

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 975**

Introduced by Smith, 14; Ashford, 20; Avery, 28; Campbell, 25;  
Gloor, 35.

Read first time January 12, 2012

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to public lettings and contracts; to adopt the

2 Fair Bidding Act.

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

1           Section 1. This act shall be known and may be cited as  
2 the Fair Bidding Act.

3           Sec. 2. The purposes of the Fair Bidding Act are to  
4 provide for the efficient procurement of goods and services by  
5 governmental units; to promote the economical, nondiscriminatory, and  
6 efficient administration and completion of state and state-funded or  
7 state-assisted construction projects; to provide for fair and open  
8 competition for construction contracts, grants, tax abatements, and  
9 tax credits awarded by governmental units; to prohibit requirements  
10 for certain terms in construction contracts and construction  
11 contracts awarded by governmental units and supported through grants  
12 and tax subsidies and abatements by governmental units; to prohibit  
13 expenditure of public funds under certain conditions; to prohibit  
14 certain terms in procurement documents for certain expenditures by  
15 governmental units involving public facilities; and to provide powers  
16 and duties for certain public officers, employees, and contractors.

17           Sec. 3. For purposes of the Fair Bidding Act:

18           (1) Bidder means any individual, firm, partnership,  
19 limited liability company, corporation, or other association of  
20 persons that makes an offer to perform a public contract for a  
21 governmental unit;

22           (2) Collective-bargaining agreement means an agreement  
23 between an employer and a labor organization which regulates terms  
24 and conditions of employment;

25           (3) Construction means the business of construction,

1 alteration, repairing, dismantling, or demolition of airports,  
2 bridges, buildings, canals, dams, disposal plants, levees, pipelines,  
3 power lines, roads, sewers, streets, transmission lines, viaducts,  
4 water and gas mains, water filters, water tanks, water towers, water  
5 wells, and every other type of structure, project, development, or  
6 improvement coming within the definition of real property or personal  
7 property, whether such property is to be occupied by the owner or  
8 held either for sale or rental;

9 (4) Governmental unit means the State of Nebraska, any  
10 agency of the state, or any political subdivision of the state,  
11 including any county, city, village, township, school district,  
12 learning community, educational service unit, district, authority,  
13 the University of Nebraska, the Nebraska state college system, the  
14 Nebraska community college system, any entity created pursuant to the  
15 Interlocal Cooperation Act or the Joint Public Agency Act, or any  
16 public corporation or entity, whether organized and existing under  
17 direct provisions of the Constitution of Nebraska or laws of the  
18 State of Nebraska or by virtue of charter, corporate articles, or  
19 other legal instruments executed under authority of the constitution  
20 or laws and any agent, agency, board, commission, authority,  
21 instrumentality, subdivision, or other body of any of such entities;

22 (5) Public benefit means a grant, loan, tax abatement,  
23 tax credit, or any other similar type of benefit awarded by a  
24 governmental unit;

25 (6) Public contract means any contract, bid documents, or

1 other controlling documents for the performance of construction  
2 between a governmental unit and a public contractor, including those  
3 between a contractor and a subcontractor;

4 (7) Public contractor means any individual, firm,  
5 partnership, limited liability company, corporation, or other  
6 association of persons engaged in construction for a governmental  
7 unit. Public contractor includes any subcontractor engaged in such  
8 construction and any person who is providing or arranging for labor  
9 for such construction for a contractor, either as an employee or as  
10 an independent contractor;

11 (8) Real property means real estate that is improved.  
12 Real property includes public land and any leasehold, tenement, or  
13 improvement placed on the real property; and

14 (9) Subcontractor means a person or entity that has  
15 contracted to furnish labor or materials to, or performed labor or  
16 supplied materials for, a public contractor or another subcontractor  
17 in connection with a contract for construction. Subcontractor  
18 includes materialmen and suppliers.

19 Sec. 4. Unless otherwise required by federal law, a  
20 governmental unit shall ensure that any public contract, procurement  
21 of services under a public contract, or requests for proposals or bid  
22 specifications for a public contract, the procurement procedures for  
23 the public contract, or any other controlling document does not  
24 contain:

25 (1) A term that requires, prohibits, encourages, or

1 discourages bidders, public contractors, or subcontractors from  
2 entering into or adhering to collective-bargaining agreements  
3 relating to construction under the public contract; or

4 (2) A term that discriminates against bidders, public  
5 contractors, or subcontractors based on the status as a party or  
6 nonparty to, or the willingness or refusal to enter into, a  
7 collective-bargaining agreement relating to construction under the  
8 public contract.

9 Sec. 5. A governmental unit shall not award a public  
10 benefit that is conditioned upon a requirement that the recipient of  
11 the award include a term described in section 4 of this act in a  
12 public contract for any construction that is the subject of the  
13 public benefit.

14 Sec. 6. A governmental unit shall not place any of the  
15 terms described in section 4 of this act in bid specifications,  
16 project agreements, or other controlling documents relating to  
17 construction. Any such included term is void and of no effect.

18 Sec. 7. The requirements of sections 4 to 6 of this act  
19 do not apply to public contracts executed before the effective date  
20 of this act.

21 Sec. 8. Nothing in the Fair Bidding Act shall:

22 (1) Prohibit employers or other parties from entering  
23 into agreements or engaging in any other activity protected by  
24 federal law, including the National Labor Relations Act, 29 U.S.C.  
25 151 et seq., as amended; or

1                   (2) Interfere with labor relations of parties that are  
2 protected under federal law, including the National Labor Relations  
3 Act, 29 U.S.C. 151 et seq., as amended.