

LEGISLATIVE BILL 938

Approved by the Governor March 18, 2024

Introduced by Brandt, 32; Dorn, 30.

A BILL FOR AN ACT relating to the County Purchasing Act; to amend sections 23-3104, 23-3105, 23-3107, 23-3108, 23-3109, 23-3111, and 23-3115, Reissue Revised Statutes of Nebraska; to redefine a term; to change provisions relating to the county board, purchasing agent, purchases, competitive bidding, and surplus property; to allow auctions and trades; to eliminate special purchases; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 23-3104, Reissue Revised Statutes of Nebraska, is amended to read:

23-3104 As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;

(3) Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase means the obtaining of personal property or services by auction, sale, lease, trade, or other contractual means. Purchase also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15. Purchasing or purchase does not include any purchase or lease of personal property or services by a facility established under section 23-3501 or by or on behalf of a county coroner.

Sec. 2. Section 23-3105, Reissue Revised Statutes of Nebraska, is amended to read:

23-3105 The county governing board of a county with a population of more than one hundred fifty thousand shall and the county governing board of any other county may employ a purchasing agent who shall not be a county officer of the county. All purchases made from appropriated funds of the county shall be made through the purchasing agent. The county board shall pay the agent for such services during the time of employment as shall be agreed upon at or during the time of employment. The person so employed and designated shall serve at the pleasure of the county board and give bond to the county in such amount as the county board shall prescribe.

Sec. 3. Section 23-3107, Reissue Revised Statutes of Nebraska, is amended to read:

23-3107 The county board or purchasing agent, subject to the approval of the county board, shall: (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed; (2) prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication; (3) revise forms from time to time as conditions warrant; (4) provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; (5) pursuant to section 23-3115, dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. ~~Except as otherwise provided in subsection (2) of section 23-3115, such property with a value of less than two thousand five hundred dollars may be sold without competitive bidding. Except as otherwise provided in subsection (2) of section 23-3115, property with a value of two thousand five hundred dollars or more shall be sold through competitive bidding;~~ (6) prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and (7) prescribe the manner in which claims for personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid.

Sec. 4. Section 23-3108, Reissue Revised Statutes of Nebraska, is amended to read:

23-3108 (1) Except as provided in section 23-3109, purchases of personal property or services by the county board or purchasing agent shall be made:

(a) Through the competitive sealed bidding process prescribed in section 23-3111 if the estimated value of the purchase is:

- (i) Before January 1, 2025, fifty thousand dollars or more;
- (ii) Beginning January 1, 2025, and before January 1, 2029, seventy thousand dollars or more;
- (iii) Beginning January 1, 2029, and before January 1, 2034, ninety thousand dollars or more; and
- (iv) Beginning January 1, 2034, one hundred ten thousand dollars or more;

(b) By securing and recording at least three informal bids, if practicable, if the estimated value of the purchase is equal to or exceeds:

- (i) Before January 1, 2025, ten thousand dollars, but is less than fifty thousand dollars;
- (ii) Beginning January 1, 2025, and before January 1, 2029, fifteen thousand dollars, but is less than seventy thousand dollars;
- (iii) Beginning January 1, 2029, and before January 1, 2034, twenty thousand dollars, but is less than ninety thousand dollars; and
- (iv) Beginning January 1, 2034, twenty-five thousand dollars, but is less than one hundred and ten thousand dollars; or

(c) By purchasing in the open market, subject to section 23-3112, if the estimated value of the purchase is: less than ten thousand dollars, subject to section 23-3112.

- (i) Before January 1, 2025, less than ten thousand dollars;
- (ii) Beginning January 1, 2025, and before January 1, 2029, less than fifteen thousand dollars;
- (iii) Beginning January 1, 2029, and before January 1, 2034, less than twenty thousand dollars; and
- (iv) Beginning January 1, 2034, less than twenty-five thousand dollars.

(2) In any county having a population of less than one hundred thousand inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value as prescribed in subdivision (1)(c) of this section less than ten thousand dollars.

(3) (2) In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision.

(4) (3) All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk.

Sec. 5. Section 23-3109, Reissue Revised Statutes of Nebraska, is amended to read:

23-3109 (1) Competitive bidding shall not be required (a) when purchasing unique or noncompetitive items, (b) when purchasing petroleum products, (c) when obtaining professional services or equipment maintenance, or (d) when the price has been established by one of the following: (i) The federal General Services Administration; (ii) the materiel division of the Department of Administrative Services; or (iii) a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity.

