

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 25
“Competition With Private Enterprise”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 23A.2

State or federal law(s) implemented by the rulemaking: Iowa Code sections 23A.1 and 23A.2

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 11, 2024
11 to 11:30 a.m.

[Microsoft Teams link](#)
Or dial: 515.817.6093
Conference ID: 562 451 240

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Veronica Tolander
800 Lincoln Way
Ames, Iowa 50010
Email: veronica.tolander@iowadot.us

Purpose and Summary

This proposed chapter defines exemptions from Iowa Code section 23A.2(1). The intended benefit is cost savings to the Department by allowing competition with private enterprise in some circumstances.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed chapter does not create additional costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed chapter positively impacts the public.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The proposed chapter does not have a quantitative impact.
 - Qualitative description of impact:
The proposed chapter has a benefit to the public by allowing competition between public and private enterprises under certain circumstances, creating a larger potential bidding pool for niche areas.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:
There are no anticipated effects on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of the proposed chapter is a potential cost savings to the Department by increasing the number of eligible bidders. The cost of inaction is an increased cost to the Department because bidding pools would remain deficient. In some circumstances, private enterprise alone is unable to meet the project requirements of the Department. There is no benefit of inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider alternatives for the proposed rules. When the deficiency was identified, this was deemed as the necessary path forward.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternatives for the proposed rules were seriously considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Registered targeted small businesses are exempt from competition for up to \$25,000.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25 COMPETITION WITH PRIVATE ENTERPRISE

761—25.1(23A) Interpretation. This chapter is not to be interpreted to mean that the department will provide a good or service with or without qualification, restriction, or charge.

761—25.2(23A) Exemptions. Activities related to the items listed in this rule are exempted from the provisions of Iowa Code section 23A.2(1).

25.2(1) Transportation-related printing, publications and electronically generated materials, including but not limited to: forms; brochures; booklets; manuals; directories; periodicals; county, city

and state transportation maps; video and audio materials; computer tapes and discs; microfilm and other instructional and informative materials.

25.2(2) Copies of records or other services provided to meet the standards of Iowa Code chapter 22.

25.2(3) Transportation-related studies, planning and research.

25.2(4) Disposal of surplus, obsolete or junked materials and supplies and equipment.

25.2(5) Matters of intergovernmental cooperation. Cooperating with other government bodies does not involve providing goods or services to the public except in the broadest sense. The term “government bodies” includes regional transit systems. Activities that involve intergovernmental cooperation include but are not limited to the following:

a. Use or consumption of departmental facilities, equipment, materials or supplies by other government bodies, including loans, rentals and sales of equipment, materials and supplies.

b. Services provided to or performed for other government bodies. These services include:

(1) Vehicle maintenance and repair services provided to other state agencies.

(2) Purchasing services provided to other government bodies.

(3) Purchases made by other government bodies through state contracts.

(4) Disposal of surplus, obsolete or junked materials and supplies and equipment belonging to other state agencies, counties or cities.

(5) Other services performed for government bodies. These services cover a wide range of activities and are performed primarily for county and city highway departments, agencies having park or institutional roads, county treasurers, public transit systems, publicly owned airports, law enforcement agencies, regional planning agencies, and transportation-related boards.

25.2(6) Acquisition and disposal of land and improvements or mitigation banks acquired for highways or facilities use.

25.2(7) Lease of right-of-way.

25.2(8) Design, construction, reconstruction, inspection and maintenance of highways, including but not limited to signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway program.

25.2(9) Use or consumption of specialized departmental equipment, materials, supplies or services to complete a contract with the department if the goods or services are not readily available on the open market and the department can provide the goods or services at a competitive price.

25.2(10) Use of departmental facilities to complete a contract with the department.

25.2(11) Activities related to emergencies, including but not limited to providing assistance to the public.

25.2(12) Goods or services for use or consumption by the department.

25.2(13) Use of departmental facilities or services by persons providing services to or representing departmental employees, including but not limited to the following services or persons: food, credit union and employee organizations.

25.2(14) Use of departmental conference rooms or grounds by civic groups and nonprofit organizations.

25.2(15) Personal protective items purchased by departmental employees through state contracts.

25.2(16) Goods or services promoting transportation or transportation safety.

25.2(17) Development, implementation, and licensing of software for use by governmental agencies, whether in Iowa or elsewhere, designed for crash data reporting and analysis; generating uniform citations and other forms for use in public safety; and transmission of such data, analysis, and forms to the appropriate agencies.

25.2(18) Development, implementation, and licensing of systems for use by governmental agencies, whether in Iowa or elsewhere, designed for situational incident response, resource management, and interagency communications.

25.2(19) Any other activity permitted or required by law.

These rules are intended to implement Iowa Code sections 23A.1 and 23A.2.