

LEGISLATIVE BILL 626

Approved by the Governor May 30, 2003

Introduced by Preister, 5; Bourne, 8; Bromm, 23; Connealy, 16; Jensen, 20;
Redfield, 12; Schimek, 27; Stuhr, 24; Wehrbein, 2

AN ACT relating to state government; to amend section 81-1118, Revised Statutes Supplement, 2002; to provide requirements for contracts for services; to change requirements for purchases and leases of personal property; and to repeal the original section.

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

Section 1. The purposes of sections 1 to 9 of this act are to establish a standardized, open, and fair process for selection of contractual services and to create an accurate reporting of expended funds for contractual services. This process shall promote a standardized method of selection for state contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There shall also be an accountable, efficient reporting method of expenditures for these services.

Sec. 2. For purposes of sections 1 to 9 of this act:

(1) Contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study, or report rather than to furnish an end item of supply, goods, equipment, or material;

(2) Emergency means necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(3) Materiel division means the materiel division of the Department of Administrative Services established in section 81-1118;

(4) Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required; and

(5) State agency or agency means any state agency, board, or commission other than the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or any officer or agency established by the Constitution of Nebraska.

Sec. 3. (1) All state agencies shall process and document all contracts for services through the state accounting system. The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. No later than September 15, 2003, all state agencies shall have entered such information about all contracts for services made prior to April 1, 2003, that are still in effect. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.

(2) The requirements of this section also apply to the courts, the Legislature, and any officer or agency established by the Constitution of Nebraska, but not to the University of Nebraska.

(3) The Nebraska state colleges shall document all contracts for services through the state accounting system.

(4) The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.

Sec. 4. Except as provided in section 7 of this act:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section for contracts for services. Unless otherwise exempt, no state agency shall expend funds for contracts for services without complying with this section;

(2) All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the materiel division procurement manual or a process approved by the Director of Administrative Services. Bidding may be performed at the state agency level or by the materiel division. Any state agency may request that the materiel division conduct the competitive bidding process;

(3) If the bidding process is at the state agency level, then state agency directors shall ensure that bid documents for each contract for

services in excess of fifty thousand dollars are prereviewed by the materiel division and that any changes to the proposed contract that differ from the bid documents in the proposed contract for services are reviewed by the materiel division before signature by the parties;

(4) State agency directors, in cooperation with the materiel division, shall be responsible for appropriate public notice of an impending contractual services project in excess of fifty thousand dollars in accordance with the materiel division's procurement manual and sections 1 to 9 of this act; and

(5) State agency directors, in cooperation with the materiel division, shall be responsible for ensuring that a request for contractual services in excess of fifty thousand dollars is filed with the materiel division for dissemination or web site access to vendors interested in competing for contracts for services.

Sec. 5. State agency directors shall be responsible for maintaining accurate documentation of the process used for selection of all contracts for services and for ensuring and documenting that services required under the contract are being performed in compliance with the terms of the contract for services. Such documentation shall be kept with each contract for services.

Sec. 6. State agency contracts for services shall be subject to the following requirements:

(1) Payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions;

(2) State agencies may not enter into contracts for services with an unspecified or unlimited duration; and

(3) State agencies may not structure contracts for services to avoid any of the requirements of sections 1 to 9 of this act.

Sec. 7. (1) Subject to review by the Director of Administrative Services, the materiel division shall provide procedures to grant limited exceptions from the provisions of sections 4, 8, and 9 of this act for:

(a) Sole source and emergency contracts; and

(b) Other circumstances or specific contracts when any of the requirements of sections 4, 8, and 9 of this act are not appropriate for or are not compatible with the circumstances or contract. The materiel division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 4, 8, and 9 of this act:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects;

and

(j) Nebraska Investment Council contracts.

Sec. 8. Except as provided in section 7 of this act, all proposals for sole source contracts for services in excess of twenty-five thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification

of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Sec. 9. Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state employee covered by the classified personnel system or by any labor contract shall use a pre-process prescribed by the materiel division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.

Sec. 10. Section 81-1118, Revised Statutes Supplement, 2002, 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 in the amount of ~~ten~~ twenty-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 ~~five~~ ten thousand dollars but less than ~~ten~~ 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 ~~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. 11. Original section 81-1118, Revised Statutes Supplement, 2002, is repealed.