

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 889

FINAL READING

Introduced by Flood, 19.

Read first time January 11, 2008

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to political subdivisions; to amend sections  
2 79-2001, 79-2002, 79-2003, 79-2004, 79-2005, 79-2006,  
3 79-2007, 79-2008, 79-2009, 79-2010, 79-2011, 79-2012,  
4 and 79-2013, Reissue Revised Statutes of Nebraska; to  
5 transfer and rename the Nebraska Schools Construction  
6 Alternatives Act; to provide construction alternatives  
7 for political subdivisions; to provide and eliminate  
8 limitations on contracts; to repeal the original  
9 sections; and to outright repeal sections 79-2014 and  
10 79-2015, Reissue Revised Statutes of Nebraska.  
11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 79-2001, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           ~~79-2001~~ Sections ~~79-2001 to 79-2015~~ 1 to 14 of this act  
4 shall be known and may be cited as the ~~Nebraska Schools~~ Political  
5 Subdivisions Construction Alternatives Act.

6           Sec. 2. Section 79-2002, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           ~~79-2002~~ The purpose of the ~~Nebraska Schools~~ Political  
9 Subdivisions Construction Alternatives Act is to authorize a  
10 ~~school district~~ political subdivision to enter into a design-build  
11 contract which is subject to qualification-based selection or a  
12 construction management at risk contract for a public project if  
13 the ~~school district~~ political subdivision adheres to the procedures  
14 set forth in the act.

15           Sec. 3. Section 79-2003, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           ~~79-2003~~ For purposes of the ~~Nebraska Schools~~ Political  
18 Subdivisions Construction Alternatives Act:

19           (1) Construction management at risk contract means  
20 a contract by which a construction manager (a) assumes the  
21 legal responsibility to deliver a construction project within a  
22 contracted price to the ~~school district~~, political subdivision, (b)  
23 acts as a construction consultant to the ~~school district~~ political  
24 subdivision during the design development phase of the project when  
25 the ~~school district's~~ political subdivision's architect or engineer

1 designs the project, and (c) is the builder during the construction  
2 phase of the project;

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

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

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

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

19 (6) Performance-criteria developer means any person  
20 licensed or any organization issued a certificate of authorization  
21 to practice architecture or engineering pursuant to the Engineers  
22 and Architects Regulation Act who is selected by a ~~school district~~  
23 political subdivision to assist the ~~school district~~ political  
24 subdivision in the development of project performance criteria,  
25 requests for proposals, evaluation of proposals, evaluation of the

1 construction under a design-build contract to determine adherence  
2 to the performance criteria, and any additional services requested  
3 by the ~~school district~~ political subdivision to represent its  
4 interests in relation to a project;

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

7 ~~(7)~~ (8) Project performance criteria means the  
8 performance requirements of the project suitable to allow the  
9 design-builder to make a proposal. Performance requirements include  
10 the following, if required by the project: Capacity, durability,  
11 standards, ingress and egress requirements, description of the  
12 site, surveys, soil and environmental information concerning the  
13 site, interior space requirements, material quality standards,  
14 design and construction schedules, site development requirements,  
15 provisions for utilities, storm water retention and disposal,  
16 parking requirements, applicable governmental code requirements,  
17 and other criteria for the intended use of the project;

18 ~~(8)~~ (9) Proposal means an offer in response to a request  
19 for proposals (a) by a design-builder to enter into a design-build  
20 contract for a project pursuant to the ~~act~~ Political Subdivisions  
21 Construction Alternatives Act or (b) by a construction manager to  
22 enter into a construction management at risk contract for a project  
23 pursuant to the act;

24 ~~(9)~~ (10) Qualification-based selection process means  
25 a process of selecting a design-builder based first on

1 the qualifications of the design-builder and then on the  
 2 design-builder's proposed approach to the design and construction  
 3 of the project;

4 ~~(10)~~ (11) Request for letters of interest means the  
 5 documentation or publication by which a ~~school district~~ political  
 6 subdivision solicits letters of interest;

7 ~~(11)~~ (12) Request for proposals means the documentation  
 8 by which a ~~school district~~ political subdivision solicits  
 9 proposals; and

10 ~~(12)~~ (13) School district means any school district  
 11 classified under section 79-102.

