

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 16

Introduced by Krist, 10.

Read first time January 08, 2015

Committee:

- 1 A BILL FOR AN ACT relating to government purchasing; to amend sections
- 2 81-159, 81-1118, and 83-145, Reissue Revised Statutes of Nebraska,
- 3 and section 73-507, Revised Statutes Cumulative Supplement, 2014; to
- 4 adopt the Purchasing from Persons with Disabilities Act; to change
- 5 requirements for bidding and purchases by state and local
- 6 governments; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known and may be
2 cited as the Purchasing from Persons with Disabilities Act.

3 Sec. 2. The purpose of the Purchasing from Persons with
4 Disabilities Act is to further the state's policy of encouraging and
5 assisting persons with disabilities to achieve maximum personal
6 independence by engaging in useful and productive employment activities
7 and, in addition, to provide state government and political subdivisions
8 with a method for achieving conformity with requirements of
9 nondiscrimination and affirmative action in employment matters related to
10 persons with disabilities.

11 Sec. 3. For purposes of the Purchasing from Persons with
12 Disabilities Act:

13 (1) Central nonprofit agency means the agency appointed under
14 section 12 of this act;

15 (2) Community rehabilitation program means a government or nonprofit
16 private program operated under criteria established by the council and
17 under which persons with disabilities produce value-added products or
18 perform value-added services for compensation;

19 (3) Council means the Council on Purchasing from Persons with
20 Disabilities;

21 (4) Disability means a mental or physical impairment, including
22 blindness, that impedes a person who is seeking, entering, or maintaining
23 gainful employment;

24 (5) Materiel division means the materiel division of the Department
25 of Administrative Services; and

26 (6) State agency means any agency, board, or commission of this
27 state, including the University of Nebraska, the Nebraska state colleges,
28 the courts, the Legislature, and all officers or state agencies
29 established by the Constitution of Nebraska.

30 Sec. 4. (1) The Council on Purchasing from Persons with
31 Disabilities is composed of nine members selected from the following

1 categories who are appointed by the Governor with the approval of a
2 majority of the Legislature:

3 (a) Private citizens with an understanding of the employment needs
4 of persons with disabilities and with business experience in the pricing
5 and marketing of goods and services;

6 (b) Representatives of community rehabilitation programs that
7 represent different disability groups and that provide or seek to provide
8 products produced or services performed by persons with disabilities;

9 (c) Representatives of state government and political subdivisions
10 that purchase a significant amount of products produced or services
11 performed by persons with disabilities; and

12 (d) Persons with disabilities, including at least one veteran.

13 (2) The Governor shall appoint members from each category described
14 in subsection (1) of this section. Members of the council shall serve
15 terms of two years, except that the Governor shall designate four initial
16 members whose terms shall be for one year. Members shall not receive
17 compensation for their service on the council but shall be entitled to
18 reimbursement for expenses incurred in performing their duties as members
19 as provided in sections 81-1174 to 81-1177.

20 (3) The Governor shall select one of the members to serve as
21 chairperson.

22 (4) A private citizen representative is not eligible for appointment
23 as a member of the council if he or she or the person's spouse:

24 (a) Is employed by or participates in the management of the central
25 nonprofit agency, a community rehabilitation program, or another
26 organization receiving funds from or doing business with the council;

27 (b) Owns or controls, directly or indirectly, more than a ten
28 percent interest in the central nonprofit agency, a community
29 rehabilitation program, or another organization receiving funds from or
30 doing business with the council; or

31 (c) Uses or receives a substantial amount of tangible goods,

1 services, or funds from the council, the central nonprofit agency, or a
2 community rehabilitation program, other than reimbursement authorized by
3 law for council membership, meeting attendance, or expenses.

4 (5) A person may not serve as a member of the council if he or she
5 is required to register as a lobbyist under section 49-1480.

6 (6) The Governor may remove a member from the council if the member:

7 (a) Does not have at the time of appointment the qualifications
8 required by subsection (1) of this section for appointment to the
9 council;

10 (b) Does not maintain during the service on the council the
11 qualifications required by subsection (1) of this section for appointment
12 to the council;

13 (c) Violates a prohibition established by subsection (4) or (5) of
14 this section;

15 (d) Cannot because of illness or disability discharge the member's
16 duties for a substantial part of the term for which the member is
17 appointed; or

18 (e) Is absent from more than one-half of the regularly scheduled
19 council meetings that the member is eligible to attend during a calendar
20 year unless the absence is excused by majority vote of the council.

21 (7) The council shall establish a formal certification procedure for
22 recognition and approval of community rehabilitation programs. The
23 procedure shall include a committee composed of three council members
24 appointed by the chairperson of the council to review certification
25 applications of community rehabilitation programs and issue
26 recommendations to the council.

