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SENATE FILE **2360**
BY COMMITTEE ON LOCAL GOVERNMENT

(SUCCESSOR TO SSB 3129)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the bid threshold requirements for public
2 improvement contracts.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SC 2360

1 Section 1. NEW SECTION. 38.1 CITATION.

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

4 Sec. 2. NEW SECTION. 38.2 DEFINITIONS.

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

7 1. "Estimated total cost of a public improvement" or
8 "estimated total cost" means the estimated total cost to the
9 governmental entity to construct a public improvement,
10 including cost of labor, materials, equipment, and supplies,
11 but excluding the cost of architectural or engineering design
12 services and inspection.

13 2. "Governmental entity" means the state, political
14 subdivisions of the state, public school corporations, and all
15 officers, boards, or commissions empowered by law to enter
16 into contracts for the construction of public improvements,
17 excluding the state board of regents.

18 3. "Public improvement" means a building or structure
19 which is constructed under the control of a governmental
20 entity and is paid for in whole or in part with funds of the
21 governmental entity, including a building or improvement
22 constructed or operated jointly with any other public or
23 private agency, but excluding urban renewal demolition and
24 low-rent housing projects, industrial aid projects authorized
25 under chapter 419, emergency work or repair or maintenance
26 work performed by employees of a governmental entity, and
27 excluding a highway, bridge, or culvert project, and excluding
28 construction or repair or maintenance work performed for a
29 city utility under chapter 388 by its employees or performed
30 for a rural water district under chapter 357A by its
31 employees.

32 4. "Repair or maintenance work" means the preservation of
33 a road, street, bridge, culvert, storm sewer, sanitary sewer,
34 or other public facility so that it remains in sound or proper
35 condition, including minor replacements and additions as

1 necessary to restore the public facility to its original
2 condition with the same design.

3 Sec. 3. NEW SECTION. 38.3 COMPETITIVE BIDS FOR PUBLIC
4 IMPROVEMENT CONTRACTS.

5 1. If the estimated total cost of a public improvement
6 exceeds the competitive bid threshold of one hundred thousand
7 dollars, or the adjusted competitive bid threshold established
8 in section 314.1B, the governmental entity shall advertise for
9 sealed bids for the proposed public improvement by publishing
10 a notice to bidders as provided in section 362.3.

11 Alternatively, the governmental entity may publish a notice in
12 a relevant contractor organization publication and a relevant
13 contractor plan room service with statewide circulation,
14 provided that a notice is posted on a website sponsored by
15 either a governmental entity or a statewide association that
16 represents the governmental entity. The notice to bidders
17 shall be published more than twenty days but not more than
18 forty-five days before the date for filing bids.

19 2. A governmental entity shall have an engineer licensed
20 under chapter 542B or an architect registered under chapter
21 544A prepare plans and specifications, and calculate the
22 estimated total cost of a proposed public improvement.

23 3. Sections 38.4 through 38.13 apply to all competitive
24 bidding pursuant to this section.

25 Sec. 4. NEW SECTION. 38.4 EXEMPTIONS FROM COMPETITIVE
26 BIDS AND QUOTATIONS.

27 Architectural or engineering design services procured for a
28 public improvement are not subject to sections 38.3 and 38.14.

29 Sec. 5. NEW SECTION. 38.5 PROHIBITED CONTRACTS.

30 If the estimated total cost of a public improvement exceeds
31 the competitive bid threshold of one hundred thousand dollars,
32 or as established in section 314.1B, a governmental entity
33 shall not divide the public improvement project into separate
34 parts, regardless of intent, if a resulting part of the public
35 improvement project is not let in accordance with section

1 38.3.

2 Sec. 6. NEW SECTION. 38.6 DONATED FUNDS.

3 If private funds are offered to a governmental entity for a
4 building or an improvement to be used by the public and such
5 funds are conditioned upon private construction of the
6 building or improvement, this chapter shall not apply to the
7 project if the governmental entity does not contribute any
8 funds to such construction.

9 Sec. 7. NEW SECTION. 38.7 NOTICE TO BIDDERS.

10 The notice to bidders shall adequately notify a potential
11 bidder of a proposed bid and shall include the following
12 items:

- 13 1. The time and place for filing sealed proposals.
- 14 2. The time and place sealed proposals will be opened and
15 considered on behalf of the governmental entity.
- 16 3. The general nature of the public improvement on which
17 bids are requested.
- 18 4. In general terms when the work must be commenced and
19 completed.
- 20 5. That each bidder shall accompany the bid with a bid
21 security as defined in section 38.8 and as specified by the
22 governmental entity.
- 23 6. Any further information which the governmental entity
24 deems pertinent.

25 The notice to bidders may provide that bids will be
26 received for the furnishing of all labor and materials and
27 furnishing or installing equipment under one contract, or for
28 parts thereof in separate sections.

29 On public improvements to be financed wholly or partially
30 by special assessments against benefited property, the
31 governmental entity, in the notice to bidders, may request
32 aggregate bids for all projects included in any resolution of
33 necessity, notwithstanding variations in the sizes of the
34 improvements and notwithstanding that some parts of the
35 improvements are assessable and some nonassessable, and may

1 award the contract to the lowest responsive, responsible
2 bidder submitting the lowest aggregate bid.

3 Sec. 8. NEW SECTION. 38.8 BID SECURITY.

4 1. Each bidder shall accompany its bid with a bid security
5 as security that the successful bidder will enter into a
6 contract for the work bid upon and will furnish after the
7 award of contract a corporate surety bond, acceptable to the
8 governmental entity, for the faithful performance of the
9 contract, in an amount equal to one hundred percent of the
10 amount of the contract. The bid security shall be in an
11 amount fixed by the governmental entity, and shall be in the
12 form of a cashier's check or certified check drawn on a state-
13 chartered or federally chartered bank, or a certified share
14 draft drawn on a state-chartered or federally chartered credit
15 union, or the governmental entity may provide for a bidder's
16 bond with corporate surety satisfactory to the governmental
17 entity. The bid bond shall contain no conditions except as
18 provided in this section.

19 2. The governmental entity shall fix the amount of bid
20 security prior to ordering publication of the notice to
21 bidders and such amount must equal at least five percent, but
22 shall not exceed ten percent of either the estimated total
23 contract cost of the public improvement, or the amount of each
24 bid.

25 Sec. 9. NEW SECTION. 38.9 AWARD OF CONTRACT.

26 The contract for the public improvement must be awarded to
27 the lowest responsive, responsible bidder. However, contracts
28 relating to public utilities or extensions or improvements
29 thereof, as described in sections 384.80 through 384.94, may
30 be awarded by the city as it deems to be in the best interests
31 of the city. This section shall not be construed to prohibit
32 a governmental entity in the award of a contract for a public
33 improvement or a governing body of a city utility from
34 providing, in the award of a contract for a public
35 improvement, an enhancement of payments upon early completion

1 of the public improvement if the availability of the
2 enhancement payments is included in the notice to bidders, the
3 enhancement payments are competitively neutral to potential
4 bidders, the enhancement payments are considered as a separate
5 item in the public hearing on the award of contract, and the
6 total value of the enhancement payments does not exceed ten
7 percent of the value of the contract.