12 Sec. 4. Section 79-2004, Reissue Revised Statutes of  
 13 Nebraska, is amended to read:

14 ~~79-2004~~ (1) Notwithstanding the procedures for public  
 15 lettings in sections 73-101 to 73-106 or any other statute relating  
 16 to the letting of bids by a political subdivision, a ~~school~~  
 17 ~~district~~ political subdivision which follows the ~~Nebraska Schools~~  
 18 Political Subdivisions Construction Alternatives Act may solicit  
 19 and execute a design-build contract or a construction management at  
 20 risk contract.

21 (2) The ~~school board~~ governing body of the political  
 22 subdivision shall adopt a resolution selecting the design-build  
 23 contract or construction management at risk contract delivery  
 24 system provided under the act prior to proceeding with the  
 25 provisions of sections ~~79-2005 to 79-2015~~, 5 to 14 of this

1 act. The resolution shall require the affirmative vote of at least  
2 ~~seventy-five percent~~ two-thirds of the ~~school board~~, governing body  
3 of the political subdivision.

4           Sec. 5. Section 79-2005, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           ~~79-2005~~ The ~~school district~~ political subdivision shall  
7 adopt policies for entering into a design-build contract or  
8 construction management at risk contract. The policies shall  
9 require that such contracts include the following:

10           (1) Procedures for selecting and hiring on its behalf  
11 a performance-criteria developer when soliciting and executing a  
12 design-build contract. The procedures shall be consistent with the  
13 Nebraska Consultants' Competitive Negotiation Act and shall provide  
14 that the performance-criteria developer (a) is ineligible to be  
15 included as a provider of any services in a proposal for the  
16 project on which it has acted as performance-criteria developer  
17 and (b) is not employed by or does not have a financial or  
18 other interest in a design-builder or construction manager who will  
19 submit a proposal;

20           (2) Procedures for the preparation and content of  
21 requests for proposals;

22           (3) Procedures and standards to be used to prequalify  
23 design-builders and construction managers. The procedures and  
24 standards shall provide that the ~~school district~~ political  
25 subdivision will evaluate prospective design-builders and

1 construction managers based on the information submitted to the  
2 ~~school district~~ political subdivision in response to a request for  
3 letters of interest and will select design-builders or construction  
4 managers who are prequalified and consequently eligible to respond  
5 to the request for proposals;

6 (4) Procedures for preparing and submitting proposals;

7 (5) Procedures for evaluating proposals in accordance  
8 with sections ~~79-2008, 79-2010, and 79-2011~~, 8, 10, and 11 of this  
9 act;

10 (6) Procedures for negotiations between the ~~school~~  
11 ~~district~~ political subdivision and the design-builders or  
12 construction managers submitting proposals prior to the acceptance  
13 of a proposal if any such negotiations are contemplated;

14 (7) Procedures for filing and acting on formal protests  
15 relating to the solicitation or execution of design-build contracts  
16 or construction management at risk contracts; and

17 (8) Procedures for the evaluation of construction under  
18 a design-build contract by the performance-criteria developer to  
19 determine adherence to the performance criteria.

20 Sec. 6. Section 79-2006, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 ~~79-2006~~ (1) A ~~school district~~ political subdivision  
23 shall prepare a request for letters of interest for design-build  
24 proposals and shall prequalify design-builders in accordance with  
25 this section. The request for letters of interest shall describe

1 the project in sufficient detail to permit a design-builder to  
2 submit a letter of interest.

