

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 636

FINAL READING

Introduced by Natural Resources Committee: Louden, 49, Chairperson;
Carlson, 38; Christensen, 44; Dubas, 34; Fischer, 43;
Hudkins, 21; Kopplin, 3; Wallman, 30

Read first time January 17, 2007

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to public entities; to amend section
2 13-801, Reissue Revised Statutes of Nebraska, and
3 sections 18-2442 and 70-637, Revised Statutes Cumulative
4 Supplement, 2006; to provide bidding requirements for
5 certain entities; to exempt specified contracts with
6 electric utilities or electric utility alliances from
7 certain bidding requirements; to harmonize provisions;
8 and to repeal the original sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-801, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-801 Sections 13-801 to 13-827 and sections 2 to 4
4 of this act shall be known and may be cited as the Interlocal
5 Cooperation Act.

6 Sec. 2. (1) A joint entity shall cause estimates of the
7 costs to be made by some competent engineer or engineers before
8 the joint entity enters into any contract for the construction,
9 management, operation, ownership, maintenance, or purchase of an
10 electric generating facility and related facilities.

11 (2) If the estimated cost exceeds the sum of one hundred
12 thousand dollars, no such contract shall be entered into without
13 advertising for sealed bids.

14 (3) (a) The provisions of subsection (2) of this section
15 and sections 3 and 4 of this act relating to sealed bids shall not
16 apply to contracts entered into by a joint entity in the exercise
17 of its rights and powers relating to equipment or supplemental
18 labor procurement from an electric utility or from or through an
19 electric utility alliance if:

20 (i) The engineer or engineers certify that, by reason of
21 the nature of the subject matter of the contract, compliance with
22 subsection (2) of this section would be impractical or not in the
23 public interest;

24 (ii) The engineer's certification is approved by a
25 two-thirds vote of the governing body of the joint entity; and

1 (iii) The joint entity advertises notice of its intention
2 to enter into such contract, the general nature of the proposed
3 work, and the name of the person to be contacted for additional
4 information by anyone interested in contracting for such work.

5 (b) Any contract for which the governing body has
6 approved an engineer's certificate described in subdivision (a) of
7 this subsection shall be advertised in three issues, not less than
8 seven days between issues, in one or more newspapers of general
9 circulation in the municipality or county where the principal
10 office or place of business of the joint entity is located, or
11 if no newspaper is so published then in a newspaper qualified to
12 carry legal notices having general circulation therein, and in such
13 additional newspapers or trade or technical periodicals as may be
14 selected by the governing body in order to give proper notice of
15 its intention to enter into such contract, and any such contract
16 shall not be entered into prior to twenty days after the last
17 advertisement.

18 (4) The provisions of subsection (2) of this section and
19 sections 3 and 4 of this act shall not apply to contracts in excess
20 of one hundred thousand dollars entered into for the purchase of
21 any materials, machinery, or apparatus to be used in facilities
22 described in subsection (1) of this section when the contract does
23 not include onsite labor for the installation thereof if, after
24 advertising for sealed bids:

25 (a) No responsive bids are received; or

1 (b) The governing body of the joint entity determines
2 that all bids received are in excess of the fair market value of
3 the subject matter of such bids.

4 (5) Notwithstanding any other provision of subsection
5 (2) of this section or sections 3 and 4 of this act, a
6 joint entity may, without advertising or sealed bidding, purchase
7 replacement parts or services relating to such replacement parts
8 for any generating unit, transformer, or other transmission and
9 distribution equipment from the original manufacturer of such
10 equipment upon certification by an engineer or engineers that
11 such manufacturer is the only available source of supply for
12 such replacement parts or services and that such purchase is in
13 compliance with standards established by the governing body of the
14 joint entity. A written statement containing such certification and
15 a description of the resulting purchase of replacement parts or
16 services from the original manufacturer shall be submitted to the
17 joint entity by the engineer or engineers certifying the purchase
18 for the governing body's approval. After such certification, but
19 not necessarily before the governing body's review, notice of any
20 such purchase shall be published once a week for at least three
21 consecutive weeks in one or more newspapers of general circulation
22 in the municipality or county where the principal office or place
23 of business of the joint entity is located and published in such
24 additional newspapers or trade or technical periodicals as may be
25 selected by the governing body in order to give proper notice of

1 such purchase.

2 (6) Notwithstanding any other provision of subsection
3 (2) of this section or sections 3 and 4 of this act, a joint
4 entity may, without advertising or sealed bidding, purchase used
5 equipment and materials on a negotiated basis upon certification
6 by an engineer that such equipment is or such materials are in
7 compliance with standards established by the governing body. A
8 written statement containing such certification shall be submitted
9 to the joint entity by the engineer for the governing body's
10 approval.

