

AMENDMENTS TO LB565

(Amendments to Standing Committee amendments, AM827)

Introduced by Natural Resources.

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

3 Section 1. Sections 1 to 20 of this act shall be known and may be
4 cited as the Public Water and Natural Resources Project Contracting Act.

5 Sec. 2. For purposes of the Public Water and Natural Resources
6 Project Contracting Act:

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

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

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

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

23 (5) Construction services means activities associated with building
24 the project;

25 (6) Department means the Department of Natural Resources;

26 (7) Design-build contract means a contract between the department

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

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

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

13 (10) Private partner means any entity that is a partner in a public-
14 private partnership other than the State of Nebraska, any agency of the
15 State of Nebraska, the federal government, any agency of the federal
16 government, any other state government, or any agency of any government
17 at any level;

18 (11) Progressive design-build means a project-delivery process in
19 which both the design and construction of a project are procured from a
20 single entity that is selected through a qualification-based selection
21 process at the earliest feasible stage of the project;

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

31 (13) Proposal means an offer in response to a request for proposals

1 (a) by a design-builder to enter into a design-build contract or (b) by a
2 construction manager to enter into a construction manager-general
3 contractor contract;

4 (14) Public-private partnership means a project delivery method for
5 construction or financing of capital projects or procurement of services
6 under a written public-private partnership agreement entered into
7 pursuant to section 20 of this act between at least one private partner
8 and the State of Nebraska or any agency of the state;

9 (15) Qualification-based selection process means a process of
10 selecting a construction manager or progressive design-builder based on
11 qualifications;

12 (16) Request for proposals means the documentation by which the
13 department solicits proposals; and

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

16 Sec. 3. The purpose of the Public Water and Natural Resources
17 Project Contracting Act is to provide the department alternative methods
18 of contracting for public water and natural resources projects. The
19 alternative methods of contracting shall be available to the department
20 for use on any project regardless of the funding source. Notwithstanding
21 any other provision of state law to the contrary, the Public Water and
22 Natural Resources Project Contracting Act shall govern the design-build,
23 progressive design-build, and construction manager-general contractor
24 procurement processes.

25 Sec. 4. The department, in accordance with the Public Water and
26 Natural Resources Project Contracting Act, may solicit and execute a
27 design-build contract, a progressive design-build contract, or a
28 construction manager-general contractor contract for a public surface
29 water or groundwater-related infrastructure project.

30 Sec. 5. The department may hire an engineering or architectural
31 consultant to assist the department with the development of project

1 performance criteria and requests for proposals, with evaluation of
2 proposals, with evaluation of the construction to determine adherence to
3 the project performance criteria, and with any additional services
4 requested by the department to represent its interests in relation to a
5 project. The procedures used to hire such person or organization shall
6 comply with the Nebraska Consultants' Competitive Negotiation Act. The
7 person or organization hired shall be ineligible to be included as a
8 provider of other services in a proposal for the project for which the
9 person or organization has been hired and shall not be employed by or
10 have a financial or other interest in a design-builder or construction
11 manager who will submit a proposal.

12 Sec. 6. The department shall adopt guidelines for entering into a
13 design-build contract, a progressive design-build contract, or a
14 construction manager-general contractor contract. The department's
15 guidelines shall include the following:

- 16 (1) Preparation and content of requests for qualifications;
17 (2) Preparation and content of requests for proposals;
18 (3) Qualification and short-listing of design-builders, progressive
19 design-builders, and construction managers. The guidelines shall provide
20 that the department will evaluate prospective design-builders,
21 progressive design-builders, and construction managers based on the
22 information submitted to the department in response to a request for
23 qualifications and will select a short list of design-builders,
24 progressive design-builders, or construction managers who shall be
25 considered qualified and eligible to respond to the request for
26 proposals;
27 (4) Preparation and submittal of proposals;
28 (5) Procedures and standards for evaluating proposals;
29 (6) Procedures for negotiations between the department and the
30 design-builders, progressive design-builders, or construction managers
31 submitting proposals prior to the acceptance of a proposal if any such

1 negotiations are contemplated; and

2 (7) Procedures for the evaluation of construction under a design-
3 build contract or a progressive design-build contract to determine
4 adherence to the project performance criteria.

