

## LEGISLATIVE BILL 320

Approved by the Governor May 12, 2017

Introduced by Lowe, 37.

A BILL FOR AN ACT relating to state government; to amend sections 81-154, 81-161.05, 81-1118, and 81-1119, Reissue Revised Statutes of Nebraska, and sections 81-161.03 and 81-1108.15, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to bidding and purchases, conflicts of interest by the materiel administrator and materiel division employees, and facilities construction and administration; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

81-161.05 Neither the materiel ~~administrator division~~ nor any employee under ~~his or her~~ its direction shall be financially interested or have any beneficial personal interest, directly or indirectly, in the purchase or leasing of any personal property nor in any firm, partnership, limited liability company, corporation, or association furnishing personal property. No such person shall receive or accept directly or indirectly from any person, firm, limited liability company, or corporation submitting any bid or to whom a contract may be awarded by rebate, gift, or otherwise, any money or other thing of value whatsoever or any promise, obligation, or contract for future reward, or compensation. Any person who violates this section shall be guilty of a Class IV felony and shall be subject to forfeiture of his or her office or position.

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

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

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

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

(b) To coordinate comprehensive capital facilities planning;

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

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

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

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

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

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

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

(3) Facilities construction shall include the following powers and duties:

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

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

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

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

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

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

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

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

(e) To submit electronically an annual report to the Appropriations Committee of the Legislature and the Committee on Building Maintenance regarding the amount of property leased by the state and the availability of state-owned property for the needs of state agencies;

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

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

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

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

(5) Subdivisions (4)(b), (c), and (d) of this section shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) buildings and grounds owned or leased for use by the University of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

unless the purchase is made to evade the dollar limitation in this section and additional unapproved purchases will be made which, when considered together, would exceed the dollar limitation.

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