3 (2) The request for letters of interest shall be (a)  
4 published in a newspaper of general circulation within the ~~school~~  
5 ~~district~~ political subdivision at least thirty days prior to  
6 the deadline for receiving letters of interest and (b) sent by  
7 first-class mail to any design-builder upon request.

8 (3) Letters of interest shall be reviewed by the  
9 ~~school district~~ political subdivision in consultation with the  
10 performance-criteria developer. The ~~school district~~ political  
11 subdivision shall select prospective design-builders in accordance  
12 with the procedures and standards adopted by the ~~school district~~  
13 political subdivision pursuant to section ~~79-2005~~, 5 of this  
14 act. The ~~school district~~ political subdivision shall select at  
15 least three prospective design-builders, except that if only  
16 two design-builders have submitted letters of interest, the  
17 ~~school district~~ political subdivision shall select at least two  
18 prospective design-builders. The selected design-builders shall  
19 then be considered prequalified and eligible to receive requests  
20 for proposals.

21 Sec. 7. Section 79-2007, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 ~~79-2007~~ A ~~school district~~ political subdivision shall  
24 prepare a request for proposals for each design-build contract in  
25 accordance with this section. Notice of the request for proposals



1 shall be published in a newspaper of general circulation within the  
2 ~~school district and filed with the State Department of Education~~  
3 political subdivision at least thirty days prior to the deadline  
4 for receiving and opening proposals. A notice of the request for  
5 proposals by a school district shall be filed with the State  
6 Department of Education at least thirty days prior to the deadline  
7 for receiving and opening proposals. The request for proposals  
8 shall contain, at a minimum, the following elements:

9 (1) The identity of the ~~school district~~ political  
10 subdivision for which the project will be built and the ~~school~~  
11 ~~district~~ political subdivision that will execute the design-build  
12 contract;

13 (2) Policies adopted by the ~~school district~~ political  
14 subdivision in accordance with section ~~79-2005~~, 5 of this act;

15 (3) The proposed terms and conditions of the design-build  
16 contract, including any terms and conditions which are subject  
17 to further negotiation. The proposed general terms and conditions  
18 shall be consistent with nationally recognized model general terms  
19 and conditions which are standard in the design and construction  
20 industry in Nebraska. The proposed terms and conditions may  
21 set forth an initial determination of the manner by which the  
22 design-builder selects any subcontractor and may require that any  
23 work subcontracted be awarded by competitive bidding;

24 (4) A project statement which contains information about  
25 the scope and nature of the project;

- 1 (5) Project performance criteria;
- 2 (6) Budget parameters for the project;
- 3 (7) Any bonds and insurance required by law or as  
4 may be additionally required by the ~~school district~~, political  
5 subdivision;
- 6 (8) The criteria for evaluation of proposals and the  
7 relative weight of each criterion;
- 8 (9) A requirement that the design-builder provide a  
9 written statement of the design-builder's proposed approach to  
10 the design and construction of the project, which may include  
11 graphic materials illustrating the proposed approach to design and  
12 construction but shall not include price proposals;
- 13 (10) A requirement that the design-builder agree to the  
14 following conditions:
- 15 (a) An architect or engineer licensed to practice in  
16 Nebraska will participate substantially in those aspects of the  
17 offering which involve architectural or engineering services;
- 18 (b) At the time of the design-build offering, the  
19 design-builder will furnish to the ~~school board~~ governing body  
20 of the political subdivision a written statement identifying  
21 the architect or engineer who will perform the architectural  
22 or engineering work for the design-build project;
- 23 (c) The architect or engineer engaged by the  
24 design-builder to perform the architectural or engineering work  
25 with respect to the design-build project will have direct

1 supervision of such work and may not be removed by the  
2 design-builder prior to the completion of the project without  
3 the written consent of the ~~school board~~; governing body of the  
4 political subdivision;

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

11 (e) The rendering of architectural or engineering  
12 services by a licensed architect or engineer employed by the  
13 design-builder will conform to the Engineers and Architects  
14 Regulation Act and rules and regulations adopted under the act; and

15 (11) Other information which the ~~school district~~  
16 political subdivision chooses to require.