11 Sec. 3. Prior to advertisement for sealed bids, plans
12 and specifications for the proposed work or materials shall be
13 prepared and filed at the principal office or place of business
14 of the joint entity. Such advertisement shall be made in three
15 issues, not less than seven days between issues, in one or more
16 newspapers of general circulation in the municipality or county
17 where the principal office or place of business of the joint
18 entity is located, or if no newspaper is so published then
19 in a newspaper qualified to carry legal notices having general
20 circulation therein, and in such additional newspapers or trade or
21 technical periodicals as may be selected by the governing body of
22 the joint entity in order to give proper notice of the receiving
23 of bids. Such advertisement shall designate the nature of the work
24 proposed to be done or materials proposed to be purchased, that the
25 plans and specifications therefor may be inspected at the office

1 of the joint entity, giving the location thereof, the time within
2 which bids shall be filed, and the date, hour, and place the same
3 shall be opened.

4 Sec. 4. The governing body of the joint entity may let
5 the contract for such work or materials to the responsible bidder
6 who submits the lowest and best bid, or in the sole discretion
7 of the governing body, all bids tendered may be rejected, and
8 readvertisement for bids made, in the manner, form, and time
9 as provided in section 3 of this act. In determining whether a
10 bidder is responsible, the governing body may consider the bidder's
11 financial responsibility, skill, experience, record of integrity,
12 ability to furnish repairs and maintenance services, and ability
13 to meet delivery or performance deadlines and whether the bid is
14 in conformance with specifications. Consideration may also be given
15 by the governing body of the joint entity to the relative quality
16 of supplies and services to be provided, the adaptability of
17 machinery, apparatus, supplies, or services to be purchased to the
18 particular uses required, the preservation of uniformity, and the
19 coordination of machinery and equipment with other machinery and
20 equipment already installed. No such contract shall be valid nor
21 shall any money of the joint entity be expended thereunder unless
22 advertisement and letting has been had as provided in sections 2 to
23 4 of this act.

24 Sec. 5. Section 18-2442, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 18-2442 ~~Before any agency shall enter into any contract~~
 2 ~~for the~~ (1) An agency shall cause estimates of the costs to be made
 3 by some competent engineer or engineers before the agency enters
 4 into any contract for:

5 (a) The construction, reconstruction, remodeling,
 6 building, alteration, maintenance, repair, extension, or
 7 improvement, for the use of the agency, of any:

8 (i) Power project, power plant, or system; ~~or~~
 9 irrigation

10 (ii) Irrigation works; ~~or~~ any part

11 (iii) Part or section thereof, for the use of the agency,
 12 of a project, plant, system, or works described in subdivision (i)
 13 or (ii) of this subdivision; or for the purchase

14 (b) The purchase of any materials, machinery, or
 15 apparatus to be used in such construction, reconstruction,
 16 remodeling, building, alteration, maintenance, repair, extension,
 17 or improvement, such agency shall cause estimates of the cost
 18 thereof to be made by some competent engineer or engineers. If such
 19 a project, plant, system, or works described in subdivision (1)(a)
 20 of this section.

21 (2) If the estimated cost shall exceed exceeds the sum
 22 of one hundred thousand dollars, no such contract shall be entered
 23 into without advertising for sealed bids. ~~or~~ except that with
 24 respect

25 (3)(a) The provisions of subsection (2) of this section

1 and sections 18-2443 and 18-2444 relating to sealed bids shall
 2 not apply to contracts entered into by an agency in the exercise
 3 of its rights and powers, relating to (i) radioactive material or
 4 the energy therefrom, (ii) relating to any technologically complex
 5 or unique equipment, contracts, or relating to (iii) equipment or
 6 supplemental labor procurement from an electric utility or from or
 7 through an electric utility alliance, or (iv) any maintenance or
 8 repair, contracts, if such the requirements of subdivisions (b) and
 9 (c) of this subsection are met.

10 (b) A contract described in subdivision (a) of this
 11 subsection need not comply with subsection (2) of this section or
 12 sections 18-2443 and 18-2444 if:

13 (i) The engineer or engineers shall certify that, by
 14 reason of the nature of the subject matter of the contract,
 15 compliance with subsection (2) of this section would be impractical
 16 and or not in the public interest; and the

17 (ii) The engineer's certification is approved by a
 18 two-thirds vote of the board; and then sections 18-2442 to
 19 18-2444 shall not apply, and the

20 (iii) The agency shall advertise advertises notice of its
 21 intention to enter into such contract, the general nature of the
 22 proposed work, and the name of the person to be contacted for
 23 additional information by anyone interested in contracting for such
 24 work.

