

AMENDMENTS TO LB609

Introduced by

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. This act shall be known and may be cited as the Nebraska
4 Bridge Repair Act.

5 Sec. 2. For purposes of this act:

6 (1) Bidder means an entity providing a firm offer bid or a design
7 bid contract proposal;

8 (2) Bridge project means the design, construction, reconstruction,
9 or improvement of a bridge and associated road work;

10 (3) Commission means the Nebraska Bridge Repair Commission;

11 (4) Design-build contract means a contract which is subject to
12 qualification-based selection between the county and a design-builder to
13 furnish (a) architectural, engineering, and related design services and
14 (b) labor, materials, supplies, equipment, and construction services;

15 (5) Design-builder means the party performing design and
16 construction services under a design-builder contract;

17 (6) Letter of interest means a statement indicating interest to
18 enter into a design-build contract;

19 (7) Project package means a grouping of bridge projects as
20 determined by the commission;

21 (8) Proposal means an offer in response to a request for proposals
22 by a design-builder to enter into a design-build contract for completion
23 of a project package;

24 (9) Request for letters of interest means the documentation or
25 publication by which the commission solicits letters of interest;

26 (10) Request for proposals means the documentation by which the
27 commission solicits proposals;

1 (11) Responsible bidder means an entity determined by the commission
2 to be capable of constructing a project package based on objective
3 criteria developed by the commission; and

4 (12) Stipend means payment by the commission to a design-builder
5 which is not selected for a design-build contract after submitting a
6 complete and responsive proposal.

7 Sec. 3. (1) The Nebraska Bridge Repair Commission is created. The
8 commission shall consist of twelve members appointed by the Governor as
9 follows: (a) One county board member or county commissioner shall be
10 appointed from each of the eight State Highway Commission districts; and
11 (b) the remaining four members of the commission shall be at-large
12 appointees, two of whom shall have experience with infrastructure
13 construction or maintenance, and one of whom shall be a professional
14 engineer licensed in Nebraska.

15 (2) Initial appointees from even-numbered districts shall serve for
16 a term of two years, and initial appointees from odd-numbered districts
17 shall serve for a term of four years. At-large appointees shall serve a
18 term of four years. All subsequent appointees shall serve for four years,
19 unless the appointment is to fill a vacancy, in which case the appointee
20 shall serve the remainder of the vacated term. A member of the commission
21 may be reappointed to serve only one additional term. Members shall not
22 receive compensation for serving on the commission, but shall be
23 reimbursed for their actual and necessary expenses as provided in
24 sections 81-1174 to 81-1177. The commission shall elect from its members
25 a chairperson and vice-chairperson. The Governor shall also appoint a
26 representative from the Nebraska Association of County Officials who
27 shall serve in an ex officio capacity.

28 (3) The Department of Roads shall provide advice and technical
29 assistance to the commission.

30 (4) The commission shall establish and operate the Nebraska Bridge
31 Infrastructure Bank Fund and fulfill other duties as provided by the

1 Nebraska Bridge Repair Act.

2 Sec. 4. Notwithstanding any provision of the Political Subdivisions
3 Construction Alternatives Act, the commission may enter into a design-
4 build contract, as provided by the Nebraska Bridge Repair Act, for
5 completion of project packages.

6 Sec. 5. (1) The commission may contract with a program manager
7 through a qualifications-based selection process. The program manager may
8 act as a consultant or may perform some of the duties of the commission
9 at its direction.

10 (2) The commission shall adopt performance criteria for evaluating
11 the cost and time effectiveness of project package completion. The
12 criteria shall be used, at a minimum, to evaluate the efficiency and
13 effectiveness of the program manager and to weigh the relative benefits
14 of design-build versus traditional procurement methods. The criteria
15 shall be reviewed every two years by the commission and reported
16 electronically to the Legislature. The performance measurements shall be
17 used to guide the commission policy related to program management and
18 project procurement methods.

19 (3) A county of this state may submit a prioritized list to the
20 commission of bridges it desires to have repaired or replaced. The
21 program manager shall assist participating counties in evaluating the
22 county's bridges and assembling a prioritized list to submit to the
23 commission of the bridges the county desires repaired or replaced. The
24 program manager shall also assist the commission in evaluating bridge
25 lists and assembling project packages.

26 (4) The commission shall receive the prioritized lists from each
27 participating county and, with assistance from the program manager,
28 evaluate the list and organize bridge projects into project packages.

29 (5) Project packages may include bridge projects from one or more
30 counties. Counties may enter into interlocal agreements or agreements to
31 form joint public agencies or any other legal entity for the purpose of

1 funding and executing project packages under the Nebraska Bridge Repair
2 Act.

3 (6) Prior to organizing a project package, the commission shall
4 establish criteria to use in assembling the project package which shall
5 include the following: (a) Bridge conditions; (b) safety impacts; (c)
6 economic impacts; (d) traffic counts; and (e) any other criteria the
7 commission establishes.

8 (7) The commission shall assemble project packages based on overall
9 availability of funding and prioritization of bridge projects. The
10 commission shall add or remove individual bridge projects from a project
11 package by using the criteria established in this section. The commission
12 shall solicit the approval of each county which has a bridge in the
13 project package to determine the final list of bridge projects included
14 or removed.

15 (8) After the commission satisfies subsections (2) through (7) of
16 this section, the commission shall determine for each project package
17 whether to use the design-build contract process provided in the act or
18 whether to use a procurement process similar to the procurement process
19 for construction projects provided by law for the Department of Roads.
20 The commission shall use each method once for the first two packages.

