

FREQUENTLY ASKED QUESTIONS ABOUT DESIGN / BID / BUILD

Question: If a bid deadline of 2:00 pm is established, is it permissible to allow a bid received at 2:01 pm to be considered?

Answer: No. The bid should be returned to the bidder unopened and the bid should not be considered by the owner. Pursuant to Iowa Code Chapter 26.10, the date and time each bid is received, together with the bid shall be recorded on the envelope containing the bid.

Question: Can the owner waive as an irregularity the failure of the bidding contractor to submit a performance or security bond as required by Iowa law?

Answer: No. The requirements for bid bonds are considered a material requirement of the public bid and cannot be waived.

Question: Can a bidder be pre-qualified based upon whether or not they sign collective bargaining agreements with trade unions?

Answer: No. Pre-qualifying based on whether or not a contractor's employees affiliate with unions or not violates Iowa's competitive bidding laws.²⁹

Question: If the low bidder's price exceeds the budget, is it legitimate to induce negotiations among bidders to lower the price?

Answer: No. Iowa law prohibits negotiations after the bid.³⁰

Question: Is it legal to do a design / build project in the public sector in Iowa?

Answer: No.³¹

Question: Is it legal to do CM at Risk for a guaranteed maximum price utilizing a construction manager or a general contractor practicing CM at risk for public sector projects?

Answer: No.

Question: When no bids are received on a specified bid package, is it permissible to forego competitive bidding and negotiate the package at random?

Answer: No. The project must be re-advertised and bid as though the process is starting from the beginning.

Question: Is competitive bidding required for architectural engineering and design services?

Answer: No. Owners are free to select design professionals at their discretion but usually it depends on a qualification based selection process to select their design representatives for the project. These services are not considered "construction" services but rather professional services.

Question: A certain percentage of revenue being used to finance the public project is received from private sources. Is it legal to suspend competitive bidding requirements for the project?

Answer: No. It may be possible under a specific set of circumstances to set aside a specified portion of the project that is to be financed solely with private funds and limit that portion only to some other process other than competitive bidding. However, all construction projects estimated to cost in excess of \$100,000 with any amount of public funds must be competitively bid.

Question: Can a bidder's proposed completion date be used as a determining factor in selecting the low responsible bidder for a project?

Answer: No. Alternate completion schedules must be stated in terms of specific dollar additions or deletions from the project as set out in alternates in the bid form and bidders must be informed accordingly so that an objective price evaluation can be calculated when determining the low responsible bidder. Open-ended completion date alternates invite selections based upon nondefined criteria.

Question: If a proposed project contains Vision Iowa money does the project still have to be competitively bid?

Answer: Yes. Iowa law states that if any building or construction work is to be paid for in whole or in part by the use of funds of the city or county, *regardless of sources, including a building or improvements built or operated jointly with any other public or private agency*, the project must be competitively bid.³² Thus if Vision Iowa grants money to a city for an approved project, or if the public owner contributes *any* amount of its own funds to the project, all of the rules regarding public bidding apply.

²⁹ *Miller v. City of Des Moines*, 122 N.W. 226 (Iowa 1909).

³⁰ See *supra* note 24 and accompanying text.

³¹ See *id.*

³² See Iowa Code § 26.2. This would specifically apply to cities and counties. Other procurement statutes are silent on this point, but it is likely a court would find the same result.