

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 583

Introduced by Hilgers, 21.

Read first time January 22, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to the Transportation Innovation Act; to amend
2 sections 39-2808, 39-2809, 39-2810, 39-2811, 39-2813, 39-2814,
3 39-2815, 39-2816, 39-2817, 39-2818, 39-2819, 39-2820, 39-2821,
4 39-2822, 39-2823, and 39-2824, Reissue Revised Statutes of Nebraska,
5 and section 39-2802, Revised Statutes Cumulative Supplement, 2018;
6 to define and redefine terms; to provide powers for counties and
7 joint entities as prescribed; to harmonize provisions; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-2802, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 39-2802 For purposes of the Transportation Innovation Act:

4 (1) Alternative technical concept means changes suggested by a
5 qualified, eligible, short-listed design-builder to a contracting
6 agency's ~~the department's~~ basic configurations, project scope, design, or
7 construction criteria;

8 (2) Best value-based selection process means a process of selecting
9 a design-builder using price, schedule, and qualifications for evaluation
10 factors;

11 (3) Construction manager means the legal entity which proposes to
12 enter into a construction manager-general contractor contract pursuant to
13 the act;

14 (4) Construction manager-general contractor contract means a
15 contract which is subject to a qualification-based selection process
16 between a contracting agency ~~the department~~ and a construction manager to
17 furnish preconstruction services during the design development phase of
18 the project and, if an agreement can be reached which is satisfactory to
19 the contracting agency ~~department~~, construction services for the
20 construction phase of the project;

21 (5) Construction services means activities associated with building
22 the project;

23 (6) Contracting agency means the department or an eligible county
24 using the powers provided under the Transportation Innovation Act;

25 (7) ~~(6)~~ Department means the Department of Transportation;

26 (8) ~~(7)~~ Design-build contract means a contract between a contracting
27 agency ~~the department~~ and a design-builder which is subject to a best
28 value-based selection process to furnish (a) architectural, engineering,
29 and related design services and (b) labor, materials, supplies,
30 equipment, and construction services;

31 (9) ~~(8)~~ Design-builder means the legal entity which proposes to

1 enter into a design-build contract;

2 (10) Eligible county means (a) a county with a population of one
3 hundred fifty thousand or more inhabitants as determined by the most
4 recent federal decennial census or the most recent revised certified
5 count by the United States Bureau of the Census or (b) a joint entity
6 created by agreement under section 13-804 if a county described in
7 subdivision (a) of this subdivision is a party to the agreement;

8 (11) (9) Multimodal transportation network means the interconnected
9 system of highways, roads, streets, rail lines, river ports, and transit
10 systems which facilitates the movement of people and freight to enhance
11 Nebraska's economy;

12 (12) (10) Preconstruction services means all nonconstruction-related
13 services that a construction manager performs in relation to the design
14 of the project before execution of a contract for construction services.
15 Preconstruction services includes, but is not limited to, cost
16 estimating, value engineering studies, constructability reviews, delivery
17 schedule assessments, and life-cycle analysis;

18 (13) (11) Project performance criteria means the performance
19 requirements of the project suitable to allow the design-builder to make
20 a proposal. Performance requirements shall include, but are not limited
21 to, the following, if required by the project: Capacity, durability,
22 standards, ingress and egress requirements, description of the site,
23 surveys, soil and environmental information concerning the site, material
24 quality standards, design and milestone dates, site development
25 requirements, compliance with applicable law, and other criteria for the
26 intended use of the project;

27 (14) (12) Proposal means an offer in response to a request for
28 proposals (a) by a design-builder to enter into a design-build contract
29 or (b) by a construction manager to enter into a construction manager-
30 general contractor contract;

31 (15) (13) Qualification-based selection process means a process of

1 selecting a construction manager based on qualifications;

2 ~~(16) (14)~~ Request for proposals means the documentation by which a
3 contracting agency ~~the department~~ solicits proposals; and

4 ~~(17) (15)~~ Request for qualifications means the documentation or
5 publication by which a contracting agency ~~the department~~ solicits
6 qualifications.