8 Sec. 10. NEW SECTION. 38.10 OPENING AND CONSIDERING
9 BIDS.

10 The governmental entity shall open, announce the amount of
11 the bids, and file all proposals received, at the time and
12 place specified in the notice to bidders. The governmental
13 entity may, by resolution, award the contract for the public
14 improvement to the bidder submitting the lowest responsive,
15 responsible bid, determined as provided in section 38.9, or
16 the governmental entity may reject all bids received, fix a
17 new date for receiving bids, and order publication of a new
18 notice to bidders. The governmental entity shall retain the
19 bid security furnished by the successful bidder until the
20 approved contract form has been executed, and a bond filed by
21 the bidder guaranteeing the performance of the contract, and
22 the contract and bond, have been approved by the governmental
23 entity. The provisions of chapter 573, where applicable,
24 apply to contracts awarded under this chapter.

25 The governmental entity shall promptly return the checks or
26 bidder's bonds of unsuccessful bidders to the bidders as soon
27 as the successful bidder is determined or within thirty days
28 whichever is sooner.

29 Sec. 11. NEW SECTION. 38.11 DELEGATION OF AUTHORITY.

30 When bids are required for any public improvement, the
31 governmental entity may delegate, by motion, resolution, or
32 policy to the city manager, clerk, engineer, or other public
33 officer, as applicable, the duty of receiving and opening bids
34 and announcing the results. The officer shall report the
35 results of the bidding with the officer's recommendations to

1 the next meeting of the governmental entity's governing body.

2 Sec. 12. NEW SECTION. 38.12 WHEN HEARING NECESSARY.

3 If the estimated total cost of a public improvement exceeds
4 the competitive bid threshold in section 38.3, or as adjusted
5 in section 314.1B, the governmental entity shall not enter
6 into a contract for the public improvement until the
7 governmental entity has held a public hearing and has approved
8 the proposed plans, specifications, and form of contract, and
9 estimated total cost of the public improvement. Notice of the
10 hearing must be published as provided in section 362.3. At
11 the hearing any interested person may appear and file
12 objections to the proposed plans, specifications, contract, or
13 estimated cost of the public improvement. After hearing
14 objections, the governmental entity shall by resolution enter
15 its decision on the plans, specifications, contract, and
16 estimated cost. This section does not apply to the state.

17 Sec. 13. NEW SECTION. 38.13 EARLY RELEASE OF RETAINED
18 FUNDS.

19 Payments made by a governmental entity for the construction
20 of public improvements and highway, bridge, or culvert
21 projects shall be made in accordance with the provisions of
22 chapter 573, except that:

23 1. At any time after all or any part of the work on the
24 public improvement is substantially completed, the contractor
25 may request the release of all or part of the retained funds
26 owed. The request shall be accompanied by a sworn statement
27 of the contractor that, ten calendar days prior to filing the
28 request, notice was given as required by subsection 7 to all
29 known subcontractors, sub-subcontractors, and suppliers.

30 2. Except as provided under subsection 3, upon receipt of
31 the request, the governmental entity shall release all or part
32 of the retained funds. Retained funds that are approved as
33 payable shall be paid at the time of the next monthly payment
34 or within thirty days, whichever is sooner. If partial
35 retained funds are released pursuant to a contractor's

1 request, no retained funds shall be subsequently held based on
2 that portion of the work. If within thirty days of when
3 payment becomes due the governmental entity does not release
4 the retained funds due, interest shall accrue on the amount of
5 retained funds at the rate of interest that is calculated as
6 the prime rate plus one percent per year as of the day
7 interest begins to accrue until the amount is paid.

8 3. If at the time of the request for the release of the
9 retained funds labor or materials are yet to be provided, an
10 amount equal to two hundred percent of the value of the labor
11 or materials yet to be provided, as determined by the
12 governmental entity's authorized contract representative, may
13 be withheld until such labor or materials are provided. For
14 purposes of this section, "authorized contract representative"
15 means the person chosen by the governmental entity to
16 represent its interests or the person designated in the
17 contract as the party representing the governmental entity's
18 interest regarding administration and oversight of the
19 project.

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

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

27 a. Completion of the public improvement project or when
28 the work on the public improvement has been substantially
29 completed in general accordance with the terms and provisions
30 of the contract.

31 b. The work on the public improvement or on the designated
32 portion is substantially completed in general accordance with
33 the terms of the contract so that the governmental entity can
34 occupy or utilize the public improvement or designated portion
35 of the public improvement for its intended purpose. This

1 paragraph shall not apply to highway, bridge, or culvert
2 projects.

3 c. The public improvement project is certified as having
4 been substantially completed by either of the following:

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

7 (2) The authorized contract representative.

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

11 6. The contractor shall release retained funds to the
12 subcontractor or subcontractors in the same manner as retained
13 funds are released to the contractor by the governmental
14 entity. Each subcontractor shall pass through to each lower
15 tier subcontractors all retained fund payments from the
16 contractor in accordance with the provisions of chapter 573.

17 7. Prior to applying for release of retained funds, the
18 contractor shall send a notice to all known subcontractors,
19 sub-subcontractors, and suppliers that provided labor or
20 materials for the public improvement project. The notice
21 shall be substantially similar to the following:

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

24 You are hereby notified that [name of contractor] will be
25 requesting an early release of funds on a public improvement
26 project designated as [name of project] for which you have or
27 may have provided labor or materials. The request will be
28 made pursuant to Iowa Code section 38.13. The request may be
29 filed with the [name of governmental entity] after ten
30 calendar days from the date of this notice. The purpose of
31 the request is to have [name of governmental entity] release
32 and pay funds for all work that has been performed and charged
33 to [name of governmental entity] as of the date of this
34 notice. This notice is provided in accordance with Iowa Code
35 section 38.13."

1 Sec. 14. NEW SECTION. 38.14 COMPETITIVE QUOTATIONS FOR
2 PUBLIC IMPROVEMENT CONTRACTS.

3 1. Competitive quotations shall be required for a public
4 improvement having an estimated total cost that exceeds the
5 amount provided in this section, but is less than the
6 competitive bid threshold established in section 38.3.

7 2. Unless the threshold amount is adjusted pursuant to
8 section 314.1B, the competitive quotation threshold shall be
9 as follows:

10 a. Sixty-seven thousand dollars for a county, including a
11 county hospital.

12 b. Fifty-one thousand dollars for a city having a
13 population of fifty thousand or more.

14 c. Fifty-one thousand dollars for a school district having
15 a population of fifty thousand or more.

16 d. Fifty-one thousand dollars for an aviation authority
17 created within a city having a population of fifty thousand or
18 more.

19 e. Thirty-six thousand dollars for a city having a
20 population of less than fifty thousand, for a school district
21 having a population of less than fifty thousand, and for any
22 other governmental entity.

23 f. The threshold amount applied to a city applies to a
24 city hospital.

25 3. a. When a competitive quotation is required, the
26 governmental entity shall make a good faith effort to obtain
27 quotations for the work from at least two contractors
28 regularly engaged in such work prior to letting a contract.
29 Quotations may be obtained from contractors after the
30 governmental entity provides a description of the work to be
31 performed, including the plans and specifications prepared by
32 an architect or engineer, if required under chapter 542B or
33 544A, and an opportunity to inspect the work site. The
34 contractor shall include in the quotation the price for labor,
35 materials, equipment, and supplies required to perform the

1 work. If the work can be performed by an employee or
2 employees of the governmental entity, the governmental entity
3 may file a quotation for the work to be performed in the same
4 manner as a contractor.

