

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 939**

FINAL READING

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

Read first time January 14, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to public lettings; to amend sections  
2 13-824.01, 18-2442, and 70-637, Revised Statutes  
3 Supplement, 2007; to change bidding requirements; and to  
4 repeal the original sections.

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

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

3                   13-824.01 (1) A joint entity shall cause estimates of the  
4 costs to be made by some competent engineer or engineers before  
5 the joint entity enters into any contract for the construction,  
6 management, operation, ownership, maintenance, or purchase of an  
7 electric generating facility and related facilities.

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

11                   (3) (a) The provisions of subsection (2) of this section  
12 and sections 13-824.02 and 13-824.03 relating to sealed bids  
13 shall not apply to contracts entered into by a joint entity in  
14 the exercise of its rights and powers relating to equipment or  
15 supplemental labor procurement from an electric utility or from or  
16 through an electric utility alliance if:

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

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

23                   (iii) The joint entity advertises notice of its intention  
24 to enter into such contract, the general nature of the proposed  
25 work, and the name of the person to be contacted for additional

1 information by anyone interested in contracting for such work.

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

15 (4) The provisions of subsection (2) of this section  
16 and sections 13-824.02 and 13-824.03 shall not apply to contracts  
17 in excess of one hundred thousand dollars entered into for the  
18 purchase of any materials, machinery, or apparatus to be used in  
19 facilities described in subsection (1) of this section ~~when the~~  
20 ~~contract does not include onsite labor for the installation thereof~~  
21 if, after advertising for sealed bids:

22 (a) No responsive bids are received; or

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

1           (5) Notwithstanding any other provision of subsection  
2 (2) of this section or sections 13-824.02 and 13-824.03, a  
3 joint entity may, without advertising or sealed bidding, purchase  
4 replacement parts or services relating to such replacement parts  
5 for any generating unit, transformer, or other transmission and  
6 distribution equipment from the original manufacturer of such  
7 equipment upon certification by an engineer or engineers that  
8 such manufacturer is the only available source of supply for  
9 such replacement parts or services and that such purchase is in  
10 compliance with standards established by the governing body of the  
11 joint entity. A written statement containing such certification and  
12 a description of the resulting purchase of replacement parts or  
13 services from the original manufacturer shall be submitted to the  
14 joint entity by the engineer or engineers certifying the purchase  
15 for the governing body's approval. After such certification, but  
16 not necessarily before the governing body's review, notice of any  
17 such purchase shall be published once a week for at least three  
18 consecutive weeks in one or more newspapers of general circulation  
19 in the municipality or county where the principal office or place  
20 of business of the joint entity is located and published in such  
21 additional newspapers or trade or technical periodicals as may be  
22 selected by the governing body in order to give proper notice of  
23 such purchase.

24           (6) Notwithstanding any other provision of subsection  
25 (2) of this section or sections 13-824.02 and 13-824.03, a joint

1 entity may, without advertising or sealed bidding, purchase used  
2 equipment and materials on a negotiated basis upon certification  
3 by an engineer that such equipment is or such materials are in  
4 compliance with standards established by the governing body. A  
5 written statement containing such certification shall be submitted  
6 to the joint entity by the engineer for the governing body's  
7 approval.

8           Sec. 2. Section 18-2442, Revised Statutes Supplement,  
9 2007, is amended to read:

10           18-2442 (1) An agency shall cause estimates of the costs  
11 to be made by some competent engineer or engineers before the  
12 agency enters into any contract for:

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

16           (i) Power project, power plant, or system;

17           (ii) Irrigation works; or

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

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

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

1           (3) (a) The provisions of subsection (2) of this section  
2 and sections 18-2443 and 18-2444 relating to sealed bids shall  
3 not apply to contracts entered into by an agency in the exercise  
4 of its rights and powers relating to (i) radioactive material  
5 or the energy therefrom, (ii) any technologically complex or  
6 unique equipment, (iii) equipment or supplemental labor procurement  
7 from an electric utility or from or through an electric utility  
8 alliance, or (iv) any maintenance or repair, if the requirements of  
9 subdivisions (b) and (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 certify that, by reason of  
14 the nature of the subject matter of the contract, compliance with  
15 subsection (2) of this section would be impractical or not in the  
16 public interest;

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

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

23           (c) Any contract for which the board has approved  
24 an engineer's certificate described in subdivision (b) of this  
25 subsection shall be advertised in three issues, not less than

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

11 (4) The provisions of subsection (2) of this section and  
12 sections 18-2443 and 18-2444 shall not apply to contracts in excess  
13 of one hundred thousand dollars entered into for the purchase of  
14 any materials, machinery, or apparatus to be used in projects,  
15 plants, systems, or works described in subdivision (1)(a) of this  
16 section ~~when the contract does not include onsite labor for the~~  
17 ~~installation thereof~~ if, after advertising for sealed bids:

18 (a) No responsive bids are received; or

19 (b) The board of directors of such agency determines that  
20 all bids received are in excess of the fair market value of the  
21 subject matter of such bids.

22 (5) Notwithstanding any other provision of subsection (2)  
23 of this section or sections 18-2443 and 18-2444, an agency may,  
24 without advertising or sealed bidding, purchase replacement parts  
25 or services relating to such replacement parts for any generating

1 unit, transformer, or other transmission and distribution equipment  
2 from the original manufacturer of such equipment upon certification  
3 by an engineer or engineers that such manufacturer is the only  
4 available source of supply for such replacement parts or services  
5 and that such purchase is in compliance with standards established  
6 by the board. A written statement containing such certification  
7 and a description of the resulting purchase of replacement parts  
8 or services from the original manufacturer shall be submitted to  
9 the board by the engineer or engineers certifying the purchase for  
10 the board's approval. After such certification, but not necessarily  
11 before the board's review, notice of any such purchase shall be  
12 published once a week for at least three consecutive weeks in  
13 one or more newspapers of general circulation in the municipality  
14 or county where the principal office or place of business of the  
15 agency is located and published in such additional newspapers or  
16 trade or technical periodicals as may be selected by the board in  
17 order to give proper notice of such purchase.

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

1                   Sec. 3. Section 70-637, Revised Statutes Supplement,  
2 2007, is amended to read:

3                   70-637 (1) A district shall cause estimates of the costs  
4 to be made by some competent engineer or engineers before the  
5 district enters into any contract for:

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

9                   (i) Power plant or system;

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

12                   (iii) Ethanol production or distribution system;

13                   (iv) Irrigation works; or

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

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

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

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

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

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

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

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

23           (c) Any contract for which the board has approved  
24 an engineer's certificate described in subdivision (b) of this  
25 subsection shall be advertised in three issues not less than

1 seven days between issues in one or more newspapers of general  
2 circulation in the district and in such additional newspapers or  
3 trade or technical periodicals as may be selected by the board in  
4 order to give proper notice of its intention to enter into such  
5 contract, and any such contract shall not be entered into prior to  
6 twenty days after the last advertisement.

7 (5) The provisions of subsection (2) of this section and  
8 sections 70-638 and 70-639 shall not apply to contracts in excess  
9 of one hundred thousand dollars entered into for the purchase  
10 of any materials, machinery, or apparatus to be used in projects  
11 described in subdivision (1)(a) of this section ~~when the contract~~  
12 ~~does not include onsite labor for the installation thereof if,~~  
13 after advertising for sealed bids:

14 (a) No responsive bids are received; or

15 (b) The board of directors of such district determines  
16 that all bids received are in excess of the fair market value of  
17 the subject matter of such bids.

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

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

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

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