7 Sec. 2. Section 39-2808, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 39-2808 The purpose of sections 39-2808 to 39-2824 ~~39-2823~~ is to
10 provide a contracting agency ~~the department~~ alternative methods of
11 contracting for public projects. The alternative methods of contracting
12 shall be available to a contracting agency ~~the department~~ for use on any
13 project regardless of the funding source. Notwithstanding any other
14 provision of state law to the contrary, the Transportation Innovation Act
15 shall govern the design-build and construction manager-general contractor
16 procurement process.

17 Sec. 3. Section 39-2809, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 39-2809 A contracting agency ~~The department~~, in accordance with
20 sections 39-2808 to 39-2824 ~~39-2823~~, may solicit and execute a design-
21 build contract or a construction manager-general contractor contract for
22 a public project, other than a project that is primarily resurfacing,
23 rehabilitation, or restoration.

24 Sec. 4. Section 39-2810, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 39-2810 A contracting agency ~~The department~~ may hire an engineering
27 or architectural consultant to assist the contracting agency ~~department~~
28 with the development of project performance criteria and requests for
29 proposals, with evaluation of proposals, with evaluation of the
30 construction to determine adherence to the project performance criteria,
31 and with any additional services requested by the contracting agency

1 ~~department~~ to represent its interests in relation to a project. The
2 procedures used to hire such person or organization shall comply with the
3 Nebraska Consultants' Competitive Negotiation Act. The person or
4 organization hired shall be ineligible to be included as a provider of
5 other services in a proposal for the project for which he or she has been
6 hired and shall not be employed by or have a financial or other interest
7 in a design-builder or construction manager who will submit a proposal.

8 Sec. 5. Section 39-2811, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 39-2811 The department shall adopt guidelines for entering into a
11 design-build contract or construction manager-general contractor
12 contract. If an eligible county intends to proceed with a design-build
13 contract or a construction manager-general contractor contract, the
14 eligible county may adopt the guidelines published by the department. The
15 department's guidelines shall include the following:

- 16 (1) Preparation and content of requests for qualifications;
- 17 (2) Preparation and content of requests for proposals;
- 18 (3) Qualification and short-listing of design-builders and
19 construction managers. The guidelines shall provide that the contracting
20 agency department will evaluate prospective design-builders and
21 construction managers based on the information submitted to the
22 contracting agency department in response to a request for qualifications
23 and will select a short list of design-builders or construction managers
24 who shall be considered qualified and eligible to respond to the request
25 for proposals;
- 26 (4) Preparation and submittal of proposals;
- 27 (5) Procedures and standards for evaluating proposals;
- 28 (6) Procedures for negotiations between the contracting agency
29 department and the design-builders or construction managers submitting
30 proposals prior to the acceptance of a proposal if any such negotiations
31 are contemplated; and

1 (7) Procedures for the evaluation of construction under a design-
2 build contract to determine adherence to the project performance
3 criteria.

4 Sec. 6. Section 39-2813, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 39-2813 (1) A contracting agency ~~The department~~ shall prepare a
7 request for qualifications for design-build proposals and shall
8 prequalify design-builders. The request for qualifications shall describe
9 the project in sufficient detail to permit a design-builder to respond.
10 The request for qualifications shall identify the maximum number of
11 design-builders the contracting agency ~~department~~ will place on a short
12 list as qualified and eligible to receive a request for proposals.

13 (2) A person or organization hired by the contracting agency
14 ~~department~~ under section 39-2810 shall be ineligible to compete for a
15 design-build contract on the same project for which the person or
16 organization was hired.

17 (3) The request for qualifications shall be (a) published in a
18 newspaper of statewide circulation at least thirty days prior to the
19 deadline for receiving the request for qualifications and (b) sent by
20 first-class mail to any design-builder upon request.

21 (4) The contracting agency ~~department~~ shall create a short list of
22 qualified and eligible design-builders in accordance with the guidelines
23 adopted pursuant to section 39-2811. The contracting agency ~~department~~
24 shall select at least two prospective design-builders, except that if
25 only one design-builder has responded to the request for qualifications,
26 the contracting agency ~~department~~ may, in its discretion, proceed or
27 cancel the procurement. The request for proposals shall be sent only to
28 the design-builders placed on the short list.

