

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 583**

FINAL READING

Introduced by Hilgers, 21.

Read first time January 22, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to design-build contracts; to amend sections  
2 13-2914, 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 change provisions relating to the Political Subdivisions  
7 Construction Alternatives Act and the Transportation Innovation Act;  
8 to define and redefine terms; to provide powers for certain cities,  
9 counties, and joint entities as prescribed; to harmonize provisions;  
10 and to repeal the original sections.  
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-2914, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 13-2914 A political subdivision shall not use a design-build  
4 contract or construction management at risk contract under the Political  
5 Subdivisions Construction Alternatives Act for a project, in whole or in  
6 part, for road, street, highway, water, wastewater, utility, or sewer  
7 construction, except that a city of the metropolitan class may use a  
8 design-build contract or construction management at risk contract for the  
9 purpose of complying with state or federal requirements to control or  
10 minimize overflows from combined sewers.

11 Sec. 2. Section 39-2802, Revised Statutes Cumulative Supplement,  
12 2018, is amended to read:

13 39-2802 For purposes of the Transportation Innovation Act:

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

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

21 (3) Construction manager means the legal entity which proposes to  
22 enter into a construction manager-general contractor contract pursuant to  
23 the act;

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

31 (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) (6) Department means the Department of Transportation;

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

11 (9) (8) Design-builder means the legal entity which proposes to  
12 enter 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) (9) 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) (10) 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) (11) Project performance criteria means the performance  
27 requirements of the project suitable to allow the design-builder to make  
28 a proposal. Performance requirements shall include, but are not limited  
29 to, the following, if required by the project: Capacity, durability,  
30 standards, ingress and egress requirements, description of the site,  
31 surveys, soil and environmental information concerning the site, material

1 quality standards, design and milestone dates, site development  
2 requirements, compliance with applicable law, and other criteria for the  
3 intended use of the project;

4 (14) ~~(12)~~ Proposal means an offer in response to a request for  
5 proposals (a) by a design-builder to enter into a design-build contract  
6 or (b) by a construction manager to enter into a construction manager-  
7 general contractor contract;

8 (15) ~~(13)~~ Qualification-based selection process means a process of  
9 selecting a construction manager based on qualifications;

10 (16) ~~(14)~~ Request for proposals means the documentation by which a  
11 contracting agency ~~the department~~ solicits proposals; and

12 (17) ~~(15)~~ Request for qualifications means the documentation or  
13 publication by which a contracting agency ~~the department~~ solicits  
14 qualifications.

15 Sec. 3. Section 39-2808, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 39-2808 The purpose of sections 39-2808 to 39-2824 ~~39-2823~~ is to  
18 provide a contracting agency ~~the department~~ alternative methods of  
19 contracting for public projects. The alternative methods of contracting  
20 shall be available to a contracting agency ~~the department~~ for use on any  
21 project regardless of the funding source. Notwithstanding any other  
22 provision of state law to the contrary, the Transportation Innovation Act  
23 shall govern the design-build and construction manager-general contractor  
24 procurement process.

25 Sec. 4. Section 39-2809, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 39-2809 A contracting agency ~~The department~~, in accordance with  
28 sections 39-2808 to 39-2824 ~~39-2823~~, may solicit and execute a design-  
29 build contract or a construction manager-general contractor contract for  
30 a public project, other than a project that is primarily resurfacing,  
31 rehabilitation, or restoration.

1           Sec. 5. Section 39-2810, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           39-2810 A contracting agency ~~The department~~ may hire an engineering  
4 or architectural consultant to assist the contracting agency ~~department~~  
5 with the development of project performance criteria and requests for  
6 proposals, with evaluation of proposals, with evaluation of the  
7 construction to determine adherence to the project performance criteria,  
8 and with any additional services requested by the contracting agency  
9 ~~department~~ to represent its interests in relation to a project. The  
10 procedures used to hire such person or organization shall comply with the  
11 Nebraska Consultants' Competitive Negotiation Act. The person or  
12 organization hired shall be ineligible to be included as a provider of  
13 other services in a proposal for the project for which he or she has been  
14 hired and shall not be employed by or have a financial or other interest  
15 in a design-builder or construction manager who will submit a proposal.