17 Sec. 8. Section 79-2008, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 ~~79-2008~~ (1) A ~~school district~~ political subdivision shall  
20 evaluate proposals for a design-build contract in accordance with  
21 this section.

22 (2) The request for proposals shall be sent only to the  
23 prequalified design-builders selected pursuant to section ~~79-2006-~~  
24 6 of this act.

25 (3) Design-builders shall submit proposals as required

1 by the request for proposals. The ~~school district~~ political  
2 subdivision may only proceed to negotiate and enter into a  
3 design-build contract if there are at least two proposals from  
4 prequalified design-builders.

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

8 (5) Proposals may be withdrawn at any time prior to  
9 acceptance. The ~~school district~~ political subdivision shall have  
10 the right to reject any and all proposals except for the purpose  
11 of evading the provisions and policies of the ~~Nebraska Schools~~  
12 Political Subdivisions Construction Alternatives Act. The ~~school~~  
13 district political subdivision may thereafter solicit new proposals  
14 using the same or a different project performance criteria.

15 (6) The ~~school district~~ political subdivision shall rank  
16 in order of preference the design-builders pursuant to the criteria  
17 in the request for proposals and taking into consideration the  
18 recommendation of the selection committee pursuant to section  
19 ~~79-2011.~~ 11 of this act.

20 (7) The ~~school district~~ political subdivision may  
21 attempt to negotiate a design-build contract with the highest  
22 ranked design-builder selected by the ~~school district~~ political  
23 subdivision and may enter into a design-build contract after  
24 negotiations. The negotiations shall include a final determination  
25 of the manner by which the design-builder selects a subcontractor.

1 If the ~~school district~~ political subdivision is unable to  
2 negotiate a satisfactory design-build contract with the highest  
3 ranked design-builder, the ~~school district~~ political subdivision  
4 may terminate negotiations with that design-builder. The ~~school~~  
5 ~~district~~ political subdivision may then undertake negotiations with  
6 the second highest ranked design-builder and may enter into a  
7 design-build contract after negotiations. If the ~~school district~~  
8 political subdivision is unable to negotiate a satisfactory  
9 contract with the second highest ranked design-builder, the ~~school~~  
10 ~~district~~ political subdivision may undertake negotiations with the  
11 third highest ranked design-builder, if any, and may enter into a  
12 design-build contract after negotiations.

13 (8) The A school district shall file a copy of all  
14 design-build contract documents with the State Department of  
15 Education within thirty days after their full execution. Within  
16 thirty days after completion of the project, the design-builder  
17 shall file a copy of all contract modifications and change orders  
18 with the department.

19 (9) If the ~~school district~~ political subdivision is  
20 unable to negotiate a satisfactory contract with any of the ranked  
21 design-builders, the ~~school district~~ political subdivision may  
22 either revise the request for proposals and solicit new proposals  
23 or cancel the design-build process under the act.

24 Sec. 9. Section 79-2009, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           ~~79-2009~~ A ~~school district~~ political subdivision shall  
2 prepare a request for proposals for each construction management at  
3 risk contract in accordance with this section. At least thirty days  
4 prior to the deadline for receiving and opening proposals, notice  
5 of the request for proposals shall be published in a newspaper of  
6 general circulation within the ~~school district~~ and ~~filed with the~~  
7 ~~State Department of Education,~~ political subdivision. A notice of  
8 the request for proposals by a school district shall be filed with  
9 the State Department of Education at least thirty days prior to  
10 the deadline for receiving and opening proposals. The request for  
11 proposals shall contain, at a minimum, the following elements:

12           (1) The identity of the ~~school district~~ political  
13 subdivision for which the project will be built and the ~~school~~  
14 ~~district~~ political subdivision that will execute the contract;

