

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 609

Introduced by Smith, 14; Watermeier, 1.

Read first time January 21, 2015

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to bridges; to adopt the Nebraska Bridge

2 Repair Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as the Nebraska
2 Bridge Repair Act.

3 Sec. 2. For purposes of this act:

4 (1) Bridge project means the design, construction, reconstruction,
5 or improvement of a bridge and associated road work;

6 (2) Commission means the Nebraska Bridge Repair Commission;

7 (3) Design-build contract means a contract which is subject to
8 qualification-based selection between the commission and a design-builder
9 to furnish (a) architectural, engineering, and related design services
10 and (b) labor, materials, supplies, equipment, and construction services;

11 (4) Design-builder means the legal entity which proposes to enter
12 into a design-build contract. Design-builder also means the providing
13 party after a contract is executed;

14 (5) Letter of interest means a statement indicating interest to
15 enter into a design-build contract;

16 (6) Project package means a grouping of bridge projects as
17 determined by the commission;

18 (7) Proposal means an offer in response to a request for proposals
19 by a design-builder to enter into a design-build contract for completion
20 of a project package;

21 (8) Request for letters of interest means the documentation or
22 publication by which the commission solicits letters of interest;

23 (9) Request for proposals means the documentation by which the
24 commission solicits proposals;

25 (10) Responsible design-builder means an entity determined by the
26 commission to be capable of constructing a project package based on
27 objective criteria developed by the commission; and

28 (11) Stipend means payment by the commission to a design-builder
29 which is not selected for a design-build contract after submitting a
30 complete and responsive proposal.

31 Sec. 3. (1) The Nebraska Bridge Repair Commission is created. The

1 commission shall consist of eleven members appointed by the Governor as
2 follows: (a) One county board member or county commissioner shall be
3 appointed from each of the eight State Highway Commission districts; and
4 (b) the remaining three members of the commission shall be at-large
5 appointees, two of whom shall have experience with construction or
6 maintenance.

7 (2) Initial appointees from even-numbered districts shall serve for
8 a term of two years, and initial appointees from odd-numbered districts
9 shall serve for a term of four years. At-large appointees shall serve a
10 term of four years. All subsequent appointees shall serve for four years,
11 unless the appointment is to fill a vacancy, in which case the appointee
12 shall serve the remainder of the vacated term. A member of the commission
13 may be reappointed to serve only one additional term. Members shall not
14 receive compensation for serving on the commission, but shall be
15 reimbursed for their actual and necessary expenses as provided in
16 sections 81-1174 to 81-1177. The commission shall elect from its members
17 a chairperson and vice-chairperson. The Executive Director of the
18 Nebraska Association of County Officials shall serve on the commission in
19 an ex officio capacity.

20 (3) The Department of Roads shall provide advice and technical
21 assistance to the commission.

22 (4) The commission shall establish and operate the Nebraska Bridge
23 Infrastructure Bank Fund and fulfill other duties as provided by the
24 Nebraska Bridge Repair Act.

25 Sec. 4. Notwithstanding any provision of the Political Subdivisions
26 Construction Alternatives Act, the commission may enter into a design-
27 build contract, as provided by the Nebraska Bridge Repair Act, for
28 completion of project packages.

29 Sec. 5. (1) The commission shall contract with a program manager
30 through a competitive bidding process. A county of this state may submit
31 a prioritized list to the commission of bridges it desires to have

1 repaired or replaced. The program manager shall assist participating
2 counties in evaluating the county's bridges and assembling a prioritized
3 list to submit to the commission of the bridges the county desires
4 repaired or replaced. The program manager shall also assist the
5 commission in evaluating bridge lists and assembling project packages.
6 The commission shall set the compensation of the program manager.

7 (2) The commission shall receive the prioritized lists from each
8 participating county and, with assistance from the program manager,
9 evaluate the list and organize bridge projects into project packages.

10 (3) Prior to organizing a project package, the commission shall
11 establish criteria to use in assembling the project package which shall
12 include the following: (a) Bridge conditions; (b) safety impacts; (c)
13 economic impacts; (d) traffic counts; and (e) any other criteria the
14 commission establishes.

15 (4) After the commission assembles a project package, it shall
16 solicit the approval of each county which has a bridge in the project
17 package as to the inclusion of that bridge in the package. A county may
18 choose not to include any or all of its bridges in the project package as
19 organized by the commission. The commission shall eliminate the bridge
20 projects that are not approved by the applicable county from the project
21 package and may proceed with the remainder of the project package if
22 feasible or add additional bridges to the project package.

23 (5) After the commission satisfies subsections (2) through (4) of
24 this section, the commission shall enter into design-build contracts for
25 the design and completion of each project package as provided for by the
26 Nebraska Bridge Repair Act.

