

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 312**

FINAL READING

Introduced by Transportation and Telecommunications Committee: Smith, 14,  
Chairperson; Brasch, 16; Davis, 43; Friesen, 34; Garrett,  
3; McCoy, 39; Murante, 49; Seiler, 33.

Read first time January 15, 2015

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to highways and bridges; to amend sections  
2 39-1348, 39-1349, 39-1350, 39-1351, 39-1352, 39-1353, and 81-1701,  
3 Reissue Revised Statutes of Nebraska; to change provisions relating  
4 to the letting of construction contracts; to provide an exemption  
5 from the Nebraska Consultants' Competitive Negotiation Act; and to  
6 repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-1348, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 39-1348 Before letting contracts for the construction,  
4 reconstruction, improvement, maintenance, or repair of roads, bridges,  
5 and their appurtenances, the department shall solicit bids as follows:

6 (1) For contracts with an estimated cost, as determined by the  
7 department, of greater than one hundred thousand dollars, the department  
8 shall advertise for sealed bids for not less than twenty days by  
9 publication of a notice thereof once a week for three consecutive weeks  
10 in the official county newspaper designated by the county board in the  
11 county where the work is to be done, and in such additional newspaper or  
12 newspapers as may appear necessary to the department in order to give  
13 notice of the receiving of bids. Such advertisement shall state the place  
14 where the plans and specifications for the work may be inspected and  
15 shall designate the time when the bids shall be filed and opened. If ÷  
16 Provided, that if through no fault of the department, publication of such  
17 notice fails to appear in any newspaper or newspapers in the manner  
18 hereinbefore provided in this subdivision, the department shall be deemed  
19 to have fulfilled the requirements of this subdivision; and section.

20 (2) For contracts with an estimated cost, as determined by the  
21 department, of one hundred thousand dollars or less, the department, in  
22 its sole discretion, shall either:

23 (a) Follow the procedures given in subdivision (1) of this section;  
24 or

25 (b) Request bids from at least three potential bidders for such  
26 work. If the department requests bids under this subdivision, it shall  
27 designate a time when the bids shall be opened. The department may award  
28 a contract pursuant to this subdivision if it receives at least one  
29 responsive bid.

30 Sec. 2. Section 39-1349, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           39-1349 (1) Except as provided in subsections ~~subsection~~ (3) and (4)  
2 of this section, all contracts for the construction, reconstruction,  
3 improvement, maintenance, or repair of state highway system roads and  
4 bridges and their appurtenances shall be let by the department to the  
5 lowest responsible bidder. Bidders on such contracts must be prequalified  
6 to bid by the department except as provided in subsection (2) of section  
7 39-1351 ~~who has been qualified by the department~~. The department may  
8 reject any or all bids and cause the work to be done as may be directed  
9 by the department. If the contractor has furnished the department all  
10 required records and reports, the department shall pay to the contractor  
11 interest at a rate three percentage points above the average annual  
12 Federal Reserve composite prime lending rate for the previous calendar  
13 year rounded to the nearest one-tenth of one percent on the amount  
14 retained and on the final payment due the contractor beginning sixty days  
15 after the work under the contract has been completed as evidenced by the  
16 completion date established in the department's letter of tentative  
17 acceptance or, when tentative acceptance has not been issued, beginning  
18 sixty days after completion of the work and running until the date when  
19 payment is tendered to the contractor.

20           (2) When the department is required by acts of Congress and rules  
21 and regulations made by an agent of the United States in pursuance of  
22 such acts to predetermine minimum wages to be paid laborers and mechanics  
23 employed on highway construction, the Director-State Engineer shall cause  
24 minimum rates of wages for such laborers and mechanics to be  
25 predetermined and set forth in contracts for such construction. The  
26 minimum rates shall be the scale of wages which the Director-State  
27 Engineer finds are paid and maintained by at least fifty percent of the  
28 contractors in performing highway work contracted with the department  
29 unless the Director-State Engineer further finds that such scale of wages  
30 so determined would unnecessarily increase the cost of such highway work  
31 to the state, in which event he or she shall reduce such determination to

1 such scale of wages as he or she finds is required to avoid such  
2 unnecessary increase in the cost of such highway work.

3 (3) The department, in its sole discretion, may permit a city or  
4 county to let state or federally funded contracts for the construction,  
5 reconstruction, improvement, maintenance, or repair of state highways,  
6 bridges, and their appurtenances located within the jurisdictional  
7 boundaries of such city or county, to the lowest responsible bidder  
8 ~~prequalified to bid by the department~~ when the work to be let is  
9 primarily local in nature and the department determines that it is in the  
10 public interest that the contract be let by the city or the county.  
11 Bidders on such contracts must be prequalified to bid by the department  
12 except as provided in subsection (2) of section 39-1351.