5 b. The governmental entity shall designate the time,
6 place, and manner for filing quotations, which may be received
7 by mail, facsimile, or electronic mail. The governmental
8 entity shall record the approved quotation in meeting minutes.
9 Quotations approved outside a meeting of the governing body of
10 a governmental entity shall be included in the minutes of the
11 next meeting of the governing body. The governmental entity
12 shall award the contract to the contractor submitting the
13 lowest responsive, responsible quotation subject to section
14 38.9, or the governmental entity may reject all of the
15 quotations.

16 c. If a public improvement may be performed by an employee
17 of the governmental entity, the amount of estimated sales and
18 fuel tax which a contractor identifies in its quotation shall
19 be deducted from the contractor's price for determining the
20 lowest responsible bidder. If no quotations are received to
21 perform the work, or if the governmental entity's estimated
22 cost to do the work with its employee is less than the lowest
23 responsive, responsible quotation received, the governmental
24 entity may authorize its employee or employees to perform the
25 work.

26 Sec. 15. NEW SECTION. 38.15 STRUCTURE DEMOLITION
27 PROJECT.

28 A governmental entity may enter into annual contracts with
29 multiple contractors for structure demolition projects, with
30 each project having a total estimated cost of one hundred
31 thousand dollars or less, or each project having a total
32 estimated cost equal to or less than the competitive bid
33 threshold as established in section 314.1B. The governmental
34 entity shall solicit contractors by publishing a notice as
35 provided in section 362.3. A contractor is eligible to

1 perform structure demolition work for the governmental entity
2 after the contractor executes an annual demolition contract in
3 a form satisfactory to the governmental entity, including a
4 bond and insurance. For the twelve-month period following
5 execution of the contract or contracts, the governmental
6 entity may obtain competitive proposals from each eligible
7 contractor as necessary for the demolition of structures. The
8 contractor submitting the lowest responsible proposal shall
9 enter into a contract addendum to perform the work.

10 Sec. 16. Section 8A.311, subsection 10, paragraph a, Code
11 Supplement 2005, is amended to read as follows:

12 a. When the estimated total cost of construction,
13 erection, demolition, alteration, or repair of a public
14 improvement exceeds twenty-five-thousand-dollars the
15 competitive bid threshold in section 38.3, or as established
16 in section 314.1B, the department shall ~~solicit-bids-on-the~~
17 ~~proposed-improvement-by-publishing-an-advertisement-in-a-print~~
18 ~~format.--The-advertisement-shall-appear-in-two-publications-in~~
19 ~~a-newspaper-published-in-the-county-in-which-the-work-is-to-be~~
20 ~~done.--The-first-advertisement-for-bids-appearing-in-a~~
21 ~~newspaper-shall-be-not-less-than-fifteen-days-prior-to-the~~
22 ~~date-set-for-receiving-bids.--The-department-may-publish-an~~
23 ~~advertisement-in-an-electronic-format-as-an-additional-method~~
24 ~~of-soliciting-bids-under-this-paragraph~~ comply with chapter
25 38.

26 Sec. 17. Section 28J.9, subsection 18, paragraph b, Code
27 Supplement 2005, is amended to read as follows:

28 b. Except as provided in paragraph "c", when the cost of a
29 contract for the construction of a building, structure, or
30 other improvement undertaken by a port authority involves an
31 expenditure exceeding twenty-five-thousand-dollars the
32 competitive bid threshold in section 38.3, or as established
33 in section 314.1B, and the port authority is the contracting
34 entity, the port authority shall make a written contract after
35 notice calling for bids for the award of the contract has been

1 given by publication twice, with at least seven days between
2 publications, in a newspaper of general circulation in the
3 area of the port authority. Each such contract shall be let
4 to the lowest responsive and responsible bidder. Every
5 contract shall be accompanied by or shall refer to plans and
6 specifications for the work to be done, prepared for and
7 approved by the port authority, and signed by an authorized
8 officer of the port authority and by the contractor.

9 Sec. 18. Section 35A.10, subsections 2 and 3, Code 2005,
10 are amended to read as follows:

11 2. The commandant and the commission shall have plans and
12 specifications prepared by the department of administrative
13 services for authorized construction, repair, or improvement
14 projects in excess of ~~twenty-five-thousand-dollars~~ the
15 competitive bid threshold in section 38.3, or as established
16 in section 314.1B. An appropriation for a project shall not
17 be expended until the department of administrative services
18 has adopted plans and specifications and has completed a
19 detailed estimate of the cost of the project, prepared under
20 the supervision of a registered architect or registered
21 professional engineer.

22 3. The director of the department of administrative
23 services shall, in writing, let all contracts for authorized
24 improvements in excess of ~~twenty-five-thousand-dollars~~ the
25 competitive bid threshold in section 38.3, or as established
26 in section 314.1B in accordance with chapter 8A, subchapter
27 III, and chapter 38. The director of the department of
28 administrative services shall not authorize payment for
29 construction purposes until satisfactory proof has been
30 furnished by the proper officer or supervising architect that
31 the parties have complied with the contract.

32 Sec. 19. Section 73A.1, subsection 2, Code Supplement
33 2005, is amended to read as follows:

34 2. "Municipality" as used in this chapter means township
35 ~~school-corporation, and~~ or the state fair board.

1 Sec. 20. Section 73A.2, Code 2005, is amended to read as
2 follows:

3 73A.2 NOTICE OF HEARING.

4 Before any municipality shall enter into any contract for
5 any public improvement to cost ~~twenty-five-thousand-dollars-or~~
6 more in excess of the competitive bid threshold in section
7 38.3, or as established in section 314.1B, the governing body
8 proposing to make the contract shall adopt proposed plans and
9 specifications and proposed form of contract, fix a time and
10 place for hearing at the municipality affected or other nearby
11 convenient place, and give notice by publication in at least
12 one newspaper of general circulation in the municipality at
13 least ten days before the hearing.

14 Sec. 21. Section 73A.18, Code 2005, is amended to read as
15 follows:

16 73A.18 WHEN BIDS REQUIRED -- ADVERTISEMENT -- DEPOSIT.

