

AHLERS & COONEY, P.C.

Attorneys At Law



Public Bidding – It's More than Simply Determining the Low Bidder

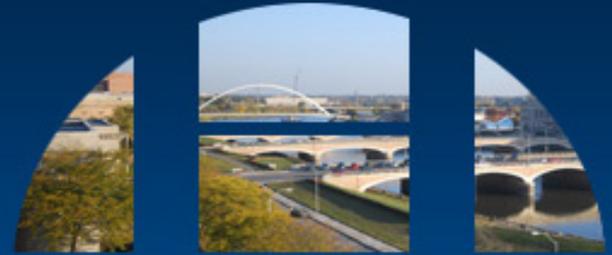
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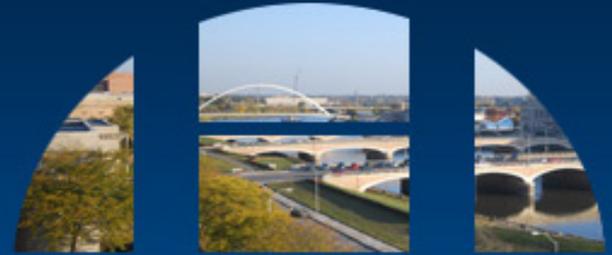
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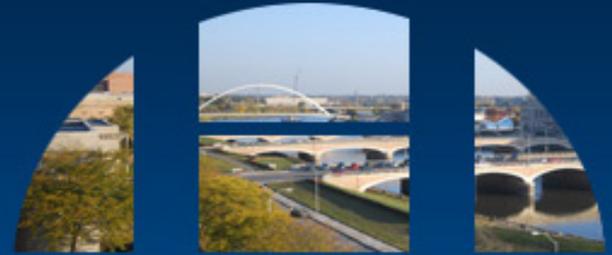


- Today's topics:
- Public (competitive) bidding requirements
- Recent Developments
- Compliance checklist



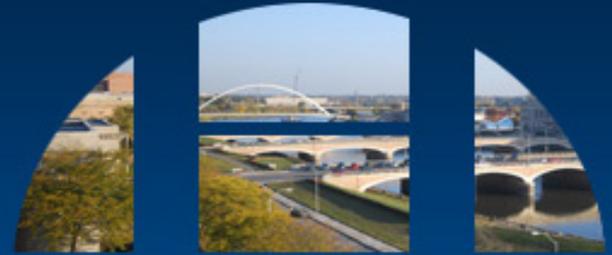
- Iowa Construction Bidding Procedures Act
- Iowa Code Chapter 26

- Chapter 26 became law in 2007 and replaced and overhauled prior Iowa Competitive Bidding Law.
- new bidding thresholds
- different notice and publication timelines for hearing and letting
- new procedures/requirements for bidding process
- a mandatory competitive quotation threshold and process for obtaining quotations
- mandatory triggering events which determine when a project is substantially complete for purposes of retainage release
- new timing option for early release of retainage

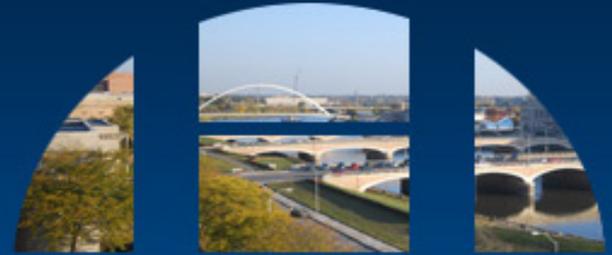


Recent Developments

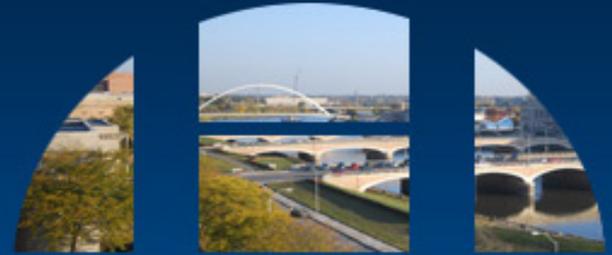
- New bid and quotation thresholds for 2015
- New DOL rules for compliance with the Reciprocal Resident Bidder and Labor Force Preference statute



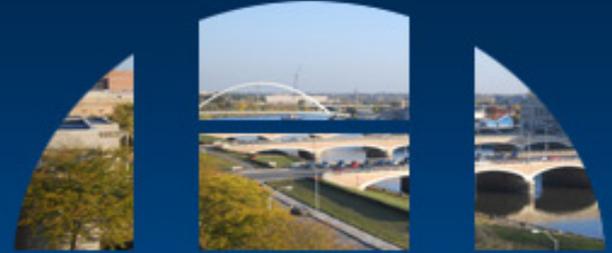
- Office of Local Systems - Iowa DOT
- The DOT has a bid threshold subcommittee that meets at least every other year to adjust the bid and quote thresholds for cities and counties.
- http://www.iowadot.gov/local_systems/publications/bid_limits.htm



- What are the current thresholds, as of January 1, 2014?
- Competitive Bid = \$130,000 or more
- Competitive Quote = \$50,000 for cities with less than 50,000 citizens
- \$72,000 for cities with greater than 50,000
- \$94,000 for counties.

