

LEGISLATIVE BILL 359

Approved by the Governor April 22, 1975

Introduced by Appropriations Committee, Marvel, 33, Chmn.; Clark, 47; Stull, 49; Johnson, 15; Simpson, 46; S. Marsh, 29; Bereuter, 24; Savage, 10

AN ACT to amend sections 48-606.01, 81-145, 81-146, 81-154, 81-159, 81-161, 81-161.03, 81-161.05, and 81-162, Reissue Revised Statutes of Nebraska, 1943, and sections 79-329, 81-153, 81-1108.16, 81-1108.22, and 81-1118, Revised Statutes Supplement, 1974, relating to requisitions by state agencies; to provide that contracts for purchases and leases shall be subject to the competitive bidding process; to provide that the Department of Administrative Services shall exercise authority over bids for contracts as prescribed; to define terms; and to repeal the original sections.

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

Section 1. That section 48-606.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-606.01. The commissioner, with the written consent of the Governor Department of Administrative Services, is authorized and empowered to use any funds available under the provisions of either subdivision (a) or (b) of section 48-621, for the purpose of acquiring suitable office space within the corporate limits of the state capital city for the Division of Employment by purchase, contract, or in any other manner including the right to use such funds or any part thereof to assist in financing the construction of any building erected by the State of Nebraska or any of its agencies wherein available space will be provided for the division under lease or contract between the commissioner and the State of Nebraska or such other agency whereby the division will continue to occupy such space rent-free after the cost of financing such building has been liquidated. The commissioner, upon approval by the Department of Administrative Services, is authorized and empowered to use any such funds to acquire suitable office space for local employment offices anywhere in the State of Nebraska.

Sec. 2. That section 79-329, Revised Statutes Supplement, 1974, be amended to read as follows:

79-329. The State Board of Education shall have authority (1) to provide for the education of and approve special educational facilities and programs provided in the public schools for handicapped children, (2) to act as the state's authority for the approval of all types of veterans educational programs, financially supported in whole or in part by the federal government, (3) to supervise and administer any educational or training program which may hereafter be established within the state by the federal government, except higher education in approved colleges, (4) to coordinate educational activities in the state that pertain to elementary and secondary education, and such other educational programs as are placed by statute under the jurisdiction of the board, (5) to receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source, (6) to publish, from time to time, directories of schools and educators, pamphlets, courses of study, handbooks on school constitution and other matters of interest to educators and similar publications, which publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing with the proceeds of such sale being transmitted to the State Treasurer and by him deposited in the state treasury to the credit of the General Fund, and to furnish eight copies thereof to the Nebraska Publications Clearinghouse, and (7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, to rent or lease space outside the State Capitol.

Sec. 3. That section 81-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-145. As used in sections 81-145 to 81-163, unless the context otherwise requires:

(1) Materiel division shall mean the head of the division of the state government charged with the administration of sections 81-145 to 81-163, which division shall be a part of and subject to the supervision of the office of Director of Administrative Services;

(2) Articles shall mean articles of personal property and shall include all materials, supplies,

furniture, equipment, printing, stationery, automotive and road equipment, and all other chattels, goods, wares and merchandise whatsoever; and

(3) Using agencies shall mean and include all officers of the state, departments, bureaus, boards, commissions, councils and institutions receiving legislative appropriations; -

(4) Property shall mean public or privately-owned real property containing a building or buildings used primarily for office space, storage, maintenance, parking, or other use; and

(5) Lease and contract shall mean an agreement entered into by the state or using agency with another party whereby, for a stated consideration, the state or using agency is to receive the articles or property, or use thereof, furnished by the other party.

Sec. 4. That section 81-146, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-146. (1) Sections 81-145 to 81-163 shall not apply:

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

(2) (b) To the purchase or use of the products of the labor of the inmates of any charitable, reformatory or penal institution of the state.

(2) Sections 81-145 to 81-163 shall apply to the leasing by the state or a using agency of property outside of the State Capitol.

Sec. 5. That section 81-153, Revised Statutes Supplement, 1974, be amended to read as follows:

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

(1) Purchase or contract for, in the name of the state, the articles required by the using agencies and the state;

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

(3) Sell and dispose of personal property that is not needed by the state or its using agencies as provided in section 81-161.04;

(4) Determine the service utility, quality, fitness and suitability of all articles or property tendered or furnished, and for such purposes, make use of the existing laboratories maintained by the state and establish a list of other public or private laboratories the tests and analyses of which will be acceptable;

(5) Fix the fees required to be paid for tests or analyses made in any state laboratory;

(6) Make rules and regulations not inconsistent with sections 81-145 to 81-163, to carry into effect the provisions thereof;

(7) Appoint such clerical, technical and other assistants as may be necessary to properly administer this act, fix their compensation and prescribe their duties in connection therewith, subject to existing laws and appropriations made therefor; and

(8) Negotiate purchases and contracts when conditions exist to defeat the purpose and principles of public competitive bidding.