27 (8) The council may delegate the administration of the procedures
28 established under subsection (7) of this section to the central nonprofit
29 agency but may not delegate the authority to certify a community
30 rehabilitation program.

31 Sec. 5. (1) The council shall determine the fair market price of

1 all products and services manufactured or provided by persons with
2 disabilities and offered for sale to the state and its political
3 subdivisions by a community rehabilitation program. The council shall
4 ensure that the products and services offered for sale offer the best
5 value for the state or a political subdivision.

6 (2) A committee composed of three council members appointed by the
7 chairperson of the council shall review the data used to determine fair
8 market price and shall make recommendations to the council concerning
9 fair market price for the products and services and offering the best
10 value.

11 (3) The council shall revise the prices periodically to reflect
12 changing market conditions.

13 Sec. 6. A suitable product or service that meets applicable
14 specifications established by a state agency or a political subdivision
15 and that is available within the time specified shall be procured from a
16 community rehabilitation program at the price determined by the council
17 to be the fair market price. This requirement does not apply to the
18 operation of vending facilities under section 71-8611.

19 Sec. 7. Each state agency shall:

20 (1) Designate an employee to ensure that the state agency complies
21 with the Purchasing from Persons with Disabilities Act; and

22 (2) Report to the materiel division and the council the purchase of
23 products or services available from the central nonprofit agency or
24 community rehabilitation program but that are purchased from another
25 entity that is not the central nonprofit agency or community
26 rehabilitation program.

27 Sec. 8. The council may adopt procedures, practices, and standards
28 used for federal programs similar to the program established by the
29 Purchasing from Persons with Disabilities Act.

30 Sec. 9. The council shall adopt and promulgate rules and
31 regulations to carry out the Purchasing from Persons with Disabilities

1 Act. The rules and regulations shall include provisions that:

2 (1) Address conflicts of interest for the central nonprofit agency
3 and community rehabilitation programs;

4 (2) Establish a process for the certification of community
5 rehabilitation programs;

6 (3) Establish a requirement that at least sixty percent of the
7 direct hours worked on each contract with a community rehabilitation
8 program be performed by persons with disabilities; and

9 (4) Define the terms value-added and direct hours for products
10 manufactured and services provided.

11 Sec. 10. (1) In determining the fair market value of products or
12 services offered for sale, the committee established under section 5 of
13 this act and the council shall give due consideration to the following
14 type of factors:

15 (a) To the extent applicable, the amount being paid for similar
16 articles in similar quantities by federal agencies purchasing the
17 products or services under a similar federal program;

18 (b) The amount which private business would pay for similar products
19 or services in similar quantities if purchasing from a reputable business
20 selling similar products or services;

21 (c) To the extent applicable, the amount paid by the state in any
22 recent purchases of similar products or services in similar quantities,
23 making due allowance for inflationary or deflationary trends;

24 (d) The actual cost of manufacturing the product or performing a
25 service at a community rehabilitation program offering employment
26 services on or off premises to persons with disabilities, with adequate
27 weight to be given to legal and moral imperatives to pay workers with
28 disabilities equitable wages; and

29 (e) The usual, customary, and reasonable costs of manufacturing,
30 marketing, and distribution.

31 (2) The actual cost of manufacturing a product or performing a

1 service consists of costs directly associated with a contract and
2 includes costs for labor, raw materials used in the production of the
3 product, storage, and delivery. Actual costs do not include a cost
4 associated with an individual's preparation to perform the work activity.

5 (3) The fair market value of a product or service may not be
6 excessive or unreasonable.

7 Sec. 11. (1) Exceptions from the requirements of section 6 of this
8 act may be made by the materiel division if:

9 (a) The product or service so produced or provided does not meet the
10 reasonable requirements of the state or a political subdivision; or

11 (b) The requested product or service cannot be reasonably complied
12 with through provision of products or services produced by persons with
13 disabilities.

14 (2) Each month, the materiel division shall provide the council with
15 a list of all items purchased under the exceptions provided by subsection
16 (1) of this section. The list shall include the date of the purchase
17 order, the type of product or service requested, the reason for purchase
18 under the exception, and any other information that the council considers
19 relevant to a determination of why the product or service was not
20 purchased.

21 (3) No state agency or political subdivision may evade the intent of
22 this section by slight variations from standards when the products or
23 services produced or provided by persons with disabilities are reasonably
24 adapted to the actual needs of the state agency or political subdivision.

25 Sec. 12. (1) The council may appoint one central nonprofit agency.
26 The council shall contract with the central nonprofit agency to:

27 (a) Recruit and assist community rehabilitation programs in
28 developing and submitting applications for the selection of suitable
29 products and services;

30 (b) Facilitate the distribution of purchase orders among community
31 rehabilitation programs;

1 (c) Manage and coordinate the day-to-day operation of the program,
2 including the general administration of contracts with community
3 rehabilitation programs;

4 (d) Promote increased supported employment opportunities for persons
5 with disabilities; and

6 (e) Recruit and assist qualified nonprofit organizations that are
7 managed by members of racial minorities, women, or persons with
8 disabilities and that are in the process of qualifying as community
9 rehabilitation programs.

