

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 166

Introduced by Bostelman, 23.

Read first time January 09, 2023

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the Transportation Innovation Act; to amend
- 2 sections 39-2814, 39-2818, and 39-2825, Revised Statutes Cumulative
- 3 Supplement, 2022; to change provisions relating to criteria and
- 4 weighting of criteria for design-build, progressive design-build,
- 5 construction manager-general contractor, and public-private-
- 6 partnership proposals; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-2814, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 39-2814 A contracting agency shall prepare a request for proposals
4 for each design-build or progressive design-build contract. The request
5 for proposals shall contain, at a minimum, the following elements:

6 (1) The guidelines adopted in accordance with section 39-2811. The
7 identification of a publicly accessible location of the guidelines,
8 either physical or electronic, shall be considered compliance with this
9 subdivision;

10 (2) The proposed terms and conditions of the design-build or
11 progressive design-build contract, including any terms and conditions
12 which are subject to further negotiation;

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

15 (4) If applicable, a statement regarding alternative technical
16 concepts including the process and time period in which such concepts may
17 be submitted, confidentiality of the concepts, and ownership of the
18 rights to the intellectual property contained in such concepts;

19 (5) Project performance criteria;

20 (6) Budget parameters for the project;

21 (7) Any bonding and insurance required by law or as may be
22 additionally required by the contracting agency;

23 (8) The criteria for evaluation of proposals and the relative weight
24 of each criterion, including the following: -

25 (a) For both design-build and progressive design-build contracts,
26 the criteria shall include, but are not limited to, construction
27 experience, design experience, and the financial, personnel, and
28 equipment resources available for the project; -

29 (b) For design-build contracts only, the criteria shall also include
30 the cost of the work; -

31 (c) For progressive design-build contracts only, the criteria shall

1 also include consideration of the historic reasonableness of the
2 progressive design-builder's costs and expenses when bidding and
3 completing projects, whether such projects were completed using the
4 progressive design-build process or another bidding and contracting
5 process; and -

6 (d) The relative weight to apply to any criterion shall be at the
7 discretion of the contracting agency based on each project, except that
8 (i) for all design-build contracts, the cost of the work shall be given a
9 relative weight of at least fifty percent, and (ii) for all progressive
10 design-build contracts, the historic reasonableness of the progressive
11 design-builder's costs and expenses shall be given a relative weight of
12 at least fifty percent;

13 (9) A requirement that the design-builder or progressive design-
14 builder provide a written statement of the design-builder's or
15 progressive design-builder's proposed approach to the design and
16 construction of the project, which may include graphic materials
17 illustrating the proposed approach to design and construction;

18 (10) A requirement that the design-builder or progressive design-
19 builder agree to the following conditions:

20 (a) At the time of the design-build or progressive design-build
21 proposal, the design-builder or progressive design-builder must furnish
22 to the contracting agency a written statement identifying the architect
23 or engineer who will perform the architectural or engineering work for
24 the project. The architect or engineer engaged by the design-builder or
25 progressive design-builder to perform the architectural or engineering
26 work with respect to the project must have direct supervision of such
27 work and may not be removed by the design-builder or progressive design-
28 builder prior to the completion of the project without the written
29 consent of the contracting agency;

30 (b) At the time of the design-build or progressive design-build
31 proposal, the design-builder or progressive design-builder must furnish

1 to the contracting agency a written statement identifying the general
2 contractor who will provide the labor, material, supplies, equipment, and
3 construction services. The general contractor identified by the design-
4 builder or progressive design-builder may not be removed by the design-
5 builder or progressive design-builder prior to completion of the project
6 without the written consent of the contracting agency;

7 (c) A design-builder or progressive design-builder offering design-
8 build or progressive design-build services with its own employees who are
9 design professionals licensed to practice in Nebraska must (i) comply
10 with the Engineers and Architects Regulation Act by procuring a
11 certificate of authorization to practice architecture or engineering and
12 (ii) submit proof of sufficient professional liability insurance in the
13 amount required by the contracting agency; and

14 (d) The rendering of architectural or engineering services by a
15 licensed architect or engineer employed by the design-builder or
16 progressive design-builder must conform to the Engineers and Architects
17 Regulation Act;

18 (11) The amount and terms of the stipend required pursuant to
19 section 39-2815, if any; and

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

22 Sec. 2. Section 39-2818, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 39-2818 A contracting agency shall prepare a request for proposals
25 for each construction manager-general contractor contract. The request
26 for proposals shall contain, at a minimum, the following elements:

27 (1) The guidelines adopted in accordance with section 39-2811. The
28 identification of a publicly accessible location of the guidelines,
29 either physical or electronic, shall be considered compliance with this
30 subdivision;

31 (2) The proposed terms and conditions of the contract, including any

1 terms and conditions which are subject to further negotiation;

2 (3) Any bonding and insurance required by law or as may be
3 additionally required by the contracting agency;

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

9 (5) The criteria for evaluation of proposals and the relative weight
10 of each criterion including, but not limited to, the following: ÷

11 (a) The criteria shall include, but not be limited to, construction
12 management experience, construction experience, and the financial,
13 personnel, and equipment resources available for the project;