Sec. 6. That section 81-154, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-154. The materiel division shall have the authority to establish and maintain a specifications and standards program and to coordinate the establishment and maintenance of uniform standards and specifications for articles and 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 uniform standards and specifications and shall encourage and foster the use of standard specifications in order that most efficient purchase of articles and property may be continuously accomplished; Provided, that all such standards and specifications shall be so drawn that it will be possible for three or more manufacturers, vendors, or suppliers to submit competitive bids. If bids cannot be obtained from three bidders, then the standards and specifications of the ~~article~~ or articles or property upon which bids are sought shall be reviewed by the materiel division and the using agencies involved. If it then be determined by the materiel division, because of the special nature of the ~~article~~ or articles or property sought to be purchased or

leased or for any other reason, that the standards and specifications should remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor.

Sec. 7. That section 81-159, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-159. Each using agency shall, at the time, in the form and for the periods prescribed by the materiel division, present to it detailed requisition for all articles or property to be purchased or leased. The materiel division shall then arrange such schedules as are included in or covered by the requisition for purchase and contract and for advertising them, in the manner best calculated to attract competition and advantageous price as set forth in sections 81-145 to 81-163. It shall prescribe the terms and conditions for delivery, inspections, and all other details thereof. Subsequent to the receipt of bids and prior to the awarding of any contract of purchase or lease, the materiel division shall present the requisition to the Director of Administrative Services with notation of the lowest and best bid. The Director of Administrative Services shall check the amount of money necessary to defray the cost thereof against the appropriation of the using agency, indicating the appropriation or authorization to spend funds against which the proposed purchase or lease will be charged. Such requisition shall be approved by the Director of Administrative Services unless it shall appear that the free balance of any appropriation or authorization to spend is not sufficient to cover the charge proposed against it.

Sec. 8. That section 81-161, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-161. All purchases, leases, or contracts which by law are required to be based on competitive bids shall be made to the lowest responsible bidder, taking into consideration the best interests of the state, the quality or performance of the articles or property proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery. In determining the lowest responsible bidder, in addition to price, the following elements shall be given consideration:

(1) The ability, capacity and skill of the bidder to perform the contract ~~or provide the service~~ required;

(2) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(3) Whether the bidder can perform the contract within the time specified;

(4) The quality of performance of previous contracts; ~~or-services;~~

(5) The previous and existing compliance by the bidder with laws relating to the contract; ~~or---services;~~ and

(6) The life-cost of the article or property in relation to the purchase price and specific use of the item;

(7) The performance of the article or property, taking into consideration any commonly accepted tests and standards of product usability and user requirements; and

~~(6)~~ (8) Such other information as may be secured having a bearing on the decision to award the contract.

Sec. 9. That section 81-161.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 shall appear to the satisfaction of the materiel division that, because of the unique nature of the article or property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of the use of the article or 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 six 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.

Sec. 10. That section 81-161.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-161.05. Neither the materiel division, nor any employee under its direction, shall be financially interested, or have any beneficial personal interest, directly, or indirectly, in the purchase or leasing of any articles or property, nor in any firm, partnership, corporation or association furnishing them. No such person shall receive or accept directly or indirectly from any person, firm 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 the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be subject to a fine of five hundred dollars, or imprisonment in the Nebraska Penal and Correctional Complex for a period of one year, or to both such fine and imprisonment, and forfeiture of his office or position.

Sec. 11. That section 81-162, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-162. Contracts for purchases or leases may be made in any of the following forms:

(1) For the furnishing of specific articles or property at specific prices;

(2) For the furnishing of articles, according to the specifications, at a fixed rate for a minimum quantity, subject to furnishing a greater quantity at the same or a lesser rate; or

(3) For the furnishing of articles, according to the specifications without a stated minimum at a rate stated, commonly known as a price agreement.

(4) The form of the contract to be used in any case shall be subject to the discretion of the materiel division.

Sec. 12. That section 81-1108.16, Revised Statutes Supplement, 1974, be amended to read as follows:

81-1108.16. (1) The administrator shall review program statements and contracts and file a written report on each program statement and contract reviewed pursuant to the provisions of section 81-1108.41. Such administrator shall file subsequent reviews and reports upon completion of the planning or design phase of the project indicating the compatibility of the projects with capital construction plans, probable cost of project,

accepted cost standard, and the relationship of project to other agency or departmental capital facilities pursuant to the provisions of section 81-1108.41.