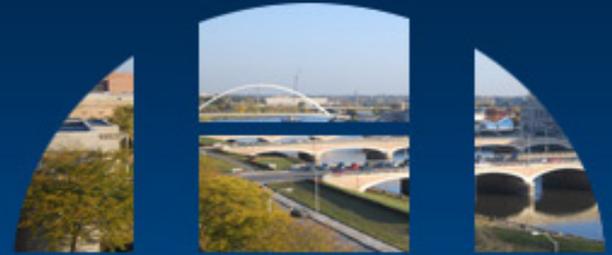


- The thresholds will increase next year - January 1, 2015!
- Competitive Bid = \$135,000 or more
- Competitive Quote = \$55,000 for cities with less than 50,000 citizens
- \$75,000 for cities with greater than 50,000
- \$100,000 for counties.



Iowa Code Chapter 573 – Labor and Material on Public Improvements

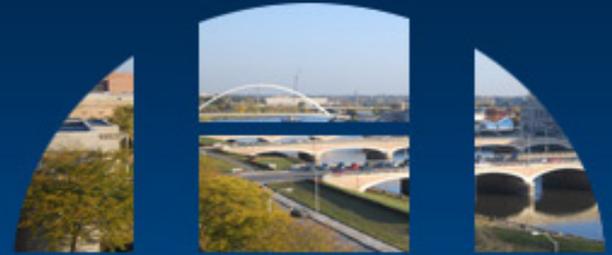
- Requires public improvement contracts, when the contract price equals or exceeds \$25,000, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law.
- The bond may also be required when the contract price is less than \$25,000.
- The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract.



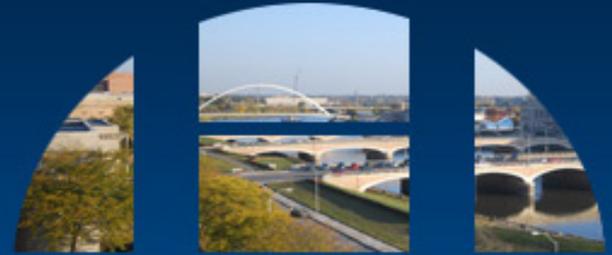
- The Labor Commissioner of the Iowa Department of Labor (“DOL”) has adopted new rules to enforce the reciprocal resident bidder and labor force preference statute.
- When a contract for a public improvement is to be awarded to the lowest responsible bidder, the public body shall request a statement from each bidder regarding the bidder’s resident status.



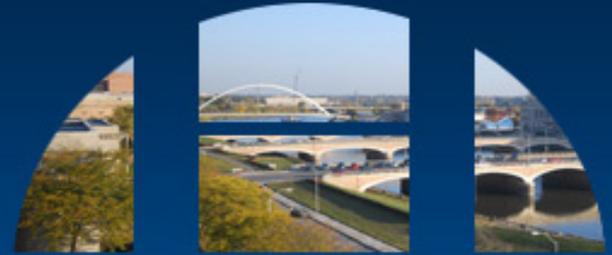
- The statement shall be on the form designated by the commissioner.
- The “Bidder Status Form” is available online at:
<http://www.iowaworkforce.org/labor/bidderstatusform.pdf>



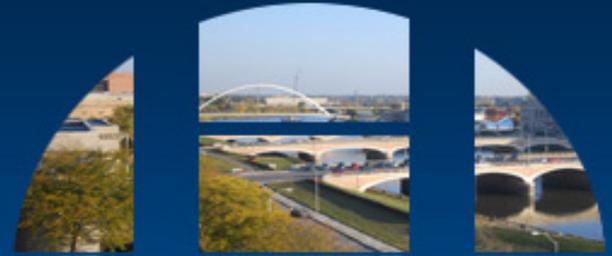
- The Reciprocal Resident Bidder and Labor Force Preference (Iowa Code 73A.21)
- when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country
- if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country.



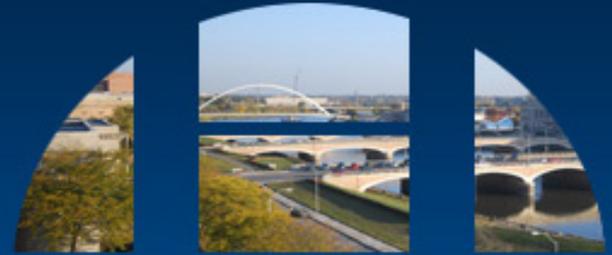
- The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.



