

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 320

FINAL READING

Introduced by Lowe, 37.

Read first time January 12, 2017

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to state government; to amend sections 81-154,
2 81-161.05, 81-1118, and 81-1119, Reissue Revised Statutes of
3 Nebraska, and sections 81-161.03 and 81-1108.15, Revised Statutes
4 Cumulative Supplement, 2016; to change provisions relating to
5 bidding and purchases, conflicts of interest by the materiel
6 administrator and materiel division employees, and facilities
7 construction and administration; to harmonize provisions; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-154, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-154 The materiel division shall establish and maintain standard
4 specifications for personal property purchased in the name of the state.
5 The materiel division shall enlist the cooperation and assistance of the
6 using agencies in the establishment, maintenance, and revision of
7 standard specifications and shall encourage and foster the use of
8 standard specifications in order that the most efficient purchase of
9 personal property may be continuously accomplished. All such standard
10 specifications shall be so drawn that it will be possible for three or
11 more manufacturers, vendors, or suppliers to submit competitive bids. If
12 a requisition for personal property exceeds fifty ~~twenty-five~~ thousand
13 dollars and bids cannot be obtained from three bidders, then the standard
14 specifications of the personal property upon which bids are sought shall
15 be reviewed by the materiel division and the using agencies involved. If
16 it is determined by the materiel division, because of the special nature
17 of the personal property sought to be purchased or leased or for any
18 other reason, that the standard specifications should remain as written,
19 bids may be accepted from a fewer number of bidders than three with the
20 approval of the Governor or his or her designated representative.

21 Sec. 2. Section 81-161.03, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 81-161.03 The materiel division may, by written order, permit
24 purchases, contracts, or leases to be made by any using agency directly
25 with the vendor or supplier whenever it appears to the satisfaction of
26 the materiel division that, because of the unique nature of the personal
27 property, the price in connection therewith, the quantity to be
28 purchased, the location of the using agency, the time of the use of the
29 personal property, or any other circumstance, the interests of the state
30 will be served better by purchasing or contracting direct than through
31 the materiel division.

1 Such permission shall be revocable and shall be operative for a
2 period not exceeding twelve months from the date of issue. Using agencies
3 receiving such permission shall report their acts and expenditures under
4 such orders to the materiel division in writing and furnish ~~such agent~~
5 ~~with~~ proper evidence that competition has been secured at such time and
6 covering such period as may be required by the materiel division.

7 The materiel division shall adopt and promulgate rules and
8 regulations establishing criteria which must be met by any agency seeking
9 direct market purchase authorization. Purchases for miscellaneous needs
10 may be made directly by any agency without prior approval from the
11 materiel division for purchases of less than twenty-five ~~ten~~ thousand
12 dollars if the agency has completed a certification program as prescribed
13 by the materiel division.

14 The Department of Correctional Services may purchase raw materials,
15 supplies, component parts, and equipment perishables directly for
16 industries established pursuant to section 83-183, whether such purchases
17 are made to fill specific orders or for general inventories. Any such
18 purchase shall not exceed fifty thousand dollars. The department shall
19 comply with the bidding process of the materiel division and shall be
20 subject to audit by the materiel division for such purchases.

21 Sec. 3. Section 81-161.05, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 81-161.05 Neither the materiel administrator ~~division~~ nor any
24 employee under his or her ~~its~~ direction shall be financially interested
25 or have any beneficial personal interest, directly or indirectly, in the
26 purchase or leasing of any personal property nor in any firm,
27 partnership, limited liability company, corporation, or association
28 furnishing personal property. No such person shall receive or accept
29 directly or indirectly from any person, firm, limited liability company,
30 or corporation submitting any bid or to whom a contract may be awarded by
31 rebate, gift, or otherwise, any money or other thing of value whatsoever

1 or any promise, obligation, or contract for future reward, or
2 compensation. Any person who violates this section shall be guilty of a
3 Class IV felony and shall be subject to forfeiture of his or her office
4 or position.

5 Sec. 4. Section 81-1108.15, Revised Statutes Cumulative Supplement,
6 2016, is amended to read:

7 81-1108.15 (1) Except as provided in the Nebraska State Capitol
8 Preservation and Restoration Act, the division shall have the primary
9 functions and responsibilities of statewide facilities planning,
10 facilities construction, and facilities administration and shall adopt
11 and promulgate rules and regulations to carry out this section.

