

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1016**

Introduced by Walz, 15.

Read first time January 13, 2022

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the Transportation Innovation Act; to amend
- 2 section 39-2801, Reissue Revised Statutes of Nebraska, and section
- 3 39-2802, Revised Statutes Cumulative Supplement, 2020; to define
- 4 terms; to provide for public-private partnerships; to harmonize
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

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

5 Sec. 2. Section 39-2802, Revised Statutes Cumulative Supplement,  
6 2020, 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 a contracting  
10 agency's basic configurations, project scope, design, or construction  
11 criteria;

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

15 (3) Construction manager means the legal entity which proposes to  
16 enter into a construction manager-general contractor contract pursuant to  
17 the act;

18 (4) Construction manager-general contractor contract means a  
19 contract which is subject to a qualification-based selection process  
20 between a contracting agency and a construction manager to furnish  
21 preconstruction services during the design development phase of the  
22 project and, if an agreement can be reached which is satisfactory to the  
23 contracting agency, construction services for the construction phase of  
24 the project;

25 (5) Construction services means activities associated with building  
26 the project;

27 (6) Contracting agency means the department, an eligible county, a  
28 city of the metropolitan class, or a city of the primary class using the  
29 powers provided under the Transportation Innovation Act;

30 (7) Department means the Department of Transportation;

31 (8) Design-build contract means a contract between a contracting

1 agency and a design-builder which is subject to a best value-based  
2 selection process to furnish (a) architectural, engineering, and related  
3 design services and (b) labor, materials, supplies, equipment, and  
4 construction services;

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

7 (10) Eligible county means (a) a county or (b) a joint entity  
8 created by agreement under section 13-804 if a county is a party to the  
9 agreement;

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

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

20 (13) Private partner means any entity that is a partner in a public-  
21 private partnership other than the State of Nebraska, any agency of the  
22 State of Nebraska, the federal government, any agency of the federal  
23 government, any other state government, or any agency of any government  
24 at any level;

25 (14) ~~(13)~~ Project performance criteria means the performance  
26 requirements of the project suitable to allow the design-builder to make  
27 a proposal. Performance requirements shall include, but are not limited  
28 to, the following, if required by the project: Capacity, durability,  
29 standards, ingress and egress requirements, description of the site,  
30 surveys, soil and environmental information concerning the site, material  
31 quality standards, design and milestone dates, site development

1 requirements, compliance with applicable law, and other criteria for the  
2 intended use of the project;

3 (15) (14) Proposal means an offer in response to a request for  
4 proposals (a) by a design-builder to enter into a design-build contract  
5 or (b) by a construction manager to enter into a construction manager-  
6 general contractor contract;

7 (16) Public-private partnership means a project delivery method for  
8 construction or financing of capital projects or procurement of services  
9 under a written public-private partnership agreement entered into  
10 pursuant to section 3 of this act between at least one private partner  
11 and the State of Nebraska or any agency of the state;

12 (17) (15) Qualification-based selection process means a process of  
13 selecting a construction manager based on qualifications;

14 (18) (16) Request for proposals means the documentation by which a  
15 contracting agency solicits proposals; and

16 (19) (17) Request for qualifications means the documentation or  
17 publication by which a contracting agency solicits qualifications.

18 Sec. 3. (1) A public-private partnership delivery method may be  
19 used for projects under the Transportation Innovation Act as provided in  
20 this section and rules and regulations adopted and promulgated pursuant  
21 to this section. State contracts using this method shall be awarded by  
22 competitive negotiation.

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

26 (3) On or before July 1, 2023, the Director-State Engineer shall  
27 adopt and promulgate rules and regulations setting forth criteria to be  
28 used in determining when a public-private partnership is to be used for a  
29 particular project. The rules and regulations shall reflect the intent of  
30 the Legislature to promote and encourage the use of public-private  
31 partnerships in the State of Nebraska. The Director-State Engineer shall

1 consult with design-builders, construction managers, other contractors  
2 and design professionals, including engineers and architects, and other  
3 appropriate professionals during the development of the rules and  
4 regulations.

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

7 (a) The parameters of the proposed public-private partnership  
8 agreement;

9 (b) The duties and responsibilities to be performed by the private  
10 partner or private partners;

11 (c) The methods of oversight to be employed by the contracting  
12 agency;

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

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

17 (f) Plans for financing and operating the project and the revenues,  
18 service payments, bond financings, and appropriations of public funds  
19 needed for the qualifying project;

20 (g) Comprehensive documentation of the experience, capabilities,  
21 capitalization and financial condition, and other relevant qualifications  
22 of the private entity submitting the proposal;

23 (h) The ability of a private partner or private partners to quickly  
24 respond to the needs presented in the request for proposals and the  
25 importance of economic development opportunities represented by the  
26 project. In evaluating proposals, preference shall be given to a plan  
27 that includes the involvement of small businesses as subcontractors, to  
28 the extent that small businesses can provide services in a competitive  
29 manner, unless any preference interferes with the qualification for  
30 federal or other funds; and

31 (i) Other information required by the contracting agency or the

1 State Highway Commission to evaluate the proposals submitted and the  
2 overall proposed public-private partnership.

3 (5) A private entity desiring to be a private partner shall  
4 demonstrate to the satisfaction of the contracting agency or the State  
5 Highway Commission that it is capable of performing any duty,  
6 responsibility, or function it may be authorized or directed to perform  
7 as a term or condition of the public-private partnership agreement.

8 (6) When a request for proposals for a project utilizing a public-  
9 private partnership is issued for a capital project, the contracting  
10 agency shall transmit a copy of the request for proposals to the State  
11 Highway Commission, clearly identifying to the staff that a public-  
12 private partnership is being utilized.

13 (7) A request for proposals may be canceled, or all proposals may be  
14 rejected, if it is determined in writing that such action is taken in the  
15 best interest of the State of Nebraska and approved by the purchasing  
16 officer.

17 (8) In the case of any public-private partnership for a capital  
18 project with an aggregate value of one hundred million dollars or more,  
19 the project shall be authorized by the Legislature, by appropriation,  
20 explicitly identifying and authorizing the utilization of a public-  
21 private partnership delivery method for the applicable capital project.  
22 The authorization of a capital project required by this subsection is in  
23 addition to any other statutorily required authorization for a capital  
24 project.

25 (9) Upon execution of a public-private partnership agreement, the  
26 contracting agency shall submit the contract to the State Highway  
27 Commission for review. The contracting agency shall ensure that the  
28 contract clearly identifies to the State Highway Commission that a  
29 public-private partnership is being utilized. Upon disapproval of or  
30 objection to the contract by the State Highway Commission, the  
31 contracting agency shall determine whether the contract shall be revised

1 to comply with the objections of the State Highway Commission, be  
2  canceled, or remain in effect.

3 (10) The department shall:

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

7 (b) Electronically report annually to the Appropriations Committee  
8  of the Legislature and the Transportation and Telecommunications  
9  Committee of the Legislature regarding private-public partnerships which  
10  have been considered or are approved pursuant to this section; and

11 (c) Submit public-private partnership agreements to the Legislature  
12  for authorization as provided in subsection (8) of this section.

13 Sec. 4. Original section 39-2801, Reissue Revised Statutes of  
14 Nebraska, and section 39-2802, Revised Statutes Cumulative Supplement,  
15 2020, are repealed.