5 Sec. 7. (1) The process for selecting a design-builder and entering
6 into a design-build contract shall be in accordance with sections 8 to 11
7 of this act.

8 (2) Except as otherwise specifically provided in the Public Water
9 and Natural Resources Project Contracting Act, the process for selecting
10 a progressive design-builder and entering into a progressive design-build
11 contract shall be in accordance with sections 8 to 11 of this act.

12 Sec. 8. (1) The department shall prepare a request for
13 qualifications for design-build and progressive design-build proposals
14 and shall prequalify design-builders and progressive design-builders. The
15 request for qualifications shall describe the project in sufficient
16 detail to permit a design-builder or a progressive design-builder to
17 respond. The request for qualifications shall identify the maximum number
18 of design-builders or progressive design-builders the department will
19 place on a short list as qualified and eligible to receive a request for
20 proposals.

21 (2) A person or organization hired by the department under section 5
22 of this act shall be ineligible to compete for a design-build contract on
23 the same project for which the person or organization was hired.

24 (3) The request for qualifications shall be (a) published in a
25 newspaper of statewide circulation at least thirty days prior to the
26 deadline for receiving the request for qualifications and (b) sent by
27 first-class mail to any design-builder or progressive design-builder upon
28 request.

29 (4) The department shall create a short list of qualified and
30 eligible design-builders or progressive design-builders in accordance
31 with the guidelines adopted pursuant to section 6 of this act. The

1 department shall select at least two prospective design-builders or
2 progressive design-builders, except that if only one design-builder or
3 progressive design-builder has responded to the request for
4 qualifications, the department may, in its discretion, proceed or cancel
5 the procurement. The request for proposals shall be sent only to the
6 design-builders or progressive design-builders placed on the short list.

7 Sec. 9. The department shall prepare a request for proposals for
8 each design-build or progressive design-build contract. The request for
9 proposals shall contain, at a minimum, the following elements:

10 (1) The guidelines adopted in accordance with section 6 of this act.
11 The identification of a publicly accessible location of the guidelines,
12 either physical or electronic, shall be considered compliance with this
13 subdivision;

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

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

19 (4) If applicable, a statement regarding alternative technical
20 concepts including the process and time period in which such concepts may
21 be submitted, confidentiality of the concepts, and ownership of the
22 rights to the intellectual property contained in such concepts;

23 (5) Project performance criteria;

24 (6) Budget parameters for the project;

25 (7) Any bonding and insurance required by law or as may be
26 additionally required by the department;

27 (8) The criteria for evaluation of proposals and the relative weight
28 of each criterion. For both design-build and progressive design-build
29 contracts, the criteria shall include, but are not limited to,
30 construction experience, design experience, and the financial, personnel,
31 and equipment resources available for the project. For design-build

1 contracts only, the criteria shall also include the cost of the work. For
2 progressive design-build contracts only, the criteria shall also include
3 consideration of the historic reasonableness of the progressive design-
4 builder's costs and expenses when bidding and completing projects,
5 whether such projects were completed using the progressive design-build
6 process or another bidding and contracting process. The relative weight
7 to apply to any criterion shall be at the discretion of the department
8 based on each project, except that for all design-build contracts, the
9 cost of the work shall be given a relative weight of at least fifty
10 percent;

11 (9) A requirement that the design-builder or progressive design-
12 builder provide a written statement of the design-builder's or
13 progressive design-builder's proposed approach to the design and
14 construction of the project, which may include graphic materials
15 illustrating the proposed approach to design and construction and shall
16 include price proposals;

