



Financing Street Improvements


2022 Municipal Streets Seminar
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Disclaimer

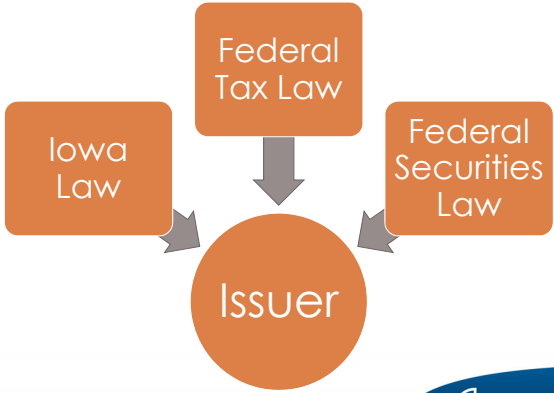
Please note that this presentation is intended for informational and educational purposes and to provide general statements from federal law, state law and agency guidance. Federal and state law may differ on particularized areas and this outline does not include all legal considerations. Each situation varies based on the individualized facts and the law is constantly evolving.

Please consult with your attorney for specific legal information, advice or individualized inquiries.




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Components of Municipal Bond law




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graph TD; IL[Iowa Law] --> I((Issuer)); FTL[Federal Tax Law] --> I; FSL[Federal Securities Law] --> I;
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General Obligation Debt

- Counts against your debt limit
 - 5% of the value of property valuation (actual valuation) in the city.
 - Tax Increment Revenue Debt counts
 - *Richards v. City of Muscatine*: ruled that urban renewal bonds issued pursuant to Code section 403.9 is debt subject to the constitutional limitation because the bonds are payable from the general revenues of the city and not from a special assessment or from the operating revenues of a municipal enterprise that generates income.



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Essential Corporate Purpose

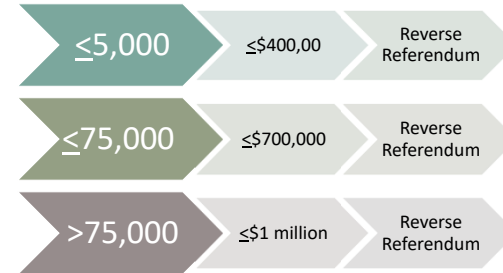
- NO election!
- Public Hearing (notice published in paper 4/20, UNLESS URBAN RENEWAL)
- Council Approved
 - Fix date
 - Hearing
 - Issuance
 - Closing

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General Corporate Purpose



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Election

- Must pass by at least 60% of total vote cast
- Reverse Referendum – if petition filed by number equal to 10% of the persons who voted at the last preceding regular city election.



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Security

- GO Bonds secured by levy of unlimited ad valorem taxes on all taxable property within the city through debt service fund.
- No lien on city property
- No mortgage

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Special Assessment Bonds


Can be issued for the purpose of financing the construction of public improvements as defined in Division IV of the City Code of Iowa - streets, sanitary and storm sewers, sidewalks, malls, water utility improvements, arcades. (Section 384.37)

Are payable solely from assessments levied against properties benefited from the public improvements being specially assessed.

- Follow special assessment process (Division IV Chapter 384), except where a petition and waiver is signed by all property owners proposed to be assessed.
- No additional hearing required on issuance when final assessments are determined.
- Public sale of bonds required
- No election required

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REVENUE DEBT



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LOSST Revenue Bonds (Chapter 423B)

Can be used to finance projects allowed by ballot language.
TWO types of LOSST obligations.

Pure LOSST Revenue

- Pledges only actual future LOSST receipts (tax not exceeding 1% on items already taxed by the State).
- authorized by holding a hearing after 4/20 notice.

General Obligation Backed LOSST Revenue

- Pledges LOSST revenues as the first security, but also provides a general obligation pledge to backup the payment of LOSST revenues.
- 10/20 notice, and there is the possibility of a petition for an election (reverse referendum).

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Revenue Basics

- Typically no election is required
- Public Hearing must be held (4/20 notice unless storm water)
- Debt is not secured by property tax
- Parity Certificate may be required
- Reserve Fund may be required

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Covenants

Rate Covenants

- Legal commitment by issuer to maintain rates at levels to generate a specified debt-service coverage (110%)

Additional Bonds Test

- Revenues must be generated at a specific ratio before new bonds may be issued on an equal lien basis (proven by a parity certificate)

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Tax Exempt Bonds



- Interest on municipal bonds is exempt from federal income. Bondholders do not pay federal income tax on the interest income from the bonds they own.
- Results in a subsidy to local governments by federal government because the bondholders pay a lower rate for these investments.

