

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 616**

Introduced by Hilgers, 21.

Read first time January 23, 2019

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Department of Transportation; to amend  
2 sections 39-1348, 39-2801, 39-2808, 39-2809, 39-2816, 39-2819,  
3 39-2822, 39-2823, 73-101, 73-307, and 81-1102, Reissue Revised  
4 Statutes of Nebraska, and sections 39-2802 and 81-1701, Revised  
5 Statutes Cumulative Supplement, 2018; to define and redefine terms;  
6 to provide for build-finance projects under the Build Nebraska Act  
7 and the Transportation Innovation Act; to harmonize provisions; to  
8 repeal the original sections; and to declare an emergency.  
9 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 Except as otherwise provided in sections 39-2808 to 39-2824  
4 and section 10 of this act ~~39-2823~~, when letting contracts for the  
5 construction, reconstruction, improvement, maintenance, or repair of  
6 roads, bridges, and their appurtenances, the department shall solicit  
7 bids as follows:

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

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

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

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

1           Sec. 2. Section 39-2801, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           39-2801 Sections 39-2801 to 39-2824 and section 10 of this act shall  
4 be known and may be cited as the Transportation Innovation Act.

5           Sec. 3. Section 39-2802, Revised Statutes Cumulative Supplement,  
6 2018, is amended to read:

7           39-2802 For purposes of the Transportation Innovation Act:

8           (1) Alternative technical concept means changes suggested by a  
9 qualified, eligible, short-listed design-builder to the department's  
10 basic configurations, project scope, design, or construction criteria;

11           (2) Best value-based selection process means a process of selecting  
12 a design-builder using price, schedule, and qualifications for evaluation  
13 factors;

14           (3) Build-finance project means a project in which a design-builder,  
15 a construction manager, or a contractor working under any project  
16 structure allowed by law pays for the project labor, materials, and  
17 vendors as the work is performed and payments due from the department are  
18 made by, or on behalf of, the department over a period not to exceed ten  
19 years after the date of substantial completion;

20           (4) ~~(3)~~ Construction manager means the legal entity which proposes  
21 to enter into a construction manager-general contractor contract pursuant  
22 to the act;

23           (5) ~~(4)~~ Construction manager-general contractor contract means a  
24 contract which is subject to a qualification-based selection process  
25 between the department and a construction manager to furnish  
26 preconstruction services during the design development phase of the  
27 project and, if an agreement can be reached which is satisfactory to the  
28 department, construction services for the construction phase of the  
29 project;

30           (6) ~~(5)~~ Construction services means activities associated with  
31 building the project;

1           ~~(7)~~ ~~(6)~~ Department means the Department of Transportation;

2           ~~(8)~~ ~~(7)~~ Design-build contract means a contract between the  
3 department and a design-builder which is subject to a best value-based  
4 selection process to furnish (a) architectural, engineering, and related  
5 design services and (b) labor, materials, supplies, equipment, and  
6 construction services;

7           ~~(9)~~ ~~(8)~~ Design-builder means the legal entity which proposes to  
8 enter into a design-build contract;

9           ~~(10)~~ Financing plan means an assurance of available funding and  
10 security to ensure payment to vendors and labor as work is performed on a  
11 build-finance project and, if not addressed in the request for proposal,  
12 the terms of required structured repayment;

13           ~~(11)~~ ~~(9)~~ Multimodal transportation network means the interconnected  
14 system of highways, roads, streets, rail lines, river ports, and transit  
15 systems which facilitates the movement of people and freight to enhance  
16 Nebraska's economy;

17           ~~(12)~~ ~~(10)~~ Preconstruction services means all nonconstruction-related  
18 services that a construction manager performs in relation to the design  
19 of the project before execution of a contract for construction services.  
20 Preconstruction services includes, but is not limited to, cost  
21 estimating, value engineering studies, constructability reviews, delivery  
22 schedule assessments, and life-cycle analysis;

23           ~~(13)~~ ~~(11)~~ Project performance criteria means the performance  
24 requirements of the project suitable to allow the design-builder to make  
25 a proposal. Performance requirements shall include, but are not limited  
26 to, the following, if required by the project: Capacity, durability,  
27 standards, ingress and egress requirements, description of the site,  
28 surveys, soil and environmental information concerning the site, material  
29 quality standards, design and milestone dates, site development  
30 requirements, compliance with applicable law, and other criteria for the  
31 intended use of the project;