12 (2) Facilities planning shall include the following responsibilities
13 and duties:

14 (a) To maintain utilization records of all state-owned, state-
15 occupied, and vacant facilities;

16 (b) To coordinate comprehensive capital facilities planning;

17 (c) To define and review program statements based on space
18 utilization standards;

19 (d) To prepare or review planning and construction documents;

20 (e) To develop and maintain time-cost schedules for capital
21 construction projects;

22 (f) To assist the Governor and the Legislative Fiscal Analyst in the
23 preparation of the capital construction budget recommendations;

24 (g) To maintain a complete inventory of all state-owned, state-
25 occupied, and vacant sites and structures and to review the proposals for
26 naming such sites and structures;

27 (h) To determine space needs of all state agencies and establish
28 space-allocation standards; and

29 (i) To cause a state comprehensive capital facilities plan to be
30 developed.

31 (3) Facilities construction shall include the following powers and

1 duties:

2 (a) To maintain close contact with and conduct inspections of each
3 project so as to assure execution of time-cost schedules and efficient
4 contract performance if such project's total design and construction cost
5 is equal to or greater than the project cost set by subdivision (1)(a) of
6 section 81-1108.43 as adjusted by subsection (2) of section 81-1108.43;

7 (b) To perform final acceptance inspections and evaluations; and

8 (c) To coordinate all change or modification orders and progress
9 payment orders.

10 (4) Facilities administration shall include the following powers and
11 duties:

12 (a) To serve as state leasing administrator or agent for all
13 facilities to be leased for use by the state and for all state-owned
14 facilities to be rented to state agencies or other parties subject to
15 section 81-1108.22. The division shall remit the proceeds from any
16 rentals of state-owned facilities to the State Treasurer for credit to
17 the State Building Revolving Fund and the State Building Renewal
18 Assessment Fund;

19 (b) To provide all maintenance, repairs, custodial duties, security,
20 and administration for all buildings and grounds owned or leased by the
21 State of Nebraska except as provided in subsections (5) and (6) of this
22 section;

23 (c) To be responsible for adequate parking and the designation of
24 parking stalls or spaces, including access aisles, in offstreet parking
25 facilities for the exclusive use of handicapped or disabled or
26 temporarily handicapped or disabled persons pursuant to section 18-1737;

27 (d) To ensure that all state-owned, state-occupied, and vacant
28 facilities are maintained or utilized to their maximum capacity or to
29 dispose of such facilities through lease, sale, or demolition;

30 (e) To submit electronically an annual report to the Appropriations
31 Committee of the Legislature and the Committee on Building Maintenance

1 regarding the amount of property leased by the state and the availability
2 of state-owned property for the needs of state agencies;

3 (f) To report monthly time-cost data on projects to the Governor and
4 the Clerk of the Legislature. The report submitted to the Clerk of the
5 Legislature shall be submitted electronically;

6 (g) To administer the State Emergency Capital Construction
7 Contingency Fund;

8 (h) To submit status reports to the Governor and the Legislative
9 Fiscal Analyst after each quarter of a construction project is completed
10 detailing change orders and expenditures to date. The report submitted to
11 the Legislative Fiscal Analyst shall be submitted electronically. Such
12 reports shall be required on all projects costing an amount equal to or
13 greater than the amount set forth in subdivision (1)(a) of section
14 81-1108.43 as adjusted by subsection (2) of section 81-1108.43 ~~five~~
15 ~~hundred thousand dollars or more~~ and on such other projects as may be
16 designated by the division; and

17 (i) To submit a final report on each project to the Governor and the
18 Legislative Fiscal Analyst. The report submitted to the Legislative
19 Fiscal Analyst shall be submitted electronically. Such report shall
20 include, but not be limited to, a comparison of final costs and
21 appropriations made for the project, change orders, and modifications and
22 whether the construction complied with the related approved program
23 statement. Such reports shall be required on all projects costing an
24 amount equal to or greater than the amount set forth in subdivision (1)
25 (a) of section 81-1108.43 as adjusted by subsection (2) of section
26 81-1108.43 ~~five hundred thousand dollars or more~~ and on such other
27 projects as may be designated by the division.

28 (5) Subdivisions (4)(b), (c), and (d) of this section shall not
29 apply to (a) state-owned facilities to be rented to state agencies or
30 other parties by the University of Nebraska, the Nebraska state colleges,
31 the Department of Aeronautics, the Department of Roads, and the Board of

1 Educational Lands and Funds, (b) buildings and grounds owned or leased
2 for use by the University of Nebraska, the Nebraska state colleges, and
3 the Board of Educational Lands and Funds, (c) buildings and grounds
4 owned, leased, or operated by the Department of Correctional Services,
5 (d) facilities to be leased for nonoffice use by the Department of Roads,
6 (e) buildings or grounds owned or leased by the Game and Parks Commission
7 if the application of such subdivisions to the buildings or grounds would
8 result in ineligibility for or repayment of federal funding, (f)
9 buildings or grounds of the state park system, state recreation areas,
10 state historical parks, state wildlife management areas, or state
11 recreational trails, or (g) other buildings or grounds owned or leased by
12 the State of Nebraska which are specifically exempted by the division
13 because the application of such subdivisions would result in the
14 ineligibility for federal funding or would result in hardship on an
15 agency, board, or commission due to other exceptional or unusual
16 circumstances, except that nothing in this subdivision shall prohibit the
17 assessment of building rental depreciation charges to tenants of
18 facilities owned by the state and under the direct control and
19 maintenance of the division.

