



OFFICE OF AUDITOR OF STATE  
STATE OF IOWA

David A. Vaudt, CPA  
Auditor of State

State Capitol Building  
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

**AOS Technical Update – July 2010**  
**School District – Performance Contracting**

Performance contracting is subject to the competitive bidding requirements of Chapter 26 of the Code of Iowa including section 26.5 regarding “prohibited contracts” which precludes entities from “dividing” or “separating” projects to avoid the statutory competitive bidding requirements.

School District officials should exercise caution and consult with legal counsel before entering into agreements. Here is some additional information for your review and consideration.

The following “Bid Law Reminder” was included in the “Legal Lessons” section of the July 2010 School Leader Update.

**“Bid Law Reminder**

Iowa’s public bid law regarding public improvement contracts is not specific to schools (meaning, it’s not an education law, so I have no expertise in the area). However, this is a reminder that Iowa Code chapter 26 is the law that addresses when a district must have competitive bids, when it must obtain competitive quotations, and when it need do neither. These are high stakes issues for which a district could be penalized if the district improperly unbundles components of a single project. School leaders are strongly urged to check with their district’s attorney.”

Pertinent Code of Iowa sections relating to School District Public Improvement Contracts

**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 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.

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. A governmental entity shall ensure that sufficient paper copies of the plans, specifications, and estimated total costs of the proposed public improvement are available for prospective bidders.

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

## **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.

## **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. (NOTE: Threshold \$65,000)

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. (NOTE: Threshold \$45,000)

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.

#### **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.