

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 414

FINAL READING

Introduced by Wishart, 27; Hansen, M., 26.

Read first time January 14, 2021

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to the Political Subdivisions Construction
2 Alternatives Act; to amend sections 13-2903 and 13-2904, Reissue
3 Revised Statutes of Nebraska, and section 13-2914, Revised Statutes
4 Cumulative Supplement, 2020; to redefine a term; to require a
5 determination statement in a resolution adopted by the governing
6 body of a political subdivision as prescribed; to change provisions
7 relating to projects included or excluded under the act; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-2903, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-2903 For purposes of the Political Subdivisions Construction
4 Alternatives Act:

5 (1) Construction management at risk contract means a contract by
6 which a construction manager (a) assumes the legal responsibility to
7 deliver a construction project within a contracted price to the political
8 subdivision, (b) acts as a construction consultant to the political
9 subdivision during the design development phase of the project when the
10 political subdivision's architect or engineer designs the project, and
11 (c) is the builder during the construction phase of the project;

12 (2) Construction manager means the legal entity which proposes to
13 enter into a construction management at risk contract pursuant to the
14 act;

15 (3) Design-build contract means a contract which is subject to
16 qualification-based selection between a political subdivision and a
17 design-builder to furnish (a) architectural, engineering, and related
18 design services for a project pursuant to the act and (b) labor,
19 materials, supplies, equipment, and construction services for a project
20 pursuant to the act;

21 (4) Design-builder means the legal entity which proposes to enter
22 into a design-build contract which is subject to qualification-based
23 selection pursuant to the act;

24 (5) Letter of interest means a statement indicating interest to
25 enter into a design-build contract or a construction management at risk
26 contract for a project pursuant to the act;

27 (6) Performance-criteria developer means any person licensed or any
28 organization issued a certificate of authorization to practice
29 architecture or engineering pursuant to the Engineers and Architects
30 Regulation Act who is selected by a political subdivision to assist the
31 political subdivision in the development of project performance criteria,

1 requests for proposals, evaluation of proposals, evaluation of the
2 construction under a design-build contract to determine adherence to the
3 performance criteria, and any additional services requested by the
4 political subdivision to represent its interests in relation to a
5 project;

6 (7) Political subdivision means a city, village, county, natural
7 resources district, school district, community college, or state college;

8 (8) Project performance criteria means the performance requirements
9 of the project suitable to allow the design-builder to make a proposal.
10 Performance requirements include the following, if required by the
11 project: Capacity, durability, standards, ingress and egress
12 requirements, description of the site, surveys, soil and environmental
13 information concerning the site, interior space requirements, material
14 quality standards, design and construction schedules, site development
15 requirements, provisions for utilities, storm water retention and
16 disposal, parking requirements, applicable governmental code
17 requirements, and other criteria for the intended use of the project;

18 (9) Proposal means an offer in response to a request for proposals
19 (a) by a design-builder to enter into a design-build contract for a
20 project pursuant to the Political Subdivisions Construction Alternatives
21 Act or (b) by a construction manager to enter into a construction
22 management at risk contract for a project pursuant to the act;

23 (10) Qualification-based selection process means a process of
24 selecting a design-builder based first on the qualifications of the
25 design-builder and then on the design-builder's proposed approach to the
26 design and construction of the project;

27 (11) Request for letters of interest means the documentation or
28 publication by which a political subdivision solicits letters of
29 interest;

30 (12) Request for proposals means the documentation by which a
31 political subdivision solicits proposals; and

1 (13) School district means any school district classified under
2 section 79-102.

3 Sec. 2. Section 13-2904, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 13-2904 (1) Notwithstanding the procedures for public lettings in
6 sections 73-101 to 73-106 or any other statute relating to the letting of
7 bids by a political subdivision, a political subdivision which follows
8 the Political Subdivisions Construction Alternatives Act may solicit and
9 execute a design-build contract or a construction management at risk
10 contract.

11 (2) The governing body of the political subdivision shall adopt a
12 resolution selecting the design-build contract or construction management
13 at risk contract delivery system provided under the act prior to
14 proceeding with the provisions of sections 13-2905 to 13-2914. The
15 resolution shall require the affirmative vote of at least two-thirds of
16 the governing body of the political subdivision. For a project authorized
17 under subsection (3) of section 13-2914, the resolution shall include a
18 statement that the political subdivision has made a determination that
19 the design-build contract or construction management at risk contract
20 delivery system is in the public interest based, at a minimum, on one of
21 the following criteria: (a) Savings in cost or time or (b) requirement of
22 specialized or complex construction methods suitable for the design-build
23 contract or construction management at risk contract delivery system.

24 Sec. 3. Section 13-2914, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 13-2914 (1) A political subdivision shall not use a design-build
27 contract or construction management at risk contract under the Political
28 Subdivisions Construction Alternatives Act for a project, in whole or in
29 part, for road, street, or highway, ~~water, wastewater, utility, or sewer~~
30 construction. 7

31 (2) ~~A~~ except that a city of the metropolitan class may use a design-

1 build contract or construction management at risk contract under the
2 Political Subdivisions Construction Alternatives Act for the purpose of
3 complying with state or federal requirements to control or minimize
4 overflows from combined sewers.

5 (3) A political subdivision may use a design-build contract or
6 construction management at risk contract under the Political Subdivisions
7 Construction Alternatives Act for a project, in whole or in part, for
8 water, wastewater, utility, or sewer construction.

9 Sec. 4. Original sections 13-2903 and 13-2904, Reissue Revised
10 Statutes of Nebraska, and section 13-2914, Revised Statutes Cumulative
11 Supplement, 2020, are repealed.