25 (c) Any contract for which the board has approved such

1 an engineer's certificate described in subdivision (b) of this
 2 subsection shall be advertised in three issues, not less than
 3 seven days between issues, in one or more newspapers of general
 4 circulation in the municipality or county where the principal
 5 office or place of business of the agency is located, or if
 6 no newspaper is so published then in a newspaper qualified to
 7 carry legal notices having general circulation therein, and in
 8 such additional newspapers or trade or technical periodicals as
 9 may be selected by the board in order to give proper notice of
 10 its intention to enter into such contract, and any such contract
 11 shall not be entered into prior to twenty days after the last
 12 advertisement.

13 (4) The provisions of subsection (2) of this section
 14 and sections 18-2443 and 18-2444 shall not apply With respect to
 15 contracts in excess of one hundred thousand dollars entered into
 16 for the purchase of any materials, machinery, or apparatus to
 17 be used in the construction, reconstruction, remodeling, building,
 18 alteration, maintenance, repair, extension, or improvement of any
 19 power plant or system, or irrigation works, or any part or
 20 section thereof projects, plants, systems, or works described in
 21 subdivision (1)(a) of this section when the contract does not
 22 include onsite labor for the installation thereof, if, after
 23 advertising for sealed bids: ~~ne~~

24 (a) No responsive bids are received; or if the

25 (b) The board of directors of such agency determines that

1 all bids received are in excess of the fair market value of the
2 subject matter of such bids. 7 then the provisions of sections
3 ~~18-2442 to 18-2444 shall not apply.~~

4 (5) Notwithstanding any other provision of subsection (2)
5 of this section or sections 18-2443 and 18-2444, an agency may,
6 without advertising or sealed bidding, purchase replacement parts
7 or services relating to such replacement parts for any generating
8 unit, transformer, or other transmission and distribution equipment
9 from the original manufacturer of such equipment upon certification
10 by an engineer or engineers that such manufacturer is the only
11 available source of supply for such replacement parts or services
12 and that such purchase is in compliance with standards established
13 by the board. A written statement containing such certification
14 and a description of the resulting purchase of replacement parts
15 or services from the original manufacturer shall be submitted to
16 the board by the engineer or engineers certifying the purchase for
17 the board's approval. After such certification, but not necessarily
18 before the board's review, notice of any such purchase shall be
19 published once a week for at least three consecutive weeks in
20 one or more newspapers of general circulation in the municipality
21 or county where the principal office or place of business of the
22 agency is located and published in such additional newspapers or
23 trade or technical periodicals as may be selected by the board in
24 order to give proper notice of such purchase.

25 (6) Notwithstanding any other provision of subsection (2)

1 of this section or sections 18-2442 to 18-2443 and 18-2444, an
 2 agency may, without advertising or sealed bidding, purchase used
 3 equipment and materials on a negotiated basis without advertising
 4 or sealed bidding upon certification by an engineer that such
 5 equipment is or such materials are in compliance with standards
 6 established by the board. A written statement containing such
 7 certification shall be submitted to the board by the engineer for
 8 the board's approval.

9 Sec. 6. Section 70-637, Revised Statutes Cumulative
 10 Supplement, 2006, is amended to read:

11 70-637 (1) A district shall cause estimates of the costs
 12 to be made by some competent engineer or engineers before the
 13 district enters into any contract for: Before any district enters
 14 into any contract for the

15 (a) The construction, reconstruction, remodeling,
 16 building, alteration, maintenance, repair, extension, or
 17 improvement, for the use of the district, of any:

18 (i) Power ~~power~~ plant or system; ~~any hydrogen~~

19 (ii) Hydrogen production, storage, or distribution
 20 system;

21 (iii) Ethanol ~~any ethanol~~ production or distribution
 22 system;

23 (iv) Irrigation ~~any irrigation works;~~ ~~or any part~~

24 (v) Part or section thereof for the use of the district
 25 of a system or works described in subdivisions (i) through (iv) of

1 this subdivision; or

2 (b) The purchase for the purchase of any materials,
3 machinery, or apparatus to be used in the projects described in
4 subdivision (1)(a) of this section.

5 (2) If the such construction, reconstruction, remodeling,
6 building, alteration, maintenance, repair, extension, or
7 improvement, such district shall cause estimates of the cost
8 thereof to be made by some competent engineer or engineers. If such
9 estimated cost exceeds the sum of one hundred thousand dollars, no
10 such contract shall be entered into without advertising for sealed
11 bids, except that (1)

12 (3) Notwithstanding the provisions of subsection (2) of
13 this section and sections 70-638 and 70-639, the board of directors
14 of the district may negotiate directly with sheltered workshops
15 pursuant to section 48-1503.