1           (14) ~~(12)~~ Proposal means an offer in response to a request for  
2 proposals (a) by a design-builder to enter into a design-build contract  
3 or (b) by a construction manager to enter into a construction manager-  
4 general contractor contract;

5           (15) ~~(13)~~ Qualification-based selection process means a process of  
6 selecting a construction manager based on qualifications;

7           (16) ~~(14)~~ Request for proposals means the documentation by which the  
8 department solicits proposals; and

9           (17) ~~(15)~~ Request for qualifications means the documentation or  
10 publication by which the department solicits qualifications.

11           Sec. 4. Section 39-2808, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13           39-2808 The purpose of sections 39-2808 to 39-2824 and section 10 of  
14 this act ~~39-2823~~ is to provide the department alternative methods of  
15 contracting for public projects. The alternative methods of contracting  
16 shall be available to the department for use on any project regardless of  
17 the funding source. Notwithstanding any other provision of state law to  
18 the contrary, the Transportation Innovation Act shall govern the design-  
19 build and construction manager-general contractor procurement process.

20           Sec. 5. Section 39-2809, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22           39-2809 The department, in accordance with sections 39-2808 to  
23 39-2824 and section 10 of this act ~~39-2823~~, may solicit and execute a  
24 design-build contract or a construction manager-general contractor  
25 contract for a public project, other than a project that is primarily  
26 resurfacing, rehabilitation, or restoration.

27           Sec. 6. Section 39-2816, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29           39-2816 (1) Design-builders shall submit proposals as required by  
30 the request for proposals. The department may meet with individual  
31 design-builders prior to the time of submitting the proposal and may have

1 discussions concerning alternative technical concepts. If an alternative  
2 technical concept provides a solution that is equal to or better than the  
3 requirements in the request for proposals and the alternative technical  
4 concept is acceptable to the department, it may be incorporated as part  
5 of the proposal by the design-builder. Notwithstanding any other  
6 provision of state law to the contrary, alternative technical concepts  
7 shall be confidential and not disclosed to other design-builders or  
8 members of the public from the time the proposals are submitted until  
9 such proposals are opened by the department.

10 (2) Proposals shall be sealed and shall not be opened until  
11 expiration of the time established for making the proposals as set forth  
12 in the request for proposals.

13 (3) Proposals may be withdrawn at any time prior to the opening of  
14 such proposals in which case no stipend shall be paid. The department  
15 shall have the right to reject any and all proposals at no cost to the  
16 department other than any stipend for design-builders who have submitted  
17 responsive proposals. The department may thereafter solicit new proposals  
18 using the same or different project performance criteria or may cancel  
19 the design-build solicitation.

20 (4) The department shall rank the design-builders in order of best  
21 value pursuant to the criteria in the request for proposals. The  
22 department may meet with design-builders prior to ranking.

23 (5) The department may attempt to negotiate a design-build contract  
24 with the highest ranked design-builder selected by the department and may  
25 enter into a design-build contract after negotiations. If the department  
26 is unable to negotiate a satisfactory design-build contract with the  
27 highest ranked design-builder, the department may terminate negotiations  
28 with that design-builder. The department may then undertake negotiations  
29 with the second highest ranked design-builder and may enter into a  
30 design-build contract after negotiations. If the department is unable to  
31 negotiate a satisfactory contract with the second highest ranked design-

1 builder, the department may undertake negotiations with the third highest  
2 ranked design-builder, if any, and may enter into a design-build contract  
3 after negotiations.

4 (6) If the department is unable to negotiate a satisfactory contract  
5 with any of the ranked design-builders, the department may either revise  
6 the request for proposals and solicit new proposals or cancel the design-  
7 build process under sections 39-2808 to 39-2824 and section 10 of this  
8 act 39-2823.

9 Sec. 7. Section 39-2819, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 39-2819 (1) Construction managers shall submit proposals as required  
12 by the request for proposals.

13 (2) Proposals shall be sealed and shall not be opened until  
14 expiration of the time established for making the proposals as set forth  
15 in the request for proposals.

16 (3) Proposals may be withdrawn at any time prior to signing a  
17 contract for preconstruction services. The department shall have the  
18 right to reject any and all proposals at no cost to the department. The  
19 department may thereafter solicit new proposals or may cancel the  
20 construction manager-general contractor procurement process.

