotations the premium cost for the necessary performance and payment bond and an estimate of the sales and fuel taxes they will incur in performing the work. However, if in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations.

180.5(3) A quotation submitted by a governmental entity need not include the information, documents or commitments in subrule 180.3(7). A performance and payment bond is not mandatory for a governmental entity.

180.5(4) The governmental entity may insist that quotations from contractors be submitted on a form prescribed by the governmental entity, provided the form complies with these rules.

761—180.6(314) Evaluation of competitive quotations.

180.6(1) If a quoting contractor does not file a quotation in the form specified by the governmental entity, or does not provide all information or documentation or make all commitments requested by the governmental entity, or does not sign the quotation if required by the governmental entity, the quotation will be determined to be nonresponsive and be rejected by the governmental entity.

180.6(2) If the governmental entity submits a quotation to perform the work, paragraphs 180.6(2) "a" through "c" are applicable. If the governmental entity does not submit a quotation, these paragraphs do not apply.

a. Because the governmental entity is not required to pay sales tax or fuel tax or to submit a performance and payment bond in connection with work performed by governmental employees using

governmental equipment, each contractor's total quotation is to be adjusted to deduct the amounts identified in the quotation for estimated sales and fuel taxes and the bond premium. The amount of each contractor's adjusted quotation is to then be compared to the amount of the quotation submitted by the governmental entity for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

b. If in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations, and the governmental entity is not to deduct estimated sales tax from the contractors' quotations for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

c. The governmental entity may request that the contractor to which the work is awarded provide documentation of the premium cost incurred by it for the performance and payment bond and of all sales and fuel taxes paid by it and its subcontractors in connection with the work. The governmental entity may decline to pay the amounts identified by the contractor in its quotation for the bond premium and estimated sales and fuel taxes if these amounts are not properly documented as having been paid.

761—180.7(314) Award of contract and subsequent procedures.

180.7(1) Except as provided in subrule 180.7(3), the governmental entity is to award the contract for the work to the contractor submitting the lowest responsive, responsible quotation, subject to Iowa Code section 26.9, or the governmental entity may reject all of the quotations. A contract is to be considered awarded when the governmental entity unconditionally accepts and approves the lowest responsive, responsible quotation. The governing body of the governmental entity is to record the approved quotation in its meeting minutes.

180.7(2) The governing body of a governmental entity may delegate the authority to award and execute contracts, or to award contracts and authorize the work to proceed, to an officer or employee of the governmental entity, provided that an award approved outside a meeting of the governing body is to be reported in the meeting minutes of the next regular meeting of the governing body.

180.7(3) If no quotations are received from contractors to perform the work or if the governmental entity's estimated cost to do the work with its employees, as reflected in its quotation, is less than the lowest responsive, responsible quotation received from a contractor, the governmental entity may authorize its employees to perform the work.

180.7(4) Upon the submission of the necessary performance and payment bond by the contractor to which the contract has been awarded and upon approval of the bond by the governmental entity, the governmental entity is to execute a contract to perform the work or shall authorize the contractor to proceed with the work.

180.7(5) Upon execution of the contract by the contractor and the governmental entity or upon authorization to proceed by the governmental entity and acknowledgment thereof by the contractor, the governmental entity releases the bid bonds or other quotation security submitted with the quotations received.

180.7(6) If the governmental entity is a city and the cost of the work will exceed the amount provided for in Iowa Code section 380.4, the governing body is to pass a resolution approving the expenditure.

761—180.8(314,573) Retained funds. In addition to requiring the contractor to submit a performance and payment bond, the governmental entity also retains funds from each payment to the contractor for the benefit of subcontractors and suppliers, and applies or releases such funds, in accordance with Iowa Code chapter 573.

These rules are intended to implement Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2, and 573.28.