17 When the estimated total cost of construction, erection,
18 demolition, alteration or repair of a public improvement
19 exceeds ~~twenty-five-thousand-dollars~~ the competitive bid
20 threshold in section 38.3, or as established in section
21 314.1B, the municipality shall advertise for bids on the
22 proposed improvement by two publications in a newspaper
23 published in the county in which the work is to be done. The
24 first advertisement for bids shall be not less than fifteen
25 days prior to the date set for receiving bids. The
26 municipality shall let the work to the lowest responsible
27 bidder submitting a sealed proposal. However, if in the
28 judgment of the municipality bids received are not acceptable,
29 all bids may be rejected and new bids requested. A bid shall
30 be accompanied, in a separate envelope, by a deposit of money
31 or a certified check or credit union certified share draft in
32 an amount to be named in the advertisement for bids as
33 security that the bidder will enter into a contract for the
34 doing of the work. The municipality shall fix the bid
35 security in an amount equal to at least five percent, but not

1 more than ten percent of the estimated total cost of the work.
2 The checks, share drafts or deposits of money of the
3 unsuccessful bidders shall be returned as soon as the
4 successful bidder is determined, and the check, share draft or
5 deposit of money of the successful bidder shall be returned
6 upon execution of the contract documents. ~~This section does
7 not apply to the construction, erection, demolition,
8 alteration or repair of a public improvement when the
9 contracting procedure for the doing of the work is provided
10 for in another provision of law.~~

11 Sec. 22. Section 161C.2, subsection 1, paragraph b, Code
12 2005, is amended to read as follows:

13 b. Any work project with an estimated cost ~~of twenty-five~~
14 thousand dollars or more in excess of the competitive bid
15 threshold in section 38.3, or as established in section 314.1B
16 shall be undertaken as a public contract as provided in
17 chapters 73A and 573. The local contracting organization
18 shall designate a contracting officer and shall establish
19 procedures to manage the contract, approve bills for payment,
20 and review proposed change orders or amendments to the
21 contract.

22 Sec. 23. Section 218.58, subsections 2 through 4, Code
23 2005, are amended to read as follows:

24 2. The director shall have plans and specifications
25 prepared by the department of administrative services for
26 authorized construction, repair, or improvement projects
27 costing over ~~twenty-five thousand dollars~~ the competitive bid
28 threshold in section 38.3, or as established in section
29 314.1B. An appropriation for a project shall not be expended
30 until the department of administrative services has adopted
31 plans and specifications and has completed a detailed estimate
32 of the cost of the project, prepared under the supervision of
33 a registered architect or registered professional engineer.
34 Plans and specifications shall not be adopted and a project
35 shall not proceed if the project would require an expenditure

1 of money in excess of the appropriation.

2 3. The department of administrative services shall comply
3 with the competitive bid procedures in chapter 38 to let all
4 contracts under chapter 8A, subchapter III, for authorized
5 construction, repair, or improvement of departmental
6 buildings, grounds, or equipment.

7 4. If the director of the department of human services and
8 the director of the department of administrative services
9 determine that emergency repairs or improvements estimated to
10 cost more than ~~twenty-five-thousand-dollars~~ the competitive
11 bid threshold in section 38.3, or as established in section
12 314.1B are necessary to assure the continued operation of a
13 departmental institution, the requirements of subsections 2
14 and 3 for preparation of plans and specifications and
15 competitive procurement procedures are waived. A
16 determination of necessity for waiver by the director of the
17 department of human services and the director of the
18 department of administrative services shall be in writing and
19 shall be entered in the project record for emergency repairs
20 or improvements. Emergency repairs or improvements shall be
21 accomplished using plans and specifications and competitive
22 procurement quotation or bid procedures, as applicable, to the
23 greatest extent possible, considering the necessity for rapid
24 completion of the project. A waiver of the requirements of
25 subsections 2 and 3 does not authorize an expenditure in
26 excess of an amount otherwise authorized for the repair or
27 improvement.

28 Sec. 24. Section 262.34, subsection 4, Code Supplement
29 2005, is amended by striking the subsection and inserting in
30 lieu thereof the following:

31 4. The contractor shall release retained funds to the
32 subcontractor or subcontractors in the same manner as retained
33 funds are released to the contractor by the board. Each
34 subcontractor shall pass through to each lower tier
35 subcontractors all retained fund payments from the contractor

1 in accordance with the provisions of chapter 573.

2 Sec. 25. Section 297.7, subsection 1, Code 2005, is
3 amended to read as follows:

4 1. ~~Sections 73A.2 and 73A.18 are~~ Chapter 38 is applicable
5 to the construction and repair of school buildings and other
6 public improvements as defined in section 38.2.

7 Sec. 26. Section 297.8, Code 2005, is amended to read as
8 follows:

9 297.8 EMERGENCY REPAIRS.

10 When emergency repairs costing more than ~~twenty-five~~
11 ~~thousand-dollars~~ the competitive bid threshold in section
12 38.3, or as established in section 314.1B are necessary in
13 order to prevent the closing of any school, the provisions of
14 the law with reference to advertising for bids shall not
15 apply, and in that event the board may contract for such
16 emergency repairs without advertising for bids. However,
17 before such emergency repairs can be made to any schoolhouse,
18 it shall be necessary to procure a certificate from the area
19 education agency administrator that such emergency repairs are
20 necessary to prevent the closing of the school.

21 Sec. 27. Section 314.1, subsection 2, Code 2005, is
22 amended to read as follows:

23 2. Notwithstanding any other provision of law to the
24 contrary, a public improvement that involves the construction,
25 reconstruction, or improvement of a highway, bridge, or
26 culvert and that has a cost in excess of the applicable
27 threshold in section 73A.18, 262.34, 297.7, 309.40, 310.14, or
28 313.10, or-384-96, as modified by the bid threshold
29 subcommittee pursuant to section 314.1B, shall be advertised
30 and let for bid, except such public improvements that involve
31 emergency work pursuant to section 309.40A, 313.10, ~~384-95,~~ or
32 ~~384.103,~~ subsection 2. However, a public improvement that has
33 an estimated total cost to a city in excess of a threshold of
34 fifty thousand dollars, as modified by the bid threshold
35 subcommittee pursuant to section 314.1B, and that involves the

1 construction, reconstruction, or improvement of a highway,
2 bridge, or culvert that is under the jurisdiction of a city
3 with a population of more than fifty thousand, shall be
4 advertised and let for bid.

5 Sec. 28. Section 314.1A, Code 2005, is amended to read as
6 follows:

7 314.1A DETAILED COST ACCOUNTINGS BY CITIES AND COUNTIES --
8 RULES.

9 1. The department shall adopt rules prescribing the manner
10 by which cities and counties shall provide a detailed cost
11 accounting under section 309.93 or 312.14, of all instances of
12 the use of day labor or public or private contracts for
13 construction, reconstruction, or improvement projects on
14 highways of a highway, bridge, or culvert within their
15 jurisdiction.

16 2. The department shall adopt rules prescribing the manner
17 by which governmental entities, as defined in section 38.2,
18 shall administer section 38.14 concerning public improvement
19 quotations.

20 3. The rules shall include definitions concerning types
21 of projects and uniform requirements and definitions that
22 cities and counties under subsection 1 and governmental
23 entities under subsection 2 shall use in determining costs for
24 such projects. The department shall establish an advisory
25 committee composed of representatives of public sector
26 agencies, private sector vertical and horizontal contractor
27 organizations, and certified public employee collective
28 bargaining organizations to make recommendations for such
29 rules.

30 Sec. 29. Section 314.1B, Code 2005, is amended to read as
31 follows:

32 314.1B BID THRESHOLD SUBCOMMITTEE -- ADJUSTMENTS --
33 NOTICE.

34 1. HORIZONTAL INFRASTRUCTURE.

35 a. The director of the department shall appoint, from the

1 members of the advisory committee established under section
2 314.1A, a horizontal infrastructure bid threshold subcommittee
3 for highway, bridge, or culvert projects. The subcommittee
4 shall consist of seven members, three of whom shall be
5 representatives of ~~local-public-sector-agencies~~ cities and
6 counties, three of whom shall be representatives of private
7 sector contractor organizations, and with the remaining member
8 being the director or the director's designee, who shall serve
9 as chairperson of the subcommittee. A vacancy in the
10 membership of the subcommittee shall be filled by the
11 director.