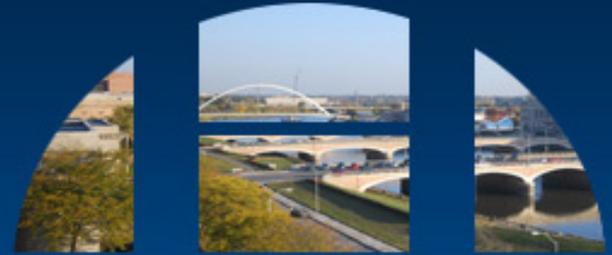
- “Resident bidder” means a person or entity authorized to transact business in this state
- and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement.
- If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.



- “Resident labor force preference” means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

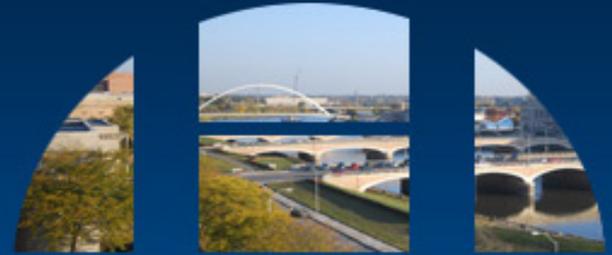


- The Reciprocal Resident Bidder and Labor Force Preference requirements shall be suspended if it is determined that they may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation.



Threshold questions

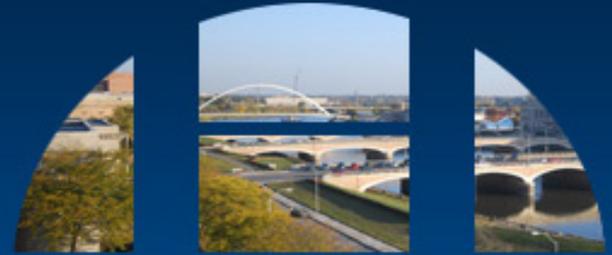
- What is a public improvement?
- A public improvement is a “a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of a governmental entity.”
- A public improvement is NOT:
 - Emergency Work
 - Privately Funded Work
 - Goods or Services
 - Repair or Maintenance Work (if performed by employees of governmental entity)



- **What is Repair or Maintenance Work?**
- Generally: Defined as “Preservation Work” to keep the facility in sound or proper condition.
- Specifically: Minor replacements and additions, as necessary, for a building so that it remains in sound or proper condition and is restored to its original condition with same design.
- If work is determined to be Repair or Maintenance Work then:
- The work is still subject to competitive bid or competitive quotation, if requisite thresholds are met....
- UNLESS the work will be performed by employees of the governmental entity.

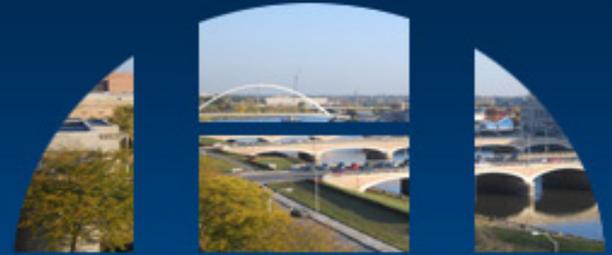


- Can you break a project up into smaller pieces to avoid compliance with the public bidding law?
- No.
- “If the estimated total cost of a public improvement exceeds the competitive bid threshold, a governmental entity shall not divide the public improvement into separate parts regardless of intent, if a resulting part of the public improvement is not let in accordance with Chapter 26”.



Competitive Bidding Process

- An Iowa licensed engineer, or licensed landscape architect or registered architect must prepare the proposed plans, specifications, and the estimated total cost of a proposed public improvement.



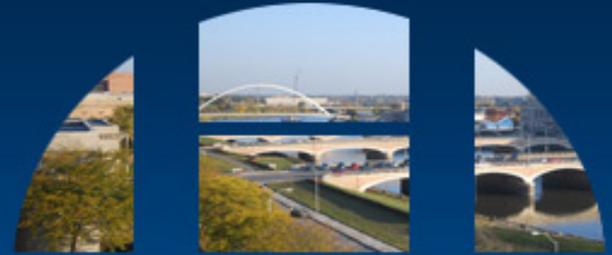
Competitive Bidding Process

- Was legal notice provided?
- Notice to Bidders
- Notice of Public Hearing
- Combined Notice