16 (4)(a) The provisions of subsection (2) of this section
17 and sections 70-638 and 70-639 relating to sealed bids shall
18 not apply and (2) with respect to contracts entered into by a
19 district in the exercise of its rights and powers relating to
20 (i) radioactive material or the energy therefrom, to (ii) any
21 technologically complex or unique equipment, contracts, or to
22 (iii) equipment or supplemental labor procurement from an electric
23 utility or from or through an electric utility alliance, or (iv)
24 any maintenance or repair, contracts, if the requirements of
25 subdivisions (b) and (c) of this subsection are met.

1 (b) A contract described in subdivision (a) of this
2 subsection need not comply with subsection (2) of this section or
3 section 70-638 or 70-639 if:

4 (i) The ~~the~~ engineer or engineers certify that, by reason
5 of the nature of the subject matter of the contract, compliance
6 with subsection (2) of this section would be impractical ~~and~~ or not
7 in the public interest; and

8 (ii) The ~~the~~ engineer's certification is approved by a
9 two-thirds vote of the board; and

10 (iii) The ~~the~~ provisions of sections 70-637 to 70-639
11 relating to sealed bids shall not apply and the district shall
12 advertise advertises notice of its intention to enter into such
13 contract, the general nature of the proposed work, and the name
14 of the person to be contacted for additional information by anyone
15 interested in contracting for such work.

16 (c) Any contract for which the board has approved such
17 an engineer's certificate described in subdivision (b) of this
18 subsection shall be advertised in three issues not less than
19 seven days between issues in one or more newspapers of general
20 circulation in the district and in such additional newspapers or
21 trade or technical periodicals as may be selected by the board in
22 order to give proper notice of its intention to enter into such
23 contract, and any such contract shall not be entered into prior to
24 twenty days after the last advertisement.

25 (5) The provisions of subsection (2) of this section

1 and sections 70-638 and 70-639 shall not apply With respect
 2 to contracts in excess of one hundred thousand dollars entered
 3 into for the purchase of any materials, machinery, or apparatus
 4 to be used in projects described in subdivision (1)(a) of this
 5 section the construction, reconstruction, remodeling, building,
 6 alteration, maintenance, repair, extension, or improvement of
 7 any power plant or system, any hydrogen production, storage,
 8 or distribution system, any ethanol production or distribution
 9 system, any irrigation works, or any part or section thereof when
 10 the contract does not include onsite labor for the installation
 11 thereof, if, after advertising for sealed bids: ne

12 (a) No responsive bids are received; or

13 (b) The if the board of directors of such district
 14 determines that all bids received are in excess of the fair market
 15 value of the subject matter of such bids. sections 70-637 to
 16 70-639 shall not apply.

17 (6) Notwithstanding any other provision of subsection
 18 (2) of this section or sections 70-637 to 70-638 and 70-639,
 19 a district may, without advertising or sealed bidding, purchase
 20 replacement parts or services relating to such replacement parts
 21 for any generating unit, transformer, or other transmission and
 22 distribution equipment from the original manufacturer of such
 23 equipment upon certification by an engineer or engineers that
 24 such manufacturer is the only available source of supply for
 25 such replacement parts or services and that such purchase is in

1 compliance with standards established by the board. A written
2 statement containing such certification and a description of the
3 resulting purchase of replacement parts or services from the
4 original manufacturer shall be submitted to the board by the
5 engineer or engineers certifying the purchase for the board's
6 approval. After such certification, but not necessarily before
7 the board review, notice of any such purchase shall be published
8 once a week for at least three consecutive weeks in one or more
9 newspapers of general circulation in the district and published in
10 such additional newspapers or trade or technical periodicals as may
11 be selected by the board in order to give proper notice of such
12 purchase.

13 (7) Notwithstanding any other provision of subsection (2)
14 of this section or sections 70-637 to 70-638 and 70-639, a district
15 may, without advertising or sealed bidding, purchase used equipment
16 and materials on a negotiated basis ~~without advertising or sealed~~
17 ~~bidding~~ upon certification by an engineer that such equipment is or
18 such materials are in compliance with standards established by the
19 board. A written statement containing such certification shall be
20 submitted to the board by the engineer for the board's approval.

21 Sec. 7. Original section 13-801, Reissue Revised Statutes
22 of Nebraska, and sections 18-2442 and 70-637, Revised Statutes
23 Cumulative Supplement, 2006, are repealed.