

AMENDMENTS TO LB1016

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 39-2801, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 39-2801 Sections 39-2801 to 39-2824 and section 12 of this act shall
6 be known and may be cited as the Transportation Innovation Act.

7 Sec. 2. Section 39-2802, Revised Statutes Cumulative Supplement,
8 2020, is amended to read:

9 39-2802 For purposes of the Transportation Innovation Act:

10 (1) Alternative technical concept means changes suggested by a
11 qualified, eligible, short-listed design-builder to a contracting
12 agency's basic configurations, project scope, design, or construction
13 criteria;

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

17 (3) Construction manager means the legal entity which proposes to
18 enter into a construction manager-general contractor contract pursuant to
19 the act;

20 (4) Construction manager-general contractor contract means a
21 contract which is subject to a qualification-based selection process
22 between a contracting agency and a construction manager to furnish
23 preconstruction services during the design development phase of the
24 project and, if an agreement can be reached which is satisfactory to the
25 contracting agency, construction services for the construction phase of
26 the project;

27 (5) Construction services means activities associated with building

1 the project;

2 (6) Contracting agency means the department, an eligible county, a
3 city of the metropolitan class, or a city of the primary class using the
4 powers provided under the Transportation Innovation Act;

5 (7) Department means the Department of Transportation;

6 (8) Design-build contract means a contract between a contracting
7 agency and a design-builder which is subject to a best value-based
8 selection process to furnish (a) architectural, engineering, and related
9 design services and (b) labor, materials, supplies, equipment, and
10 construction services;

11 (9) Design-builder means the legal entity which proposes to enter
12 into a design-build contract;

13 (10) Eligible county means (a) a county or (b) a joint entity
14 created by agreement under section 13-804 if a county is a party to the
15 agreement;

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

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

26 (13) Private partner means any entity that is a partner in a public-
27 private partnership other than the State of Nebraska, any agency of the
28 State of Nebraska, the federal government, any agency of the federal
29 government, any other state government, or any agency of any government
30 at any level;

31 (14) Progressive design-build means a project-delivery process in

1 which both the design and construction of a project are procured from a
2 single entity that is selected through a qualification-based selection
3 process at the earliest feasible stage of the project;

4 (15) ~~(13)~~ Project performance criteria means the performance
5 requirements of the project suitable to allow the design-builder to make
6 a proposal. Performance requirements shall include, but are not limited
7 to, the following, if required by the project: Capacity, durability,
8 standards, ingress and egress requirements, description of the site,
9 surveys, soil and environmental information concerning the site, material
10 quality standards, design and milestone dates, site development
11 requirements, compliance with applicable law, and other criteria for the
12 intended use of the project;

13 (16) ~~(14)~~ Proposal means an offer in response to a request for
14 proposals (a) by a design-builder to enter into a design-build contract
15 or (b) by a construction manager to enter into a construction manager-
16 general contractor contract;

17 (17) Public-private partnership means a project delivery method for
18 construction or financing of capital projects or procurement of services
19 under a written public-private partnership agreement entered into
20 pursuant to section 12 of this act between at least one private partner
21 and the State of Nebraska or any agency of the state;

22 (18) ~~(15)~~ Qualification-based selection process means a process of
23 selecting a construction manager or progressive design-builder based on
24 qualifications;

25 (19) ~~(16)~~ Request for proposals means the documentation by which a
26 contracting agency solicits proposals; and

27 (20) ~~(17)~~ Request for qualifications means the documentation or
28 publication by which a contracting agency solicits qualifications.

29 Sec. 3. Section 39-2808, Revised Statutes Cumulative Supplement,
30 2020, is amended to read:

31 39-2808 The purpose of sections 39-2808 to 39-2824 is to provide a

1 contracting agency alternative methods of contracting for public
2 projects. The alternative methods of contracting shall be available to a
3 contracting agency for use on any project regardless of the funding
4 source. Notwithstanding any other provision of state law to the contrary,
5 the Transportation Innovation Act shall govern the design-build,
6 progressive design-build, and construction manager-general contractor
7 procurement processes ~~process~~.

8 Sec. 4. Section 39-2809, Revised Statutes Cumulative Supplement,
9 2020, is amended to read:

10 39-2809 A contracting agency, in accordance with sections 39-2808 to
11 39-2824, may solicit and execute a design-build contract, a progressive
12 design-build contract, or a construction manager-general contractor
13 contract for a public project, other than a project that is primarily
14 resurfacing, rehabilitation, or restoration.

