

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.