(2) The county board may, by majority vote of its members, waive the bidding requirements of the County Purchasing Act if such waiver is necessary to meet an emergency which threatens serious loss of life, health, or property in the county.

(3) The county governing board may waive the bidding requirements of the County Purchasing Act if the county can save a significant amount of money through an auction. The amount of the purchase shall not exceed a maximum dollar amount set by the county board at a regular or special meeting of the board as described in this subsection. Notice of such special meeting shall be published in a newspaper of general circulation within the county at least five days before the special meeting. If no edition of a newspaper of general circulation within the county is to be finalized for printing prior to such publication deadline, notice of such special meeting shall be (a) posted by the newspaper to the newspaper's website, if available, (b) posted by the newspaper on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers, and (c) posted by the county board at the courthouse. Such special meeting may be conducted by virtual conferencing. The county board shall, at its next regular meeting following the purchase, approve the purchase price by a vote of the county board. If no bids are received, the county board may purchase the personal property on the open market. by entering into a special purchase. The county board shall, five days prior to such special purchase, publish notice of its intention to make such a special purchase, stating the items considered and inviting informal quotes. A two-thirds vote of the entire county board shall approve such special purchase.

Sec. 6. Section 23-3111, Reissue Revised Statutes of Nebraska, is amended to read:

23-3111 When competitive sealed bidding is required by section 23-3108:

(1) Sealed bids shall be solicited by public notice in a legal newspaper of general circulation in the county at least once a week for two consecutive weeks before the final date of submitting bids;

(2) In addition to subdivision (1) of this section, sealed bids may also be solicited by sending requests by United States mail or electronic mail to

prospective suppliers and by posting notice on a public bulletin board;

(3) The notice shall contain: (a) A general description of the proposed purchase; (b) an invitation for sealed bids; (c) the name of the county official in charge of receiving the bids; (d) the date, time, and place the bids received shall be opened; and (e) whether alternative items will be considered;

(4) All bids shall remain sealed until opened on the published date and time by the county board or its designated agent;

(5) Any or all bids may be rejected and the bid need not be awarded at the time of opening, but may be held over for further consideration;

(6) If all bids received on a pending contract are for the same unit price or total amount and appear to be so as the result of collusion between the bidders, the county board or purchasing agent shall have authority to reject all bids and to purchase the personal property or services in the open market, except that the price paid in the open market shall not exceed the bid price;

(7) Each bid, with the name of bidder, shall be entered on a record and each record, with the successful bidder indicated thereon, shall, after the award or contract, be open to public inspection; and

(8) Except as otherwise provided in the County Purchasing Act, all All lettings on such bids shall be public and shall be conducted as provided in Chapter 73, article 1.

Sec. 7. Section 23-3115, Reissue Revised Statutes of Nebraska, is amended to read:

23-3115 (1)(a) ~~(1)~~ The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property, other than mobile equipment, which is obsolete or not usable by the county and which has a value of:

(i) Before January 1, 2025, less than two thousand five hundred dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, less than three thousand five hundred dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, less than four thousand five hundred dollars; and

(iv) Beginning January 1, 2034, less than six thousand dollars.

(b) In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions. Surplus personal property which is obsolete or not usable by the county and which has a value exceeding the applicable amount described in subdivision (1)(a) of this section shall be sold through competitive bidding or at auction.

(2)(a) ~~(2)~~ The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus mobile equipment which is obsolete or not usable by the county and which has a value of:

(i) Before January 1, 2025, less than five thousand dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, less than seven thousand dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, less than nine thousand dollars; and

(iv) Beginning January 1, 2034, less than twelve thousand dollars.

(b) In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions. Surplus mobile equipment which is obsolete or not usable by the county and which has a value exceeding the applicable amount prescribed in subdivision (2)(a) of this section of five thousand dollars or more shall be sold through competitive bidding or at auction.

(3) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) or (2) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.

(4) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

(5) No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever.

(6) Sales of surplus property not subject to competitive bidding may be made by auction, sealed bid, public or private sale, or trade.

Sec. 8. This act becomes operative on January 1, 2025.

Sec. 9. Original sections 23-3104, 23-3105, 23-3107, 23-3108, 23-3109, 23-3111, and 23-3115, Reissue Revised Statutes of Nebraska, are repealed.