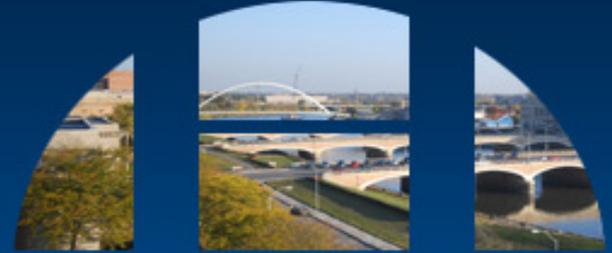
Competitive Bidding Process

- Must publish a Notice of Public Hearing on Plans, Specs, Form of Contract, and Estimated Total Cost of the Public Improvement:
- ONCE at least 4 days, but not more than 20 days before the date set for the hearing
- In a newspaper of general circulation in the city where project is located.
- Hearing must be held before the governmental body may award the contract and enter into a contract for construction.



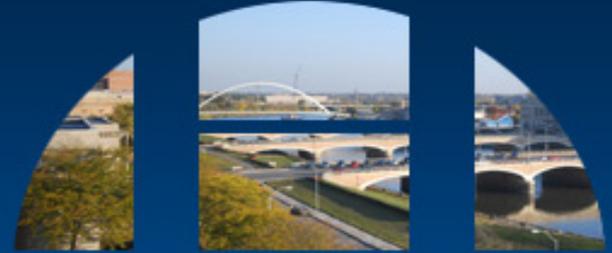
Competitive Bidding Process

- Notice to Bidders
- Must publish ONCE not less than 4 days, but not more than 45 days before the date set for receiving bids.



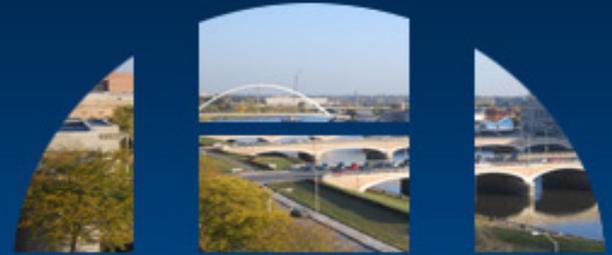
Competitive Bidding Process

- Notice to Bidders **must** include:
- Time and place for filing sealed bids
 - “before” not “until” certain time
- Time and place sealed bids will be opened and considered
- General nature or description of the public improvement
- In general terms, when the work must start and be completed
- Requirement for bid security

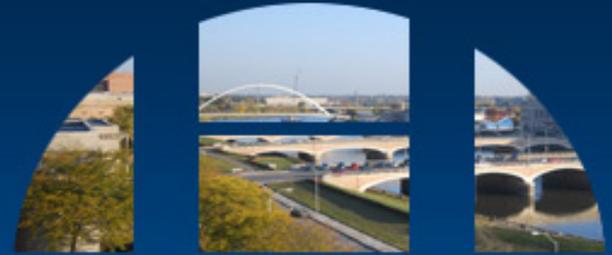


Competitive Bidding Process

- Notice to Bidders may include:
- statement that bids will be received under one contract or in parts
- Reservation of right to reject all bids, waive any informalities or irregularities, and enter into a contract in the best interest of the governmental entity
- Any other information the governmental entity deems pertinent

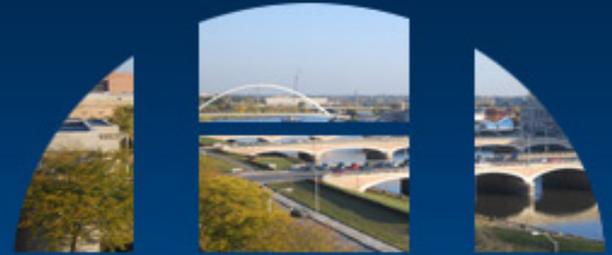


- Notice to Bidders should include:
- “Failure to submit a fully completed Bidder Status Form with the bid may result in the bid being deemed nonresponsive and rejected.”



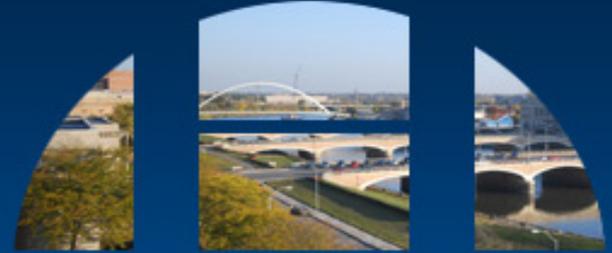
Competitive Bidding Process

- Bid opening
- The date and time each bid is received, and the name of the person opening bid should be recorded on envelope.
- All bids received after deadline should be returned to bidder unopened.
- Office of the governmental entity shall make the formal recommendation to the Council / Board to award the bid.