21 (4) The department shall rank the construction managers in  
22 accordance with the qualification-based selection process and pursuant to  
23 the criteria in the request for proposals. The department may meet with  
24 construction managers prior to the ranking.

25 (5) The department may attempt to negotiate a contract for  
26 preconstruction services with the highest ranked construction manager and  
27 may enter into a contract for preconstruction services after  
28 negotiations. If the department is unable to negotiate a satisfactory  
29 contract for preconstruction services with the highest ranked  
30 construction manager, the department may terminate negotiations with that  
31 construction manager. The department may then undertake negotiations with

1 the second highest ranked construction manager and may enter into a  
2 contract for preconstruction services after negotiations. If the  
3 department is unable to negotiate a satisfactory contract with the second  
4 highest ranked construction manager, the department may undertake  
5 negotiations with the third highest ranked construction manager, if any,  
6 and may enter into a contract for preconstruction services after  
7 negotiations.

8 (6) If the department is unable to negotiate a satisfactory contract  
9 for preconstruction services with any of the ranked construction  
10 managers, the department may either revise the request for proposals and  
11 solicit new proposals or cancel the construction manager-general  
12 contractor contract process under sections 39-2808 to 39-2824 and section  
13 10 of this act 39-2823.

14 Sec. 8. Section 39-2822, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 39-2822 The department may enter into agreements under sections  
17 39-2808 to 39-2824 and section 10 of this act 39-2823 to let, design, and  
18 construct projects for political subdivisions when any of the funding for  
19 such projects is provided by or through the department. In such  
20 instances, the department may enter into contracts with the design-  
21 builder or construction manager. The provisions of the Political  
22 Subdivisions Construction Alternatives Act shall not apply to projects  
23 let, designed, and constructed under the supervision of the department  
24 pursuant to agreements with political subdivisions under sections 39-2808  
25 to 39-2824 and section 10 of this act 39-2823.

26 Sec. 9. Section 39-2823, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 39-2823 Nothing in sections 39-2808 to 39-2824 and section 10 of  
29 this act 39-2823 shall limit or reduce statutory or regulatory  
30 requirements regarding insurance.

31 Sec. 10. (1) The department may structure a contract as a build-

1 finance project pursuant to the Build Nebraska Act, sections 39-2808 to  
2 39-2824, or the Accelerated State Highway Capital Improvement Program  
3 created in section 39-2804. Prior to entering into a contract for a  
4 build-finance project, the department shall determine that there will be  
5 an estimated cost savings to the state as a result of a cost-benefit  
6 analysis.

7 (2) The department may authorize a design-builder or a construction  
8 manager engaged in a contract pursuant to sections 39-2808 to 39-2824 or  
9 a contractor engaged in a contract pursuant to the Build Nebraska Act or  
10 the Accelerated State Highway Capital Improvement Program to structure  
11 the contract as a build-finance project.

12 (3) If a build-finance project will be under consideration by the  
13 department, the department shall include the financing requirements in  
14 the request for proposals or the initial project solicitation. The  
15 department may include in the financing requirements the maximum annual  
16 payment, the interest rate on the financing, and the minimum number of  
17 years for repayment.

18 (4) The department may require a financing plan from the design-  
19 builder, the construction manager, or the contractor. If required, the  
20 financing plan shall be included in the proposal and may be considered by  
21 the department as a part of the best value-based selection process or a  
22 qualifying factor in the selection process, as applicable.

23 (5) The contract for any build-finance project shall include in its  
24 terms that the payments extending beyond the contract year of completion  
25 will be subject to annual appropriations by the Legislature, that the  
26 project is unsecured, and that it does not constitute a debt obligation  
27 of the state.

28 (6) The department shall not obligate more than ten percent of the  
29 annual revenue of the Highway Trust Fund to secure payment on all build-  
30 finance projects at the time a contract for a build-finance project is  
31 under consideration.