15           (2) Policies adopted by the ~~school district~~ political  
16 subdivision in accordance with section ~~79-2005,~~ 5 of this act;

17           (3) The proposed terms and conditions of the contract,  
18 including any terms and conditions which are subject to further  
19 negotiation. The proposed general terms and conditions shall be  
20 consistent with nationally recognized model general terms and  
21 conditions which are standard in the design and construction  
22 industry in Nebraska. The proposed terms and conditions may  
23 set forth an initial determination of the manner by which the  
24 construction manager selects any subcontractor and may require that  
25 any work subcontracted be awarded by competitive bidding;

1           (4) Any bonds and insurance required by law or as  
2 may be additionally required by the ~~school district,~~ political  
3 subdivision;

4           (5) General information about the project which will  
5 assist the ~~school district~~ political subdivision in its selection  
6 of the construction manager, including a project statement which  
7 contains information about the scope and nature of the project, the  
8 project site, the schedule, and the estimated budget;

9           (6) The criteria for evaluation of proposals and the  
10 relative weight of each criterion; and

11           (7) A description of any other information which the  
12 ~~school district~~ political subdivision chooses to require.

13           Sec. 10. Section 79-2010, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           ~~79-2010~~ (1) A ~~school district~~ political subdivision shall  
16 evaluate proposals for a construction management at risk contract  
17 in accordance with this section.

18           (2) The ~~school district~~ political subdivision shall  
19 evaluate and rank each proposal on the basis of best meeting the  
20 criteria in the request for proposals and taking into consideration  
21 the recommendation of the selection committee pursuant to section  
22 ~~79-2011.~~ 11 of this act.

23           (3) The ~~school district~~ political subdivision shall  
24 attempt to negotiate a construction management at risk contract  
25 with the highest ranked construction manager and may enter into a

1 construction management at risk contract after negotiations. The  
2 negotiations shall include a final determination of the manner  
3 by which the construction manager selects a subcontractor. If  
4 the ~~school district~~ political subdivision is unable to negotiate  
5 a satisfactory contract with the highest ranked construction  
6 manager, the ~~school district~~ political subdivision may terminate  
7 negotiations with that construction manager. The ~~school district~~  
8 political subdivision may then undertake negotiations with the  
9 second highest ranked construction manager and may enter into a  
10 construction management at risk contract after negotiations. If  
11 the ~~school district~~ political subdivision is unable to negotiate a  
12 satisfactory contract with the second highest ranked construction  
13 manager, the ~~school district~~ political subdivision may undertake  
14 negotiations with the third highest ranked construction manager, if  
15 any, and may enter into a construction management at risk contract  
16 after negotiations.

17 (4) The A school district shall file a copy of all  
18 construction management at risk contract documents with the State  
19 Department of Education within thirty days after their full  
20 execution. Within thirty days after completion of the project,  
21 the construction manager shall file a copy of all contract  
22 modifications and change orders with the department.

23 (5) If the ~~school district~~ political subdivision is  
24 unable to negotiate a satisfactory contract with any of the ranked  
25 construction managers, the ~~school district~~ political subdivision



1 may either revise the request for proposals and solicit new  
2 proposals or cancel the construction management at risk process  
3 under the ~~act~~, Political Subdivisions Construction Alternatives  
4 Act.