12 ~~2.--a-~~ b. The subcommittee shall review the competitive
13 bid thresholds applicable to city and county highway, bridge,
14 and culvert projects. The subcommittee shall review price
15 adjustments for all types of city and county highway, bridge,
16 and culvert construction, reconstruction, and improvement
17 projects, based on changes in the construction price index
18 from the preceding year. Upon completion of the review the
19 subcommittee may make adjustments in the applicable bid
20 thresholds for types of work based on the price adjustments.

21 ~~b-~~ c. A bid threshold, under this subsection, shall not
22 be adjusted to an amount that is less than the bid threshold
23 applicable to a city or county on July 1, ~~2002~~ 2006, as
24 provided in section 73A.18, 309.40, 310.14, or ~~314.17-or~~
25 ~~384-96~~. An adjusted bid threshold shall take effect as
26 provided in subsection 3, and shall remain in effect until a
27 new adjusted bid threshold is established and becomes
28 effective as provided in this section.

29 2. VERTICAL INFRASTRUCTURE.

30 a. The director of the department shall appoint, from the
31 members of the advisory committee established under section
32 314.1A, a vertical infrastructure bid threshold subcommittee
33 for public improvements as defined in section 38.2. The
34 subcommittee shall consist of seven members, three of whom
35 shall be representatives of governmental entities as defined

1 in section 38.2, three of whom shall be representatives of
2 private sector vertical infrastructure contractor
3 organizations, and with the remaining member being the
4 director or the director's designee, who shall serve as
5 chairperson of the subcommittee. A vacancy in the membership
6 of the subcommittee shall be filled by the director.

7 b. The subcommittee appointed under this subsection shall
8 review the competitive bid and quotation thresholds applicable
9 to governmental entities under chapter 38. The subcommittee
10 shall review price adjustments for all types of construction,
11 reconstruction, and public improvement projects based on the
12 changes in the construction price index, building cost index,
13 and material cost index from the preceding year. Upon
14 completion of the review the subcommittee may make adjustments
15 in the applicable bid thresholds for types of work based on
16 the price adjustments.

17 c. The subcommittee shall not make an initial adjustment
18 to the competitive bid threshold in section 38.3 to be
19 effective prior to January 1, 2012. Thereafter, the
20 subcommittee shall adjust the bid threshold amount in
21 accordance with subsection 3 but shall not adjust the bid
22 threshold to an amount less than the bid threshold applicable
23 to a governmental entity on January 1, 2007.

24 d. Prior to January 1, 2012, the subcommittee shall make
25 adjustments to the competitive quotation threshold in section
26 38.14 for vertical infrastructure in accordance with
27 adjustments made by the horizontal infrastructure subcommittee
28 under subsection 1 applicable to city and county highway,
29 bridge, and culvert projects.

30 3. REVIEW -- PUBLICATION. The Each subcommittee shall
31 meet to conduct the review and make the adjustments described
32 in this section on or before August 1 of every other year, or
33 of every year if determined necessary by the subcommittee,
34 ~~with-the-first-meeting-occurring-on-or-before-August-17-2002.~~
35 By September 1 of each year in which the a subcommittee makes

1 adjustments in the bid or quotation thresholds, the director
2 shall cause an advisory notice to be published in the Iowa
3 administrative bulletin and in a newspaper of general
4 circulation in this state, stating the adjusted bid and
5 quotation thresholds to be in effect on January 1 of the
6 following year, as established by the subcommittee
7 subcommittees under this section.

8 Sec. 30. Section 330A.12, Code 2005, is amended to read as
9 follows:

10 330A.12 AWARD OF CONTRACT.

11 All contracts entered into by an authority for the
12 construction, reconstruction, and improvement of aviation
13 facilities shall be entered into pursuant to and shall comply
14 with the competitive bid procedures in chapter 73A 38.
15 However, where an authority determines an emergency exists, it
16 may enter into contracts obligating the authority for not in
17 excess of twenty-five-thousand-dollars the competitive bid
18 threshold in section 38.3, or as established in section 314.1B
19 per emergency without regard to the requirements of chapter
20 73A 38 and the authority may proceed with the necessary action
21 as expeditiously as possible to the extent necessary to
22 resolve such emergency.

23 Sec. 31. Section 331.341, subsections 1 and 2, Code 2005,
24 are amended to read as follows:

25 1. When the estimated total cost of a public improvement,
26 other than improvements which may be paid for from the
27 secondary road fund, exceeds the amount-specified-in-section
28 309-40 competitive bid threshold in section 38.3, or as
29 established in section 314.1B, the board shall follow the
30 contract-letting competitive bid procedures provided for
31 cities governmental entities in sections-384-95-to-384-103
32 chapter 38. However, in following those sections the board
33 shall substitute the word "county" for the word "city",
34 section-331-305 for section-362-37 shall consider "governing
35 body" to mean the board, and shall exclude references to a

1 ~~city-utility,-utility-board-of-trustees,-or-public-utilities-~~
2 As used in this section, "public improvement" means the same
3 as defined in section 384.95 38.2 as modified by this
4 subsection.

5 2. The board shall give preference to Iowa products and
6 labor in accordance with chapter 73 and shall comply with bid
7 and contract requirements in ~~section-73.2~~ chapter 38.

8 Sec. 32. Section 357.14, unnumbered paragraph 2, Code
9 2005, is amended to read as follows:

10 When the completed plans and specifications are on file
11 with the county auditor, and the estimated total cost of the
12 project exceeds the competitive bid threshold in section 38.3,
13 or as established in section 314.1B, the board of supervisors
14 shall ~~advertise-for-bids-and-shall-publish-a-notice-once-each~~
15 ~~week-for-two-consecutive-weeks-in-some-newspaper-published-in~~
16 ~~the-county-in-which-the-improvement-is-to-be-constructed,~~
17 ~~setting-forth-the-location-and-nature-of-the-improvement-and~~
18 ~~the-date-and-place-where-bids-will-be-received-by-the-board~~
19 comply with the competitive bid procedures in chapter 38 for
20 the construction of the project. ~~The-last-published-notice-to~~
21 ~~bidders-shall-be-at-least-seven-days-before-the-time-set-for~~
22 ~~receiving-bids.--Bidders-shall-be-required-to-submit-certified~~
23 ~~checks-or-credit-union-certified-share-drafts-for-five-percent~~
24 ~~of-the-amount-of-the-bid.~~

25 Sec. 33. Section 357A.12, unnumbered paragraph 2, Code
26 2005, is amended to read as follows:

27 The procedures for contract-letting competitive bidding
28 specified in sections-384.95-through-384.102 chapter 38 and
29 for emergency repairs as specified in section 384.103,
30 subsection 2, shall apply to construction carried out pursuant
31 to this chapter. ~~References-in-those-sections-to-a-city-shall~~
32 ~~be-applicable-to-a-rural-water-district-operating-under-this~~
33 ~~chapter,-and-references-to-a-city-council-shall-be-applicable~~
34 ~~to-the-board-of-directors-of-a-rural-water-district.~~

