

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 775

Introduced by Stinner, 48.

Read first time January 03, 2018

Committee: Appropriations

- 1 A BILL FOR AN ACT relating to the Game and Parks Commission; to amend
- 2 section 37-201, Reissue Revised Statutes of Nebraska, and sections
- 3 73-101, 73-307, and 81-1701, Revised Statutes Cumulative Supplement,
- 4 2016; to adopt the State Park System Construction Alternatives Act;
- 5 to harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 37-201, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 37-201 Sections 37-201 to 37-811 and 37-1501 to 37-1510 and the
4 State Park System Construction Alternatives Act shall be known and may be
5 cited as the Game Law.

6 Sec. 2. Sections 2 to 33 of this act shall be known and may be
7 cited as the State Park System Construction Alternatives Act.

8 Sec. 3. For purposes of the State Park System Construction
9 Alternatives Act, unless the context otherwise requires, the definitions
10 found in sections 4 to 17 of this act are used.

11 Sec. 4. Alternative technical concept means changes suggested by a
12 qualified, eligible, short-listed design-builder to the commission's
13 basic configurations, project scope, design, or construction criteria.

14 Sec. 5. Best value-based selection process means a process of
15 selecting a design-builder using price, schedule, and qualifications for
16 evaluation factors.

17 Sec. 6. Commission means the Game and Parks Commission.

18 Sec. 7. Construction manager means the legal entity which proposes
19 to enter into a construction manager-general contractor contract pursuant
20 to the State Park System Construction Alternatives Act.

21 Sec. 8. Construction manager-general contractor contract means a
22 contract which is subject to a qualification-based selection process
23 between the commission and a construction manager to furnish
24 preconstruction services during the design development phase of the
25 project and, if an agreement can be reached which is satisfactory to the
26 commission, construction services for the construction phase of the
27 project.

28 Sec. 9. Construction services means activities associated with
29 building the project.

30 Sec. 10. Design-build contract means a contract between the
31 commission and a design-builder which is subject to a best value-based

1 selection process to furnish (1) architectural, engineering, and related
2 design services and (2) labor, materials, supplies, equipment, and
3 construction services.

4 Sec. 11. Design-builder means the legal entity which proposes to
5 enter into a design-build contract.

6 Sec. 12. Preconstruction services means all nonconstruction-related
7 services that a construction manager performs in relation to the design
8 of the project before execution of a contract for construction services.
9 Preconstruction services includes, but is not limited to, cost
10 estimating, value engineering studies, constructability reviews, delivery
11 schedule assessments, and life-cycle analysis.

12 Sec. 13. Project performance criteria means the performance
13 requirements of the project suitable to allow the design-builder to make
14 a proposal. Performance requirements shall include, but are not limited
15 to, the following, if required by the project: Capacity, durability,
16 standards, ingress and egress requirements, description of the site,
17 surveys, soil and environmental information concerning the site, material
18 quality standards, design and milestone dates, site development
19 requirements, compliance with applicable law, and other criteria for the
20 intended use of the project.

21 Sec. 14. Proposal means an offer in response to a request for
22 proposals (1) by a design-builder to enter into a design-build contract
23 or (2) by a construction manager to enter into a construction manager-
24 general contractor contract.

25 Sec. 15. Qualification-based selection process means a process of
26 selecting a construction manager based on qualifications.

27 Sec. 16. Request for proposals means the documentation by which the
28 commission solicits proposals.

29 Sec. 17. Request for qualifications means the documentation or
30 publication by which the commission solicits qualifications.

31 Sec. 18. The purpose of the State Park System Construction

1 Alternatives Act is to provide the commission alternative methods of
2 contracting for public projects for buildings in the state park system.
3 The alternative methods of contracting shall be available to the
4 commission for use on any project regardless of the funding source.
5 Notwithstanding any other provision of state law to the contrary, the
6 State Park System Construction Alternatives Act shall govern the design-
7 build and construction manager-general contractor procurement process for
8 the commission.

9 Sec. 19. The commission, in accordance with the State Park System
10 Construction Alternatives Act, may solicit and execute a design-build
11 contract or a construction manager-general contractor contract for a
12 public project in the state park system.