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Tax Law 101

- Tax-Exempt Bonds must be for capital expenditures
 - Costs to acquire, construct, or improve land, buildings, and equipment
- May potentially be Bank Qualified (issue less than \$10,000,000 in calendar year)
- May need a Reimbursement Resolution
- Generally, can't invest bond proceeds in investments earning a yield materially higher than the yield of the bond issue (certain exceptions apply)
- Generally, must pay rebate to federal government unless qualify for an exception to rebate

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Bidding and Awarding Public Improvement Projects



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Iowa Construction Bidding Procedures Act — IA Code Ch. 26

- Includes:
 - Bidding thresholds
 - Notice and Publication timelines for hearing and letting
 - Procedures and requirements for bidding process
 - Competitive quotation threshold and process for quotations
 - Release of retainage

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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 or if a commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity.”
- “Under the control of a governmental entity,” now specifically includes “determining the construction work to be performed or establishing the specifications for a building or construction work to be occupied by the governmental entity.”

*Recent changes from HF2253 passed signed into law April 4, 2018.

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A Public Improvement is NOT

- Emergency Work
- Privately Funded Work
- Goods or Services
- Repair or Maintenance Work


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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 or structure so that it remains in sound or proper conditions and is restored to its original condition with same design.



- Must still bid unless performed by employees

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Competitive Bid Thresholds

City/County	Threshold Horizontal (As of Jan. 1, 2022)	Threshold Vertical (As of Jan. 1, 2022)	Threshold Horizontal (As of Jan. 1, 2023)	Threshold Vertical (As of Jan. 1, 2023)
City (50,000 or less)	\$54,000	\$139,000	\$65,000	\$196,000
City (greater than 50,000)	\$77,000	\$139,000	\$93,000	\$196,000
Counties	\$100,000	\$139,000	\$120,000	\$196,000

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Competitive Bid Thresholds – Authority

- Iowa Code § 314.1B
- Appointed by Director of IDOT
 - Horizontal infrastructure committee
 - Vertical infrastructure committee

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Express Prohibition in Statute


“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”.

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Competitive Bidding Process

1. Architect or Engineer prepares proposed plans, specs, form of contract and estimated total cost of construction.
 
2. Restrictions on Bid Forms:
 - a) The City may not require a potential bidder on a public improvement to provide any information which the potential bidder may deem to be confidential or proprietary as a requirement for being deemed a responsive, responsible bidder.

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Competitive Bidding Process

b) The City may not impose any requirement that directly or indirectly restricts potential bidders to any predetermined class of bidders defined by experience on similar projects, size of company, union membership, or any other criteria.


c) The City may request information from the apparent lowest responsive bidder to assist it in determining that bidder's responsibility. However, the City may only request information related to the apparent low bidder's 1) experience, 2) number of employees, and 3) ability to finance the cost of the public improvement.

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Competitive Bidding Process

3. Notice of Public Hearing on Plans, Specs, Form of Contract and Estimated Total Cost of Construction.

- Description of public improvement and location
- Publish ONCE at least 4 days, but 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.


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Competitive Bidding Process

4. Notice to Bidders

- Post ONCE not less than 13 days, but not more than 45 days before the date set for receiving bids.
- Post in*: 1) a relevant contractor plan room service with statewide circulation and 2) a relevant construction lead generating service with statewide circulation and 3) on an internet site sponsored by either the governmental entity or a statewide association that represents governmental entities.


**Master Builders of Iowa (MBI) will post notice to bidders in its construction update network at no charge to governmental entity—this meets first two requirements*

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Competitive Bidding Process

4. Notice to Bidders

- If circumstances beyond the control of the governmental entity cause a scheduled bid letting to be postponed AND there are no changes to the project's contract documents, a notice to bidders of the revised bid date shall be posted not less than 4, but not more than 45 days before the revised date for receiving bids in the same locations.
- Best example: Inclement weather

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Competitive Bidding Process

4. Notice to Bidders

- Notice must include:
 - Time and place for filing sealed proposals
 - Time and place sealed proposals will be opened and considered
 - General nature or description of the project
 - In general terms, when the work must be commenced and completed
 - Requirement for bid security (no more than 10%)



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Competitive Bidding Process

4. Notice to Bidders

- Notice may include:
 - 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 or contracts in the best interest of the governmental entity.
 - Any other information the governmental entity deems pertinent.