27 Sec. 6. The commission shall adopt and promulgate rules and
28 regulations for entering into a design-build contract to complete project
29 packages. In adopting such rules and regulations, the commission shall
30 seek input from industry representatives of interested design-builders.
31 The rules and regulations shall include procedures governing the

1 following:

2 (1) Preparation and content of requests for proposals;

3 (2) Standards used to prequalify design-builders. The procedures and
4 standards shall provide that the commission will evaluate prospective
5 design-builders and based on the information submitted to the commission
6 in response to a request for letters of interest, the commission will
7 select design-builders who are prequalified and consequently eligible to
8 respond to the request for proposals. The commission shall be prohibited
9 from considering previous experience with design-build procurement in
10 prequalifying design-builders;

11 (3) Preparation and submission of proposals;

12 (4) Evaluation of proposals;

13 (5) Policies for compensating by stipend design-builders not
14 selected in a proposal. For each project package, the commission may or
15 may not choose to provide such stipend. Each request for proposal shall
16 clearly state if a stipend is to be paid, and the amount, if any. In any
17 case, a stipend shall not be owed where a prequalified design-builder
18 fails to submit a proposal;

19 (6) Procedures for negotiations between the commission and the
20 design-builders submitting proposals prior to the acceptance of a
21 proposal;

22 (7) Evaluation criteria for proceeding with a request for proposal
23 and negotiation of a design-build contract where only one letter of
24 interest is received or only one proposal is received; and

25 (8) Filing and acting on formal protests relating to the
26 solicitation or execution of design-build contracts. The commission may
27 require unsuccessful protesters to forfeit a stipend, if any.

28 Sec. 7. (1) The commission shall prepare a request for letters of
29 interest for design-build proposals and shall, in accordance with this
30 section, prequalify design-builders to ensure that respondents are
31 responsible design-builders. The request for letters of interest shall

1 describe the project package in sufficient detail to permit a design-
2 builder to submit a letter of interest.

3 (2) The request for letters of interest shall be (a) published in a
4 newspaper of general circulation within the state at least thirty days
5 prior to the deadline for receiving letters of interest and (b) sent by
6 first-class mail to any design-builder upon request.

7 (3) Letters of interest shall be reviewed by the commission in
8 consultation with the program manager. The commission shall select
9 prospective design-builders in accordance with the rules and regulations
10 adopted and promulgated by the commission. The commission shall select at
11 least three prospective design-builders, except that if only two design-
12 builders have submitted letters of interest, the commission shall select
13 both prospective design-builders. The selected design-builders shall then
14 be considered prequalified and eligible to receive requests for
15 proposals.

16 Sec. 8. The commission shall prepare a request for proposals for
17 each design-build contract in accordance with this section. Notice of the
18 request for proposals shall be published in a newspaper of general
19 circulation within the state at least thirty days prior to the deadline
20 for receiving and opening proposals. The request for proposals shall
21 contain, at a minimum, the following:

22 (1) The rules and regulations adopted and promulgated by the
23 commission;

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

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

29 (4) Project performance criteria;

30 (5) Budget parameters for the project and objective criteria for
31 evaluating comparative cost of design-builder proposals;

1 (6) Any bonds and insurance required by law or as may be
2 additionally required by the commission;

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

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

9 (9) Any other information which the commission may require.

10 Sec. 9. (1) The commission shall evaluate proposals for a design-
11 build contract under the Nebraska Bridge Repair Act in accordance with
12 this section.

13 (2) The request for proposals shall be sent only to the prequalified
14 design-builders selected pursuant to section 7 of this act.

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

18 (4) Proposals may be withdrawn at any time prior to acceptance. The
19 commission shall have the right to reject any and all proposals except
20 for the purpose of evading the provisions of this act. The commission may
21 thereafter solicit new proposals using the same or a different project
22 performance criteria.

23 (5) The commission shall rank in order of preference the design-
24 builders pursuant to the criteria in the request for proposals. The
25 rankings and details shall be provided by the commission to all design-
26 builders who submitted a proposal before commencing negotiations with the
27 highest ranked design-builder. If only one proposal is received, the
28 commission shall determine if such proposal meets the criteria developed
29 by the commission under section 8 of this act. The commission shall also
30 consider the importance of commencing a project package and the relative
31 likelihood of receiving more or better proposals if the project package

1 is let for another round of bidding.

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

14 (7) If the commission is unable to negotiate a satisfactory contract
15 with any of the ranked design-builders, the commission may either revise
16 the request for proposals and solicit new proposals, start the process
17 over by issuing a new request for letters of interest, or cancel the
18 design-build process.

19 Sec. 10. A design-build contract may be conditioned upon later
20 refinements in scope and price and may permit the design-builder in
21 agreement with the commission and applicable county to make changes in
22 the project without invalidating the contract. Later refinements under
23 this section shall not exceed the scope of the project statement
24 contained in the request for proposal. Nothing in the Nebraska Bridge
25 Repair Act shall limit or reduce statutory or regulatory requirements
26 regarding bonding or insurance. After the commission awards a design-
27 build contract under the act, the county in which the bridge project is
28 located shall have the sole authority to make all final decisions
29 concerning the performance of the work under the design-build contract.

30 Sec. 11. The Nebraska Bridge Infrastructure Bank Fund is created.
31 The fund shall consist of money credited to the fund and any

1 appropriation by the Legislature. The fund shall only be used to (a) pay
2 design-build contracts awarded pursuant to section 5 of this act, (b) pay
3 expenses to administer the commission, (c) compensate the program
4 manager, and (d) pay stipends to design-builders in accordance with the
5 Nebraska Bridge Repair Act. Any money in the Nebraska Bridge
6 Infrastructure Bank Fund available for investment shall be invested by
7 the state investment officer pursuant to the Nebraska Capital Expansion
8 Act and the Nebraska State Funds Investment Act.