

AMENDMENTS TO LB 391

(Amendments to Standing Committee amendments, AM0588)

1 1. Strike sections 7, 8, 10, 11, and 12 and insert the
2 following new sections:

3 "Sec. 7. A school district shall prepare a request for
4 proposals for each design-build contract in accordance with this
5 section. Notice of the request for proposals shall be published in
6 a newspaper of general circulation within the school district and
7 filed with the State Department of Education at least thirty days
8 prior to the deadline for receiving and opening proposals. The
9 request for proposals shall contain, at a minimum, the following
10 elements:

11 (1) The identity of the school district for which the
12 project will be built and the school district that will award the
13 design-build contract;

14 (2) Policies adopted by the school district in accordance
15 with section 5 of this act;

16 (3) The proposed terms and conditions of the design-build
17 contract, including any terms and conditions which are subject to
18 further negotiation. The proposed general terms and conditions
19 shall be consistent with nationally recognized model general terms
20 and conditions which are standard in the design and construction
21 industry in Nebraska;

22 (4) A project statement which contains information about
23 the scope and nature of the project;

- 1 (5) Project performance criteria;
- 2 (6) Budget parameters for the project;
- 3 (7) Any bonds and insurance required by law or as may be
4 additionally required by the school district;
- 5 (8) The criteria for evaluation of proposals and the
6 relative weight of each criterion;
- 7 (9) A requirement that the design-builder provide a
8 written statement of the design-builder's proposed approach to the
9 design and construction of the project, which may include graphic
10 materials illustrating the proposed approach to design and
11 construction but may not include price proposals;
- 12 (10) A requirement that the design-builder agree to the
13 following conditions:
- 14 (a) An architect or engineer licensed to practice in
15 Nebraska will participate substantially in those aspects of the
16 offering which involve architectural or engineering services;
- 17 (b) At the time of the design-build offering, the
18 design-builder will furnish to the school board a written statement
19 identifying the architect or engineer who will perform the
20 architectural or engineering work for the design-build project;
- 21 (c) The architect or engineer engaged by the
22 design-builder to perform the architectural or engineering work
23 with respect to the design-build project will have direct
24 supervision of such work and may not be removed by the
25 design-builder prior to the completion of the project without the
26 written consent of the school board;
- 27 (d) A design-builder offering design-build services with

1 its own employees who are design professionals licensed to practice
2 in Nebraska will (i) comply with the Engineers and Architects
3 Regulation Act by procuring a certificate of authorization to
4 practice architecture or engineering and (ii) submit proof of
5 sufficient professional liability insurance; and

6 (e) The rendering of architectural or engineering
7 services by a licensed architect or engineer employed by the
8 design-builder will conform to the Engineers and Architects
9 Regulation Act and rules and regulations adopted under the act; and

10 (11) Other information which the school district chooses
11 to require.

12 Sec. 8. (1) A school district shall evaluate proposals
13 for a design-build contract in accordance with this section.

14 (2) The request for proposals shall be sent only to the
15 prequalified design-builders selected pursuant to section 6 of this
16 act.

17 (3) Design-builders shall submit proposals as required by
18 the request for proposals. The school district may only proceed to
19 negotiate and enter into a design-build contract if there are at
20 least two proposals from prequalified design-builders.

21 (4) Proposals shall be sealed and shall not be opened
22 until expiration of the time established for making proposals as
23 set forth in the request for proposals.

24 (5) Proposals may be withdrawn at any time prior to
25 acceptance. The school district shall have the right to reject any
26 and all proposals except for the purpose of evading the provisions
27 and policies of the Nebraska Schools Construction Alternatives Act.

1 The school district may thereafter solicit new proposals using the
2 same or a different project performance criteria.

3 (6) The school district shall rank in order of preference
4 the design-builders pursuant to the criteria in the request for
5 proposals and taking into consideration the recommendation of the
6 selection committee pursuant to section 11 of this act.

7 (7) The school district may attempt to negotiate a
8 design-build contract with the highest ranked design-builder
9 selected by the school district and may enter into a design-build
10 contract after negotiations. If the school district is unable to
11 negotiate a satisfactory design-build contract with the highest
12 ranked design-builder, the school district may terminate
13 negotiations with that design-builder. The school district may
14 then undertake negotiations with the second highest ranked
15 design-builder and may enter into a design-build contract after
16 negotiations. If the school district is unable to negotiate a
17 satisfactory contract with the second highest ranked
18 design-builder, the school district may undertake negotiations with
19 the third highest ranked design-builder, if any, and may enter into
20 a design-build contract after negotiations.

21 (8) The school district shall file a copy of all
22 design-build contract documents with the State Department of
23 Education within thirty days after their full execution. Within
24 thirty days after completion of the project, the design-builder
25 shall file a copy of all contract modifications and change orders
26 with the department.

27 (9) If the school district is unable to negotiate a

1 satisfactory contract with any of the ranked design-builders, the
2 school district may either revise the request for proposals and
3 solicit new proposals or cancel the design-build process under the
4 act.

5 Sec. 10. (1) A school district shall evaluate proposals
6 for a construction management at risk contract in accordance with
7 this section.

8 (2) The school district shall evaluate and rank each
9 proposal on the basis of best meeting the criteria in the request
10 for proposals and taking into consideration the recommendation of
11 the selection committee pursuant to section 11 of this act.