10 (2) The services of the central nonprofit agency may include:

11 (a) Assistance to community rehabilitation programs regarding
12 solicitation and negotiation of contracts;

13 (b) Direct marketing of products and services to consumers;

14 (c) Research and development of products and services;

15 (d) Public relations activities to promote the program;

16 (e) Customer relations;

17 (f) Education and training;

18 (g) Accounting services related to purchase orders, invoices, and
19 payments to community rehabilitation programs; and

20 (h) Other duties designated by the council.

21 (3) Each year, the council shall review products and services
22 provided by the central nonprofit agency and community rehabilitation
23 programs and the revenue required to accomplish the program to determine
24 whether each community rehabilitation program's performance complies with
25 contractual specifications.

26 (4) The management fee charged by the central nonprofit agency shall
27 be computed as a percentage of the selling price of the product or the
28 contract price of a service, shall be included in the selling price or
29 contract price, and shall be paid as specified in the contract with the
30 community rehabilitation program. The management fee shall be approved by
31 the council and shall be reviewed on an annual basis. The management fee

1 shall be set by the council in the amount necessary to reimburse for
2 direct and reasonable costs incurred by the central nonprofit agency for
3 its services and by the materiel division and the council in
4 administering the Purchasing from Persons with Disabilities Act.

5 (5) The council may terminate the contract of the central nonprofit
6 agency if:

7 (a) The council finds substantial evidence of the central nonprofit
8 agency's noncompliance with the contract; and

9 (b) The council has provided at least thirty days' notice to the
10 central nonprofit agency of the termination.

11 (6) The council may request an audit by the Auditor of Public
12 Accounts of:

13 (a) The management fee collections; or

14 (b) The financial condition of the central nonprofit agency.

15 (7) A person may not operate a community rehabilitation program and
16 at the same time act as the central nonprofit agency.

17 Sec. 13. (1) The council may access financial or other information
18 and records from the central nonprofit agency or a community
19 rehabilitation program if the council determines the information and
20 records are necessary for the effective administration of the Purchasing
21 from Persons with Disabilities Act.

22 (2) The council shall recognize the privacy interest of persons
23 employed by the central nonprofit agency or community rehabilitation
24 programs when obtaining such information and records. The information and
25 records may not be released or made public on subpoena or otherwise,
26 except that release may be made:

27 (a) For statistical purposes, but only if a person is not
28 identified;

29 (b) With the consent of each person identified in the information
30 released; or

31 (c) Regarding a compensation package of any central nonprofit agency

1 employee or subcontractor if determined by the council to be relevant to
2 the administration of the act.

3 (3) The council or the central nonprofit agency at the council's
4 direction may inspect a community rehabilitation program for compliance
5 with the act.

6 Sec. 14. On or before November 1 of each year, the council shall
7 file with the Governor and electronically with the Legislature a report
8 of:

9 (1) The number of persons with disabilities, according to their type
10 of disability, who are employed in community rehabilitation programs
11 participating in the program established by the Purchasing from Persons
12 with Disabilities Act or who are employed by businesses or workshops that
13 receive supportive employment from community rehabilitation programs;

14 (2) The total amount of annual wages paid to persons with
15 disabilities participating in the program;

16 (3) A summary of the sales of products offered by each community
17 rehabilitation program;

18 (4) A list of products and services offered by each community
19 rehabilitation program;

20 (5) The geographic distribution of the community rehabilitation
21 programs;

22 (6) The number of nondisabled workers who are employed in community
23 rehabilitation programs under the act; and

24 (7) The average and range of annual wages for disabled and
25 nondisabled workers who are employed on contracts with community
26 rehabilitation programs under the act.

27 Sec. 15. Section 73-507, Revised Statutes Cumulative Supplement,
28 2014, is amended to read:

29 73-507 (1) Subject to review by the Director of Administrative
30 Services, the division shall provide procedures to grant limited
31 exceptions from sections 73-504, 73-508, and 73-509 for:

1 (a) Sole source contracts, emergency contracts, and contracts for
2 services when the price has been established by the federal General
3 Services Administration or competitively bid by another state or group of
4 states, a group of states and any political subdivision of any other
5 state, or a cooperative purchasing organization on behalf of a group of
6 states; and

7 (b) Other circumstances or specific contracts when any of the
8 requirements of sections 73-504, 73-508, and 73-509 are not appropriate
9 for or are not compatible with the circumstances or contract. The
10 division shall provide a written rationale which shall be kept on file
11 when granting an exception under this subdivision.