13 Sec. 20. The commission may hire an engineering or architectural
14 consultant to assist the commission with the development of project
15 performance criteria and requests for proposals, with evaluation of
16 proposals, with evaluation of the construction to determine adherence to
17 the project performance criteria, and with any additional services
18 requested by the commission to represent its interests in relation to a
19 project. The procedures used to hire such person or organization shall
20 comply with the Nebraska Consultants' Competitive Negotiation Act. The
21 person or organization hired shall be ineligible to be included as a
22 provider of other services in a proposal for the project for which he or
23 she has been hired and shall not be employed by or have a financial or
24 other interest in a design-builder or construction manager who will
25 submit a proposal.

26 Sec. 21. The commission shall adopt guidelines for entering into a
27 design-build contract or construction manager-general contractor
28 contract. The guidelines shall include the following:

- 29 (1) Preparation and content of requests for qualifications;
30 (2) Preparation and content of requests for proposals;
31 (3) Qualification and short-listing of design-builders and

1 construction managers. The guidelines shall provide that the commission
2 will evaluate prospective design-builders and construction managers based
3 on the information submitted to the commission in response to a request
4 for qualifications and will select a short list of design-builders or
5 construction managers who shall be considered qualified and eligible to
6 respond to the request for proposals;

7 (4) Preparation and submittal of proposals;

8 (5) Procedures and standards for evaluating proposals;

9 (6) Procedures for negotiations between the commission and the
10 design-builders or construction managers submitting proposals prior to
11 the acceptance of a proposal if any such negotiations are contemplated;
12 and

13 (7) Procedures for the evaluation of construction under a design-
14 build contract to determine adherence to the project performance
15 criteria.

16 Sec. 22. The process for selecting a design-builder and entering
17 into a design-build contract shall be in accordance with sections 23 to
18 26 of this act.

19 Sec. 23. (1) The commission shall prepare a request for
20 qualifications for design-build proposals and shall prequalify design-
21 builders. The request for qualifications shall describe the project in
22 sufficient detail to permit a design-builder to respond. The request for
23 qualifications shall identify the maximum number of design-builders the
24 commission will place on a short list as qualified and eligible to
25 receive a request for proposals.

26 (2) A person or organization hired by the commission under section
27 20 of this act shall be ineligible to compete for a design-build contract
28 on the same project for which the person or organization was hired.

29 (3) The request for qualifications shall be (a) published in a
30 newspaper of statewide circulation at least thirty days prior to the
31 deadline for receiving the request for qualifications and (b) sent by

1 first-class mail to any design-builder upon request.

2 (4) The commission shall create a short list of qualified and
3 eligible design-builders in accordance with the guidelines adopted
4 pursuant to section 21 of this act. The commission shall select at least
5 two prospective design-builders, except that if only one design-builder
6 has responded to the request for qualifications, the commission may, in
7 its discretion, proceed or cancel the procurement. The request for
8 proposals shall be sent only to the design-builders placed on the short
9 list.

10 Sec. 24. The commission shall prepare a request for proposals for
11 each design-build contract. The request for proposals shall contain, at a
12 minimum, the following elements:

13 (1) The guidelines adopted by the commission in accordance with
14 section 21 of this act. The identification of a publicly accessible
15 location of the guidelines, either physical or electronic, shall be
16 considered compliance with this subdivision;

17 (2) The proposed terms and conditions of the design-build contract,
18 including any terms and conditions which are subject to further
19 negotiation;

20 (3) A project statement which contains information about the scope
21 and nature of the project;

22 (4) A statement regarding alternative technical concepts including
23 the process and time period in which such concepts may be submitted,
24 confidentiality of the concepts, and ownership of the rights to the
25 intellectual property contained in such concepts;

26 (5) Project performance criteria;

27 (6) Budget parameters for the project;

28 (7) Any bonding and insurance required by law or as may be
29 additionally required by the commission;

30 (8) The criteria for evaluation of proposals and the relative weight
31 of each criterion. The criteria shall include, but are not limited to,

