

ORDINANCE NO. 9999

An ordinance to amend Chapter 27 of Grand Island City Code; to add Article VI “Construction Alternatives” to include sections 27-64 thru 27-76; to clarify and/or make general corrections to various code sections, to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Article VI Sections 27-64 thru 27-76 of the Grand Island City Code are hereby added to read as follows:

CHAPTER 27 PROCUREMENT
ARTICLE VI CONSTRUCTION ALTERNATIVES

27-64 Purpose

The purpose of this Article is to authorize the City of Grand Island to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for a City project if the City adheres to the procedures set forth in the Nebraska Political Subdivisions Construction Alternatives Act and this Article.

27-65 Definitions

For purposes of this Article:

Construction Management at Risk Contract. A contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the City, (b) acts as a construction consultant to the City during the design development phase of the project when the City’s architect or engineer designs the project, and (c) is the builder during the construction phase of the project.

Construction Manager. The legal entity which proposes to enter into a construction management at risk contract pursuant to this Article.

Design-build Contract. A contract which is subject to qualification-based selection between the City and a design-builder to furnish (a) architectural, engineering, and related design services for a project pursuant to this Article and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to this Article.

Design-builder. The legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to this Article.

Letter of Interest. A statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to this Article.

ORDINANCE NO. 9999 (Cont.)

Performance-criteria Developer. Any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act of the State of Nebraska who is selected by the City to assist the City 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 City to represent its interest in relation to a project.

Project Performance Criteria. 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.

Qualification-based Selection Process. 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.

Request for Letters of Interest. The documentation or publication by which the City solicits letters of interest.

Request for Proposals. The documentation by which the City solicits proposals.

27-66 Contracts authorized; City Council; resolution required

- A. Notwithstanding the procedures for public lettings in Neb. Rev. Stat. §§73-101 to 73-106 or any other statute or City Code relating to the letting of bids by the City, the City may solicit and execute a design-build contract or a construction management at risk contract.
- B. The City Council for the City shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system provided under this Article prior to proceeding with the provisions of this Article. The resolution shall require the affirmative vote of at least two-thirds of the City Council of the City. For a project authorized under subsection (B) of section 27-76, the resolution shall include a statement that the City 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:
 - 1. Savings in cost or time; or
 - 2. Requirement of specialized or complex construction methods suitable for the design-build contract or construction management at risk contract delivery system.

ORDINANCE NO. 9999 (Cont.)

27-67 Policies; requirements

All design-build contracts or construction management at risk contracts shall include the following:

- A. Procedures for selecting and hiring on its behalf a performance-criteria developer when soliciting and executing a design-build contract. The procedures shall be consistent with the Nebraska Consultants' Competitive Negotiation Act and shall provide that the performance-criteria developer:
 - 1. Is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as a performance-criteria developer; and
 - 2. Is not employed by or does not have a financial or other interest in a design-builder or construction manager who will submit a proposal;
- B. Procedures for the preparation and content of requests for proposals;
- C. Procedures and standards to be used to prequalify design-builders and construction managers. The procedures and standards shall provide that the City will evaluate prospective design builders and construction managers based on the information submitted to the City in response to a request for letters of interest and will select design-builders or construction managers who are prequalified and consequently eligible to respond to the request for proposals;
- D. Procedures for preparing and submitting proposals;
- E. Procedures for evaluating proposals in accordance with sections 27-70, 27-72 and 27-73
- F. Procedures for negotiations between the City and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated;
- G. Procedures for filing and acting on formal protest relating to the solicitation or execution of design-build contracts or construction management at risk contracts; and
- H. Procedures for the evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria.

27-68 Letters of interest; requirements

- A. The City shall prepare a request for letters of interest for design-build proposals and shall prequalify design-builders in accordance with this section. The request for letters of interest shall describe the project in sufficient detail to permit a design-builder to submit a letter of interest.
- B. The request for letters of interest shall be (a) published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receiving letters of interest and (b) sent by first-class mail to any design-builder upon request.
- C. Letters of interest shall be reviewed by the City in consultation with the performance-criteria developer. The City shall select prospective design-builders in accordance with the procedures and standards adopted by the City 27-67. The City shall select at least three (3) prospective design-builders, except that if only two (2) design-builders have submitted

ORDINANCE NO. 9999 (Cont.)

letters of interest, the City shall select at least two (2) prospective design-builders. The selected design-builders shall then be considered prequalified and eligible to receive requests for proposals. If only one letter of interest is received, the City shall re-issue the request for letters of interest.

27-69 Design-build contract; request for proposals; requirements

The City shall prepare a request for proposals for each design-build contract in accordance with this section. Notice of the request for proposals shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

- A. The identity of the City for which the project will be built and execute the design-build contract;
- B. Policies adopted by the City in accordance with section 27-67;
- C. The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
- D. A project statement which contains information about the scope and nature of the project;
- E. Project performance criteria;
- F. Budget parameters for the project;
- G. Any bonds and insurance required by law or as may be additionally required by the City;
- H. The criteria for evaluation of proposals and the relative weight of each criterion;
- I. A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals;
- J. A requirement that the design-builder agree to the following conditions:
 - a. An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;
 - b. At the time of the design-build offering, the design-builder will furnish to the governing body of the political subdivision a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;
 - c. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the design-builder prior to

ORDINANCE NO. 9999 (Cont.)

the completion of the project without the written consent of the governing body of the political subdivision;

- d. A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance; and
 - e. The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act; and
- K. Other information which the City chooses to require.

