

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 338

Introduced by Howard, 9; Conrad, 46; Cook, 13; Dubas, 34; Haar, 21;
Lathrop, 12; Mello, 5; Nordquist, 7; Wallman, 30.

Read first time January 12, 2011

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Department of Administrative Services; to
2 amend sections 16-321.01, 17-568.02, 60-3,100, 73-301,
3 73-304, 73-306, 81-145, 81-146, 81-153, 81-154, 81-159,
4 81-1108.16, and 81-1118.03, Reissue Revised Statutes of
5 Nebraska; to provide preference requirements for services
6 and personal property contracts as prescribed; to provide
7 powers and duties for the Director of Administrative
8 Services and the materiel division; to define a term; to
9 harmonize provisions; and to repeal the original
10 sections.

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

1 Section 1. Section 16-321.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 16-321.01 Any municipal bidding procedure may be waived
4 by the city council or board of public works (1) when materials or
5 equipment are purchased at the same price and from the same seller as
6 materials or equipment which have formerly been obtained pursuant to
7 the state bidding procedure in sections 81-145 to 81-162 and section
8 11 of this act or (2) when the contract is negotiated directly with a
9 sheltered workshop pursuant to section 48-1503.

10 Sec. 2. Section 17-568.02, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 17-568.02 Any municipal bidding procedure may be waived
13 by the city council, village board, or board of public works (1) when
14 materials or equipment are purchased at the same price and from the
15 same seller as materials or equipment which have formerly been
16 obtained pursuant to the state bidding procedure in sections 81-145
17 to 81-162 and section 11 of this act or (2) when the contract is
18 negotiated directly with a sheltered workshop pursuant to section
19 48-1503.

20 Sec. 3. Section 60-3,100, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-3,100 (1) The department shall issue to every person
23 whose motor vehicle or trailer is registered fully reflectorized
24 license plates upon which shall be displayed (a) the registration
25 number consisting of letters and numerals assigned to such motor

1 vehicle or trailer in figures not less than two and one-half inches
2 nor more than three inches in height and (b) also the word Nebraska
3 suitably lettered so as to be attractive. Two license plates shall be
4 issued for every motor vehicle, except that one plate shall be issued
5 for dealers, motorcycles, minitrucks, truck-tractors, trailers,
6 buses, and apportionable vehicles. The license plates shall be of a
7 color designated by the director. The color of the plates shall be
8 changed each time the license plates are changed. Each time the
9 license plates are changed, the director shall secure competitive
10 bids for materials pursuant to sections 81-145 to 81-162 and section
11 11 of this act. Motorcycle, minitruck, and trailer license plate
12 letters and numerals may be one-half the size of those required in
13 this section.

14 (2) When two license plates are issued, one shall be
15 prominently displayed at all times on the front and one on the rear
16 of the registered motor vehicle or trailer. When only one plate is
17 issued, it shall be prominently displayed on the rear of the
18 registered motor vehicle or trailer. When only one plate is issued
19 for motor vehicles registered pursuant to section 60-3,198 and truck-
20 tractors, it shall be prominently displayed on the front of the
21 apportionable vehicle.

22 Sec. 4. Section 73-301, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 73-301 The Director of Administrative Services shall
25 review and approve or disapprove any contract for personal services

1 between a private entity and any state agency, other than (1) the
2 University of Nebraska, (2) the Nebraska state colleges, and (3) any
3 other board, commission, or agency established by the Constitution of
4 Nebraska, if, on the effective date of the contract, the personal
5 services are performed by permanent state employees of the agency and
6 will be replaced by services performed by the private entity. The
7 contract shall be subject to the preference requirements of
8 subsection (2) of section 73-304 and the public bidding procedures
9 established in sections 81-145 to 81-162 and section 11 of this act
10 except in emergencies approved by the Governor.

11 For purposes of this section, contract for personal
12 services means an agreement by a contractor to provide human labor
13 but does not mean a contract to supply only goods or personal
14 property. The term includes contracts with private service providers,
15 consultants, and independent service contractors.

16 Sec. 5. Section 73-304, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 73-304 (1) The Director of Administrative Services may
19 approve a proposed contract if:

20 ~~(1)~~ (a) The potential economic advantage of contracting
21 is not outweighed by the public's interest in having the particular
22 services performed directly by the state agency;

23 ~~(2)~~ (b) The contract does not adversely affect the
24 state's affirmative action efforts;

25 ~~(3)~~ (c) The contract will include adequate control

1 mechanisms to insure that the services are provided pursuant to the
2 terms of the contract; and

3 ~~(4)–(d)~~ The private entity is fairly compensating its
4 employees.