1 the cost of the work, construction experience, design experience, and the
2 financial, personnel, and equipment resources available for the project.
3 The relative weight to apply to any criterion shall be at the discretion
4 of the commission based on each project, except that in all cases, the
5 cost of the work shall be given a relative weight of at least fifty
6 percent;

7 (9) A requirement that the design-builder provide a written
8 statement of the design-builder's proposed approach to the design and
9 construction of the project, which may include graphic materials
10 illustrating the proposed approach to design and construction and shall
11 include price proposals;

12 (10) A requirement that the design-builder agree to the following
13 conditions:

14 (a) At the time of the design-build proposal, the design-builder
15 must furnish to the commission a written statement identifying the
16 architect or engineer who will perform the architectural or engineering
17 work for the project. The architect or engineer engaged by the design-
18 builder to perform the architectural or engineering work with respect to
19 the project must have direct supervision of such work and may not be
20 removed by the design-builder prior to the completion of the project
21 without the written consent of the commission;

22 (b) At the time of the design-build proposal, the design-builder
23 must furnish to the commission a written statement identifying the
24 general contractor who will provide the labor, material, supplies,
25 equipment, and construction services. The general contractor identified
26 by the design-builder may not be removed by the design-builder prior to
27 completion of the project without the written consent of the commission;

28 (c) A design-builder offering design-build services with its own
29 employees who are design professionals licensed to practice in Nebraska
30 must (i) comply with the Engineers and Architects Regulation Act by
31 procuring a certificate of authorization to practice architecture or

1 engineering and (ii) submit proof of sufficient professional liability
2 insurance in the amount required by the commission; and

3 (d) The rendering of architectural or engineering services by a
4 licensed architect or engineer employed by the design-builder must
5 conform to the Engineers and Architects Regulation Act; and

6 (11) Other information or requirements which the commission, in its
7 discretion, chooses to include in the request for proposals.

8 Sec. 25. The commission shall pay a stipend to qualified design-
9 builders that submit responsive proposals but are not selected. Payment
10 of the stipend shall give the commission ownership of the intellectual
11 property contained in the proposals and alternative technical concepts.
12 The amount of the stipend shall be at the discretion of the commission.

13 Sec. 26. (1) Design-builders shall submit proposals as required by
14 the request for proposals. The commission may meet with individual
15 design-builders prior to the time of submitting the proposal and may have
16 discussions concerning alternative technical concepts. If an alternative
17 technical concept provides a solution that is equal to or better than the
18 requirements in the request for proposals and the alternative technical
19 concept is acceptable to the commission, it may be incorporated as part
20 of the proposal by the design-builder. Notwithstanding any other
21 provision of state law to the contrary, alternative technical concepts
22 shall be confidential and not disclosed to other design-builders or
23 members of the public from the time the proposals are submitted until
24 such proposals are opened by the commission.

25 (2) Proposals shall be sealed and shall not be opened until
26 expiration of the time established for making the proposals as set forth
27 in the request for proposals.

28 (3) Proposals may be withdrawn at any time prior to the opening of
29 such proposals in which case no stipend shall be paid. The commission
30 shall have the right to reject any and all proposals at no cost to the
31 commission other than any stipend for design-builders who have submitted

1 responsive proposals. The commission may thereafter solicit new proposals
2 using the same or different project performance criteria or may cancel
3 the design-build solicitation.

4 (4) The commission shall rank the design-builders in order of best
5 value pursuant to the criteria in the request for proposals. The
6 commission may meet with design-builders prior to ranking.

7 (5) The commission may attempt to negotiate a design-build contract
8 with the highest ranked design-builder selected by the commission and may
9 enter into a design-build contract after negotiations. If the commission
10 is unable to negotiate a satisfactory design-build contract with the
11 highest ranked design-builder, the commission may terminate negotiations
12 with that design-builder. The commission may then undertake negotiations
13 with the second highest ranked design-builder and may enter into a
14 design-build contract after negotiations. If the commission is unable to
15 negotiate a satisfactory contract with the second highest ranked design-
16 builder, the commission may undertake negotiations with the third highest
17 ranked design-builder, if any, and may enter into a design-build contract
18 after negotiations.