16           Sec. 6. Section 39-2811, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18           39-2811 The department shall adopt guidelines for entering into a  
19 design-build contract or construction manager-general contractor  
20 contract. If an eligible county, a city of the metropolitan class, or a  
21 city of the primary class intends to proceed with a design-build contract  
22 or a construction manager-general contractor contract, the eligible  
23 county, city of the metropolitan class, or city of the primary class may  
24 adopt the guidelines published by the department. The department's  
25 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 and  
29 construction managers. The guidelines shall provide that the contracting  
30 agency ~~department~~ will evaluate prospective design-builders and  
31 construction managers based on the information submitted to the

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

5 (4) Preparation and submittal of proposals;

6 (5) Procedures and standards for evaluating proposals;

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

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

14 Sec. 7. Section 39-2813, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 39-2813 (1) A contracting agency ~~The department~~ shall prepare a  
17 request for qualifications for design-build proposals and shall  
18 prequalify design-builders. The request for qualifications shall describe  
19 the project in sufficient detail to permit a design-builder to respond.  
20 The request for qualifications shall identify the maximum number of  
21 design-builders the contracting agency department will place on a short  
22 list as qualified and eligible to receive a request for proposals.

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

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

31 (4) The contracting agency department shall create a short list of

1 qualified and eligible design-builders in accordance with the guidelines  
2 adopted pursuant to section 39-2811. The contracting agency department  
3 shall select at least two prospective design-builders, except that if  
4 only one design-builder has responded to the request for qualifications,  
5 the contracting agency department may, in its discretion, proceed or  
6 cancel the procurement. The request for proposals shall be sent only to  
7 the design-builders placed on the short list.

8 Sec. 8. Section 39-2814, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 39-2814 A contracting agency ~~The department~~ shall prepare a request  
11 for proposals for each design-build contract. The request for proposals  
12 shall contain, at a minimum, the following elements:

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

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

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

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

26 (5) Project performance criteria;

27 (6) Budget parameters for the project;

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

30 (8) The criteria for evaluation of proposals and the relative weight  
31 of each criterion. The criteria shall include, but are not limited to,

1 the cost of the work, construction experience, design experience, and the  
2 financial, personnel, and equipment resources available for the project.  
3 The relative weight to apply to any criterion shall be at the discretion  
4 of the contracting agency ~~department~~ based on each project, except that  
5 in all cases, the cost of the work shall be given a relative weight of at  
6 least fifty percent;

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

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

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

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

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 contracting agency ~~department~~;  
4 and

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

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

10 (12) ~~(11)~~ Other information or requirements which the contracting  
11 agency ~~department~~, in its discretion, chooses to include in the request  
12 for proposals.

13 Sec. 9. Section 39-2815, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 39-2815 The contracting agency ~~department~~ shall pay a stipend to  
16 qualified design-builders that submit responsive proposals but are not  
17 selected. Payment of the stipend shall give the contracting agency  
18 ~~department~~ ownership of the intellectual property contained in the  
19 proposals and alternative technical concepts. The amount of the stipend  
20 shall be at the discretion of the contracting agency as disclosed in the  
21 request for proposals ~~department~~.

22 Sec. 10. Section 39-2816, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 39-2816 (1) Design-builders shall submit proposals as required by  
25 the request for proposals. A contracting agency ~~The department~~ may meet  
26 with individual design-builders prior to the time of submitting the  
27 proposal and may have discussions concerning alternative technical  
28 concepts. If an alternative technical concept provides a solution that is  
29 equal to or better than the requirements in the request for proposals and  
30 the alternative technical concept is acceptable to the contracting agency  
31 ~~department~~, it may be incorporated as part of the proposal by the design-

1 builder. Notwithstanding any other provision of state law to the  
2 contrary, alternative technical concepts shall be confidential and not  
3 disclosed to other design-builders or members of the public from the time  
4 the proposals are submitted until such proposals are opened by the  
5 contracting agency department.