1           Sec. 11. Section 73-101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           73-101 Whenever the State of Nebraska, or any department or any  
4 agency thereof, any county board, county clerk, county highway  
5 superintendent, the mayor and city council or commissioner of any  
6 municipality, any entity created pursuant to the Interlocal Cooperation  
7 Act or the Joint Public Agency Act, or the officers of any school  
8 district, township, or other governmental subdivision, shall advertise  
9 for bids in pursuance of any statutes of the State of Nebraska, on any  
10 road contract work or any public improvements work, or for supplies,  
11 construction, repairs, and improvements, and in all other cases where  
12 bids for supplies or work, of any character whatsoever, are received for  
13 the various departments and agencies of the state, and other subdivisions  
14 and agencies enumerated in this section, they shall fix not only the day  
15 upon which such bids shall be returned, received, or opened, as provided  
16 by other statutes, but shall also fix the hour at which such bids shall  
17 close, or be received or opened, and they shall also provide that such  
18 bids shall be immediately and simultaneously opened in the presence of  
19 the bidders, or representatives of the bidders, when the hour is reached  
20 for the bids to close. If bids are being opened on more than one  
21 contract, the officials having in charge the opening of such bids may, if  
22 they deem it advisable, award each contract as the bids are opened.  
23 Sections 73-101 to 73-106 shall not apply to the State Park System  
24 Construction Alternatives Act or sections 39-2808 to 39-2824 and section  
25 10 of this act 39-2823.

26           Sec. 12. Section 73-307, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28           73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska  
29 Consultants' Competitive Negotiation Act, the State Park System  
30 Construction Alternatives Act, sections 39-2808 to 39-2824 and section 10  
31 of this act 39-2823, or section 57-1503.

1 Sections 73-301 to 73-306 shall not be construed to apply to  
2 renewals of contracts already approved pursuant to or not subject to such  
3 sections, to amendments to such contracts, or to renewals of such  
4 amendments unless the amendments would directly cause or result in the  
5 replacement by the private entity of additional permanent state employees  
6 or positions greater than the replacement caused by the original  
7 contract.

8 Sec. 13. Section 81-1102, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 81-1102 For purposes of sections 11-119, 81-106, 81-1101 to 81-1118,  
11 81-1121, 81-1170.01, 81-1170.02, and 84-304, unless the context otherwise  
12 requires:

13 (1) Gender with reference to the masculine or feminine gender shall  
14 be construed to apply to either or both genders;

15 (2) Executive budget shall mean the budget proposed by the Governor  
16 to the Legislature as the basis of appropriations for the operation of  
17 and capital outlay by state government during the period covered by such  
18 budget;

19 (3) Approved budget shall mean the executive or Governor's budget as  
20 modified by appropriations actions of the Legislature;

21 (4) Budgetary allotments shall mean the plan of expenditures, by  
22 program, subprogram, activity, or object of expenditure under the  
23 approved budget for monthly or other applicable periods of time within  
24 each fiscal year, to which a department or agency may be held during such  
25 period of time within the fiscal year;

26 (5) Accrual system shall mean the recording of revenue when earned  
27 and the recording of expenditures as soon as they result in liabilities,  
28 notwithstanding the fact that the receipt of the revenue or payment of  
29 the expenditure may take place, in whole or in part, in another  
30 accounting period;

31 (6) Double entry system shall mean a system of bookkeeping which

1 requires for every entry made to the debit side of an account or accounts  
2 an entry for a corresponding amount or amounts to the credit side of  
3 another account or accounts resulting in a self-balancing accounting  
4 system;

5 (7) Disbursement shall mean payment from the state treasury;

6 (8) Expenditure shall mean, when an accrual system has been  
7 established, total liability incurred by contract, purchase order, or  
8 payroll commitments or as otherwise provided by law, whether or not  
9 related disbursement has been made from the state treasury, and shall  
10 mean, until an accrual system has been established, disbursements from  
11 the state treasury;

12 (9) Revenue shall mean, when an accrual system has been established,  
13 additions to assets which do not increase any liability or represent the  
14 recovery of an expenditure or disbursement or any part thereof or the  
15 cancellation of liabilities without a corresponding increase in other  
16 liabilities or a decrease in assets. Until an accrual system has been  
17 established, this term shall mean additions to cash in the state treasury  
18 or for deposit in the state treasury only;

19 (10) Receipts shall mean cash received, unless otherwise qualified;

20 (11) Budgetary accounting shall mean a system of accounts designed  
21 to reflect budget operations and conditions such as estimated revenue,  
22 appropriations, and encumbrances as distinct from proprietary accounts  
23 designed to show the status of the assets, liabilities, and surplus of  
24 the state and its departments and agencies;