35 Sec. 34. Section 364.4, subsection 4, paragraph i, Code

1 2005, is amended to read as follows:

2 i. A contract for construction by a private party of
3 property to be leased or lease-purchased by a city is not a
4 contract for a public improvement under section-384-95,
5 ~~subsection-17-except-for-purposes-of-section-384-102~~ chapter
6 38. ~~However, if a lease-purchase contract is funded in~~
7 ~~advance by means of the lessor depositing moneys to be~~
8 ~~administered by a city, with the city's obligations to make~~
9 ~~rent payments commencing with its receipt of moneys, a~~
10 ~~contract for construction of the property in question awarded~~
11 ~~by the city is subject to division VI of chapter 384.~~

12 Sec. 35. Section 380.4, unnumbered paragraph 1, Code 2005,
13 is amended to read as follows:

14 Passage of an ordinance, amendment, or resolution requires
15 a majority vote of all of the members of the council, except
16 when the mayor may vote to break a tie vote in a city with an
17 even number of council members, as provided in section 372.4.
18 Passage of a motion requires a majority vote of a quorum of
19 the council. A resolution must be passed to spend public
20 funds in excess of ~~twenty-five-thousand-dollars~~ the
21 competitive bid threshold in section 38.3, or as established
22 in section 314.1B on any one project, or to accept public
23 improvements and facilities upon their completion. Each
24 council member's vote on a measure must be recorded. A
25 measure which fails to receive sufficient votes for passage
26 shall be considered defeated.

27 Sec. 36. Section 384.20, unnumbered paragraph 3, Code
28 2005, is amended to read as follows:

29 "Continuing appropriation" means the unexpended portion of
30 the cost of public improvements, as defined in section 384-95
31 38.3, which cost was adopted through a public hearing pursuant
32 to section ~~384-102~~ 38.12 and was included in an adopted or
33 amended budget of a city. A continuing appropriation does not
34 expire at the conclusion of a fiscal year. A continuing
35 appropriation continues until the public improvement is

1 completed, but expenditures under the continuing appropriation
2 shall not exceed the resources available for paying for the
3 public improvement.

4 Sec. 37. Section 384.103, subsection 2, unnumbered
5 paragraph 2, Code 2005, is amended to read as follows:

6 In that event the governing body may contract for emergency
7 repairs without holding a public hearing and advertising for
8 bids, and the provisions of ~~sections-384-96-to-384-102,~~
9 chapter 38 do not apply.

10 Sec. 38. Section 390.3, unnumbered paragraph 2, Code 2005,
11 is amended to read as follows:

12 However, in the performance of a joint agreement, the
13 governing body is not subject to statutes generally applicable
14 to public contracts, including hearings on plans,
15 specifications, form of contracts, costs, notice and
16 competitive bidding required under ~~sections-384-95-through~~
17 chapter 38 and section 384.103, unless all parties to the
18 joint agreement are cities located within the state of Iowa.

19 Sec. 39. Section 573.2, unnumbered paragraph 1, Code 2005,
20 is amended to read as follows:

21 Contracts for the construction of a public improvement
22 shall, when the contract price equals or exceeds ~~twenty-five~~
23 ~~thousand-dollars~~ the competitive bid threshold in section
24 38.3, or as established in section 314.1B, be accompanied by a
25 bond, with surety, conditioned for the faithful performance of
26 the contract, and for the fulfillment of other requirements as
27 provided by law. The bond may also be required when the
28 contract price does not equal that amount. However, if a
29 contractor provides a performance or maintenance bond as
30 required by a public improvement contract governed by this
31 chapter and subsequently the surety company becomes insolvent
32 and the contractor is required to purchase a new bond, the
33 contractor may apply for reimbursement from the governmental
34 agency that required a second bond and the claims shall be
35 reimbursed from funds allocated for road construction

1 purposes.

2 Sec. 40. Section 904.314, unnumbered paragraph 1, Code
3 2005, is amended to read as follows:

4 The director shall cause plans and specifications to be
5 prepared by the department of administrative services for all
6 improvements authorized and costing over ~~twenty-five-thousand~~
7 ~~dollars~~ the competitive bid threshold in section 38.3, or as
8 established in section 314.1B. An appropriation for any
9 improvement costing over ~~twenty-five-thousand-dollars~~ the
10 competitive bid threshold in section 38.3, or as established
11 in section 314.1B, shall not be expended until the adoption of
12 suitable plans and specifications, prepared by a competent
13 architect or engineer and accompanied by a detailed statement
14 of the amount, quality, and description of all material and
15 labor required for the completion of the improvement.

16 Sec. 41. Section 904.315, Code 2005, is amended to read as
17 follows:

18 904.315 CONTRACTS FOR IMPROVEMENTS.

19 The director of the department of administrative services
20 shall, in writing, let all contracts for authorized
21 improvements ~~costing-in-excess-of-twenty-five-thousand-dollars~~
22 under chapter 8A, subchapter III, costing in excess of the
23 competitive bid threshold in section 38.3, or as established
24 in section 314.1B. Upon prior authorization by the director,
25 improvements costing five thousand dollars or less may be made
26 by the superintendent of any institution.

27 A contract is not required for improvements at a state
28 institution where the labor of inmates is to be used if the
29 contract is not for a construction, reconstruction,
30 demolition, or repair project or improvement with an estimated
31 cost in excess of ~~twenty-five-thousand-dollars~~ the competitive
32 bid threshold in section 38.3, or as established in section
33 314.1B.

34 Sec. 42. Sections 384.95 through 384.102, Code 2005, are
35 repealed.

1 a population of 50,000 or more, \$51,000.

2 5. For a city having a population of less than 50,000, for
3 a school district having a population of less than 50,000, and
4 for any other governmental entity, \$36,000.

5 6. The threshold amount applied to a city applies to a
6 city hospital.

7 These competitive quotation threshold amounts are subject
8 to change by the same vertical infrastructure bid threshold
9 subcommittee that adjusts the competitive bid threshold
10 amount. Prior to January 1, 2012, an adjustment to the
11 competitive quotation threshold for vertical infrastructure
12 must be in accordance with adjustments made by the horizontal
13 infrastructure bid threshold subcommittee.

14 Currently, the state department of transportation has a
15 subcommittee that reviews bid thresholds for highway, bridge,
16 or culvert projects. The bill designates this existing
17 subcommittee as the horizontal infrastructure bid threshold
18 subcommittee. The director of the department appoints the
19 members for both the horizontal infrastructure bid threshold
20 subcommittee and the vertical infrastructure bid threshold
21 subcommittee.

22 The bill includes conforming amendments that replace the
23 existing \$25,000 competitive bid threshold amount with a
24 reference to the \$100,000 bid threshold in new Code section
25 38.3, or as adjusted by the vertical infrastructure bid
26 threshold subcommittee in Code section 314.1B.

27 The bill provides an immediate effective date for the
28 provisions concerning the state board of regents payment of
29 retained funds, the state department of transportation
30 rulemaking, and the bid threshold subcommittees. The
31 remainder of the bill takes effect January 1, 2007. The bill
32 applies to public improvement contracts governed by new Code
33 chapter 38 and entered into on or after January 1, 2007.