5 (2) The director shall give preference to a private
6 entity that certifies to the director that the services provided
7 pursuant to the contract will be performed in the United States
8 unless the director determines that such preference would do a
9 disservice to the public interest. The private entity shall include
10 such certification with the proposed contract. The private entity
11 shall also include a statement of work that discloses where a service
12 will be performed and whether any service under the contract is
13 anticipated to be performed outside of the United States. If the
14 private entity anticipates any service to be performed outside of the
15 United States, it shall provide in the statement of work a provision
16 setting forth the necessity or advantage that requires the
17 performance of such service outside of the United States. Nothing in
18 this subsection shall be construed to apply to any contract to which
19 the state is a party under medicare.

20 (3) If a private entity is awarded a contract after the
21 effective date of this act through the use of a preference pursuant
22 to subsection (2) of this section and knowingly performs services
23 outside of the United States that were not disclosed in the statement
24 of work, the private entity is barred from obtaining any state
25 contract for a period of five years after the violation is discovered

1 by the director, the director may void the contract, and the
2 Department of Administrative Services may recover damages in a civil
3 action in an amount three times the value of the contract. All money
4 collected by the department pursuant to this section shall be
5 remitted to the State Treasurer for distribution in accordance with
6 Article VII, section 5, of the Constitution of Nebraska.

7 (4) A contract entered into in accordance with any
8 treaty, law, agreement, or regulation of the United States shall not
9 be in violation of subsection (2) of this section to the extent of
10 such accordance.

11 Sec. 6. Section 73-306, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 73-306 The Department of Administrative Services shall
14 adopt and promulgate rules and regulations to carry out sections
15 73-301 to 73-305. Such rules and regulations shall apply to the
16 Director of Administrative Services in carrying out his or her duties
17 pursuant to such sections. Such rules and regulations shall include
18 provisions for prequalifying a private entity to comply with the
19 requirements of subsection (2) of section 73-304.

20 Sec. 7. Section 81-145, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 81-145 As used in sections 81-145 to 81-162 and section
23 11 of this act, unless the context otherwise requires:

24 (1) Lease or contract means an agreement entered into by
25 the state or using agency with another party whereby, for a stated

1 consideration, the state or using agency is to receive the personal
2 property or use thereof furnished by the other party;

3 (2) Manufactured in the United States means, in the case
4 of personal property, design, final assembly, processing, packaging,
5 testing, or another process that adds value, quality, or reliability
6 to the personal property occurs in the United States;

7 ~~(1)-(3) Materiel division shall mean means~~ the head of
8 the division of the state government charged with the administration
9 of sections 81-145 to 81-162 and 81-1118 to 81-1118.06 and section 11
10 of this act, which division shall be a part of and subject to the
11 supervision of the office of the Director of Administrative Services;

12 ~~(2)-(4) Personal property shall include includes~~ all
13 materials, supplies, furniture, equipment, printing, stationery,
14 automotive and road equipment, and other chattels, goods, wares, and
15 merchandise whatsoever; and

16 ~~(3)-(5) Using agencies shall mean and include means and~~
17 includes all officers of the state, departments, bureaus, boards,
18 commissions, councils, and institutions receiving legislative
19 appropriations. ~~;~~ and

20 ~~(4) Lease or contract shall mean an agreement entered~~
21 ~~into by the state or using agency with another party whereby, for a~~
22 ~~stated consideration, the state or using agency is to receive the~~
23 ~~personal property or use thereof furnished by the other party.~~

24 Sec. 8. Section 81-146, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 81-146 Sections 81-145 to 81-162 and 81-1118 to
2 81-1118.03 and section 11 of this act shall not apply:

3 (1) To the erection, construction, or original equipment
4 of any building or addition thereto, to the construction of any road
5 or bridge, or to the performance of any like work;

6 (2) To the purchase or use of the products of the labor
7 of the inmates of any charitable, reformatory, or penal institution
8 of the state, but section 83-146 shall apply to such products; or

9 (3) To the leasing by the state or a using agency of real
10 property.

