

LEGISLATIVE BILL 257

Approved by the Governor February 1, 1990

Introduced by Baack, 47

AN ACT relating to public structures and improvements; to amend sections 52-118 to 52-118.02, 83-134, and 83-916, Reissue Revised Statutes of Nebraska, 1943; to change bonding requirements for certain projects; to provide requirements for the erection, repair, and improvement of state buildings; and to repeal the original sections.

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

Section 1. That section 52-118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-118. (1) ~~It~~ Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska, or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, and furnishing, or the repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply, and where when the mechanics and laborers have no lien to secure the payment of their wages and materials ~~men~~ suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person, persons, firm, or corporation to whom the contract is awarded a payment bond, in a sum not less than the contract price, with a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that shall be is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or

less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total cost of five thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond, referred to in subsection (1) of this section, shall be to, filed with, ~~must be~~ approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract, referred to in subsection (1) of this section, shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond ~~herein provided for~~ referred to in subsection (1) of this section has been so made, filed, and approved.

Sec. 2. That section 52-118.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-118.01. Every person who has furnished labor or material in the prosecution of the work provided for in the contract set out in subsection (1) of section 52-118, in respect of which a bond is furnished under ~~the provisions of subsections (1) and (2) of such section, 52-118,~~ and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him ~~or her~~ or material was furnished or supplied by him ~~or her~~ for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute ~~said~~ ~~the~~ action to final execution and judgment for the sum or sums justly due him ~~or her~~. ~~Any~~ ~~;~~ ~~PROVIDED,~~ that any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such bond shall have a right of action upon the bond upon giving written notice to the contractor within four months from the date on which such person did or performed the last of the labor, or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope

addressed to the contractor at any place he or she maintains an office or conducts his or her business, or his or her residence, or in any other manner in which a notice may be served.

Sec. 3. That section 52-118.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-118.02. Every suit instituted under the provisions of sections 52-118 to 52-118-02 section 52-118.01 shall be brought by any person entitled to the benefit of this action, but no such suit shall be commenced after the expiration of one year after the date of final settlement of the principal contract. The action shall be in the name of the party claiming the benefits of this action.

For the purposes of subsection (1) of section 52-118, equipment which is rented for a project covered by such subsection under a lease with an option to purchase shall be considered to be equipment rented under a straight lease agreement not to exceed the reasonable rental value of the equipment during the period such equipment is actually used on such project and unless and until the option to purchase is validly exercised under the contract.

Sec. 4. (1) The state and any department or agency thereof shall have general charge of the erection of new buildings which are being erected for such department or agency, the repair and improvement of buildings under the control of such department or agency, including fire escapes, and the improvement of grounds under the control of such department or agency.

(2) Buildings and other improvements costing more than fifteen thousand dollars shall be (a) constructed under the general charge of the department or agency as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (4) of this section.

(3) The successful bidder at the letting referred to in subsection (2) of this section shall enter into a contract with the department or agency, prepared as provided for by subsection (4) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of fifteen thousand dollars or less unless the department or agency includes a bond requirement in the specifications for the project.

(4) When contracts are to be let by the

department or agency as provided in subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the department or agency at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department or agency. All bids or proposals shall be accompanied by a certified check or by a bid bond in a sum fixed by the department or agency and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department or agency shall exclude it from such a contract. Upon the awarding of the contract or contracts therefor, the Attorney General shall review the contract or contracts to be entered into by the department or agency and the contracting parties.

Sec. 5. That section 83-134, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-134. (1) The Department of Public Institutions shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than fifteen thousand dollars, exclusive of equipment not germane to construction and building material made in the institution, shall be (a) constructed under the general charge of the department, as provided in subsection (1) of this section; and (b) let by contract to the lowest responsible bidder, after proper advertisement as set forth in subsection (5) of this section, except ; PROVIDED; that buildings costing more than fifteen thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed within the walls of the Department of Correctional Services adult correctional facility, may be constructed by the use of convict labor. Any ; and any such construction by convict labor shall have the approval of the Department of Correctional Services, the warden, and the chief engineer of the department.

(3) Convict labor or the labor of state charges shall be employed, ~~wherever~~ whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder, at the letting referred to in subsection (2) of this section, shall enter into a formal contract with the department, prepared as is provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of fifteen thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department, as is provided for by subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services at least three daily Nebraska newspapers, one of which shall be published in Omaha and one in Lincoln, stating that sealed proposals will be received by the ~~department~~ Department of Public Institutions at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements; and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract. Upon the awarding of the contract or contracts therefor, the Attorney General shall ~~prepare a review the~~ contract or contracts to be entered into by the department and the contracting parties.

Sec. 6. That section 83-916, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-916. (1) The Department of Correctional Services shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than fifteen thousand dollars, exclusive of equipment not germane to construction and building

material made in the institution, shall be (a) constructed under the general charge of the department; as provided in subsection (1) of this section; and (b) let by contract to the lowest responsible bidder; after proper advertisement as set forth in subsection (5) of this section, except ; PROVIDED; that buildings costing more than fifteen thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed within the walls of the Department of Correctional Services adult correctional facility, may be constructed by the use of convict labor. Any ; and any such construction by convict labor shall have the approval of the department, the warden, and the chief engineer of the department.

(3) Convict labor or the labor of state charges shall be employed, wherever whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder; at the letting referred to in subsection (2) of this section; shall enter into a formal contract with the department, prepared as provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of fifteen thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department; as provided for by subsection (2) of this section, advertisements shall be published in at least three daily Nebraska newspapers; one of which shall be published in Omaha and one in Lincoln; accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the department Department of Correctional Services at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements; and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract. Upon

the awarding of the contract or contracts therefor, the Attorney General shall ~~prepare a~~ review the contract or contracts to be entered into by the department and the contracting parties.

Sec. 7. That original sections 52-118 to 52-118.02, 83-134, and 83-916, Reissue Revised Statutes of Nebraska, 1943, are repealed.