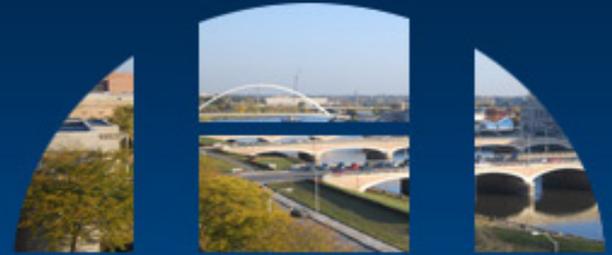
Competitive Bidding Process

- Award of Contract
- Must award to the bidder submitting the lowest, responsive, responsible bid or reject all bids and fix a new date for receiving bids and order publication of new notice to bidders.
- Within 30 days of receipt of bids



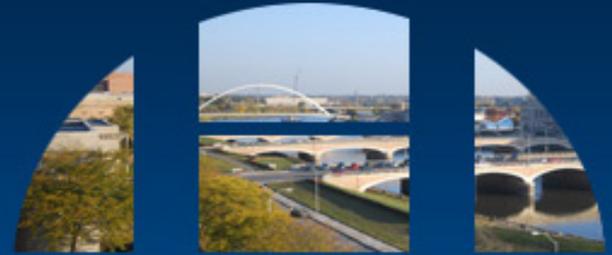
Issues During Bid Opening and Award

- Awarding to Lowest Responsive, Responsible Bidder
- Responsive: Bidder has bid according to specifications without any conditions, qualifications or exclusions and in compliance with the bid form and other documents.
- Responsible: Bidder has the capacity, not only financially, but also the skills, manpower and performance ability to complete the project as specified.



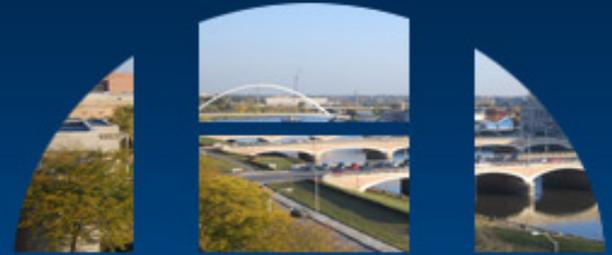
Issues During Bid Opening and Award

- Owner has limited discretion in awarding to the lowest responsive, responsible bidder
- price is just one factor.
- Other factors: business judgment of bidder, construction experience, ability to secure bonds and insurance.



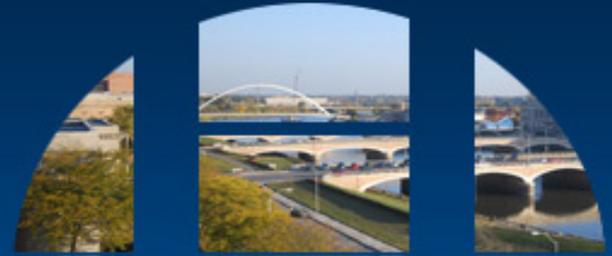
Issues During Bid Opening and Award

- If Owner intends to declare a bidder non-responsible, it is recommended the contractor be offered a hearing before the Council / Board.
- Following the hearing (or if contractor refuses a hearing), the Council / Board should pass a resolution rejecting the bidder as non-responsible and specifying the reasons.



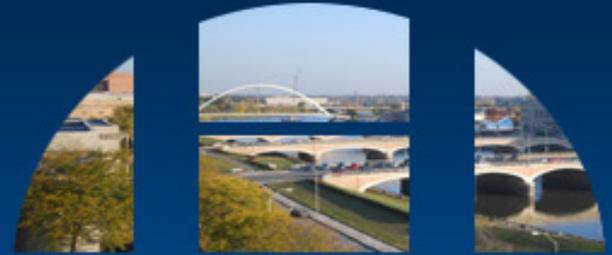
Issues During Bid Opening and Award

- Rejecting All Bids
- If all bids received are not acceptable or are non-responsive to the specifications, all bids may be rejected via resolution.
- must re-advertise after rejecting all bids.



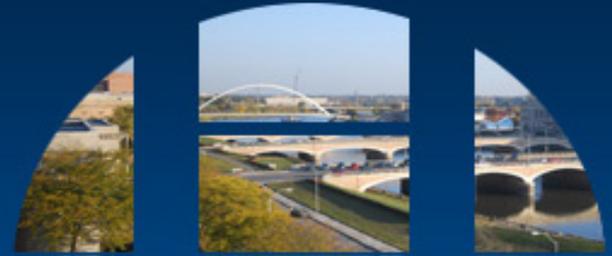
Issues During Bid Opening and Award

- Tie Bids
- If identical bids are received the Owner has wide discretion in awarding the contract so long as its actions are:
 - 1) in good faith,
 - 2) in the public interest,
 - 3) free of personal favoritism.
- If bids are identical, preference should be given to in-state contractors.



