

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 775

FINAL READING

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

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

- 30 (1) Preparation and content of requests for qualifications;
31 (2) Preparation and content of requests for proposals;

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

8 (4) Preparation and submittal of proposals;

9 (5) Procedures and standards for evaluating proposals;

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

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

17 Sec. 22. The process for selecting a design-builder and entering
18 into a design-build contract shall be in accordance with sections 23 to
19 26 of this act.

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

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

30 (3) The request for qualifications shall be (a) published in a
31 newspaper of statewide circulation at least thirty days prior to the

1 deadline for receiving the request for qualifications and (b) sent by
2 first-class mail to any design-builder upon request.

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

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

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

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

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

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

27 (5) Project performance criteria;

28 (6) Budget parameters for the project;

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

31 (8) The criteria for evaluation of proposals and the relative weight

1 of each criterion. The criteria shall include, but are not limited to,
2 the cost of the work, construction experience, design experience, and the
3 financial, personnel, and equipment resources available for the project.
4 The relative weight to apply to any criterion shall be at the discretion
5 of the commission based on each project, except that in all cases, the
6 cost of the work shall be given a relative weight of at least fifty
7 percent;

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

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

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

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

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

1 procuring a certificate of authorization to practice architecture or
2 engineering and (ii) submit proof of sufficient professional liability
3 insurance in the amount required by the commission; and

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

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

9 Sec. 25. The commission shall pay a stipend to qualified design-
10 builders that submit responsive proposals but are not selected. Payment
11 of the stipend shall give the commission ownership of the intellectual
12 property contained in the proposals and alternative technical concepts.
13 The amount of the stipend shall be at the discretion of the commission.
14 The refusal to pay or accept the stipend shall leave the intellectual
15 property contained in the proposals and alternative technical concepts in
16 the possession of the creator of the proposals and alternative technical
17 concepts.

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

30 (2) Proposals shall be sealed and shall not be opened until
31 expiration of the time established for making the proposals as set forth

1 in the request for proposals.

2 (3) Proposals may be withdrawn at any time prior to the opening of
3 such proposals in which case no stipend shall be paid. The commission
4 shall have the right to reject any and all proposals at no cost to the
5 commission other than any stipend for design-builders who have submitted
6 responsive proposals. The commission may thereafter solicit new proposals
7 using the same or different project performance criteria or may cancel
8 the design-build solicitation.

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

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

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

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

31 (2) The commission shall prepare a request for qualifications for

1 construction manager-general contractor contract proposals and shall
2 prequalify construction managers. The request for qualifications shall
3 describe the project in sufficient detail to permit a construction
4 manager to respond. The request for qualifications shall identify the
5 maximum number of eligible construction managers the commission will
6 place on a short list as qualified and eligible to receive a request for
7 proposals.

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 construction manager upon request.

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

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

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

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

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

31 (4) General information about the project which will assist the

1 commission in its selection of the construction manager, including a
2 project statement which contains information about the scope and nature
3 of the project, the project site, the schedule, and the estimated budget;

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

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

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

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

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

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

23 (4) The commission shall rank the construction managers in
24 accordance with the qualification-based selection process and pursuant to
25 the criteria in the request for proposals. The commission may meet with
26 construction managers prior to the ranking.

27 (5) The commission may attempt to negotiate a contract for
28 preconstruction services with the highest ranked construction manager and
29 may enter into a contract for preconstruction services after
30 negotiations. If the commission is unable to negotiate a satisfactory
31 contract for preconstruction services with the highest ranked

1 construction manager, the commission may terminate negotiations with that
2 construction manager. The commission may then undertake negotiations with
3 the second highest ranked construction manager and may enter into a
4 contract for preconstruction services after negotiations. If the
5 commission is unable to negotiate a satisfactory contract with the second
6 highest ranked construction manager, the commission may undertake
7 negotiations with the third highest ranked construction manager, if any,
8 and may enter into a contract for preconstruction services after
9 negotiations.

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

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

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

19 (b) Conduct contract negotiations with the construction manager to
20 develop a construction manager-general contractor contract for
21 construction services.

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

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

1 Sec. 32. Nothing in the State Park System Construction Alternatives
2 Act shall limit or reduce statutory or regulatory requirements regarding
3 insurance.

4 Sec. 33. The commission may adopt and promulgate rules and
5 regulations to carry out the State Park System Construction Alternatives
6 Act.

7 Sec. 34. Section 73-101, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

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

31 Sec. 35. Section 73-307, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska
3 Consultants' Competitive Negotiation Act, the State Park System
4 Construction Alternatives Act, sections 39-2808 to 39-2823, or section
5 57-1503.

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

13 Sec. 36. Section 81-1701, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 81-1701 The purpose of the Nebraska Consultants' Competitive
16 Negotiation Act is to provide managerial control over competitive
17 negotiations by the state for acquisition of professional architectural,
18 engineering, landscape architecture, or land surveying services. The act
19 does not apply to (1) contracts under section 57-1503, (2) contracts
20 under subsection (4) of section 39-1349, ~~or~~ (3) contracts under sections
21 39-2808 to 39-2823 except as provided in section 39-2810, or (4)
22 contracts under the State Park System Construction Alternatives Act
23 except as provided in section 20 of this act.

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