15 Sec. 5. Section 39-2811, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 39-2811 The department shall adopt guidelines for entering into a
18 design-build contract, a progressive design-build contract, or
19 construction manager-general contractor contract. If an eligible county,
20 a city of the metropolitan class, or a city of the primary class intends
21 to proceed with a design-build contract, a progressive design-build
22 contract, or a construction manager-general contractor contract, the
23 eligible county, city of the metropolitan class, or city of the primary
24 class may adopt the guidelines published by the department. The
25 department's guidelines shall include the following:

- 26 (1) Preparation and content of requests for qualifications;
27 (2) Preparation and content of requests for proposals;
28 (3) Qualification and short-listing of design-builders, progressive
29 design-builders, and construction managers. The guidelines shall provide
30 that the contracting agency will evaluate prospective design-builders,
31 progressive design-builders, and construction managers based on the

1 information submitted to the contracting agency in response to a request
2 for qualifications and will select a short list of design-builders,
3 progressive design-builders, or construction managers who shall be
4 considered qualified and eligible to respond to the request for
5 proposals;

6 (4) Preparation and submittal of proposals;

7 (5) Procedures and standards for evaluating proposals;

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

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

15 Sec. 6. Section 39-2812, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 39-2812 (1) The process for selecting a design-builder and entering
18 into a design-build contract shall be in accordance with sections 39-2813
19 to 39-2816.

20 (2) Except as otherwise specifically provided in the Transportation
21 Innovation Act, the process for selecting a progressive design-builder
22 and entering into a progressive design-build contract shall be in
23 accordance with sections 39-2813 to 39-2816.

24 Sec. 7. Section 39-2813, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 39-2813 (1) A contracting agency shall prepare a request for
27 qualifications for design-build and progressive design-build proposals
28 and shall prequalify design-builders and progressive design-builders. The
29 request for qualifications shall describe the project in sufficient
30 detail to permit a design-builder or a progressive design-builder to
31 respond. The request for qualifications shall identify the maximum number

1 of design-builders or progressive design-builders the contracting agency
2 will place on a short list as qualified and eligible to receive a request
3 for proposals.

4 (2) A person or organization hired by the contracting agency under
5 section 39-2810 shall be ineligible to compete for a design-build
6 contract on the same project for which the person or organization was
7 hired.

8 (3) The request for qualifications shall be (a) published in a
9 newspaper of statewide circulation at least thirty days prior to the
10 deadline for receiving the request for qualifications and (b) sent by
11 first-class mail to any design-builder or progressive design-builder upon
12 request.

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

23 Sec. 8. Section 39-2814, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 39-2814 A contracting agency shall prepare a request for proposals
26 for each design-build or progressive design-build contract. The request
27 for proposals shall contain, at a minimum, the following elements:

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

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

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

6 (4) If applicable, a A statement regarding alternative technical
7 concepts including the process and time period in which such concepts may
8 be submitted, confidentiality of the concepts, and ownership of the
9 rights to the intellectual property contained in such concepts;

10 (5) Project performance criteria;

11 (6) Budget parameters for the project;

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

14 (8) The criteria for evaluation of proposals and the relative weight
15 of each criterion. For both design-build and progressive design-build
16 contracts, the ~~The~~ criteria shall include, but are not limited to, ~~the~~
17 ~~cost of the work,~~ construction experience, design experience, and the
18 financial, personnel, and equipment resources available for the project.
19 For design-build contracts only, the criteria shall also include the cost
20 of the work. The relative weight to apply to any criterion shall be at
21 the discretion of the contracting agency based on each project, except
22 that for in all design-build contracts cases, the cost of the work shall
23 be given a relative weight of at least fifty percent;

24 (9) A requirement that the design-builder or progressive design-
25 builder provide a written statement of the design-builder's or
26 progressive design-builder's proposed approach to the design and
27 construction of the project, which may include graphic materials
28 illustrating the proposed approach to design and construction ~~and shall~~
29 ~~include price proposals;~~

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

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

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

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

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

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

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

3 Sec. 9. Section 39-2816, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 39-2816 (1) Design-builders and progressive design-builders shall
6 submit proposals as required by the request for proposals. A contracting
7 agency may meet with individual design-builders and progressive design-
8 builders prior to the time of submitting the proposal and may have
9 discussions concerning alternative technical concepts. If an alternative
10 technical concept provides a solution that is equal to or better than the
11 requirements in the request for proposals and the alternative technical
12 concept is acceptable to the contracting agency, it may be incorporated
13 as part of the proposal by the design-builder or progressive design-
14 builder. Notwithstanding any other provision of state law to the
15 contrary, alternative technical concepts shall be confidential and not
16 disclosed to other design-builders, progressive design-builders, or
17 members of the public from the time the proposals are submitted until
18 such proposals are opened by the contracting agency.