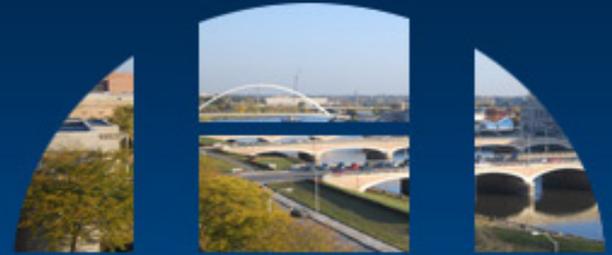
Issues During Bid Opening and Award

- Incomplete Bids
- A bid must be complete and responsive to be accepted.
- A complete bid is one that requires no explanation or support from other proposals and is capable of being acted on in the absence of other information.



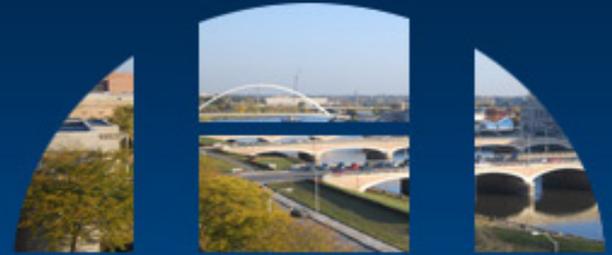
Issues During Bid Opening and Award

- Can the Owner extend Bid deadline?
- The time for receiving bids may not be extended after bids are advertised and received.
- Even if bids have not yet been received, the bid date may not be extended without re-advertising.
- Any bid received after the time specified in the notice must be rejected and returned.



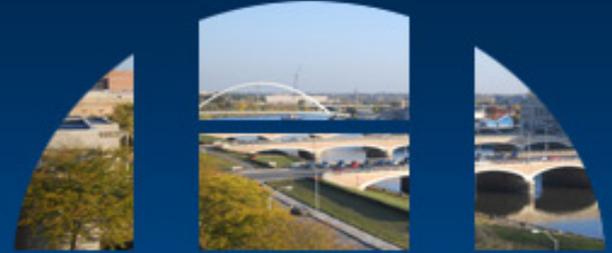
Issues Arising During Bidding

- Withdrawal, Modification and Mistake of Bid
- Allow with return of bid security when the bid contains a clear and honest mistake or clerical error and is withdrawn prior to the award of contract.
- The mistake must be substantial such that compelling bidder to perform would be unconscionable.
- The mistake must not be the result of culpable negligence, poor judgment, inaccurate predictions of future variables.
- If withdrawal or modification is permitted the reasons should be documented in Council's minutes.



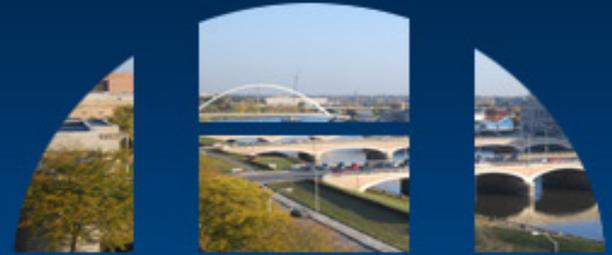
Issues Arising During Bidding

- Changes in Specifications
- Specifications may be modified by written addendum before bids are received and opened.



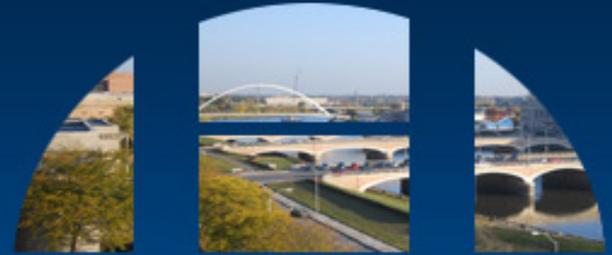
Issues Arising During Bidding

- Material (substantial) changes in the specifications made after the bids have been received render the contract invalid and requires a rebid.
- A change is material if it gives a bidder a substantial advantage or benefit not enjoyed by other bidders or materially changes the character of the project.
- Typically arises when low bid exceeds the engineer's cost estimate and value engineering is suggested.



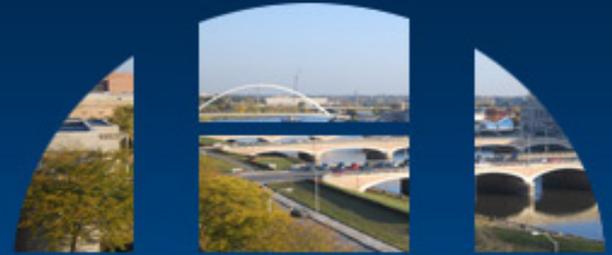
Issues During Bid Opening and Award

- Waiving Informalities and Irregularities
- Owner can waive informalities and irregularities in a bid when the waiver will not give a material advantage or benefit to one bidder over others.
- Price irregularities are generally not waived.
- The decision should be made by the Owner on a case-by-case basis in consultation with legal counsel and the project architect, engineer and/or construction manager.



