

LEGISLATIVE BILL 540

Approved by the Governor January 31, 1984

Introduced by Wesely, 26

AN ACT relating to disabled persons; to amend sections 14-564, 23-321, 23-323, 70-637, and 81-153, Reissue Revised Statutes of Nebraska, 1943, and sections 16-321 and 17-568.01, Revised Statutes Supplement, 1983; to define a term; to allow certain public bodies to negotiate directly with sheltered workshops for products and services as prescribed; to harmonize provisions; to provide a penalty; to provide severability; and to repeal the original sections.

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

Section 1. As used in this act, unless the context otherwise requires, sheltered workshop shall mean a facility in Nebraska operated by a public agency or a private nonprofit corporation organized for the primary purpose of employment of and service to physically or mentally disabled clients in a program of rehabilitation. Such facility shall be certified as a sheltered workshop, a work activity center, or an equivalent by an independent accrediting agency and comply with the Fair Labor Standards Amendments of 1966, Public Law No. 89-601, 80 Stat. 830, as a sheltered workshop or a work activity center.

Sec. 2. To negotiate contracts pursuant to this act, a sheltered workshop shall:

(1) Employ a minimum of ten physically or mentally disabled clients;

(2) Provide disabled clients with a wage at a level consistent with their health, efficiency, and general well-being as required by Chapter 48, article 12;

(3) Provide a controlled work environment and a program designed to enable the disabled client enrolled in the program to progress toward normal living and develop, as far as possible, his or her capacity, performance, and relationship with other persons; and

(4) Provide a work experience sufficiently diverse to accommodate the needs of each disabled client enrolled in the program.

Sec. 3. Whenever the State of Nebraska, any department or any agency thereof, or any county, municipality, school district, township, or other governmental subdivision is required to advertise for bids pursuant to any statutes of the State of Nebraska, it may directly negotiate and contract for products and services

with a sheltered workshop. Direct negotiation for products and services, notwithstanding the procedures for public lettings pursuant to sections 73-101 to 73-106, may be conducted if the department, agency, or subdivision gives consideration to the following elements:

(1) Whether the product or service contracted for is supplied by the sheltered workshop at a fair market price;

(2) Whether the product or service meets the specifications of the department, agency, or subdivision;

(3) The ability, capacity, and skill of the sheltered workshop to perform the contract required;

(4) The character, integrity, reputation, judgment, experience, and efficiency of the sheltered workshop;

(5) Whether the sheltered workshop can perform the contract within the time specified;

(6) The quality of performance of previous contracts;

(7) The previous and existing compliance by the sheltered workshop with laws relating to the contract;

(8) The life-cost of the product or service in relation to the purchase price and specific use of the item; and

(9) The performance of the product or service, taking into consideration any commonly accepted tests and standards of product usability and user requirements.

An agency, subdivision, or city under home rule charter shall furnish prior public 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 any sheltered workshop interested in contracting for such work.

Any contract negotiated pursuant to this section shall be in writing and shall be made available to the public by the purchasing party upon request. Such a contract shall include the purchase price, the quantity of product or service purchased, and the time period for which the product or service will be provided.

Sec. 4. No person shall engage in, aid, or abet any person in any conduct, fraudulent activity, or misrepresentation of the facts in violation of sections 1 to 3 of this act.

Sec. 5. Notwithstanding the provisions for public lettings required by a city home rule charter adopted pursuant to Article XI of the constitution, the governing body of any such city may negotiate directly with a sheltered workshop pursuant to section 3 of this act.

Sec. 6. That section 14-564, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-564. During the month of December of each year, the city council shall prepare, or cause to be prepared, a list of all supplies required for each office

and department or board for the ensuing year. Such list shall designate clearly the quantity and quality of the articles required, but shall not specify the particular product of any manufacturer. The city council may negotiate directly with a sheltered workshop for such supplies pursuant to section 3 of this act. In the event the council does not negotiate with a sheltered workshop, ~~the~~ The city clerk shall advertise for bids on the articles in such list for at least three successive days in the official newspaper. Such advertisement shall state, in substance, that at a certain stated regular meeting of the city council, bids will be received and opened for all such supplies, and it shall be sufficient in such advertisement to describe the articles in a general way and refer to such list as being on file in the office of the city clerk. Such bids shall be received at the first regular meeting of the city council held after such advertisement has been completed, and awards shall be made at the next regular meeting thereafter. Bidders shall not be required to bid on all items included in such estimates, nor upon all items in one class. The council may accept the lowest and best bid on any item or items and may reject any and all bids. Other ~~;~~ PROVIDED, ~~other~~ or additional supplies not exceeding the value of one hundred dollars for any officer or board may be purchased on the request of the mayor and comptroller.