17 (10) A requirement that the design-builder or progressive design-
18 builder agree to the following conditions:

19 (a) At the time of the design-build or progressive design-build
20 proposal, the design-builder or progressive design-builder must furnish
21 to the department a written statement identifying the architect or
22 engineer who will perform the architectural or engineering work for the
23 project. The architect or engineer engaged by the design-builder or
24 progressive design-builder to perform the architectural or engineering
25 work with respect to the project must have direct supervision of such
26 work and may not be removed by the design-builder or progressive design-
27 builder prior to the completion of the project without the written
28 consent of the department;

29 (b) At the time of the design-build or progressive design-build
30 proposal, the design-builder or progressive design-builder must furnish
31 to the department a written statement identifying the general contractor

1 who will provide the labor, material, supplies, equipment, and
2 construction services. The general contractor identified by the design-
3 builder or progressive design-builder may not be removed by the design-
4 builder or progressive design-builder prior to completion of the project
5 without the written consent of the department;

6 (c) A design-builder or progressive design-builder offering design-
7 build or progressive design-build services with its own employees who are
8 design professionals licensed to practice in Nebraska must (i) comply
9 with the Engineers and Architects Regulation Act by procuring a
10 certificate of authorization to practice architecture or engineering and
11 (ii) submit proof of sufficient professional liability insurance in the
12 amount required by the department; and

13 (d) The rendering of architectural or engineering services by a
14 licensed architect or engineer employed by the design-builder or
15 progressive design-builder must conform to the Engineers and Architects
16 Regulation Act;

17 (11) The amount and terms of the stipend required pursuant to
18 section 10 of this act, if any; and

19 (12) Other information or requirements which the department, in its
20 discretion, chooses to include in the request for proposals.

21 Sec. 10. The department shall pay a stipend to qualified design-
22 builders that submit responsive proposals but are not selected. Payment
23 of the stipend shall give the department ownership of the intellectual
24 property contained in the proposals and alternative technical concepts.
25 The amount of the stipend shall be at the discretion of the department as
26 disclosed in the request for proposals.

27 Sec. 11. (1) Design-builders and progressive design-builders shall
28 submit proposals as required by the request for proposals. The department
29 may meet with individual design-builders and progressive design-builders
30 prior to the time of submitting the proposal and may have discussions
31 concerning alternative technical concepts. If an alternative technical

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

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

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

1 builder. The department may then undertake negotiations with the second
2 highest ranked design-builder or progressive design-builder and may enter
3 into a design-build or progressive design-build contract after
4 negotiations. If the department is unable to negotiate a satisfactory
5 contract with the second highest ranked design-builder or progressive
6 design-builder, the department may undertake negotiations with the third
7 highest ranked design-builder or progressive design-builder, if any, and
8 may enter into a design-build or progressive design-build contract after
9 negotiations.

10 (6) If the department is unable to negotiate a satisfactory contract
11 with any of the ranked design-builders or progressive design-builders,
12 the department may either revise the request for proposals and solicit
13 new proposals or cancel the design-build or progressive design-build
14 process under the Public Water and Natural Resources Project Contracting
15 Act.

16 Sec. 12. (1) The process for selecting a construction manager and
17 entering into a construction manager-general contractor contract shall be
18 in accordance with this section and sections 13 to 15 of this act.

19 (2) The department shall prepare a request for qualifications for
20 construction manager-general contractor contract proposals and shall
21 prequalify construction managers. The request for qualifications shall
22 describe the project in sufficient detail to permit a construction
23 manager to respond. The request for qualifications shall identify the
24 maximum number of eligible construction managers the department will
25 place on a short list as qualified and eligible to receive a request for
26 proposals.

27 (3) The request for qualifications shall be (a) published in a
28 newspaper of statewide circulation at least thirty days prior to the
29 deadline for receiving the request for qualifications and (b) sent by
30 first-class mail to any construction manager upon request.