34
35

SENATE FILE 2360

S-5105

1 Amend Senate File 2360 as follows:

2 1. Page 1, line 17, by inserting after the word
3 "regents" the following: "and the state department of
4 transportation".

5 2. Page 1, line 18, by striking the word
6 "structure" and inserting the following: "construction
7 work".

8 3. Page 2, line 11, by striking the word
9 "Alternatively" and inserting the following:
10 "Additionally".

11 4. Page 6, line 19, by inserting after the word
12 "entity" the following: "or the state department of
13 transportation".

14 5. Page 6, line 22, by striking the word "that:"
15 and inserting the following: "as provided in this
16 section. For purposes of this section, "department"
17 means the state department of transportation."

18 6. Page 6, line 24, by inserting after the word
19 "improvement" the following: "or highway, bridge, or
20 culvert project".

21 7. Page 6, line 31, by inserting after the word
22 "entity" the following: "or the department".

23 8. Page 7, line 3, by inserting after the word
24 "entity" the following: "or the department".

25 9. Page 7, line 12, by inserting after the word
26 "entity's" the following: "or the department's".

27 10. Page 7, line 15, by inserting after the word
28 "entity" the following: "or the department".

29 11. Page 7, line 17, by inserting after the word
30 "entity's" the following: "or the department's".

31 12. Page 7, line 27, by inserting after the word
32 "project" the following: "or the highway, bridge, or
33 culvert project".

34 13. Page 7, line 28, by inserting after the word
35 "improvement" the following: "or the highway, bridge,
36 or culvert project".

37 14. Page 7, line 33, by inserting after the word
38 "entity" the following: "or the department".

39 15. Page 8, line 3, by inserting after the word
40 "project" the following: "or the highway, bridge, or
41 culvert project".

42 16. Page 8, line 8, by inserting after the word
43 "entity" the following: "or the department".

44 17. Page 8, line 14, by inserting after the word
45 "entity" the following: "or the department".

46 18. Page 8, by striking line 16 and inserting the
47 following: "contractor."

48 19. Page 8, line 20, by inserting after the word
49 "project" the following: "or the highway, bridge, or
50 culvert project".

S-5105

- 1 20. Page 8, line 26, by inserting before the word
2 "designated" the following: "or a highway, bridge, or
3 culvert project".
- 4 21. Page 8, line 29, by inserting after the word
5 "entity" the following: "or department".
- 6 22. Page 8, line 31, by inserting after the word
7 "entity" the following: "or department".
- 8 23. Page 8, line 33, by inserting after the word
9 "entity" the following: "or department".
- 10 24. Page 16, line 1, by striking the words and
11 figure "in accordance with the provisions of chapter
12 573".
- 13 25. Page 17, line 24, by striking the word "an"
14 and inserting the following: "~~an~~ horizontal and
15 vertical infrastructure".
- 16 26. Page 17, line 25, by striking the word
17 "committee" and inserting the following: "~~committee~~
18 committees".
- 19 27. Page 18, line 1, by inserting after the word
20 "the" the following: "appropriate".
- 21 28. Page 18, line 31, by inserting after the word
22 "the" the following: "appropriate".
- 23 29. Page 19, line 8, by striking the words "and
24 quotation".
- 25 30. Page 19, line 24, by striking the words and
26 figures "Prior to January 1, 2012" and inserting the
27 following: "Beginning July 1, 2006".
- 28 31. Page 21, by inserting after line 7 the
29 following:
30 "Sec. ____ . Section 331.341, subsection 4, Code
31 2005, is amended to read as follows:
32 4. If the contract price for a public improvement
33 is ~~fifteen~~ twenty-five thousand dollars or more, the
34 board shall require a contractor's bond in accordance
35 with chapter 573."
- 36 32. Page 22, line 3, by striking the word "~~not~~"
37 and inserting the following: "not".
- 38 33. Page 22, line 4, by striking the word
39 "~~section~~" and inserting the following: "section".
- 40 34. Page 22, line 5, by striking the word
41 "chapter" and inserting the following: "38.2,
42 subsection 3, except for purposes of section 38.12."
- 43 35. Page 22, by striking lines 6 through 11 and
44 inserting the following: "However, if a lease-
45 purchase contract is funded in advance by means of the
46 lessor depositing moneys to be administered by a city,
47 with the city's obligations to make rent payments
48 commencing with its receipt of moneys, a contract for
49 construction of the property in question awarded by
50 the city is subject to ~~division VI of chapter 384~~ 38."

S-5105

Page 3

- 1 36. Page 22, by striking lines 12 through 26.
- 2 37. By striking page 23, line 19, through page
- 3 24, line 1.
- 4 38. Page 24, line 16, by inserting after the
- 5 figure "904.315," the following: "unnumbered
- 6 paragraph 1,".
- 7 39. Page 24, by striking line 18.
- 8 40. Page 24, by striking lines 27 through 33.
- 9 41. Title page, line 2, by inserting after the
- 10 word "contracts" the following: "and providing for an
- 11 effective date".
- 12 42. By renumbering as necessary.

By DOUG SHULL

S-5105 FILED MARCH 21, 2006

ADOPTED

Shull co-chair

Quirmbaeh co-chair

Putney
McCoy

SSB# 3129

Local Government

Succeeded By
(SF) HF 23/60

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CO-CHAIRPERSON SHULL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to city contracts for public improvements.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 384.96, Code 2005, is amended to read
2 as follows:

3 384.96 SEALED BIDS.

4 When the estimated total cost to a city of a public
5 improvement exceeds the sum of twenty-five one hundred
6 thousand dollars, the governing body shall advertise for
7 sealed bids for the proposed improvement by publishing a
8 notice to bidders as provided in section 362.3, except that
9 the notice to bidders may be published more than twenty days
10 but not more than forty-five days before the date for filing
11 bids.

12 Sec. 2. Section 384.100, unnumbered paragraph 1, Code
13 2005, is amended to read as follows:

14 The governing body shall open, announce the amount of the
15 bids, and file all proposals received, at the time and place
16 specified in the notice to bidders. The governing body may,
17 by resolution, award the contract for the public improvement
18 to the bidder submitting the best bid, determined as provided
19 in section 384.99, or it may reject all bids received, fix a
20 new date for receiving bids, and order publication of a new
21 notice to bidders. The bid security furnished by the
22 successful bidder must be retained by the governing body until
23 the approved contract form has been executed, and a bond filed
24 by the bidder guaranteeing the performance of the contract,
25 and the contract and bond, have been approved by the governing
26 body. The Except as provided in section 384.104, the
27 provisions of chapter 573~~7~~-where-applicable~~7~~ apply to
28 contracts awarded under this division.

29 Sec. 3. Section 384.102, Code 2005, is amended to read as
30 follows:

31 384.102 WHEN HEARING NECESSARY.

32 When the estimated total cost of a public improvement
33 exceeds the sum of twenty-five one hundred thousand dollars,
34 the governing body shall not enter into a contract for the
35 improvement until it has held a public hearing on the proposed

1 plans, specifications, and form of contract, and estimated
2 cost for the improvement. Notice of the hearing must be
3 published as provided in section 362.3. At the hearing any
4 interested person may appear and file objections to the
5 proposed plans, specifications, contract, or estimated cost of
6 the improvement. After hearing objections, the governing body
7 shall by resolution enter its decision on the plans,
8 specifications, contract, and estimated cost.