Sec. 7. That section 16-321, Revised Statutes Supplement, 1983, be amended to read as follows:

16-321. (1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, ~~and~~ the improvement of streets, and the erection and repair of buildings, and shall perform such other duties as the council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board shall have the right to utilize its own engineering staff, and shall have the right to hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works shall have the right to purchase material and employ labor for the enlargement and improvement of the water and electric departments.

(2) No contracts for services, material, or labor for enlargement or improvement, except as provided in section 18-412.01, costing over ten thousand dollars shall be made unless it is first approved by the city

council. Except as provided in section 18-412.01, before the city council shall make any contract in excess of ten thousand dollars for general improvements, such as water extensions, sewers, public heating system, bridges, or work on streets, or any other work or improvement where the cost of such improvement shall be assessed to the property, an estimate of the cost thereof shall be made by the city engineer and submitted to the council. No contract shall be entered into for any such work or improvement or for the purchase of such equipment, for any price exceeding ten thousand dollars without advertising for bids, except that unless such a contract shall may be negotiated directly with a sheltered workshop pursuant to section 3 of this act or entered into for the benefit of the municipal electric utility. A municipal electric utility may enter into a contract for any such work or improvement or for the purchase of such equipment without advertising for bids if the: (a) Price is ten thousand dollars or less; (b) price is twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) price is thirty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) price is forty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars. In advertising for bids for any such work, or for the purchase of such equipment, the council may cause the amount of such estimate to be published therewith.

(3) Such advertisement, as provided in subsection (2) of this section, shall be published at least ten days in some legal newspaper of general circulation published in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance provided under section 16-405 when adopted by a three-fourths vote of the council and entered of record.

(4) If, after advertising for bids as provided in subsections (2) and (3) of this section, the city council receives fewer than two bids on a contract for services, material, or labor, or if the bids received by the city council contain a price which exceeds the estimated cost of the project, the mayor and the city council shall have the authority to negotiate a contract for services, material, or labor in an attempt to complete the proposed project at a cost commensurate with the estimate given.

(5) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

(6) The municipal bidding procedure shall be waived when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure of Chapter 81, article 1.

Sec. 8. That section 17-568.01, Revised Statutes Supplement, 1983, be amended to read as follows:

17-568.01. (1) The city or village engineer shall, when requested by the mayor, city council, or village board, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, and the improvement of streets, and the erection and repair of buildings, and shall perform such other duties as the council or board may require. When a city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board shall have the right to utilize its own engineering staff, and shall have the right to hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works shall have the right to purchase material and employ labor for the enlargement and improvement of the water and electric departments.

(2) No contracts for services, material, or labor for enlargement or improvement, except as provided in section 18-412.01, costing over ten thousand dollars shall be made unless it is first approved by the city council or village board. Except as provided in section 18-412.01, before the city council or village board shall make any contract in excess of ten thousand dollars for general improvements, such as water extensions, sewers, public heating system, bridges, or work on streets, or any other work or improvement where the cost of such improvement shall be assessed to the property, an estimate of the cost thereof shall be made by the city or village engineer and submitted to the council or village board. No contract shall be entered into for any such work or improvement or for the purchase of such equipment, for any

price exceeding ten thousand dollars without advertising for bids, unless except that such a contract shall may be negotiated directly with a sheltered workshop pursuant to section 3 of this act or entered into for the benefit of the municipal electric utility. A municipal electric utility may enter into a contract for any such work or improvement or for the purchase of such equipment without advertising for bids if the: (a) Price is ten thousand dollars or less; (b) price is twenty thousand dollars or less and the municipal electric utility has gross annual revenue revenues from retail sales in excess of one million dollars; (c) price is thirty thousand dollars or less and the municipal electric utility has gross annual revenue revenues from retail sales in excess of five million dollars; or (d) price is forty thousand dollars or less and the municipal electric utility has gross annual revenue revenues from retail sales in excess of ten million dollars. In advertising for bids for any such work, or for the purchase of such equipment, the council or village board may cause the amount of such estimate to be published therewith.

(3) Such advertisement, provided for in subsection (2) of this section, shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the city or village and, if there be no legal newspaper published in or of general circulation in such city or village, then in some newspaper of general circulation published in the county wherein such city or village is located, and if there be no legal newspaper of general circulation published in the county wherein such city or village is located then in a newspaper, designated by the county board, having a general circulation within the county where bids are required, and if no newspaper is published in the city, village, or in the county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three public places in the city or village. In , Provided, that in case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to life, health, or property, or war, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the council or board of trustees, and entered of record.