31 (4) The department shall create a short list of qualified and

1 eligible construction managers in accordance with the guidelines adopted
2 pursuant to section 6 of this act. The department shall select at least
3 two construction managers, except that if only one construction manager
4 has responded to the request for qualifications, the department may, in
5 its discretion, proceed or cancel the procurement. The request for
6 proposals shall be sent only to the construction managers placed on the
7 short list.

8 Sec. 13. The department shall prepare a request for proposals for
9 each construction manager-general contractor contract. The request for
10 proposals shall contain, at a minimum, the following elements:

11 (1) The guidelines adopted by the department in accordance with
12 section 6 of this act. The identification of a publicly accessible
13 location of the guidelines, either physical or electronic, shall be
14 considered compliance with this subdivision;

15 (2) The proposed terms and conditions of the contract, including any
16 terms and conditions which are subject to further negotiation;

17 (3) Any bonding and insurance required by law or as may be
18 additionally required by the department;

19 (4) General information about the project which will assist the
20 department in its selection of the construction manager, including a
21 project statement which contains information about the scope and nature
22 of the project, the project site, the schedule, and the estimated budget;

23 (5) The criteria for evaluation of proposals and the relative weight
24 of each criterion;

25 (6) A statement that the construction manager shall not be allowed
26 to sublet, assign, or otherwise dispose of any portion of the contract
27 without consent of the department. In no case shall the department allow
28 the construction manager to sublet more than seventy percent of the work,
29 excluding specialty items; and

30 (7) Other information or requirements which the department, in its
31 discretion, chooses to include in the request for proposals.

1 Sec. 14. (1) Construction managers shall submit proposals as
2 required by the request for proposals.

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

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

11 (4) The department shall rank the construction managers in
12 accordance with the qualification-based selection process and pursuant to
13 the criteria in the request for proposals. The department may meet with
14 construction managers prior to the ranking.

15 (5) The department may attempt to negotiate a contract for
16 preconstruction services with the highest ranked construction manager and
17 may enter into a contract for preconstruction services after
18 negotiations. If the department is unable to negotiate a satisfactory
19 contract for preconstruction services with the highest ranked
20 construction manager, the department may terminate negotiations with that
21 construction manager. The department may then undertake negotiations with
22 the second highest ranked construction manager and may enter into a
23 contract for preconstruction services after negotiations. If the
24 department is unable to negotiate a satisfactory contract with the second
25 highest ranked construction manager, the department may undertake
26 negotiations with the third highest ranked construction manager, if any,
27 and may enter into a contract for preconstruction services after
28 negotiations.

29 (6) If the department is unable to negotiate a satisfactory contract
30 for preconstruction services with any of the ranked construction
31 managers, the department may either revise the request for proposals and

1 solicit new proposals or cancel the construction manager-general
2 contractor contract process under the Public Water and Natural Resources
3 Project Contracting Act.

4 Sec. 15. (1) Before the construction manager begins any
5 construction services, the department shall:

6 (a) Conduct an independent cost estimate for the project; and

7 (b) Conduct contract negotiations with the construction manager to
8 develop a construction manager-general contractor contract for
9 construction services.

10 (2) If the construction manager and the department are unable to
11 negotiate a contract, the department may use other contract procurement
12 processes. Persons or organizations who submitted proposals but were
13 unable to negotiate a contract with the department shall be eligible to
14 compete in the other contract procurement processes.

15 Sec. 16. A design-build contract, a progressive design-build
16 contract, and a construction manager-general contractor contract may be
17 conditioned upon later refinements in scope and price and may permit the
18 department in agreement with the design-builder, progressive design-
19 builder, or construction manager to make changes in the project without
20 invalidating the contract.

