

LEGISLATIVE BILL 312

Approved by the Governor March 05, 2015

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

A BILL FOR AN ACT relating to highways and bridges; to amend sections 39-1348, 39-1349, 39-1350, 39-1351, 39-1352, 39-1353, and 81-1701, Reissue Revised Statutes of Nebraska; to change provisions relating to the letting of construction contracts; to provide an exemption from the Nebraska Consultants' Competitive Negotiation Act; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

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

(3) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder prequalified to bid by the department

when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

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

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

39-1350 The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the Department of Roads, Lincoln, Nebraska, or at such other location as designated by the department if ; ~~Provided, that~~ the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

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

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

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

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

39-1352 (1) Except as provided in subsection (2) of this section, any Any person, proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department, shall submit to the department, at such times as it may require, a statement showing such person's ~~his~~ qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The financial showing required in the statement shall be certified by a certified public accountant or by a public accountant holding a currently valid permit from the Nebraska State Board of Public Accountancy. The statement shall be confidential and only for the use of the department.

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

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

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

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

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

81-1701 The purpose of the Nebraska Consultants' Competitive Negotiation Act is to provide managerial control over competitive negotiations by the state for acquisition of professional architectural, engineering, landscape architecture, or land surveying services. The act does not apply to contracts under section 57-1503 or contracts under subsection (4) of section 39-1349.

Sec. 8. Original sections 39-1348, 39-1349, 39-1350, 39-1351, 39-1352,

39-1353, and 81-1701, Reissue Revised Statutes of Nebraska, are repealed.