(4) If, after advertising for bids as provided in subsections (2) and (3) of this section, the city council or village board receives fewer than two bids on a contract for services, material, or labor, or if the bids received by the city council or village board contain a price which exceeds the estimated cost of the project, the

mayor and the city council or village board shall have the authority to negotiate a contract for services, material, or labor in an attempt to complete the proposed project at a cost commensurate with the estimate given.

(5) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

(6) The municipal bidding procedure shall be waived when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure of Chapter 81, article 1.

Sec. 9. That section 23-321, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-321. In all counties where the cost of furnishing the officers with books, blanks, and stationery shall exceed the sum of two hundred dollars per year, the supplies for such purposes shall be let either to sheltered workshops through direct negotiations pursuant to section 3 of this act or in separate contracts to the lowest competent bidder, if any bids are filed, who shall give bond for the faithful performance of his or her contract, with at least two good and sufficient sureties, residents of the state. The bond required by this section shall be approved by the county board, and the sureties therein shall justify in the same manner as sureties on official bonds.

Sec. 10. That section 23-323, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-323. The If the county has not contracted with a sheltered workshop, the county board shall at its first meeting in January in each year, open said all bids and award the contracts for the furnishing of all books, blanks, and stationery as may be required by county officers to the lowest bidder competent under the provisions of section 23-321, and who complies with all its provisions. The ; PROVIDED; the county board may reject any or all bids. In the event no bids are filed, or in the event all bids filed are rejected, then the county board may go into the open market and purchase all such books, blanks, and stationery as may be required by county officers for the ensuing year.

Sec. 11. That section 70-637, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-637. Before any district shall enter into any contract for 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, for the use of the district, or for the purchase of any materials, machinery, or apparatus to be used in 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 shall exceed the sum of fifty thousand dollars, no such contract shall be entered into without advertising for sealed bids, except that (1) the board may negotiate directly with sheltered workshops pursuant to section 3 of this act and (2) ; PROVIDED, with respect to contracts entered into by a district in the exercise of its rights and powers, relating to radioactive material or the energy therefrom, or relating to any maintenance or repair contracts, if ~~said~~ the engineer or engineers shall certify that by reason of the nature of the subject matter of the contract compliance with this section would be impractical and not in the public interest, and the engineer's certification is approved by a two-thirds vote of the board, ~~then~~ the provisions of sections 70-637 to 70-639 relating to sealed bids shall not apply, and the district shall advertise 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. Any contract for which the board has approved such engineer's certificate 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. With respect to contracts in excess of fifty 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 when the contract does not include onsite labor for the installation thereof, if, after advertising for sealed bids, no responsive bids are received or 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, then the provisions of sections 70-637 to 70-639 shall not apply.

Sec. 12. That section 81-153, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-153. The materiel division shall have the

power and duty to:

- (1) Purchase or contract for, in the name of the state, the articles required by the using agencies and the state;
- (2) Promulgate, apply, and enforce standard specifications established as provided in section 81-154;
- (3) Sell and dispose of personal property that is not needed by the state or its using agencies as provided in section 81-161.04 or accept trade-ins when determined by it to be an advantage to the state;
- (4) Determine the utility, quality, fitness, and suitability of all articles or property tendered or furnished;
- (5) Make rules and regulations not inconsistent with sections 81-145 to 81-163 or sections 81-1118 to 81-1118.03, to carry into effect the provisions thereof. Such rules and regulations shall include provisions for modifying and terminating purchase contracts and the cost principles to be used in such modification or termination;
- (6) Appoint such clerical, technical, and other assistants as may be necessary to properly administer this act, fix their compensation, and prescribe their duties in connection therewith, subject to existing laws and appropriations made therefor;
- (7) Allow the purchase of items without competitive bidding when the price has been established by the federal General Services Administration. Such division may give consideration to a sheltered workshop, pursuant to section 3 of this act, in making such purchases;
- (8) Enter into any personal property lease agreement when it appears to be in the best interest of the state; and
- (9) Negotiate purchases and contracts when conditions exist to defeat the purpose and principles of public competitive bidding.

Sec. 13. A person violating any provision of sections 1 to 4 of this act shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, each day shall constitute a separate offense.

Sec. 14. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 15. That original sections 14-564, 23-321, 23-323, 70-637, and 81-153, Reissue Revised Statutes of Nebraska, 1943, and sections 16-321 and 17-568.01, Revised Statutes Supplement, 1983, are repealed.