14 (b) The criteria shall also include historic reasonableness of the
15 construction manager's costs and expenses when bidding and completing
16 projects; and

17 (c) The relative weight to apply to any criterion shall be at the
18 discretion of the contracting agency based on each project, except that
19 for all construction manager-general contractor contracts, the historic
20 reasonableness of the construction manager's costs and expenses shall be
21 given a relative weight of at least fifty percent, with at least one-half
22 of the cost evaluation based on competitiveness of construction manager's
23 costs on projects procured by means of traditional design-bid-build
24 procurement;

25 (6) A statement that the construction manager shall not be allowed
26 to sublet, assign, or otherwise dispose of any portion of the contract
27 without consent of the contracting agency. In no case shall the
28 contracting agency allow the construction manager to sublet more than
29 seventy percent of the work, excluding specialty items; and

30 (7) Other information or requirements which the contracting agency,
31 in its discretion, chooses to include in the request for proposals.

1 Sec. 3. Section 39-2825, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 39-2825 (1) A public-private partnership delivery method may be used
4 for projects under the Transportation Innovation Act as provided in this
5 section and rules and regulations adopted and promulgated pursuant to
6 this section only to the extent allowed under the Constitution of
7 Nebraska. State contracts using this method shall be awarded by
8 competitive negotiation.

9 (2) A contracting agency utilizing a public-private partnership
10 shall continue to be responsible for oversight of any function that is
11 delegated to or otherwise performed by a private partner.

12 (3) On or before July 1, 2023, the Director-State Engineer shall
13 adopt and promulgate rules and regulations setting forth criteria to be
14 used in determining when a public-private partnership is to be used for a
15 particular project. The rules and regulations shall reflect the intent of
16 the Legislature to promote and encourage the use of public-private
17 partnerships in the State of Nebraska. The Director-State Engineer shall
18 consult with design-builders, progressive design-builders, construction
19 managers, other contractors and design professionals, including engineers
20 and architects, and other appropriate professionals during the
21 development of the rules and regulations.

22 (4) A request for proposals for a project utilizing a public-private
23 partnership shall include at a minimum:

24 (a) The parameters of the proposed public-private partnership
25 agreement;

26 (b) The duties and responsibilities to be performed by the private
27 partner or private partners;

28 (c) The methods of oversight to be employed by the contracting
29 agency;

30 (d) The duties and responsibilities that are to be performed by the
31 contracting agency and any other parties to the contract;

1 (e) The criteria for evaluation of proposals and the relative weight
2 of each criterion, including the following:

3 (i) The criteria shall include each private partner's experience and
4 the financial, personnel, and equipment resources available for the
5 project;

6 (ii) The criteria shall also include historic reasonableness of the
7 private partner's costs and expenses when bidding and completing
8 projects; and

9 (iii) The relative weight to apply to any criterion shall be at the
10 discretion of the contracting agency based on each project, except that
11 for all public-private partnership contracts, the historic reasonableness
12 of each private partner's costs and expenses shall be given a relative
13 weight of at least fifty percent, with at least one-half of the cost
14 evaluation based on competitiveness of each private partner's projects
15 procured by means of traditional open bidding to a lowest responsible
16 bidder under section 39-1348 to 39-1354 evaluation factors and the
17 relative weight of each factor to be used in the scoring of awards;

18 (f) Plans for financing and operating the project and the revenues,
19 service payments, bond financings, and appropriations of public funds
20 needed for the qualifying project;

21 (g) Comprehensive documentation of the experience, capabilities,
22 capitalization and financial condition, and other relevant qualifications
23 of the private entity submitting the proposal;

24 (h) The ability of a private partner or private partners to quickly
25 respond to the needs presented in the request for proposals and the
26 importance of economic development opportunities represented by the
27 project. In evaluating proposals, preference shall be given to a plan
28 that includes the involvement of small businesses as subcontractors, to
29 the extent that small businesses can provide services in a competitive
30 manner, unless any preference interferes with the qualification for
31 federal or other funds; and

1 (i) Other information required by the contracting agency to evaluate
2 the proposals submitted and the overall proposed public-private
3 partnership.

4 (5) A private entity desiring to be a private partner shall
5 demonstrate to the satisfaction of the contracting agency that it is
6 capable of performing any duty, responsibility, or function it may be
7 authorized or directed to perform as a term or condition of the public-
8 private partnership agreement.

9 (6) A request for proposals may be canceled, or all proposals may be
10 rejected, if it is determined in writing that such action is taken in the
11 best interest of the State of Nebraska and approved by the purchasing
12 officer.

13 (7) Upon execution of a public-private partnership agreement, the
14 contracting agency shall ensure that the contract clearly identifies that
15 a public-private partnership is being utilized.

16 (8) The department shall:

17 (a) Adhere to the rules and regulations adopted and promulgated
18 under this section when utilizing a public-private partnership for
19 financing capital projects; and

20 (b) Electronically report annually to the Appropriations Committee
21 of the Legislature and the Transportation and Telecommunications
22 Committee of the Legislature regarding private-public partnerships which
23 have been considered or are approved pursuant to this section.

24 Sec. 4. Original sections 39-2814, 39-2818, and 39-2825, Revised
25 Statutes Cumulative Supplement, 2022, are repealed.