13 (4) The department, in its sole discretion, may permit a federal  
14 agency to let contracts for the construction, reconstruction,  
15 improvement, maintenance, or repair of state highways, bridges, and their  
16 appurtenances and may permit such federal agency to perform any and all  
17 other aspects of the project to which such contract relates, including,  
18 but not limited to, preliminary engineering, environmental clearance,  
19 final design, and construction engineering, when the department  
20 determines that it is in the public interest to do so. Bidders on such  
21 contracts must be prequalified to bid by the department except as  
22 provided in subsection (2) of section 39-1351.

23 Sec. 3. Section 39-1350, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 39-1350 The department shall have the authority to act for any  
26 political or governmental subdivision or public corporation of this state  
27 for the purpose of taking bids or letting contracts for the construction,  
28 reconstruction, improvement, maintenance, or repair of roads, bridges,  
29 and their appurtenances. The department, while so acting, may take such  
30 bids and let such contracts at the offices of the Department of Roads,  
31 Lincoln, Nebraska, or at such other location as designated by the

1 ~~department if ; Provided, that~~ the department has the written consent of  
2 the political or governmental subdivision or public corporation where the  
3 work is to be done.

4 Sec. 4. Section 39-1351, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 39-1351 (1) Except as provided in subsection (2) of this section,  
7 any Any person desiring to submit to the department a bid for the  
8 performance of any contract for the construction, reconstruction,  
9 improvement, maintenance, or repair of roads, bridges, and their  
10 appurtenances, which the department proposes to let, shall apply to the  
11 department for prequalification not later than ten days before the  
12 letting of the contract. The department shall determine the extent of any  
13 applicant's qualifications by a full and appropriate evaluation of the  
14 applicant's ~~his~~ experience, equipment, financial resources, and  
15 performance record. In determining the qualification of persons to bid on  
16 any particular contract, the department shall consider the equipment and  
17 resources available for the particular contract contemplated.  ~~; Provided,~~  
18 ~~that the above requirements shall not apply to~~

19 (2) The department may, in its sole discretion, grant an exemption  
20 from all prequalification requirements for (a) any contract contracts for  
21 the construction, reconstruction, improvement, maintenance, or repair of  
22 roads, bridges, and their appurtenances if and maintenance when the  
23 estimate of the department engineer for such work repair and maintenance  
24 is one less than twenty-five hundred thousand dollars or less  ~~,~~ or (b)  
25 any contract for the construction, reconstruction, improvement,  
26 maintenance, or repair of roads, bridges, and their appurtenances if such  
27 work is of an emergency nature.

28 Sec. 5. Section 39-1352, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 39-1352 (1) Except as provided in subsection (2) of this section,  
31 any Any person~~,~~ proposing to bid on a contract for the construction,

1 reconstruction, improvement, maintenance, or repair of roads, bridges,  
2 and their appurtenances to be let by the department, shall submit to the  
3 department, at such times as it may require, a statement showing such  
4 person's his qualifications. Such statement shall be under oath and on a  
5 standard form to be prepared and supplied by the department. The  
6 financial showing required in the statement shall be certified by a  
7 certified public accountant or by a public accountant holding a currently  
8 valid permit from the Nebraska State Board of Public Accountancy. The  
9 statement shall be confidential and only for the use of the department.

10 (2) Subsection (1) of this section shall not apply to any contract  
11 granted an exemption from prequalification requirements pursuant to  
12 subsection (2) of section 39-1351.

13 Sec. 6. Section 39-1353, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 39-1353 (1) Proposal forms for submitting bids, on any contract for  
16 the construction, reconstruction, improvement, maintenance, or repair of  
17 roads, bridges, and their appurtenances to be let by the department,  
18 shall be issued by the department at the offices of the Department of  
19 Roads, Lincoln, Nebraska, or at such other location as designated by the  
20 department not later than 5 p.m. of the day before the letting of the  
21 contract.

22 (2) Such proposal forms shall be issued only to those persons  
23 previously qualified by the department and bids shall be accepted only  
24 from such qualified persons. This subsection shall not apply to any  
25 contract granted an exemption from prequalification requirements pursuant  
26 to subsection (2) of section 39-1351.

27 Sec. 7. Section 81-1701, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 81-1701 The purpose of the Nebraska Consultants' Competitive  
30 Negotiation Act is to provide managerial control over competitive  
31 negotiations by the state for acquisition of professional architectural,

1 engineering, landscape architecture, or land surveying services. The act  
2 does not apply to contracts under section 57-1503 or contracts under  
3 subsection (4) of section 39-1349.

4       Sec. 8.    Original sections 39-1348, 39-1349, 39-1350, 39-1351,  
5 39-1352, 39-1353, and 81-1701, Reissue Revised Statutes of Nebraska, are  
6 repealed.