20 (6) Security for all buildings and grounds owned or leased by the
21 State of Nebraska in Lincoln, Nebraska, except the buildings and grounds
22 described in subsection (5) of this section, shall be the responsibility
23 of the Nebraska State Patrol. The Nebraska State Patrol shall consult
24 with the Governor, the Chief Justice, the Executive Board of the
25 Legislative Council, and the State Capitol Administrator regarding
26 security policy within the State Capitol and capitol grounds.

27 (7) Each member of the Legislature shall receive an electronic copy
28 of the reports required by subdivisions (4)(f), (h), and (i) of this
29 section by making a request for them to the State Building Administrator.
30 The information on such reports shall be submitted to the division by the
31 agency responsible for the project.

1 Sec. 5. Section 81-1118, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-1118 The materiel division of the Department of Administrative
4 Services is hereby established and shall be managed by the materiel
5 administrator.

6 There are hereby established the following seven branches of the
7 materiel division of the Department of Administrative Services which
8 shall have the following duties, powers, and responsibilities:

9 (1) The office supplies bureau shall be responsible for providing
10 office supplies, paper, and forms to using agencies;

11 (2) Central mail shall be responsible for all mailing operations,
12 transportation of material, tracking shipments, and making freight
13 claims;

14 (3) The print shop shall be responsible for specifications and for
15 receiving bids and placing orders to the lowest and best commercial
16 bidder for all printing and reproduction operations for the state. The
17 print shop shall also be responsible for coordinating all existing
18 printing and reproduction operations of the state;

19 (4) Copy services shall be responsible for the purchasing and
20 placement of all copier requirements;

21 (5) The state purchasing bureau shall be responsible for all
22 purchases by all state agencies other than the University of Nebraska.
23 The materiel division shall administer the public notice and bidding
24 procedures and any other areas designated by the Director of
25 Administrative Services to carry out the lease or purchase of personal
26 property. All purchases of and contracts for materials, supplies, or
27 equipment and all leases of personal property shall be made in the
28 following manner except in emergencies approved by the Governor:

29 (a) By a competitive formal sealed bidding process through the
30 materiel division in all cases in which the purchases are of estimated
31 value exceeding fifty ~~in the amount of twenty-five thousand dollars or~~

1 ~~more;~~

2 (b) By a competitive informal bidding process through the materiel
3 division in all cases in which the purchases are of estimated value equal
4 to or exceeding twenty-five ~~ten~~ thousand dollars but equal to or less
5 than fifty ~~twenty-five~~ thousand dollars;

6 (c) By unrestricted open market purchases through the materiel
7 division in all cases in which purchases are of estimated value of less
8 than twenty-five ~~ten~~ thousand dollars;

9 (d) All requisitions for whatever purpose coming to the state
10 purchasing bureau shall be in conformance with the approved budget of the
11 requisitioning department or agency; and

12 (e) All contracts for purchases and leases shall be bid as a single
13 whole item. In no case shall contracts be divided or fractionated in
14 order to produce several contracts which are of an estimated value below
15 that required for competitive bidding;

16 (6) The state recycling office shall be responsible for the
17 administration and operation of the State Government Recycling Management
18 Act; and

19 (7) State surplus property shall be responsible for the disposition
20 of the state's surplus property and the maintenance of all inventory
21 records.

22 Nothing in this section shall be construed to require that works of
23 art must be procured through the materiel division.

24 Sec. 6. Section 81-1119, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 81-1119 The Department of Administrative Services may purchase real
27 property needed by the state which costs an amount equal to or less than
28 ten percent of the amount set forth in subdivision (1)(a) of section
29 81-1108.43 as adjusted by subsection (2) of section 81-1108.43 ~~ten~~
30 ~~thousand dollars or less~~ without legislative approval or a specific
31 appropriation for such purchase unless the purchase is made to evade the

1 dollar limitation in this section and additional unapproved purchases
2 will be made which, when considered together, would exceed the dollar
3 limitation.

4 Sec. 7. Original sections 81-154, 81-161.05, 81-1118, and 81-1119,
5 Reissue Revised Statutes of Nebraska, and sections 81-161.03 and
6 81-1108.15, Revised Statutes Cumulative Supplement, 2016, are repealed.