12 (2) The following types of contracts for services are not subject to
13 sections 73-504, 73-508, 73-509, and 73-510:

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

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

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

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

25 (e) Contracts with a value of fifteen million dollars or less with
26 direct providers of medical, behavioral, or developmental health
27 services, child care, or child welfare services to an individual;

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

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

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

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

10 (j) Nebraska Investment Council contracts; ~~and~~

11 (k) Contracts under section 57-1503; and -

12 (l) Contracts for services under the Purchasing from Persons with
13 Disabilities Act.

14 Sec. 16. Section 81-159, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 81-159 Each using agency shall, at the time, in the form, and for
17 the periods prescribed by the materiel division, present to it detailed
18 requisition for all personal property to be purchased or leased. The
19 materiel division shall then arrange such schedules as are included in or
20 covered by the requisition for purchase and contract and for advertising
21 them in the manner best calculated to attract competition and
22 advantageous price as set forth in sections 81-145 to 81-162 and 81-1118
23 to 81-1118.06 and the Purchasing from Persons with Disabilities Act. It
24 shall prescribe the terms and conditions for delivery, inspections, and
25 all other details thereof.

26 Sec. 17. Section 81-1118, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 81-1118 The materiel division of the Department of Administrative
29 Services is hereby established and shall be managed by the materiel
30 administrator.

31 There are hereby established the following seven branches of the

1 materiel division of the Department of Administrative Services which
2 shall have the following duties, powers, and responsibilities:

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

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

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

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

15 (5) The state purchasing bureau shall be responsible for all
16 purchases by all state agencies other than the University of Nebraska.
17 The materiel division shall administer the public notice and bidding
18 procedures and any other areas designated by the Director of
19 Administrative Services to carry out the lease or purchase of personal
20 property. All purchases of and contracts for materials, supplies, or
21 equipment and all leases of personal property shall be made in the
22 following manner except in emergencies approved by the Governor and as
23 provided in the Purchasing from Persons with Disabilities Act:

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

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

31 (c) By unrestricted open market purchases through the materiel

1 division in all cases in which purchases are of estimated value of less
2 than ten thousand dollars;

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

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

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

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

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

18 Sec. 18. Section 83-145, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 83-145 All departments, institutions, and agencies of this state
21 which are supported in whole or in part by taxation for state purposes
22 and all counties and other political subdivisions of this state shall
23 purchase from the Department of Correctional Services all articles
24 required by them produced, printed, or manufactured by offenders confined
25 in facilities of the Department of Correctional Services, or elsewhere,
26 including products of any farms operated by the department unless such
27 articles of equal quality and materials (1) could be purchased from
28 another supplier at a lesser cost or (2) are available under the
29 Purchasing from Persons with Disabilities Act. The quality and materials
30 must be certified as being equal by the materiel division of the
31 Department of Administrative Services. No such article shall be purchased

1 by any department, institution, or agency of the state from any other
2 source unless excepted from the provisions of this section as provided in
3 sections 83-144 to 83-152. Printing by offenders shall be restricted to
4 such as may be required at the various institutions under the
5 jurisdiction of the department and such other printing requirements as
6 may be determined by the materiel division of the Department of
7 Administrative Services pursuant to subdivision (3) of section 81-1118.
8 No products of any institutional printing plant, other than that used by
9 departments, institutions, agencies, and other political subdivisions of
10 the state, shall be sold in competition with outside labor. Nothing in
11 this section shall be construed to prohibit the department from
12 exchanging Department of Correctional Services-made goods with other
13 states. Goods received from divisions of corrections outside of Nebraska
14 shall be of the same status and will be subject to the same restrictions
15 and penalties as if they had been manufactured in the Nebraska Department
16 of Correctional Services. In cases of exchange of Department of
17 Correctional Services-made goods with other states, the department is
18 authorized to pay or receive in cash any differences that may exist in
19 the articles exchanged, the amounts paid or received to be charged or
20 credited to the Correctional Industries Revolving Fund. In exchange of
21 Department of Correctional Services-made goods with other states, the
22 goods received in exchange shall be restricted to such use and needs as
23 may be required in the various institutions under the jurisdiction of the
24 department. Any authorized agency, bureau, commission, or department of
25 the federal government or any charitable, fraternal, or nonprofit
26 corporation may purchase from the Department of Correctional Services
27 goods produced or manufactured by offenders confined in facilities of the
28 Department of Correctional Services, or elsewhere, including products of
29 any farms operated by the department.

30 Sec. 19. Original sections 81-159, 81-1118, and 83-145, Reissue
31 Revised Statutes of Nebraska, and section 73-507, Revised Statutes

1 Cumulative Supplement, 2014, are repealed.