29 Sec. 7. Section 39-2814, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 39-2814 A contracting agency ~~The department~~ shall prepare a request

1 for proposals for each design-build contract. The request for proposals
2 shall contain, at a minimum, the following elements:

3 (1) The guidelines adopted by ~~the department~~ in accordance with
4 section 39-2811. The identification of a publicly accessible location of
5 the guidelines, either physical or electronic, shall be considered
6 compliance with this subdivision;

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

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

12 (4) A statement regarding alternative technical concepts including
13 the process and time period in which such concepts may be submitted,
14 confidentiality of the concepts, and ownership of the rights to the
15 intellectual property contained in such concepts;

16 (5) Project performance criteria;

17 (6) Budget parameters for the project;

18 (7) Any bonding and insurance required by law or as may be
19 additionally required by the contracting agency ~~department~~;

20 (8) The criteria for evaluation of proposals and the relative weight
21 of each criterion. The criteria shall include, but are not limited to,
22 the cost of the work, construction experience, design experience, and the
23 financial, personnel, and equipment resources available for the project.
24 The relative weight to apply to any criterion shall be at the discretion
25 of the contracting agency ~~department~~ based on each project, except that
26 in all cases, the cost of the work shall be given a relative weight of at
27 least fifty percent;

28 (9) A requirement that the design-builder provide a written
29 statement of the design-builder's proposed approach to the design and
30 construction of the project, which may include graphic materials
31 illustrating the proposed approach to design and construction and shall

1 include price proposals;

2 (10) A requirement that the design-builder agree to the following
3 conditions:

4 (a) At the time of the design-build proposal, the design-builder
5 must furnish to the contracting agency ~~department~~ a written statement
6 identifying the architect or engineer who will perform the architectural
7 or engineering work for the project. The architect or engineer engaged by
8 the design-builder to perform the architectural or engineering work with
9 respect to the project must have direct supervision of such work and may
10 not be removed by the design-builder prior to the completion of the
11 project without the written consent of the contracting agency ~~department~~;

12 (b) At the time of the design-build proposal, the design-builder
13 must furnish to the contracting agency ~~department~~ a written statement
14 identifying the general contractor who will provide the labor, material,
15 supplies, equipment, and construction services. The general contractor
16 identified by the design-builder may not be removed by the design-builder
17 prior to completion of the project without the written consent of the
18 contracting agency ~~department~~;

19 (c) A design-builder offering design-build services with its own
20 employees who are design professionals licensed to practice in Nebraska
21 must (i) comply with the Engineers and Architects Regulation Act by
22 procuring a certificate of authorization to practice architecture or
23 engineering and (ii) submit proof of sufficient professional liability
24 insurance in the amount required by the contracting agency ~~department~~;
25 and

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

29 (11) The amount and terms of the stipend required pursuant to
30 section 39-2815; and

31 (12) ~~(11)~~ Other information or requirements which the contracting

1 ~~agency department~~, in its discretion, chooses to include in the request
2 for proposals.

3 Sec. 8. Section 39-2815, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 39-2815 The contracting agency ~~department~~ shall pay a stipend to
6 qualified design-builders that submit responsive proposals but are not
7 selected. Payment of the stipend shall give the contracting agency
8 ~~department~~ ownership of the intellectual property contained in the
9 proposals and alternative technical concepts. The amount of the stipend
10 shall be at the discretion of the contracting agency as disclosed in the
11 request for proposals ~~department~~.

12 Sec. 9. Section 39-2816, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 39-2816 (1) Design-builders shall submit proposals as required by
15 the request for proposals. A contracting agency ~~The department~~ may meet
16 with individual design-builders prior to the time of submitting the
17 proposal and may have discussions concerning alternative technical
18 concepts. If an alternative technical concept provides a solution that is
19 equal to or better than the requirements in the request for proposals and
20 the alternative technical concept is acceptable to the contracting agency
21 ~~department~~, it may be incorporated as part of the proposal by the design-
22 builder. Notwithstanding any other provision of state law to the
23 contrary, alternative technical concepts shall be confidential and not
24 disclosed to other design-builders or members of the public from the time
25 the proposals are submitted until such proposals are opened by the
26 contracting agency ~~department~~.