21 Sec. 17. The department may enter into agreements under the Public
22 Water and Natural Resources Project Contracting Act to let, design, and
23 construct projects for political subdivisions when any of the funding for
24 such projects is provided by or through the department. In such
25 instances, the department may enter into contracts with the design-
26 builder, progressive design-builder, or construction manager. The
27 Political Subdivisions Construction Alternatives Act shall not apply to
28 projects let, designed, and constructed under the supervision of the
29 department pursuant to agreements with political subdivisions under the
30 Public Water and Natural Resources Project Contracting Act.

31 Sec. 18. Nothing in the Public Water and Natural Resources Project

1 Contracting Act shall limit or reduce statutory or regulatory
2 requirements regarding insurance.

3 Sec. 19. The department may adopt and promulgate rules and
4 regulations to carry out the Public Water and Natural Resources Project
5 Contracting Act.

6 Sec. 20. (1) A public-private partnership delivery method may be
7 used for projects under the Public Water and Natural Resources Project
8 Contracting Act as provided in this section and rules and regulations
9 adopted and promulgated pursuant to this section only to the extent
10 allowed under the Constitution of Nebraska. State contracts using this
11 method shall be awarded by competitive negotiation.

12 (2) The department utilizing a public-private partnership shall
13 continue to be responsible for oversight of any function that is
14 delegated to or otherwise performed by a private partner.

15 (3) On or before July 1, 2024, the Director of Natural Resources
16 shall adopt and promulgate rules and regulations setting forth criteria
17 to be used in determining when a public-private partnership is to be used
18 for a particular project. The rules and regulations shall reflect the
19 intent of the Legislature to promote and encourage the use of public-
20 private partnerships in the State of Nebraska. The Director of Natural
21 Resources shall consult with design-builders, progressive design-
22 builders, construction managers, other contractors and design
23 professionals, including engineers and architects, and other appropriate
24 professionals during the development of the rules and regulations.

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

27 (a) The parameters of the proposed public-private partnership
28 agreement;

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

31 (c) The methods of oversight to be employed by the department;

1 (d) The duties and responsibilities that are to be performed by the
2 department and any other parties to the contract;

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

5 (f) Plans for financing and operating the project and the revenue,
6 service payments, bond financings, and appropriations of public funds
7 needed for the qualifying project;

8 (g) Comprehensive documentation of the experience, capabilities,
9 capitalization and financial condition, and other relevant qualifications
10 of the private entity submitting the proposal;

11 (h) The ability of a private partner or private partners to quickly
12 respond to the needs presented in the request for proposals and the
13 importance of economic development opportunities represented by the
14 project. In evaluating proposals, preference shall be given to a plan
15 that includes the involvement of small businesses as subcontractors, to
16 the extent that small businesses can provide services in a competitive
17 manner, unless any preference interferes with the qualification for
18 federal or other funds; and

19 (i) Other information required by the department to evaluate the
20 proposals submitted and the overall proposed public-private partnership.

21 (5) A private entity desiring to be a private partner shall
22 demonstrate to the satisfaction of the department that it is capable of
23 performing any duty, responsibility, or function it may be authorized or
24 directed to perform as a term or condition of the public-private
25 partnership agreement.

26 (6) A request for proposals may be canceled, or all proposals may be
27 rejected, if it is determined in writing that such action is taken in the
28 best interest of the State of Nebraska and approved by the purchasing
29 officer.

30 (7) Upon execution of a public-private partnership agreement, the
31 department shall ensure that the contract clearly identifies that a

1 public-private partnership is being utilized.

2 (8) The department shall:

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

6 (b) Electronically report annually to the Natural Resources
7 Committee of the Legislature regarding private-public partnerships which
8 have been considered or are approved pursuant to this section.

9 Sec. 33. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
10 15, 16, 17, 18, 19, 20, 29, 30, 31, 32, and 34 of this act become
11 operative three calendar months after the adjournment of this legislative
12 session. The other sections of this act become operative on their
13 effective date.

14 Sec. 36. Since an emergency exists, this act takes effect when
15 passed and approved according to law.