19 (6) If the commission is unable to negotiate a satisfactory contract
20 with any of the ranked design-builders, the commission may either revise
21 the request for proposals and solicit new proposals or cancel the design-
22 build process under the State Park System Construction Alternatives Act.

23 Sec. 27. (1) The process for selecting a construction manager and
24 entering into a construction manager-general contractor contract shall be
25 in accordance with this section and sections 28 to 30 of this act.

26 (2) The commission shall prepare a request for qualifications for
27 construction manager-general contractor contract proposals and shall
28 prequalify construction managers. The request for qualifications shall
29 describe the project in sufficient detail to permit a construction
30 manager to respond. The request for qualifications shall identify the
31 maximum number of eligible construction managers the commission will

1 place on a short list as qualified and eligible to receive a request for
2 proposals.

3 (3) The request for qualifications shall be (a) published in a
4 newspaper of statewide circulation at least thirty days prior to the
5 deadline for receiving the request for qualifications and (b) sent by
6 first-class mail to any construction manager upon request.

7 (4) The commission shall create a short list of qualified and
8 eligible construction managers in accordance with the guidelines adopted
9 pursuant to section 21 of this act. The commission shall select at least
10 two construction managers, except that if only one construction manager
11 has responded to the request for qualifications, the commission may, in
12 its discretion, proceed or cancel the procurement. The request for
13 proposals shall be sent only to the construction managers placed on the
14 short list.

15 Sec. 28. The commission shall prepare a request for proposals for
16 each construction manager-general contractor contract. The request for
17 proposals shall contain, at a minimum, the following elements:

18 (1) The guidelines adopted by the commission in accordance with
19 section 21 of this act. The identification of a publicly accessible
20 location of the guidelines, either physical or electronic, shall be
21 considered compliance with this subdivision;

22 (2) The proposed terms and conditions of the contract, including any
23 terms and conditions which are subject to further negotiation;

24 (3) Any bonding and insurance required by law or as may be
25 additionally required by the commission;

26 (4) General information about the project which will assist the
27 commission in its selection of the construction manager, including a
28 project statement which contains information about the scope and nature
29 of the project, the project site, the schedule, and the estimated budget;

30 (5) The criteria for evaluation of proposals and the relative weight
31 of each criterion;

1 (6) A statement that the construction manager shall not be allowed
2 to sublet, assign, or otherwise dispose of any portion of the contract
3 without consent of the commission. In no case shall the commission allow
4 the construction manager to sublet more than seventy percent of the work,
5 excluding specialty items; and

6 (7) Other information or requirements which the commission, in its
7 discretion, chooses to include in the request for proposals.

8 Sec. 29. (1) Construction managers shall submit proposals as
9 required by the request for proposals.

10 (2) Proposals shall be sealed and shall not be opened until
11 expiration of the time established for making the proposals as set forth
12 in the request for proposals.

13 (3) Proposals may be withdrawn at any time prior to signing a
14 contract for preconstruction services. The commission shall have the
15 right to reject any and all proposals at no cost to the commission. The
16 commission may thereafter solicit new proposals or may cancel the
17 construction manager-general contractor procurement process.

18 (4) The commission shall rank the construction managers in
19 accordance with the qualification-based selection process and pursuant to
20 the criteria in the request for proposals. The commission may meet with
21 construction managers prior to the ranking.

22 (5) The commission may attempt to negotiate a contract for
23 preconstruction services with the highest ranked construction manager and
24 may enter into a contract for preconstruction services after
25 negotiations. If the commission is unable to negotiate a satisfactory
26 contract for preconstruction services with the highest ranked
27 construction manager, the commission may terminate negotiations with that
28 construction manager. The commission may then undertake negotiations with
29 the second highest ranked construction manager and may enter into a
30 contract for preconstruction services after negotiations. If the
31 commission is unable to negotiate a satisfactory contract with the second

1 highest ranked construction manager, the commission may undertake
2 negotiations with the third highest ranked construction manager, if any,
3 and may enter into a contract for preconstruction services after
4 negotiations.