25 (12) Encumbrances shall mean charges to appropriation accounts to  
26 reflect obligations for which a part of the appropriation is reserved and  
27 which shall cease to be encumbrances when paid or when an actual  
28 liability is established in a proprietary account;

29 (13) Financing agreement shall mean any bond, lease-purchase  
30 obligation, installment sales contract, or similar financial arrangement,  
31 for a period greater than one year, which is entered into by the state or

1 any agency, board, or commission thereof, not including the University of  
2 Nebraska or state colleges, in accordance with the Constitution of  
3 Nebraska and statutes of this state, relating to capital construction,  
4 real property acquisition, and personal property acquisition;

5 (14) Proprietary account shall mean those accounts designed to show  
6 actual financial position and operations such as actual assets,  
7 liabilities, surplus, revenue, and expenditures, as distinguished from  
8 budgetary accounts;

9 (15) Program shall mean a major operation of the state government  
10 directed toward the achievement of a definite legal objective and which,  
11 in most instances, could be carried on independently of other major  
12 operations of the state as defined and described in the accounting and  
13 budgeting manuals on file in the office of the Director of Administrative  
14 Services;

15 (16) Subprogram shall mean one or more operations of a department or  
16 agency of the state designed jointly to accomplish a major program  
17 objective as defined in the accounting and budgeting manuals on file in  
18 the office of the Director of Administrative Services;

19 (17) Activity shall mean one or more operations of a department or  
20 agency of the state designed jointly to accomplish the objective of a  
21 subprogram to which it is related as defined in the accounting and  
22 budgeting manual on file in the office of the Director of Administrative  
23 Services;

24 (18) Staffing pattern shall mean the number of positions in each  
25 class and the specific classes of positions as may be authorized for each  
26 department or agency for such department or agency programs, subprograms,  
27 and activities;

28 (19) Approved project shall mean any acquisition of land or  
29 buildings, any construction or major remodeling of new or newly acquired  
30 buildings or structures or of existing state-owned buildings or  
31 structures, ~~excluding state highways or state roads or aeronautical~~

1 ~~projects~~, or any additions to buildings or structures of land owned by  
2 the state or its departments or agencies for which an appropriation or  
3 other act of the Legislature makes provision;

4 (20) Machine time shall mean the hours or fractions thereof of  
5 operation of each component of a machine data processing system together  
6 with the hours or fractions thereof of machine operator time for each  
7 such component devoted to the production of a report or tabulation or the  
8 processing of data necessary to such production and shall also include a  
9 proportional reflection of the hours or fractions thereof of supervisory  
10 time so that all costs of operation of the information management  
11 services division may be reflected in billings to benefiting departments  
12 or agencies;

13 (21) Budget request shall mean the complete recitation, on forms  
14 prescribed by the budget division and in the manner prescribed by such  
15 division, of the operating and construction funds requests of a  
16 department or agency for the biennium next following the then current  
17 biennium;

18 (22) Department shall mean the Department of Administrative  
19 Services; and

20 (23) Director shall mean the Director of Administrative Services.

21 Sec. 14. Section 81-1701, Revised Statutes Cumulative Supplement,  
22 2018, is amended to read:

23 81-1701 The purpose of the Nebraska Consultants' Competitive  
24 Negotiation Act is to provide managerial control over competitive  
25 negotiations by the state for acquisition of professional architectural,  
26 engineering, landscape architecture, or land surveying services. The act  
27 does not apply to (1) contracts under section 57-1503, (2) contracts  
28 under subsection (4) of section 39-1349, (3) contracts under sections  
29 39-2808 to 39-2824 and section 10 of this act ~~39-2823~~ except as provided  
30 in section 39-2810, or (4) contracts under the State Park System  
31 Construction Alternatives Act except as provided in section 37-1719.

1           Sec. 15.   Original sections 39-1348, 39-2801, 39-2808, 39-2809,  
2 39-2816, 39-2819, 39-2822, 39-2823, 73-101, 73-307, and 81-1102, Reissue  
3 Revised Statutes of Nebraska, and sections 39-2802 and 81-1701, Revised  
4 Statutes Cumulative Supplement, 2018, are repealed.

5           Sec. 16.   Since an emergency exists, this act takes effect when  
6 passed and approved according to law.