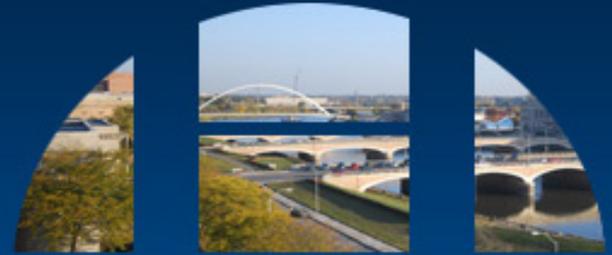
Competitive Quotation Thresholds

- Must seek competitive quotations and follow competitive quotations process if:
 - 1. Cost of a public improvement exceeds \$50,000, but is less than \$130,000 (for cities or other governmental entities with less than 50,000 population).
 - 2. Cost of public improvement exceeds \$72,000, but is less than \$130,000 (for cities or other governmental entities with 50,000 or more population).
- Remember: these thresholds will increase Jan. 1, 2015



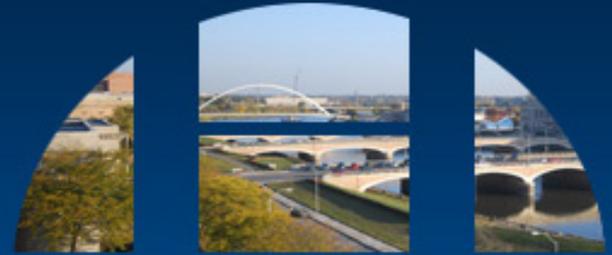
Competitive Quotations Process

- Architect/engineer prepares plans and specifications.
- “Good faith effort” must be made to solicit/obtain quotations from at least two contractors regularly engaged in the work being sought.
- Quoters shall be provided with:
 - a general description of the work
 - architectural or engineering plans and specifications
 - an opportunity to visit the site



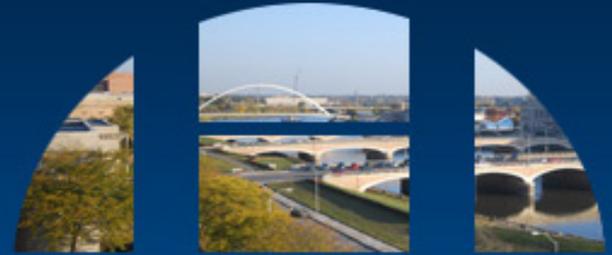
Competitive Quotations Process

- Governmental entity shall designate a time, date and manner for filing quotations, which may be received by mail, fax, or email.
- All quotes received must include the price for labor, materials, equipment and supplies.
- Award of the contract must be to the lowest responsive, responsible quoter or all quotes must be rejected.



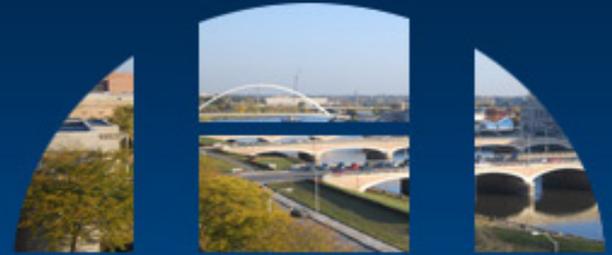
Competitive Quotations Process

- Approved quotations shall be recorded in board meeting minutes.
- If no quotations are received from the contractors, the governmental entity may authorize its employees to perform the work.
- Contractor may not commence work on the project until the contractor's performance and payment bond(s) have been approved by the governmental entity.



Competitive Quotations Process

- NOTE: Iowa law requires all projects costing over \$25,000 be accompanied by a bond to secure faithful performance of the work.



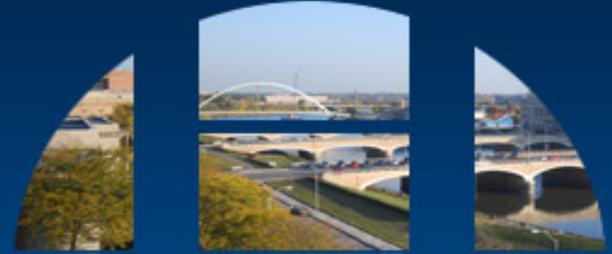
Compliance Checklist

- Is it a public improvement?
- Did its estimated cost exceed the competitive bidding / quotation thresholds?
- If yes, then...



