

LEGISLATIVE BILL 636

Approved by the Governor April 11, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) No responsive bids are received; or

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

(5) Notwithstanding any other provision of subsection (2) of this section or sections 3 and 4 of this act, a joint entity may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established

by the governing body of the joint entity. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

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

Sec. 3. Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the joint entity. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body of the joint entity in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the joint entity, giving the location thereof, the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids, then the provisions of sections 18-2442 to 18-2444 shall not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply With respect to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section ~~the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any power plant or system, any hydrogen production, storage, or distribution system, any ethanol production or distribution system, any irrigation works, or any part or section thereof~~ when the contract does not include onsite labor for the installation thereof, if, after advertising for sealed bids: ~~no~~

(a) No responsive bids are received; or

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

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-637 to 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating

to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

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

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