11 Sec. 9. Section 81-153, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-153 The materiel division shall have the power and
14 duty to:

15 (1) Purchase or contract for, in the name of the state,
16 the personal property required by the using agencies and the state;

17 (2) Promulgate, apply, and enforce standard
18 specifications established as provided in section 81-154;

19 (3) Sell and dispose of personal property that is not
20 needed by the state or its using agencies as provided in section
21 81-161.04 or initiate trade-ins when determined to be in the best
22 interest of the state;

23 (4) Determine the utility, quality, fitness, and
24 suitability of all personal property tendered or furnished;

25 (5) Make rules and regulations consistent with sections

1 81-145 to 81-171 and 81-1118 to 81-1118.06 and section 11 of this act
2 to carry into effect the provisions thereof. Such rules and
3 regulations shall include provisions for modifying and terminating
4 purchase contracts, ~~and~~ the cost principles to be used in such
5 modification or termination, and prequalifying manufacturers,
6 vendors, and suppliers to comply with the requirements of subsection
7 (2) of section 81-154 and section 11 of this act;

8 (6) Employ such clerical, technical, and other assistants
9 as may be necessary to properly administer ~~such~~ sections 81-145 to
10 81-171 and 81-1118 to 81-1118.06 and section 11 of this act, fix
11 their compensation, and prescribe their duties in connection
12 therewith, subject to existing laws and appropriations;

13 (7) Allow the purchase of items without competitive
14 bidding when the price has been established by the federal General
15 Services Administration or to allow the purchase of items by
16 participation in a contract competitively bid by another state or
17 group of states. The division may also give consideration to a
18 sheltered workshop pursuant to section 48-1503 in making such
19 purchases;

20 (8) Enter into any personal property lease agreement when
21 it appears to be in the best interest of the state; and

22 (9) Negotiate purchases and contracts when conditions
23 exist to defeat the purpose and principles of public competitive
24 bidding.

25 Sec. 10. Section 81-154, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-154 (1) The materiel division shall establish and
3 maintain standard specifications for personal property purchased in
4 the name of the state. The materiel division shall enlist the
5 cooperation and assistance of the using agencies in the
6 establishment, maintenance, and revision of standard specifications
7 and shall encourage and foster the use of standard specifications in
8 order that the most efficient purchase of personal property may be
9 continuously accomplished. All such standard specifications shall be
10 so drawn that it will be possible for three or more manufacturers,
11 vendors, or suppliers to submit competitive bids. If a requisition
12 for personal property exceeds twenty-five thousand dollars and bids
13 cannot be obtained from three bidders, then the standard
14 specifications of the personal property upon which bids are sought
15 shall be reviewed by the materiel division and the using agencies
16 involved. If it is determined by the materiel division, because of
17 the special nature of the personal property sought to be purchased or
18 leased or for any other reason, that the standard specifications
19 should remain as written, bids may be accepted from a fewer number of
20 bidders than three with the approval of the Governor or his or her
21 designated representative.

22 (2) Standard specifications established pursuant to
23 subsection (1) of this section shall include requirements that
24 promote the purchase of and give preference to personal property that
25 has been manufactured in the United States. The materiel division

1 shall purchase personal property that has been manufactured in the
2 United States unless the materiel division determines that any of the
3 following applies:

4 (a) The personal property is not manufactured in the
5 United States in reasonably available quantities;

6 (b) The price of the personal property manufactured in
7 the United States exceeds by an unreasonable amount the price of
8 available and comparable property manufactured outside of the United
9 States;

10 (c) The quality of the personal property manufactured in
11 the United States is substantially less than the quality of the
12 comparably priced, available, and comparable personal property
13 manufactured outside the United States;

14 (d) The purchase of personal property manufactured
15 outside of the United States better serves the public interest by
16 helping to protect or save life, property, or the environment;

17 (e) The purchase of the personal property is made in
18 conjunction with contracts or offerings of telecommunications
19 service, fire suppression, security systems, communications services,
20 Internet services, or information services; or

21 (f) The purchase is of pharmaceutical products, drugs,
22 biologies, vaccines, medical devices used to provide medical and
23 health care or treat disease or used in medical or research
24 diagnostic tests, or medical nutritionals regulated by the federal
25 Food and Drug Administration under the Federal Food, Drug, and

1 Cosmetic Act, as amended.

2 In determining the price of personal property for
3 purposes of this subsection, consideration shall be given to the
4 life-cycle cost, including maintenance and repair of the personal
5 property.

6 (3) A contract entered into in accordance with any
7 treaty, law, agreement, or regulation of the United States shall not
8 be in violation of subsection (2) of this section to the extent of
9 such accordance.