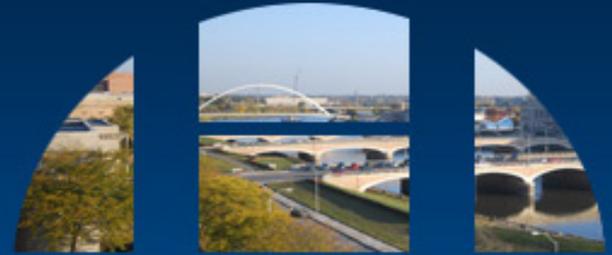
Compliance Checklist

- Did an Iowa licensed engineer, landscape architect or registered architect prepare the plans, specifications, and estimated total cost of the public improvement?



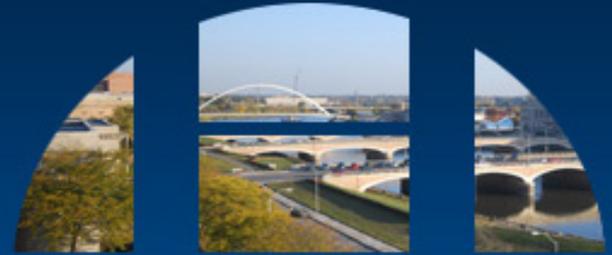
Compliance Checklist

- Did the governmental entity adopt a resolution ordering construction of the public improvement, fixing a date for the public hearing on the plans, specifications, form of contract and estimated total cost of construction, and ordering the publication of the Advertisement for Bids (Notice to Bidders) and Notice of Hearing?



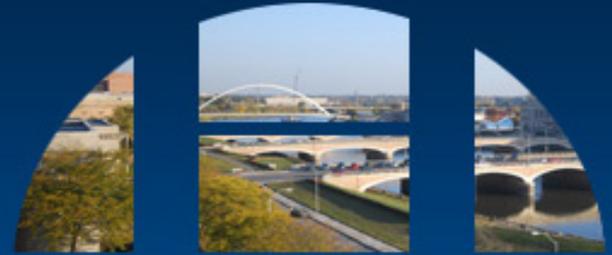
Compliance Checklist

- Was the Publication of the Notice to Bidders / Notice of Public Hearing timely?
- Did the Notice(s) include the required information?



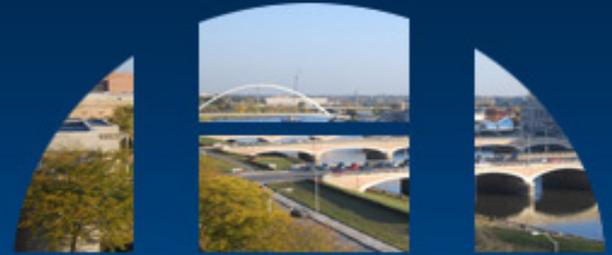
Compliance Checklist

- Did the Governmental Entity hold a public hearing on the plans, specifications, form of contract and estimated total cost of construction?



Compliance Checklist

- Did the Governmental Entity adopt a resolution approving the plans, specifications, form of contract and estimated total cost of construction before awarding the contract?



Compliance Checklist

- Did the Governmental entity adopt a resolution awarding the contract to the lowest responsive, responsible bidder?



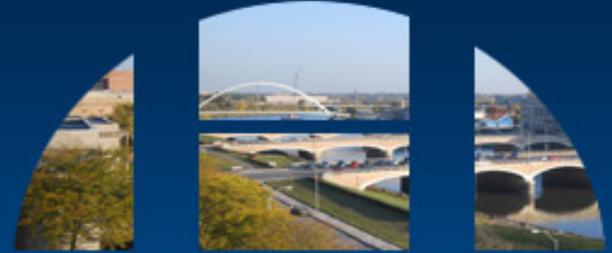
Compliance Checklist

- Did the Contractor submit the required performance, payment and, if applicable, maintenance bonds?



Compliance Checklist

- Did the Governmental Entity adopt a resolution approving the contract and bonds?

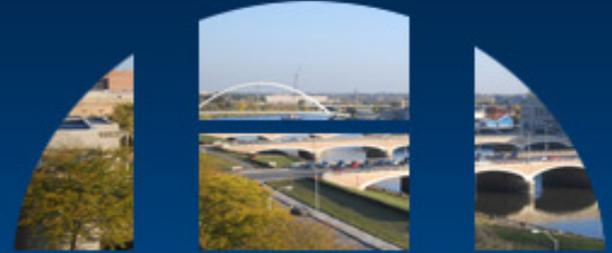


Compliance Checklist

- Did the Governmental Entity adopt a resolution accepting the public improvement?

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Attorneys At Law



- October 20, 2004
- February 24, 2012