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

30 (3) Proposals may be withdrawn at any time prior to the opening of
31 such proposals in which case no stipend shall be paid. The contracting

1 ~~agency department~~ shall have the right to reject any and all proposals at
2 no cost to the ~~contracting agency department~~ other than any stipend for
3 design-builders who have submitted responsive proposals. The ~~contracting~~
4 ~~agency department~~ may thereafter solicit new proposals using the same or
5 different project performance criteria or may cancel the design-build
6 solicitation.

7 (4) The ~~contracting agency department~~ shall rank the design-builders
8 in order of best value pursuant to the criteria in the request for
9 proposals. The ~~contracting agency department~~ may meet with design-
10 builders prior to ranking.

11 (5) The ~~contracting agency department~~ may attempt to negotiate a
12 design-build contract with the highest ranked design-builder selected by
13 the ~~contracting agency department~~ and may enter into a design-build
14 contract after negotiations. If the ~~contracting agency department~~ is
15 unable to negotiate a satisfactory design-build contract with the highest
16 ranked design-builder, the ~~contracting agency department~~ may terminate
17 negotiations with that design-builder. The ~~contracting agency department~~
18 may then undertake negotiations with the second highest ranked design-
19 builder and may enter into a design-build contract after negotiations. If
20 the ~~contracting agency department~~ is unable to negotiate a satisfactory
21 contract with the second highest ranked design-builder, the ~~contracting~~
22 ~~agency department~~ may undertake negotiations with the third highest
23 ranked design-builder, if any, and may enter into a design-build contract
24 after negotiations.

25 (6) If the ~~contracting agency department~~ is unable to negotiate a
26 satisfactory contract with any of the ranked design-builders, the
27 ~~contracting agency department~~ may either revise the request for proposals
28 and solicit new proposals or cancel the design-build process under
29 sections 39-2808 to ~~39-2824~~ ~~39-2823~~.

30 Sec. 10. Section 39-2817, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 39-2817 (1) The process for selecting a construction manager and
2 entering into a construction manager-general contractor contract shall be
3 in accordance with this section and sections 39-2818 to 39-2820.

4 (2) A contracting agency ~~The department~~ shall prepare a request for
5 qualifications for construction manager-general contractor contract
6 proposals and shall prequalify construction managers. The request for
7 qualifications shall describe the project in sufficient detail to permit
8 a construction manager to respond. The request for qualifications shall
9 identify the maximum number of eligible construction managers the
10 contracting agency ~~department~~ will place on a short list as qualified and
11 eligible to receive a request for proposals.

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

16 (4) The contracting agency ~~department~~ shall create a short list of
17 qualified and eligible construction managers in accordance with the
18 guidelines adopted pursuant to section 39-2811. The contracting agency
19 ~~department~~ shall select at least two construction managers, except that
20 if only one construction manager has responded to the request for
21 qualifications, the contracting agency ~~department~~ may, in its discretion,
22 proceed or cancel the procurement. The request for proposals shall be
23 sent only to the construction managers placed on the short list.

24 Sec. 11. Section 39-2818, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 39-2818 A contracting agency ~~The department~~ shall prepare a request
27 for proposals for each construction manager-general contractor contract.
28 The request for proposals shall contain, at a minimum, the following
29 elements:

30 (1) The guidelines adopted ~~by the department~~ in accordance with
31 section 39-2811. The identification of a publicly accessible location of

1 the guidelines, either physical or electronic, shall be considered
2 compliance with this subdivision;

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

5 (3) Any bonding and insurance required by law or as may be
6 additionally required by the contracting agency ~~department~~;

7 (4) General information about the project which will assist the
8 contracting agency ~~department~~ in its selection of the construction
9 manager, including a project statement which contains information about
10 the scope and nature of the project, the project site, the schedule, and
11 the estimated budget;

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

14 (6) A statement that the construction manager shall not be allowed
15 to sublet, assign, or otherwise dispose of any portion of the contract
16 without consent of the contracting agency ~~department~~. In no case shall
17 the contracting agency ~~department~~ allow the construction manager to
18 sublet more than seventy percent of the work, excluding specialty items;
19 and

20 (7) Other information or requirements which the contracting agency
21 ~~department~~, in its discretion, chooses to include in the request for
22 proposals.