27-70 Design-build contract; evaluation of proposals; requirements; negotiations

- A. The City shall evaluate proposals for a design-build contract in accordance with this section.
- B. The request for proposals shall be sent only to the prequalified design-builders selected pursuant to 27-68.
- C. Design-builders shall submit proposals as required by the request for proposals. The City may only proceed to negotiate and enter into a design-build contract if there are at least two (2) proposals from prequalified design-builders.
- D. Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.
- E. Proposals may be withdrawn at any time prior to acceptance. The City shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Political Subdivisions Construction Alternatives Act and this Article. The City may thereafter solicit new proposals using the same or different project performance criteria.
- F. The City shall rank in order of preference the design-builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 27-73.
- G. The City may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the City and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor. If the City is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the City may terminate negotiations with that design-builder. The City may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the City is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the City may undertake negotiations with the third highest ranked design-builder, if any and may enter into a design-build contract after negotiations.

ORDINANCE NO. 9999 (Cont.)

- H. If the City is unable to negotiate a satisfactory contract with any of the ranked design-builders, the City may either revise the request for proposals and solicit new proposals or cancel the design-build process under the Act and this Article.

27-71 Construction management at risk contract; request for proposals; requirements

The City shall prepare a request for proposals for each construction management at risk contract in accordance with this section. The notice for the request for proposals shall be published in a newspaper of general circulation in the City at least thirty (30) days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

- A. The identity of the City for which the project will be built and that will execute the contract;
- B. Policies adopted by the City in accordance with section 27-67;
- C. The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
- D. Any bonds and insurance required by law or as may be additionally required by the City;
- E. General information about the project which will assist the City in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;
- F. The criteria for evaluation of proposals and the relative weight of each criterion; and
- G. A description of any other information which the City chooses to require.

27-72 Construction management at risk contract; evaluation of proposals; requirements; negotiations

- A. The City shall evaluate proposals for a construction management at risk contract in accordance with this section.
- B. The City shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 27-73.
- C. The City shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory contract with the highest ranked construction manager, the City may terminate negotiations with the construction manager. The City may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations. If the political subdivision is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the City may undertake negotiations with the third

ORDINANCE NO. 9999 (Cont.)

highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

- D. If the City is unable to negotiate a satisfactory contract with any of the ranked construction managers, the City may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the Political Subdivisions Construction Alternatives Act and this Article.

27-73 Contract proposals; evaluation; selection committee; duties

- A. In evaluating proposals in accordance with sections 27-70 and 27-72, the City shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five (5) persons designated by the City. Members of the selection committee shall include (a) members of the City Council, (b) members of the administration or staff of the City, (c) the performance-criteria developer when evaluating proposals from design-builders under section 27-70 or the City's architect or engineer when evaluating proposals from construction managers under section 27-72, (d) any person having special expertise relevant to selection of a design-builder or construction manager under the Political Subdivisions Construction Alternatives Act and this Article, and (e) a resident of the City other than an individual included in subdivisions (a) through (d) of his subsection. A member of the selection committee designated under subdivision (d) or (e) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the City or the performance-criteria developer.
- B. The selection committee and the City shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (a) through (g) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:
1. The financial resources of the design-builder or construction manager to complete the project, ten (10) percent;
 2. The ability of the proposed personnel of the design-builder or construction manager to perform, thirty (30) percent;
 3. The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty (30) percent;
 4. The quality of performance on previous projects, thirty (30) percent;
 5. The ability of the design-builder or construction manager to perform within the time specified, thirty (30) percent;
 6. The previous and existing compliance of the design-builder or construction manager with law relating to the contract, ten (10) percent; and
 7. Such other information as may be secured having a bearing on the selection, twenty (20) percent.

ORDINANCE NO. 9999 (Cont.)

- C. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of Neb. Rev. Stat. §84-712.01.

27-74 Contracts; refinements; changes authorized

A design-build contract and a construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the political subdivision in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract. Later refinements under this section shall not exceed the scope of the project statement contained in the request for proposals pursuant to section 27-69 or 27-71.

27-75 Act; bonding or insurance requirements

Nothing in the Political Subdivisions Construction Alternatives Act or this Article shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.

27-76 Road, street, or highway construction projects excluded; water, wastewater, utility, or sewer construction projects permitted

- A. The City shall not use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act or this Article for a project, in whole or in part, for road, street, or highway construction.
- B. The City may use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act or this Article for a project, in whole or in part, for water, wastewater, utility, or sewer construction.
- C. Any City project using Federal funding shall not use a design-build contract or a construction management at risk contract in whole or in part.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the *Grand Island Independent* as provided by law.

Enacted: November 5, 2024.

ORDINANCE NO. 9999 (Cont.)

Roger G. Steele, Mayor

Attest:

Jill Granere, City Clerk