

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 226

Introduced by Brandt, 32.

Read first time January 10, 2023

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to transportation; to amend sections 39-2817
2 and 39-2825, Revised Statutes Cumulative Supplement, 2022; to change
3 provisions relating to construction manager-general contractor
4 contracts and public-private partnerships under the Transportation
5 Innovation Act; to harmonize provisions; and to repeal the original
6 sections.

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

1 Section 1. Section 39-2817, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 39-2817 (1) The process for selecting a construction manager and
4 entering into a construction manager-general contractor contract shall be
5 in accordance with this section and sections 39-2818 to 39-2820.

6 (2) A contracting agency shall prepare a request for qualifications
7 for construction manager-general contractor contract proposals and shall
8 prequalify construction managers. The request for qualifications shall
9 describe the project in sufficient detail to permit a construction
10 manager to respond. The request for qualifications shall identify the
11 maximum number of eligible construction managers the contracting agency
12 will place on a short list as qualified and eligible to receive a request
13 for proposals.

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

18 (4) The contracting agency shall create a short list of qualified
19 and eligible construction managers in accordance with the guidelines
20 adopted pursuant to section 39-2811. The contracting agency shall select
21 at least two construction managers, except that if only one construction
22 manager has responded to the request for qualifications, the contracting
23 agency may, in its discretion, proceed or cancel the procurement. The
24 request for proposals shall be sent only to the construction managers
25 placed on the short list.

26 (5) A contracting agency may combine the separate qualification and
27 proposal steps of this section and section 39-2818 into a single-step
28 process if the contracting agency determines that a single-step process
29 is in the contracting agency's best interest. If a single-step process is
30 used, a contracting agency shall consider the qualifications of all
31 proposing construction managers as a part of the request for proposals.

1 Notice of the request for proposals shall be published as provided in
2 subsection (3) of this section. There is no requirement to short list
3 construction managers when using the single-step process. If only one
4 proposal is submitted, the contracting agency may, in its discretion,
5 proceed or cancel the procurement.

6 Sec. 2. Section 39-2825, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 39-2825 (1) A public-private partnership delivery method may be used
9 for projects under the Transportation Innovation Act as provided in this
10 section and rules and regulations adopted and promulgated pursuant to
11 this section only to the extent allowed under the Constitution of
12 Nebraska. State contracts using this method shall be awarded by
13 competitive negotiation.

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

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

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

29 (a) The parameters of the proposed public-private partnership
30 agreement;

31 (b) The duties and responsibilities to be performed by the private

1 partner or private partners;

2 (c) The methods of oversight to be employed by the contracting
3 agency;

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

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

8 (f) Plans for financing and operating the project and the revenues,
9 service payments, bond financings, and appropriations of public funds
10 needed for the qualifying project;

11 (g) Comprehensive documentation of the experience, capabilities,
12 capitalization and financial condition, and other relevant qualifications
13 of the private entity submitting the proposal;

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

22 (i) Other information required by the contracting agency to evaluate
23 the proposals submitted and the overall proposed public-private
24 partnership.

25 (5) A private entity desiring to be a private partner shall
26 demonstrate to the satisfaction of the contracting agency that it is
27 capable of performing any duty, responsibility, or function it may be
28 authorized or directed to perform as a term or condition of the public-
29 private partnership agreement.

30 (6) A request for proposals may be canceled, or all proposals may be
31 rejected, if it is determined in writing that such action is taken in the

1 best interest of the State of Nebraska and approved by the purchasing
2 officer.

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

6 (8) The department shall:

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

10 (b) Electronically report annually to the Appropriations Committee
11 of the Legislature and the Transportation and Telecommunications
12 Committee of the Legislature regarding private-public partnerships which
13 have been considered or are approved pursuant to this section.

14 (9)(a) The department may also procure services under this section
15 using an unsolicited proposal if the department determines that there is
16 sufficient merit to pursue the unsolicited proposal and a reasonable
17 opportunity for other entities to submit competing proposals for
18 consideration and a possible contract award as appropriate.

19 (b) The department may charge and retain one or more administrative
20 fees for an initial evaluation and for a more detailed review of an
21 unsolicited proposal.

22 (c) The department may implement such unsolicited proposal process,
23 expend funds to evaluate, review, develop, and implement unsolicited
24 proposals, and enter into contracts for such proposals deemed by the
25 department to be in the best interest of the state.

26 (d) The department may give preference to creative and innovative
27 unsolicited proposals that provide material benefit to the state beyond
28 traditional procurement and project delivery methods.

29 Sec. 3. Original sections 39-2817 and 39-2825, Revised Statutes
30 Cumulative Supplement, 2022, are repealed.