

## LEGISLATIVE BILL 939

Approved by the Governor March 19, 2008

Introduced by Heidemann, 1; Carlson, 38; Christensen, 44; Dubas, 34; Fischer, 43; Hudkins, 21; Kopplin, 3; Louden, 49; Wallman, 30.

FOR AN ACT relating to public lettings; to amend sections 13-824.01, 18-2442, and 70-637, Revised Statutes Supplement, 2007; to change bidding requirements; and to repeal the original sections.

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

Section 1. Section 13-824.01, Revised Statutes Supplement, 2007, is amended to read:

13-824.01 (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 13-824.02 and 13-824.03 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 13-824.02 and 13-824.03 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 13-824.02 and 13-824.03, 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 13-824.02 and 13-824.03, 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. 2. Section 18-2442, Revised Statutes Supplement, 2007, is amended to read:

18-2442 (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;

(ii) Irrigation works; or

(iii) Part or section of a project, plant, system, or works described in subdivision (i) or (ii) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in a project, plant, system, or works described in subdivision (1)(a) of this section.

(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 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) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, 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 sections 18-2443 and 18-2444 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 board; and

(iii) The agency 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 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 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, 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:

(a) No responsive bids are received; or

(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.

(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 18-2443 and 18-2444, an agency 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 board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Sec. 3. Section 70-637, Revised Statutes Supplement, 2007, 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:

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

(i) Power plant or system;

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

(iii) Ethanol production or distribution system;

(iv) Irrigation works; or

(v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or

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

(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 to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, 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 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 board; and

(iii) The district 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 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 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 ~~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 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.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 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 70-638 and 70-639, a district 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 board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Sec. 4. Original sections 13-824.01, 18-2442, and 70-637, Revised Statutes Supplement, 2007, are repealed.