12 (3) The school district shall attempt to negotiate a
13 construction management at risk contract with the highest ranked
14 construction manager and may enter into a construction management
15 at risk contract after negotiations. If the school district is
16 unable to negotiate a satisfactory contract with the highest ranked
17 construction manager, the school district may terminate
18 negotiations with that construction manager. The school district
19 may then undertake negotiations with the second highest ranked
20 construction manager and may enter into a construction management
21 at risk contract after negotiations. If the school district is
22 unable to negotiate a satisfactory contract with the second highest
23 ranked construction manager, the school district may undertake
24 negotiations with the third highest ranked construction manager, if
25 any, and may enter into a construction management at risk contract
26 after negotiations.

27 (4) The school district shall file a copy of all

1 construction management at risk contract documents with the State
2 Department of Education within thirty days after their full
3 execution. Within thirty days after completion of the project, the
4 construction manager at risk shall file a copy of all contract
5 modifications and change orders with the department.

6 (5) If the school district is unable to negotiate a
7 satisfactory contract with any of the ranked construction managers,
8 the school district may either revise the request for proposals and
9 solicit new proposals or cancel the construction management at risk
10 process under the act.

11 Sec. 11. (1) In evaluating proposals in accordance with
12 sections 8 and 10 of this act, the school district shall refer the
13 proposals for recommendation to a selection committee. The
14 selection committee shall be a group of at least five persons
15 designated by the school district. Members of the selection
16 committee shall include (a) members of the school board, (b)
17 members of the school administration or staff, (c) the
18 performance-criteria developer when evaluating proposals from
19 design-builders under section 8 of this act or the school's
20 architect or engineer when evaluating proposals from construction
21 managers under section 10 of this act, (d) any person having
22 special expertise relevant to selection of a design-builder or
23 construction manager under the Nebraska Schools Construction
24 Alternatives Act, and (e) a resident of the school district other
25 than an individual included in subdivisions (a) through (d) of this
26 subsection. A member of the selection committee designated under
27 subdivision (d) or (e) of this subsection shall not be employed by

1 or have a financial or other interest in a design-builder or
2 construction manager who has a proposal being evaluated and shall
3 not be employed by the school district or the performance-criteria
4 developer.

5 (2) The selection committee and the school district shall
6 evaluate proposals taking into consideration the criteria
7 enumerated in subdivisions (a) through (g) of this subsection with
8 the maximum percentage of total points for evaluation which may be
9 assigned to each criterion set forth following the criterion. The
10 following criterion shall be evaluated, when applicable:

11 (a) The financial resources of the design-builder or
12 construction manager to complete the project, ten percent;

13 (b) The ability to perform of the proposed personnel of
14 the design-builder or construction manager, thirty percent;

15 (c) The character, integrity, reputation, judgment,
16 experience, and efficiency of the design-builder or construction
17 manager, thirty percent;

18 (d) The quality of performance on previous projects,
19 thirty percent;

20 (e) The ability of the design-builder or construction
21 manager to perform within the time specified, thirty percent;

22 (f) The previous and existing compliance of the
23 design-builder or construction manager with laws relating to the
24 contract, ten percent;

25 (g) Such other information as may be secured having a
26 bearing on the selection, twenty percent.

27 Sec. 12. A design-build contract and a construction

1 management at risk contract may be conditioned upon later
2 refinements in scope and price and may permit the school district
3 in agreement with the design-builder or construction manager to
4 make changes in the project without invalidating the contract.
5 Later refinements under this section shall not exceed the scope of
6 the project statement contained in the request for proposals
7 pursuant to section 7 or 9 of this act.

8 Sec. 13. Nothing in the Nebraska Schools Construction
9 Alternatives Act shall limit or reduce statutory or regulatory
10 requirements regarding bonding or insurance.

11 Sec. 14. (1) No more than twenty-four contracts shall be
12 executed under the Nebraska Schools Construction Alternatives Act
13 as follows:

14 (a) For contracts under two million dollars, four
15 contracts in each congressional district;

16 (b) For contracts of at least two million dollars but
17 under ten million dollars, two contracts in each congressional
18 district; and

19 (c) For contracts of ten million dollars or more, two
20 contracts in each congressional district.

21 (2) For purposes of this section, the physical location
22 of the project shall be considered the location of the contract for
23 that project.

24 (3) The date the contract is executed shall be utilized
25 to determine whether the limitations on contracts imposed by this
26 section have been exceeded. A contract in excess of the limitation
27 on contracts shall be void.

1 Sec. 15. (1) A school district shall not use a
2 design-build contract or construction management at risk contract
3 for a construction project with locations on parcels of land which
4 are not contiguous except for specialty maintenance projects.

5 (2) For purposes of this section, (a) a specialty
6 maintenance project is a construction project for the maintenance
7 of an existing facility with a specialty contractor, such as an
8 electrical contractor or plumbing contractor, and (b) parcels are
9 considered contiguous if they would be contiguous but for the
10 existence of a public road."

11 2. On page 3, line 22, strike "award" and insert
12 "execute"; and in line 23 strike beginning with "using" through
13 "process".

14 3. On page 4, line 21, strike "and 10" and insert ", 10,
15 and 11".

16 4. On page 9, strike beginning with "Notice" in line 8
17 through the period in line 11 and insert "At least thirty days
18 prior to the deadline for receiving and opening proposals, notice
19 of the request for proposals shall be published in a newspaper of
20 general circulation within the school district and filed with the
21 State Department of Education."; and in line 23 after "including"
22 insert "a project statement which contains".