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

9 (3) Proposals may be withdrawn at any time prior to the opening of  
10 such proposals in which case no stipend shall be paid. The contracting  
11 agency department shall have the right to reject any and all proposals at  
12 no cost to the contracting agency department other than any stipend for  
13 design-builders who have submitted responsive proposals. The contracting  
14 agency department may thereafter solicit new proposals using the same or  
15 different project performance criteria or may cancel the design-build  
16 solicitation.

17 (4) The contracting agency department shall rank the design-builders  
18 in order of best value pursuant to the criteria in the request for  
19 proposals. The contracting agency department may meet with design-  
20 builders prior to ranking.

21 (5) The contracting agency department may attempt to negotiate a  
22 design-build contract with the highest ranked design-builder selected by  
23 the contracting agency department and may enter into a design-build  
24 contract after negotiations. If the contracting agency department is  
25 unable to negotiate a satisfactory design-build contract with the highest  
26 ranked design-builder, the contracting agency department may terminate  
27 negotiations with that design-builder. The contracting agency department  
28 may then undertake negotiations with the second highest ranked design-  
29 builder and may enter into a design-build contract after negotiations. If  
30 the contracting agency department is unable to negotiate a satisfactory  
31 contract with the second highest ranked design-builder, the contracting

1 ~~agency department~~ may undertake negotiations with the third highest  
2 ranked design-builder, if any, and may enter into a design-build contract  
3 after negotiations.

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

9 Sec. 11. Section 39-2817, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 39-2817 (1) The process for selecting a construction manager and  
12 entering into a construction manager-general contractor contract shall be  
13 in accordance with this section and sections 39-2818 to 39-2820.

14 (2) A contracting agency ~~The department~~ shall prepare a request for  
15 qualifications for construction manager-general contractor contract  
16 proposals and shall prequalify construction managers. The request for  
17 qualifications shall describe the project in sufficient detail to permit  
18 a construction manager to respond. The request for qualifications shall  
19 identify the maximum number of eligible construction managers the  
20 ~~contracting agency department~~ will place on a short list as qualified and  
21 eligible to receive a request for proposals.

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

26 (4) The ~~contracting agency department~~ shall create a short list of  
27 qualified and eligible construction managers in accordance with the  
28 guidelines adopted pursuant to section 39-2811. The ~~contracting agency~~  
29 ~~department~~ shall select at least two construction managers, except that  
30 if only one construction manager has responded to the request for  
31 qualifications, the ~~contracting agency department~~ may, in its discretion,

1 proceed or cancel the procurement. The request for proposals shall be  
2 sent only to the construction managers placed on the short list.

3 Sec. 12. Section 39-2818, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 39-2818 A contracting agency ~~The department~~ shall prepare a request  
6 for proposals for each construction manager-general contractor contract.  
7 The request for proposals shall contain, at a minimum, the following  
8 elements:

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

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

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

17 (4) General information about the project which will assist the  
18 contracting agency ~~department~~ in its selection of the construction  
19 manager, including a project statement which contains information about  
20 the scope and nature of the project, the project site, the schedule, and  
21 the estimated budget;

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

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

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

1 proposals.

2 Sec. 13. Section 39-2819, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 39-2819 (1) Construction managers shall submit proposals as required  
5 by the request for proposals.

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

9 (3) Proposals may be withdrawn at any time prior to signing a  
10 contract for preconstruction services. The contracting agency ~~department~~  
11 shall have the right to reject any and all proposals at no cost to the  
12 contracting agency ~~department~~. The contracting agency ~~department~~ may  
13 thereafter solicit new proposals or may cancel the construction manager-  
14 general contractor procurement process.