23 Sec. 12. Section 39-2819, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 39-2819 (1) Construction managers shall submit proposals as required
26 by the request for proposals.

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

30 (3) Proposals may be withdrawn at any time prior to signing a
31 contract for preconstruction services. The contracting agency ~~department~~

1 shall have the right to reject any and all proposals at no cost to the
2 contracting agency department. The contracting agency department may
3 thereafter solicit new proposals or may cancel the construction manager-
4 general contractor procurement process.

5 (4) The contracting agency department shall rank the construction
6 managers in accordance with the qualification-based selection process and
7 pursuant to the criteria in the request for proposals. The contracting
8 agency department may meet with construction managers prior to the
9 ranking.

10 (5) The contracting agency department may attempt to negotiate a
11 contract for preconstruction services with the highest ranked
12 construction manager and may enter into a contract for preconstruction
13 services after negotiations. If the contracting agency department is
14 unable to negotiate a satisfactory contract for preconstruction services
15 with the highest ranked construction manager, the contracting agency
16 department may terminate negotiations with that construction manager. The
17 contracting agency department may then undertake negotiations with the
18 second highest ranked construction manager and may enter into a contract
19 for preconstruction services after negotiations. If the contracting
20 agency department is unable to negotiate a satisfactory contract with the
21 second highest ranked construction manager, the contracting agency
22 department may undertake negotiations with the third highest ranked
23 construction manager, if any, and may enter into a contract for
24 preconstruction services after negotiations.

25 (6) If the contracting agency department is unable to negotiate a
26 satisfactory contract for preconstruction services with any of the ranked
27 construction managers, the contracting agency department may either
28 revise the request for proposals and solicit new proposals or cancel the
29 construction manager-general contractor contract process under sections
30 39-2808 to 39-2824 ~~39-2823~~.

31 Sec. 13. Section 39-2820, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 39-2820 (1) Before the construction manager begins any construction
3 services, a contracting agency ~~the department~~ shall:

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

5 (b) Conduct contract negotiations with the construction manager to
6 develop a construction manager-general contractor contract for
7 construction services.

8 (2) If the construction manager and the contracting agency
9 ~~department~~ are unable to negotiate a contract, the contracting agency
10 ~~department~~ may use other contract procurement processes. Persons or
11 organizations who submitted proposals but were unable to negotiate a
12 contract with the contracting agency ~~department~~ shall be eligible to
13 compete in the other contract procurement processes.

14 Sec. 14. Section 39-2821, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 39-2821 A design-build contract and a construction manager-general
17 contractor contract may be conditioned upon later refinements in scope
18 and price and may permit the contracting agency ~~department~~ in agreement
19 with the design-builder or construction manager to make changes in the
20 project without invalidating the contract.

21 Sec. 15. Section 39-2822, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 39-2822 The department may enter into agreements under sections
24 39-2808 to 39-2824 ~~39-2823~~ to let, design, and construct projects for
25 political subdivisions when any of the funding for such projects is
26 provided by or through the department. In such instances, the department
27 may enter into contracts with the design-builder or construction manager.
28 The provisions of the Political Subdivisions Construction Alternatives
29 Act shall not apply to projects let, designed, and constructed under the
30 supervision of the department pursuant to agreements with political
31 subdivisions under sections 39-2808 to 39-2824 ~~39-2823~~.

1 Sec. 16. Section 39-2823, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 39-2823 Nothing in sections 39-2808 to 39-2824 ~~39-2823~~ shall limit
4 or reduce statutory or regulatory requirements regarding insurance.

5 Sec. 17. Section 39-2824, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 39-2824 The department may adopt and promulgate rules and
8 regulations to carry out the Transportation Innovation Act. An eligible
9 county may adopt a resolution establishing rules to carry out the act.

10 Sec. 18. Original sections 39-2808, 39-2809, 39-2810, 39-2811,
11 39-2813, 39-2814, 39-2815, 39-2816, 39-2817, 39-2818, 39-2819, 39-2820,
12 39-2821, 39-2822, 39-2823, and 39-2824, Reissue Revised Statutes of
13 Nebraska, and section 39-2802, Revised Statutes Cumulative Supplement,
14 2018, are repealed.