5 Sec. 11. Section 79-2011, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 ~~79-2011~~ (1) In evaluating proposals in accordance with  
8 sections ~~79-2008 and 79-2010~~, 8 and 10 of this act, ~~the school~~  
9 ~~district~~ political subdivision shall refer the proposals for  
10 recommendation to a selection committee. The selection committee  
11 shall be a group of at least five persons designated by the ~~school~~  
12 ~~district~~, political subdivision. Members of the selection committee  
13 shall include (a) members of the ~~school board~~, governing body of  
14 the political subdivision, (b) members of the ~~school~~ administration  
15 or staff of the political subdivision, (c) the performance-criteria  
16 developer when evaluating proposals from design-builders under  
17 section ~~79-2008~~ 8 of this act or the ~~school's~~ political  
18 subdivision's architect or engineer when evaluating proposals from  
19 construction managers under section ~~79-2010~~, 10 of this act, (d)  
20 any person having special expertise relevant to selection of a  
21 design-builder or construction manager under the ~~Nebraska Schools~~  
22 Political Subdivisions Construction Alternatives Act, and (e) a  
23 resident of the ~~school district~~ political subdivision other than  
24 an individual included in subdivisions (a) through (d) of this  
25 subsection. A member of the selection committee designated under

1 subdivision (d) or (e) of this subsection shall not be employed  
2 by or have a financial or other interest in a design-builder or  
3 construction manager who has a proposal being evaluated and shall  
4 not be employed by the ~~school district~~ political subdivision or the  
5 performance-criteria developer.

6 (2) The selection committee and the ~~school district~~  
7 political subdivision shall evaluate proposals taking into  
8 consideration the criteria enumerated in subdivisions (a) through  
9 (g) of this subsection with the maximum percentage of total points  
10 for evaluation which may be assigned to each criterion set forth  
11 following the criterion. The following criteria shall be evaluated,  
12 when applicable:

13 (a) The financial resources of the design-builder or  
14 construction manager to complete the project, ten percent;

15 (b) The ability of the proposed personnel of the  
16 design-builder or construction manager to perform, thirty percent;

17 (c) The character, integrity, reputation, judgment,  
18 experience, and efficiency of the design-builder or construction  
19 manager, thirty percent;

20 (d) The quality of performance on previous projects,  
21 thirty percent;

22 (e) The ability of the design-builder or construction  
23 manager to perform within the time specified, thirty percent;

24 (f) The previous and existing compliance of the  
25 design-builder or construction manager with laws relating to the

1 contract, ten percent; and

2 (g) Such other information as may be secured having a  
3 bearing on the selection, twenty percent.

4 (3) The records of the selection committee in evaluating  
5 proposals and making recommendations shall be considered public  
6 records for purposes of section 84-712.01.

7 Sec. 12. Section 79-2012, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 ~~79-2012~~ A design-build contract and a construction  
10 management at risk contract may be conditioned upon later  
11 refinements in scope and price and may permit the ~~school district~~  
12 political subdivision in agreement with the design-builder or  
13 construction manager to make changes in the project without  
14 invalidating the contract. Later refinements under this section  
15 shall not exceed the scope of the project statement contained in  
16 the request for proposals pursuant to section ~~79-2007 or 79-2009.~~  
17 7 or 9 of this act.

18 Sec. 13. Section 79-2013, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 ~~79-2013~~ Nothing in the ~~Nebraska Schools~~ Political  
21 Subdivisions Construction Alternatives Act shall limit or  
22 reduce statutory or regulatory requirements regarding bonding or  
23 insurance.

24 Sec. 14. A political subdivision shall not use a  
25 design-build contract or construction management at risk contract

1 for a project, in whole or in part, for road, street, highway,  
2 water, wastewater, utility, or sewer construction, except that a  
3 city of the metropolitan class may use a design-build contract  
4 or construction management at risk contract for the purpose of  
5 complying with state or federal requirements to control or minimize  
6 overflows from combined sewers.

7           Sec. 15. Original sections 79-2001, 79-2002, 79-2003,  
8 79-2004, 79-2005, 79-2006, 79-2007, 79-2008, 79-2009, 79-2010,  
9 79-2011, 79-2012, and 79-2013, Reissue Revised Statutes of  
10 Nebraska, are repealed.

11           Sec. 16. The following sections are outright repealed:  
12 Sections 79-2014 and 79-2015, Reissue Revised Statutes of Nebraska.