9 Sec. 4. NEW SECTION. 384.104 EARLY RELEASE OF RETENTION.

10 1. Payments made by a city for the construction of public
11 improvements shall be made in accordance with the provisions
12 of chapter 573. The payment of retained funds shall be made
13 as provided in section 573.14, except that:

14 a. At any time after all or any part of the work is
15 substantially completed in accordance with paragraph "c", the
16 contractor may request the release of all or part of the
17 retainage owed. The request shall be accompanied by a sworn
18 statement of the contractor that, ten days prior to filing the
19 request, the contractor gave notice as provided in subsection
20 4 to subcontractors, sub-subcontractors, and suppliers of
21 which the contractor has actual knowledge.

22 b. Upon receipt of the request, the city may release all
23 or part of the unpaid funds. Retainage that is approved as
24 payable shall be paid at the time of the next monthly payment
25 or within thirty days, whichever is sooner. If partial
26 retainage is released pursuant to a contractor's request, no
27 retainage shall be subsequently held based on that portion of
28 the work. If within thirty days of when payment becomes due
29 the city does not release the retainage due, interest shall
30 accrue on the retainage amount due as provided in section
31 573.14 until that amount is paid.

32 c. If at the time of the request for the retainage there
33 are remaining or incomplete minor items, an amount equal to
34 two hundred percent of the value of each remaining or
35 incomplete item, as determined by the city's authorized

1 contract representative, may be withheld until such item or
2 items are completed.

3 d. An itemization of the remaining or incomplete items, or
4 the reason that the request for release of the retainage was
5 denied, shall be provided to the contractor in writing within
6 thirty calendar days of the receipt of the request for release
7 of retainage.

8 2. For purposes of this section, "authorized contract
9 representative" means the architect or engineer who is in
10 charge of the project and chosen by the city to represent its
11 interests, or if there is no architect or engineer, then such
12 other contract representative or officer as designated in the
13 contract documents as the party representing the city's
14 interest regarding administration and oversight of the
15 project.

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

18 a. Completion of the project or when the work has been
19 substantially completed in general accordance with the terms
20 and provisions of the contract.

21 b. The work or the portion designated is sufficiently
22 complete in accordance with the requirements of the contract
23 so the city can occupy or utilize the work for its intended
24 purpose.

25 c. The project is certified as having been substantially
26 completed by either of the following:

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

29 (2) The contracting authority representing the city.

30 4. The notice required under subsection 1 shall read as
31 follows:

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

34 You are hereby notified that [name of contractor] will be
35 requesting an early release of funds on a project designated

1 as [name of project] for which you have or may have provided
2 labor or materials. The request will be made pursuant to Iowa
3 Code section 384.104. The request may be filed with the [name
4 of city] after ten calendar days from the date of this notice.
5 The purpose of the request is to have [name of city] release
6 and pay funds for all work that has been performed and charged
7 to [name of city] as of the date of this notice. This notice
8 is provided in accordance with Iowa Code section 384.104."

9 5. Each contractor or subcontractor shall withhold
10 retainage, if at all, in the same manner as retainage is
11 withheld from the contractor or subcontractor; and each
12 subcontractor shall pass through all retainage payments to
13 lower tier subcontractors in accordance with the provisions of
14 chapter 573.

15 Sec. 5. Section 573.14, unnumbered paragraph 2, Code
16 Supplement 2005, is amended to read as follows:

17 The public corporation shall order payment of any amount
18 due the contractor to be made in accordance with the terms of
19 the contract. Except as provided in section 573.12 for
20 progress payments, failure to make payment pursuant to this
21 section, of any amount due the contractor, within forty days,
22 unless a greater time period not to exceed fifty days is
23 specified in the contract documents, after the work under the
24 contract has been completed and if the work has been accepted
25 and all required materials, certifications, and other
26 documentations required to be submitted by the contractor and
27 specified by the contract have been furnished the awarding
28 public corporation by the contractor, shall cause interest to
29 accrue on the amount unpaid to the benefit of the unpaid
30 party. Interest shall accrue during the period commencing the
31 thirty-first day following the completion of work and
32 satisfaction of the other requirements of this paragraph and
33 ending on the date of payment. The rate of interest shall be
34 determined by the period of time during which interest
35 accrues, and shall be the same as the rate of interest that is

1 in effect under section 12C.6, as of the day interest begins
2 to accrue, for a deposit of public funds for a comparable
3 period of time. However, for institutions governed pursuant
4 to chapter 262 and for cities, the rate of interest shall be
5 determined by the period of time during which interest
6 accrues, and shall be calculated as the prime rate plus one
7 percent per year as of the day interest begins to accrue.
8 This paragraph does not abridge any of the rights set forth in
9 section 573.16. Except as provided in sections 573.12 and
10 573.16, interest shall not accrue on funds retained by the
11 public corporation to satisfy the provisions of this section
12 regarding claims on file. This chapter does not apply if the
13 public corporation has entered into a contract with the
14 federal government or accepted a federal grant which is
15 governed by federal law or rules that are contrary to the
16 provisions of this chapter. For purposes of this unnumbered
17 paragraph, "prime rate" means the prime rate charged by banks
18 on short-term business loans, as determined by the board of
19 governors of the federal reserve system and published in the
20 federal reserve bulletin.

21

EXPLANATION

22 Currently, the city must comply with contract letting
23 procedures, including a public hearing, when the total
24 estimated cost of a public improvement exceeds \$25,000. This
25 bill raises that threshold amount to \$100,000. This change
26 will impact counties and rural water districts that are
27 required to follow the same contract letting procedures.

28 For the construction of a public improvement, state and
29 local governmental entities are required to comply with Code
30 chapter 573 when making payments to a contractor for the work
31 performed and the material delivered. A percentage of the
32 contract price is retained from payments to be made to the
33 contractor to create a fund for the subsequent payment of
34 claims on the public improvement. After the public
35 improvement is completed, the retained funds are paid in

1 accordance with Code section 573.14. However, if the contract
2 is 95 percent complete, Code section 573.15A provides for the
3 early payment of retained funds. The bill provides another
4 alternative for such early payment of funds, but only for
5 cities.

6 Under the bill, a city may release all or part of the
7 retained funds to a contractor after the work on the public
8 improvement is "substantially completed" as defined. Before a
9 contractor files a request for retained funds, the contractor
10 is required to notify the subcontractors, sub-subcontractors,
11 and suppliers that may have provided labor or materials for
12 the public improvement. The city may approve and pay the
13 contractor's retainage request, or the city may withhold funds
14 if there are minor items that remain to be completed. The
15 city may deny the request; however, the city must provide a
16 written itemization of the remaining or incomplete items or
17 the reason for denying the retainage request.

18 If the city fails to timely pay the retainage amount,
19 interest will accrue until the amount is paid. The bill
20 changes the rate of interest for cities. The rate of interest
21 is calculated as the prime rate plus 1 percent per year as of
22 the day interest begins to accrue. The state board of regents
23 is subject to the same rate. Currently, the rate of interest
24 for cities and all other state and local governmental entities
25 is the same as the rate of interest that is in effect under
26 Code section 12C.6, as of the day interest begins to accrue,
27 for a deposit of public funds for a comparable period of time.

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