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Competitive Bidding Process

4. Notice to Bidders

- Notice and Instruction to Bidders should include:
 - Language which states: "Failure to submit a fully completed Bidder Status Form with the bid may result in the bid being deemed nonresponsive and rejected."
 - The Labor Commissioner of the Iowa Department of Labor ("DOL") requires public body to request a statement from each bidder regarding the bidder's resident status during a public improvement project.
 - The DOL "Bidder Status Form" is available online at: https://www.iowadivisionoflabor.gov/sites/authoring.iowadivisionoflabor.gov/files/BP.status.form_.pdf

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Competitive Bidding Process

5. Open Bids on Project

- 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 to award the bid.

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Competitive Bidding Process

6. 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.
- Make sure you allow for time between the bid opening and the bid award to review, analyze and recommend the lowest, responsive, responsible bid.
- Recommend no less than 3 days, but a week or more is preferable. Bids are generally good for 30-45 days.

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Competitive Bidding Process

6. Award of Contract

- The City shall not, in awarding a contract for a public improvement do any of the following:
 - a) Require a bidder, offeror, contractor or subcontractor to work with labor organizations with respect to the public improvement project, or a related public improvement project;
 - b) Prohibit a bidder, offeror, contractor or subcontractor from working with labor organizations with respect to the public improvement project, or a related public improvement project;
 - c) Discriminate against any bidder, offeror, contractor or subcontractor for its choice to work with or not work with any labor organization with respect to the public improvement project, or a related public improvement project.

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2022 CMAR Project Delivery System

- Before July 1, 2022, Construction Manager At Risk projects were prohibited in Iowa for public improvement projects
- Design, bid, build – only permitted project delivery method.
- Construction managers could only be engaged as advisors.

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BEFORE July 1, 2022

Construction Manager At Risk

- A project delivery method in which the owner hires a construction manager (CM) to oversee the project from design to construction close-out and deliver it with a Guaranteed Maximum Price (GMP) provided to the owner prior to the bid stage. The GMP includes the cost of the construction work, plus the Construction Manager's negotiated fee.

Construction Manager As Advisor

- A project delivery method in which the owner retains a construction manager to supplement its own development staff.

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AFTER July 1, 2022

Construction Manager At Risk project delivery method is allowed for public improvement projects – SF183

- Permitted for vertical construction only (no bridges, highways, or culverts)
- New law also prohibits a fee-based selection of an architect, landscape architect, or engineer for a public improvement project. These professionals must now be solicited using a qualifications-based process, with price not being the sole factor.
- Law specifically prohibits Design-Build project delivery method. Project designer cannot also serve as the CMAR or GC.

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Bidding Projects with Special Assessments

- Iowa Code Chapter 384—assess private properties for cost of public improvements
- Costs assessed must not exceed the special benefit conferred upon the property by the improvements
- Special Assessment procedures must be initiated **BEFORE** ordering construction and advertising for bids on the proposed public improvement

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How are Special Assessments Initiated?

1. Petition and Waiver
2. Council action

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Petition and Waiver

Property owners may initiate a plan for a public improvement to be paid for in whole or in part by special assessments, by written contract to be approved by the city and signed by all of the owners of record of all property affected by the proposed assessment.

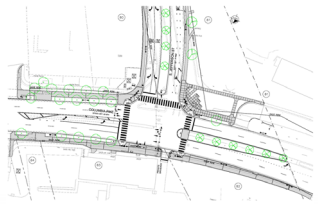
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Council Action

The Council shall arrange for engineering services to prepare the plats, schedules, estimates of cost, plans, and specifications and to supervise construction of the proposed improvement.



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Procedure for Projects Involving Special Assessments

- Council—engineer prepare plats, schedules, estimates of cost, plans and specifications on proposed improvement
- Council—initiates by:
 - adopt preliminary resolution for construction, fixing value of lots, adopting plans/specifications/cost/flat, and proposed resolution of necessity, OR
 - Approve petition and waiver from property owners
- Public hearing and publication

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Procedure for Projects Involving Special Assessments

- AFTER resolution of necessity—Council may direct preparation of detailed plans, form of contract, notice to bidders, and order advertisement of bids
- Public hearing on plans, specifications, form of contract, and estimate of costs
- Consideration of bids
- Award contract and approve contract and bond

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Grade Ordinance Certificate

Engineer must file a certificate with City that any paving, curbing, guttering, or sidewalks will be constructed to grade upon completion

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Special Assessment Project Closeout

- Engineer must file certificate of completion
- Council has 15 days after certificate filed to accept work and order final plat and schedule of assessments
 - Note: assessments can be less, but not more, than preliminary schedule of assessments
- Final plat and schedule must be filed by engineer within 30 days, Council must adopt and levy assessments within 10 days from filing

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Special Assessment Project Closeout

- Council must order payment of any amount due to the contractor after acceptance of the project
- Payment must be made within 70 days after work under contract completed (subject to Chapter 573)

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Questions?



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