(2) The administrator shall review all proposed contracts for leasing of property, as prescribed in sections 81-145 to 81-163, and either approve or disapprove thereof. The administrator shall, when reviewing such contracts and leases, confer with the materiel division of the Department of Administrative Services and shall thereafter file a written report with the Governor and the Executive Board of the Legislative Council on each such contract reviewed and include the reasons for his approval or disapproval. No contract for the leasing of property shall be awarded without the approval of the Department of Administrative Services. All contracts for purchases or leases shall be open to inspection by the Legislature during normal business hours.

Sec. 13. That section 81-1108.22, Revised Statutes Supplement, 1974, be amended to read as follows:

81-1108.22. (1) Any When any board, agency, commission, or department of the state government not otherwise specifically authorized by law may shall use funds available for the purpose of renting office space outside of the State Capitol, when the terms and location are shall be approved by the Director of Administrative Services and the State Building Administrator in writing, and the acquisition of space outside of the State Capitol has been approved by motion of the Legislature when in session or by majority vote of the Executive Board of the Legislative Council when the Legislature is not in session. A copy of all such lease contracts shall be kept on file by the respective state agency and shall be open to inspection by the Legislature and the public during normal business hours.

(2) The division shall have the responsibility of providing office space in leased buildings in the proximity of the State Capitol or in other locations approved by the Governor. The administrator shall develop a system of charges to cover basic rental, maintenance, renovations, and operation of such leased properties. The charges to state agencies, boards, commissions, or departments of state government shall be paid from funds available for the purpose of renting space on a regular basis and placed in the Leased Office Building Fund, which fund is hereby created. The administrator shall make payments for basic rentals, renovations, and maintenance and operational costs of such leased buildings from the Leased Office Building

Fund.

Sec. 14. That section 81-1118, Revised Statutes Supplement, 1974, be amended to read as follows:

81-1118. The purchasing division of the Department of Administrative Services is hereby transferred into the materiel division of the Department of Administrative Services, which is hereby established, and shall be managed by the materiel administrator who shall assume the former role of Purchasing Agent.

There is hereby established the following five bureaus of the materiel division of the Department of Administrative Services which shall have the following duties, powers and responsibilities:

(1) Central stores bureau shall be responsible for general stores, food, scientific, photo, visual aids material and the book stores. In addition, the central stores bureau shall keep inventory control records, requisition material from the purchasing bureau and dispose of surplus material;

(2) The traffic bureau shall be responsible for the transportation of material, tracking shipments and making freight claims;

(3) The reproduction services bureau shall be responsible for specifications and for receiving bids and placing orders to the lowest and best commercial bidder for all printing, reproduction and mailing operations for the state, with the exception of printing work produced on copying and mimeograph machines. The reproduction services bureau shall also be responsible for coordinating all existing printing, reproduction and mailing operations of the state which shall be limited to existing state facilities;

(4) The standards and specifications bureau shall be responsible for establishing guidelines as to the quality of items purchased unless otherwise provided for by law; and

(5) The purchasing bureau shall be responsible for all purchases by all state agencies. The materiel division shall assist the State Building Administrator in administering public notice and bidding procedures and any other areas designated by the director to carry out sections 81-145 to 81-151, 81-153, 81-154, 81-156, 81-159, 81-161 to 81-162, 81-1108.16, and 81-1108.22. All purchases of and contracts for materials, supplies, or equipment, or contractual services and all leases of

Property as defined in section 81-145 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 in the amount of five thousand dollars, or more;

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

(d) All requisitions for whatever purpose coming to the 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.

Sec. 15. Notwithstanding any other provision of law, all contracts for, or leases of, articles or property, as defined in section 81-145, shall be subject to the following conditions:

(1) No purchase or lease of property shall be approved until a solicitation for purchase or lease has been made by the Department of Administrative Services. Such solicitation shall be in the form of a public notice of the proposed purchase or lease and a general description of the property needed in a paper of general circulation in the area where the agency will be operating;

(2) The Department of Administrative Services shall be the sole and final authority on leases of property by a using agency. In any case when the approval of the Governor is required, the Governor may, in his discretion, confer complete authority upon the Department of Administrative Services in the review and approval of lease proposals;

(3) The Department of Administrative Services shall adopt and promulgate rules and regulations to (a) develop and implement leasing policies and procedures which shall insure economical and efficient operations of state agencies, and (b) carry out the provisions of sections 81-145 to 81-163, 81-1108.16, and 81-1118; and

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

Sec. 16. That original sections 48-606.01, 81-145, 81-146, 81-154, 81-159, 81-161, 81-161.03, 81-161.05, and 81-162, Reissue Revised Statutes of Nebraska, 1943, and sections 79-329, 81-153, 81-1108.16, 81-1108.22, and 81-1118, Revised Statutes Supplement, 1974, are repealed.