

LEGISLATIVE BILL 414

Approved by the Governor April 23, 2021

Introduced by Wishart, 27; Hansen, M., 26.

A BILL FOR AN ACT relating to the Political Subdivisions Construction Alternatives Act; to amend sections 13-2903 and 13-2904, Reissue Revised Statutes of Nebraska, and section 13-2914, Revised Statutes Cumulative Supplement, 2020; to redefine a term; to require a determination statement in a resolution adopted by the governing body of a political subdivision as prescribed; to change provisions relating to projects included or excluded under the act; and to repeal the original sections.

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

Section 1. Section 13-2903, Reissue Revised Statutes of Nebraska, is amended to read:

13-2903 For purposes of the Political Subdivisions Construction Alternatives Act:

(1) Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the political subdivision, (b) acts as a construction consultant to the political subdivision during the design development phase of the project when the political subdivision's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;

(2) Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the act;

(3) Design-build contract means a contract which is subject to qualification-based selection between a political subdivision and a design-builder to furnish (a) architectural, engineering, and related design services for a project pursuant to the act and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to the act;

(4) Design-builder means the legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to the act;

(5) Letter of interest means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the act;

(6) Performance-criteria developer means any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by a political subdivision to assist the political subdivision in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of the construction under a design-build contract to determine adherence to the performance criteria, and any additional services requested by the political subdivision to represent its interests in relation to a project;

(7) Political subdivision means a city, village, county, natural resources district, school district, community college, or state college;

(8) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project;

(9) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract for a project pursuant to the Political Subdivisions Construction Alternatives Act or (b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;

(10) Qualification-based selection process means a process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project;

(11) Request for letters of interest means the documentation or publication by which a political subdivision solicits letters of interest;

(12) Request for proposals means the documentation by which a political subdivision solicits proposals; and

(13) School district means any school district classified under section 79-102.

Sec. 2. Section 13-2904, Reissue Revised Statutes of Nebraska, is amended to read:

13-2904 (1) Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute relating to the letting of bids by a political subdivision, a political subdivision which follows the Political

Subdivisions Construction Alternatives Act may solicit and execute a design-build contract or a construction management at risk contract.

(2) The governing body of the political subdivision shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system provided under the act prior to proceeding with the provisions of sections 13-2905 to 13-2914. The resolution shall require the affirmative vote of at least two-thirds of the governing body of the political subdivision. For a project authorized under subsection (3) of section 13-2914, the resolution shall include a statement that the political subdivision has made a determination that the design-build contract or construction management at risk contract delivery system is in the public interest based, at a minimum, on one of the following criteria: (a) Savings in cost or time or (b) requirement of specialized or complex construction methods suitable for the design-build contract or construction management at risk contract delivery system.

Sec. 3. Section 13-2914, Revised Statutes Cumulative Supplement, 2020, is amended to read:

13-2914 (1) A political subdivision shall not use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for a project, in whole or in part, for road, street, or highway, water, wastewater, utility, or sewer construction.

~~(2) A city of the metropolitan class may use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers.~~

(3) A political subdivision may use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for a project, in whole or in part, for water, wastewater, utility, or sewer construction.

Sec. 4. Original sections 13-2903 and 13-2904, Reissue Revised Statutes of Nebraska, and section 13-2914, Revised Statutes Cumulative Supplement, 2020, are repealed.