10 Sec. 11. (1) A contract awarded by the materiel division
11 on or after the effective date of this act through the use of the
12 preference required in subsection (2) of section 81-154 shall contain
13 the manufacturer's, vendor's, or supplier's certification that the
14 personal property provided pursuant to the contract will be
15 manufactured in the United States.

16 (2) If a manufacturer, vendor, or supplier is awarded a
17 contract through the use of the preference required in subsection (2)
18 of section 81-154 and knowingly supplies personal property under that
19 contract that was not manufactured in the United States, the
20 manufacturer, vendor, or supplier is barred from obtaining any state
21 contract for a period of five years after the violation is discovered
22 by the materiel division, the materiel division may void the
23 contract, and the materiel division may recover damages in a civil
24 action in an amount three times the value of the contract. All money
25 collected by the materiel division pursuant to this section shall be

1 remitted to the State Treasurer for distribution in accordance with
2 Article VII, section 5, of the Constitution of Nebraska.

3 Sec. 12. Section 81-159, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-159 Each using agency shall, at the time, in the form,
6 and for the periods prescribed by the materiel division, present to
7 ~~it~~ the materiel division a detailed requisition for all personal
8 property to be purchased or leased. The materiel division shall then
9 arrange such schedules as are included in or covered by the
10 requisition for purchase and contract and for advertising them in the
11 manner best calculated to attract competition and advantageous price
12 as set forth in sections 81-145 to 81-162 and 81-1118 to 81-1118.06
13 and section 11 of this act. ~~It~~ The materiel division shall prescribe
14 the terms and conditions for delivery, inspections, and all other
15 details thereof.

16 Sec. 13. Section 81-1108.16, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 81-1108.16 (1) The administrator shall review program
19 statements and contracts and file a written report on each program
20 statement and contract reviewed pursuant to the provisions of section
21 81-1108.41. Such administrator shall file subsequent reviews and
22 reports upon completion of the planning or design phase of the
23 project indicating the compatibility of the project with capital
24 construction plans, the probable cost of the project, the accepted
25 cost standard, and the relationship of the project to the state

1 comprehensive capital facilities plan and to other agency or
2 departmental capital facilities pursuant to the provisions of section
3 81-1108.41.

4 (2) No contract for the leasing of real property shall be
5 awarded without the approval of the Department of Administrative
6 Services, and no such contract shall be awarded if:

7 (a) There is state-owned property which is adequate or
8 which through cost-effective renovation, as determined by the
9 division, could be made adequate to meet the using agency's needs; or

10 (b) It has not been arranged through the bidding process
11 provided in rules and regulations adopted by the division. The rules
12 and regulations shall be in accordance with sections 73-101,
13 81-1108.55, and 81-1108.56 and shall be otherwise consistent with
14 sections 81-145 to 81-162 and section 11 of this act to the greatest
15 extent possible.

16 All contracts for purchases or leases shall be open to
17 inspection by the Legislature during normal business hours.

18 Sec. 14. Section 81-1118.03, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-1118.03 Notwithstanding any other provision of law,
21 all contracts for or leases of personal property shall be subject to
22 the following conditions:

23 (1) No purchase or lease of property shall be approved
24 until a solicitation for purchase or lease has been made by the
25 Department of Administrative Services. Such solicitation shall be in

1 the form of a public notice of the proposed purchase or lease and a
2 general description of the personal property needed in a paper of
3 general circulation in the area where the agency will be operating or
4 by any other method approved by the materiel administrator;

5 (2) The Department of Administrative Services shall be
6 the sole and final authority on purchases and leases of personal
7 property by a using agency. In any case when the approval of the
8 Governor is required, the Governor may, in his or her discretion,
9 confer complete authority upon the Department of Administrative
10 Services in the review and approval of purchase and lease proposals;

11 (3) The Department of Administrative Services shall adopt
12 and promulgate rules and regulations to (a) develop and implement
13 purchasing and leasing policies and procedures which shall insure
14 economical and efficient operations of state agencies and (b) carry
15 out ~~the provisions of sections 81-145 to 81-162~~ and section 11 of
16 this act; and

17 (4) The Director of Administrative Services shall refuse
18 to issue warrants for the disbursement of any funds in payment of
19 contracts or leases which have not been approved according to law.

20 Sec. 15. Original sections 16-321.01, 17-568.02,
21 60-3,100, 73-301, 73-304, 73-306, 81-145, 81-146, 81-153, 81-154,
22 81-159, 81-1108.16, and 81-1118.03, Reissue Revised Statutes of
23 Nebraska, are repealed.