15 (4) The contracting agency ~~department~~ shall rank the construction  
16 managers in accordance with the qualification-based selection process and  
17 pursuant to the criteria in the request for proposals. The contracting  
18 agency ~~department~~ may meet with construction managers prior to the  
19 ranking.

20 (5) The contracting agency ~~department~~ may attempt to negotiate a  
21 contract for preconstruction services with the highest ranked  
22 construction manager and may enter into a contract for preconstruction  
23 services after negotiations. If the contracting agency ~~department~~ is  
24 unable to negotiate a satisfactory contract for preconstruction services  
25 with the highest ranked construction manager, the contracting agency  
26 ~~department~~ may terminate negotiations with that construction manager. The  
27 contracting agency ~~department~~ may then undertake negotiations with the  
28 second highest ranked construction manager and may enter into a contract  
29 for preconstruction services after negotiations. If the contracting  
30 agency ~~department~~ is unable to negotiate a satisfactory contract with the  
31 second highest ranked construction manager, the contracting agency

1 ~~department~~ may undertake negotiations with the third highest ranked  
2 construction manager, if any, and may enter into a contract for  
3 preconstruction services after negotiations.

4 (6) If the contracting agency ~~department~~ is unable to negotiate a  
5 satisfactory contract for preconstruction services with any of the ranked  
6 construction managers, the contracting agency ~~department~~ may either  
7 revise the request for proposals and solicit new proposals or cancel the  
8 construction manager-general contractor contract process under sections  
9 39-2808 to 39-2824 ~~39-2823~~.

10 Sec. 14. Section 39-2820, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 39-2820 (1) Before the construction manager begins any construction  
13 services, a contracting agency ~~the department~~ shall:

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

15 (b) Conduct contract negotiations with the construction manager to  
16 develop a construction manager-general contractor contract for  
17 construction services.

18 (2) If the construction manager and the contracting agency  
19 ~~department~~ are unable to negotiate a contract, the contracting agency  
20 ~~department~~ may use other contract procurement processes. Persons or  
21 organizations who submitted proposals but were unable to negotiate a  
22 contract with the contracting agency ~~department~~ shall be eligible to  
23 compete in the other contract procurement processes.

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

26 39-2821 A design-build contract and a construction manager-general  
27 contractor contract may be conditioned upon later refinements in scope  
28 and price and may permit the contracting agency ~~department~~ in agreement  
29 with the design-builder or construction manager to make changes in the  
30 project without invalidating the contract.

31 Sec. 16. Section 39-2822, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 39-2822 The department may enter into agreements under sections  
3 39-2808 to 39-2824 ~~39-2823~~ to let, design, and construct projects for  
4 political subdivisions when any of the funding for such projects is  
5 provided by or through the department. In such instances, the department  
6 may enter into contracts with the design-builder or construction manager.  
7 The provisions of the Political Subdivisions Construction Alternatives  
8 Act shall not apply to projects let, designed, and constructed under the  
9 supervision of the department pursuant to agreements with political  
10 subdivisions under sections 39-2808 to 39-2824 ~~39-2823~~.

11 Sec. 17. Section 39-2823, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 39-2823 Nothing in sections 39-2808 to 39-2824 ~~39-2823~~ shall limit  
14 or reduce statutory or regulatory requirements regarding insurance.

15 Sec. 18. Section 39-2824, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 39-2824 The department may adopt and promulgate rules and  
18 regulations to carry out the Transportation Innovation Act. An eligible  
19 county, a city of the metropolitan class, or a city of the primary class  
20 may adopt a resolution or an ordinance establishing rules to carry out  
21 the act.

22 Sec. 19. Original sections 13-2914, 39-2808, 39-2809, 39-2810,  
23 39-2811, 39-2813, 39-2814, 39-2815, 39-2816, 39-2817, 39-2818, 39-2819,  
24 39-2820, 39-2821, 39-2822, 39-2823, and 39-2824, Reissue Revised Statutes  
25 of Nebraska, and section 39-2802, Revised Statutes Cumulative Supplement,  
26 2018, are repealed.