5 (6) If the commission is unable to negotiate a satisfactory contract
6 for preconstruction services with any of the ranked construction
7 managers, the commission may either revise the request for proposals and
8 solicit new proposals or cancel the construction manager-general
9 contractor contract process under the State Park System Construction
10 Alternatives Act.

11 Sec. 30. (1) Before the construction manager begins any
12 construction services, the commission shall:

13 (a) Conduct an independent cost estimate for the project; and

14 (b) Conduct contract negotiations with the construction manager to
15 develop a construction manager-general contractor contract for
16 construction services.

17 (2) If the construction manager and the commission are unable to
18 negotiate a contract, the commission may use other contract procurement
19 processes as provided by law. Persons or organizations who submitted
20 proposals but were unable to negotiate a contract with the commission
21 shall be eligible to compete in the other contract procurement processes.

22 Sec. 31. A design-build contract and a construction manager-general
23 contractor contract may be conditioned upon later refinements in scope
24 and price and may permit the commission in agreement with the design-
25 builder or construction manager to make changes in the project without
26 invalidating the contract.

27 Sec. 32. Nothing in the State Park System Construction Alternatives
28 Act shall limit or reduce statutory or regulatory requirements regarding
29 insurance.

30 Sec. 33. The commission may adopt and promulgate rules and
31 regulations to carry out the State Park System Construction Alternatives

1 Act.

2 Sec. 34. Section 73-101, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

4 73-101 Whenever the State of Nebraska, or any department or any
5 agency thereof, any county board, county clerk, county highway
6 superintendent, the mayor and city council or commissioner of any
7 municipality, any entity created pursuant to the Interlocal Cooperation
8 Act or the Joint Public Agency Act, or the officers of any school
9 district, township, or other governmental subdivision, shall advertise
10 for bids in pursuance of any statutes of the State of Nebraska, on any
11 road contract work or any public improvements work, or for supplies,
12 construction, repairs, and improvements, and in all other cases where
13 bids for supplies or work, of any character whatsoever, are received for
14 the various departments and agencies of the state, and other subdivisions
15 and agencies enumerated in this section, they shall fix not only the day
16 upon which such bids shall be returned, received, or opened, as provided
17 by other statutes, but shall also fix the hour at which such bids shall
18 close, or be received or opened, and they shall also provide that such
19 bids shall be immediately and simultaneously opened in the presence of
20 the bidders, or representatives of the bidders, when the hour is reached
21 for the bids to close. If bids are being opened on more than one
22 contract, the officials having in charge the opening of such bids may, if
23 they deem it advisable, award each contract as the bids are opened.
24 Sections 73-101 to 73-106 shall not apply to the State Park System
25 Construction Alternatives Act or sections 39-2808 to 39-2823.

26 Sec. 35. Section 73-307, Revised Statutes Cumulative Supplement,
27 2016, is amended to read:

28 73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska
29 Consultants' Competitive Negotiation Act, the State Park System
30 Construction Alternatives Act, sections 39-2808 to 39-2823, or section
31 57-1503.

1 Sections 73-301 to 73-306 shall not be construed to apply to
2 renewals of contracts already approved pursuant to or not subject to such
3 sections, to amendments to such contracts, or to renewals of such
4 amendments unless the amendments would directly cause or result in the
5 replacement by the private entity of additional permanent state employees
6 or positions greater than the replacement caused by the original
7 contract.

8 Sec. 36. Section 81-1701, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 81-1701 The purpose of the Nebraska Consultants' Competitive
11 Negotiation Act is to provide managerial control over competitive
12 negotiations by the state for acquisition of professional architectural,
13 engineering, landscape architecture, or land surveying services. The act
14 does not apply to (1) contracts under section 57-1503, (2) contracts
15 under subsection (4) of section 39-1349, ~~or~~ (3) contracts under sections
16 39-2808 to 39-2823 except as provided in section 39-2810, or (4)
17 contracts under the State Park System Construction Alternatives Act
18 except as provided in section 20 of this act.

19 Sec. 37. Original section 37-201, Reissue Revised Statutes of
20 Nebraska, and sections 73-101, 73-307, and 81-1701, Revised Statutes
21 Cumulative Supplement, 2016, are repealed.