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

22 (3) Proposals may be withdrawn at any time prior to the opening of
23 such proposals in which case no stipend shall be paid. The contracting
24 agency shall have the right to reject any and all proposals at no cost to
25 the contracting agency other than any stipend for design-builders who
26 have submitted responsive proposals. The contracting agency may
27 thereafter solicit new proposals using the same or different project
28 performance criteria or may cancel the design-build or progressive
29 design-build solicitation.

30 (4) The contracting agency shall rank the design-builders or
31 progressive design-builders in order of best value pursuant to the

1 criteria in the request for proposals. The contracting agency may meet
2 with design-builders or progressive design-builders prior to ranking.

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

20 (6) If the contracting agency is unable to negotiate a satisfactory
21 contract with any of the ranked design-builders or progressive design-
22 builders, the contracting agency may either revise the request for
23 proposals and solicit new proposals or cancel the design-build or
24 progressive design-build process under sections 39-2808 to 39-2824.

25 Sec. 10. Section 39-2821, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 39-2821 A design-build contract, a progressive design-build
28 contract, and a construction manager-general contractor contract may be
29 conditioned upon later refinements in scope and price and may permit the
30 contracting agency in agreement with the design-builder, progressive
31 design-builder, or construction manager to make changes in the project

1 without invalidating the contract.

2 Sec. 11. Section 39-2822, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 39-2822 The department may enter into agreements under sections
5 39-2808 to 39-2824 to let, design, and construct projects for political
6 subdivisions when any of the funding for such projects is provided by or
7 through the department. In such instances, the department may enter into
8 contracts with the design-builder, progressive design-builder, or
9 construction manager. The provisions of the Political Subdivisions
10 Construction Alternatives Act shall not apply to projects let, designed,
11 and constructed under the supervision of the department pursuant to
12 agreements with political subdivisions under sections 39-2808 to 39-2824.

13 Sec. 12. (1) A public-private partnership delivery method may be
14 used for projects under the Transportation Innovation Act as provided in
15 this section and rules and regulations adopted and promulgated pursuant
16 to this section only to the extent allowed under the Constitution of
17 Nebraska. State contracts using this method shall be awarded by
18 competitive negotiation.

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

22 (3) On or before July 1, 2023, the Director-State Engineer shall
23 adopt and promulgate rules and regulations setting forth criteria to be
24 used in determining when a public-private partnership is to be used for a
25 particular project. The rules and regulations shall reflect the intent of
26 the Legislature to promote and encourage the use of public-private
27 partnerships in the State of Nebraska. The Director-State Engineer shall
28 consult with design-builders, progressive design-builders, construction
29 managers, other contractors and design professionals, including engineers
30 and architects, and other appropriate professionals during the
31 development of the rules and regulations.

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

3 (a) The parameters of the proposed public-private partnership
4 agreement;

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

7 (c) The methods of oversight to be employed by the contracting
8 agency;

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

11 (e) The evaluation factors and the relative weight of each factor to
12 be used in the scoring of awards;

13 (f) Plans for financing and operating the project and the revenues,
14 service payments, bond financings, and appropriations of public funds
15 needed for the qualifying project;

16 (g) Comprehensive documentation of the experience, capabilities,
17 capitalization and financial condition, and other relevant qualifications
18 of the private entity submitting the proposal;

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

27 (i) Other information required by the contracting agency to evaluate
28 the proposals submitted and the overall proposed public-private
29 partnership.

30 (5) A private entity desiring to be a private partner shall
31 demonstrate to the satisfaction of the contracting agency that it is

1 capable of performing any duty, responsibility, or function it may be
2 authorized or directed to perform as a term or condition of the public-
3 private partnership agreement.

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

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

11 (8) The department shall:

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

15 (b) Electronically report annually to the Appropriations Committee
16 of the Legislature and the Transportation and Telecommunications
17 Committee of the Legislature regarding private-public partnerships which
18 have been considered or are approved pursuant to this section.

19 Sec. 13. Original sections 39-2801 and 39-2812, Reissue Revised
20 Statutes of Nebraska, and sections 39-2802, 39-2808, 39-2809, 39-2811,
21 39-2813, 39-2814, 39-2816, 39-2821, and 39-2822, Revised Statutes
22 Cumulative Supplement, 2020, are repealed.