21 Sec. 6. The commission shall adopt and promulgate rules and
22 regulations for entering into a design-build contract to complete project
23 packages. In adopting such rules and regulations, the commission shall
24 seek input from industry representatives of interested design-builders.
25 The rules and regulations shall include procedures governing the
26 following:

27 (1) Preparation and content of requests for proposals;

28 (2) Standards used to prequalify design-builders. The procedures and
29 standards shall provide that the commission will evaluate prospective
30 design-builders and, based on the information submitted to the commission
31 in response to a request for letters of interest, the commission will

1 select design-builders who are prequalified and consequently eligible to
2 respond to the request for proposals. The commission shall be prohibited
3 from considering previous experience with design-build procurement in
4 prequalifying design-builders;

5 (3) Preparation and submission of proposals;

6 (4) Evaluation of proposals;

7 (5) Policies for compensating by stipend design-builders not
8 selected in a proposal. For each project package, the commission may or
9 may not choose to provide such stipend. Each request for proposal shall
10 clearly state if a stipend is to be paid, and the amount, if any. In any
11 case, a stipend shall not be owed where a prequalified design-builder
12 fails to submit a proposal;

13 (6) Procedures for negotiations between the commission and the
14 design-builders submitting proposals prior to the acceptance of a
15 proposal;

16 (7) Evaluation criteria for proceeding with a request for proposal
17 and negotiation of a design-build contract where only one letter of
18 interest is received or only one proposal is received; and

19 (8) Filing and acting on formal protests relating to the
20 solicitation or execution of design-build contracts. The commission may
21 require unsuccessful protesters to forfeit a stipend, if any.

22 Sec. 7. (1) The commission shall prepare a request for letters of
23 interest for bidders and shall, in accordance with this section,
24 prequalify bidders to ensure that respondents are responsible bidders.
25 The request for letters of interest shall describe the project package in
26 sufficient detail to permit a bidder to submit a letter of interest.

27 (2) The request for letters of interest shall be (a) published in a
28 newspaper of general circulation within the state at least thirty days
29 prior to the deadline for receiving letters of interest and (b) sent by
30 first-class mail to any bidder upon request.

31 (3) Letters of interest shall be reviewed by the commission. The

1 commission shall select prospective bidders in accordance with the rules
2 and regulations adopted and promulgated by the commission. The commission
3 shall select at least three prospective bidders, except that if only two
4 bidders have submitted letters of interest, the commission shall select
5 both prospective bidders. The selected bidders shall then be considered
6 prequalified and eligible to receive requests for proposals.

7 Sec. 8. If the commission elects to use a design-build process, the
8 commission shall prepare a request for proposals for each design-build
9 contract in accordance with this section. The request for proposals shall
10 contain, at a minimum, the following:

11 (1) The rules and regulations adopted and promulgated by the
12 commission;

13 (2) The proposed terms and conditions of the design-build contract,
14 including any terms and conditions which are subject to further
15 negotiation;

16 (3) A project statement which contains information about the scope
17 and nature of the project;

18 (4) Project performance criteria;

19 (5) Procedures for the procurement process if the design-build
20 process is not selected, which procedures, except as provided by the
21 Nebraska Bridge Repair Act, shall be consistent with the procedures
22 provided by law for the Department of Roads; and

23 (6) Any other information which the commission may require.

24 Sec. 9. (1) The commission shall evaluate proposals for a design-
25 build contract under the Nebraska Bridge Repair Act in accordance with
26 this section.

27 (2) The request for proposals shall be sent only to the prequalified
28 design-builders selected pursuant to section 7 of this act.

29 (3) Proposals shall be sealed and shall not be opened until
30 expiration of the time established for making proposals as set forth in
31 the request for proposals.

1 (4) Proposals may be withdrawn at any time prior to acceptance. The
2 commission shall have the right to reject any and all proposals except
3 for the purpose of evading the provisions of the act. The commission may
4 thereafter solicit new proposals using the same or a different project
5 performance criteria.

6 Sec. 10. The commission shall review and score proposals according
7 to the criteria in the request for proposals. The commission may forward
8 the highest scoring proposal to the county, counties, or joint public
9 agency that has bridges included in the project package. The commission
10 may also award a grant to the county, counties, or joint public agency
11 for reimbursement for a contract entered into by the county, counties, or
12 joint public agency pursuant to section 11 of this act.

13 Sec. 11. A county, counties, or joint public agency may, but is not
14 required to, enter into a contract with the bidder who submitted the
15 proposal forwarded to the county, counties, or joint public agency by the
16 commission under section 10 of this act. A design-build contract may be
17 conditioned upon later refinements in scope and price and may permit the
18 design-builder in agreement with the county, counties, or joint public
19 agency to make changes in the project without invalidating the contract.
20 Later refinements under this section shall not exceed the scope of the
21 project statement contained in the request for proposal. Nothing in the
22 Nebraska Bridge Repair Act shall limit or reduce statutory or regulatory
23 requirements regarding bonding or insurance.

24 Sec. 12. The Nebraska Bridge Infrastructure Bank Fund is created.
25 The fund shall consist of money credited to the fund and any
26 appropriation by the Legislature. The fund shall only be used to (a)
27 award grants pursuant to section 10 of this act, (b) pay expenses to
28 administer the commission, (c) compensate the program manager, and (d)
29 pay stipends to design-builders in accordance with the Nebraska Bridge
30 Repair Act. Any money in the Nebraska Bridge Infrastructure Bank Fund
31 available for investment shall be invested by the state investment

- 1 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
- 2 State Funds Investment Act.