

2023 Regular Session

SENATE BILL NO. 167

BY SENATOR ABRAHAM

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC WORKS. Provides relative to design-build. (8/1/23)

AN ACT

To amend and reenact R.S. 48:250.3(B), (C), (D), and (E), and to enact R.S. 38:2225.2.6 and R.S. 48:250.3.1, relative to design-build; to provide for design-build for airports; to provide for design-build contracts and qualifications of design-builders components; to provide for progressive design-build contracts by the Department of Transportation and Development; to provide for requirements of design-builders, notice of intent letters, and procurement process for progressive design-build; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38.2225.2.6 is hereby enacted to read as follows:

§2225.2.6. Design-build contracts; authorized use by airport authorities

A.(1) Notwithstanding any other provision of law to the contrary, an airport authority may use the design-build project delivery method to contract for construction and design-build when deemed in the public interest, beneficial to the airport, and in accordance with the procedures set forth by law.

(2) Whenever the airport authority resolves to construct or repair any building or structure using the design-build method as authorized by Paragraph

1 (1) of this Subsection, it shall adopt a list of projects under which design-build
2 contracts will be utilized; and an ordinance adopting the selection process
3 promulgated by the division of administration, office of facility planning and
4 control, specifying the selection process for the awarding of a design-build
5 contract in compliance with the provisions of this Section.

6 (3) For the purposes of this Section, "design builder" means the entity
7 contractually responsible for delivering the project design and construction.

8 B. Every design-builder shall be duly licensed and registered to do
9 business in the state of Louisiana as either an architect, an engineer, or a
10 general contractor. Each design builder shall have the following rights and
11 powers:

12 (1) The design-builder may sublet responsibility for professional design
13 services to an individual, firm, or corporation duly licensed and registered in
14 the state of Louisiana to provide professional design services.

15 (2) The design builder may sublet responsibility for construction or other
16 services requiring a contractor's or trade subcontractor's license to persons or
17 entities duly registered, licensed, or otherwise qualified to provide those services
18 as required by law.

19 C. Prior to letting any contract, the airport authority shall adopt an
20 ordinance adopting procedures promulgated by the division of administration,
21 office of facility planning and control, establishing procedures for developing
22 plans, specifications, qualifications, and other matters pertaining to procedures
23 for advertising, reviewing and selecting design builders, and letting the
24 design-build contracts for public work as specified in Paragraph (A)(2) of this
25 Section.

26 D. The procedures promulgated by the division of administration, office
27 of facility planning and control, provided for in Subsection C of this Section
28 shall include, at a minimum, the following provisions:

29 (1) Requirements that:

1 (a) All engineering and surveying firms providing design and design
2 related services with the design builder to which the design-build contract is
3 awarded shall be licensed to perform these services by the Louisiana
4 Professional Engineering and Land Surveying Board.

5 (b) All architectural firms providing design services with the design
6 builder to which the design-build contract is awarded shall be licensed to
7 perform the services by the State Board of Architectural Examiners or the
8 Louisiana Horticulture Commission.

9 (c) All contractors performing construction work for the design-build
10 program shall be licensed by the State Licensing Board for Contractors.

11 (2) A two-stage selection process that will utilize a request for
12 qualifications graded and judged by a primary evaluation committee and a
13 request for technical proposals graded and judged by a separate technical
14 review committee shall be used to select the design builder and shall include the
15 following specific provisions:

16 (a)(i) Public announcement procedures for solicitation of interested
17 design-build competitors and a procedure for requesting letters of interest and
18 statements of qualifications from qualified firms or teams.

19 (ii) Public announcement procedures shall include a requirement for
20 advertisement in the official journal of the parish the project is to take place.

21 (iii) All notices of intent to select design-build contractors shall be
22 advertised a minimum of thirty days prior to the deadline for receipt of
23 responses and shall contain a brief description of the project, the required scope
24 of services, and sufficient information for design-build entities to determine
25 their interest.

26 (b) These decisions shall be made on the basis of the criteria set forth in
27 this Subsection. Members of the technical review committee shall not have
28 served as members of the primary evaluation committee. Each member of the
29 technical review committee shall score assigned elements. Scores shall be

1 considered public record.

2 (3) The airport authority shall provide a request for a qualifications
3 package to design builders who submit a letter of interest. All required
4 information shall be identified in the request for qualifications package and in
5 the standard response forms. The response to a request for qualifications
6 package shall include statements of qualification by credentials and experience
7 of design component members for the areas of expertise specific to the project
8 and statements of qualification by experience and resources of the construction
9 team component. The completed response form and any other required
10 information shall be transmitted by the responding design builder by the
11 deadline to submit forms and information as provided in the request for
12 qualifications package. Any response failing to meet all of the requirements
13 contained in the request for qualifications package shall not be considered.
14 False or misrepresented information furnished in response to a request for
15 qualifications package shall be grounds for rejection.

16 (4)(a) A primary design-build evaluation committee shall evaluate the
17 responses to the request for qualifications package received by the airport
18 authority. The following general criteria used by the primary evaluation
19 committee in evaluating responses to the request for qualifications package for
20 design-build services shall apply to both the design and construction
21 components of any responding entity:

22 (i) Professional training and experience of both the design and
23 construction entity components and of key personnel in general and as related
24 to the project under consideration.

25 (ii) Capacity for timely completion of the work.

26 (iii) Past performance on public projects or projects of a similar nature
27 to the project described in the notice of intent.

28 (iv) The quantity and value of governing authority work awarded to both
29 the design and construction entity components.

1 **(b) Notwithstanding the provisions of R.S. 38:2225(B), the primary**
2 **design-build evaluation committee may consider additional project-specific**
3 **needs, including but not limited to the design-builder's past projects in the same**
4 **metropolitan statistical area as the proposed project and the domicile address**
5 **of the responding design builder verified by the secretary of state online**
6 **business filing database.**

7 **(c) The primary design-build evaluation committee shall consist of a**
8 **minimum of three members designated by the head of the airport authority**
9 **according to the rules established pursuant to this Subsection.**

10 **(d) The primary evaluation committee shall evaluate the qualifications**
11 **of responding design builders on the basis of the criteria set forth in this**
12 **Subsection and the rules established pursuant to this Subsection and shall select**
13 **a short list of not fewer than three of the highest rated entities; however, if**
14 **fewer than three responses are received, the head of the airport authority may**
15 **approve proceeding with the design-build process. The primary evaluation**
16 **committee may, at its discretion, be assisted by other airport authority**
17 **personnel in its evaluation of a design builder's qualifications. The primary**
18 **design-build evaluation committee shall present its short list to the head of the**
19 **airport authority. The short-listed design builders shall be invited to submit a**
20 **detailed technical proposal for the design-build project. The invitation to the**
21 **short-listed entities shall specify a deadline for submission of proposals.**

22 **(5)(a) The specific requirements of the technical proposal shall be**
23 **identified by the airport authority to the design builders making the short list**
24 **by means of a "Scope of Services Package". Generally, the technical proposal**
25 **shall include discussions of design strategy and preliminary design concepts,**
26 **space standards, space planning, fundamental requirements, quality standards,**
27 **capacities, other design related issues, materials, the schedule for**
28 **commencement and completion of all phases of work, and a lump sum cost for**
29 **all services in fulfillment of the requirements and within the constraints of the**

1 scope of services package.

2 (b) For more complex projects and projects with scopes which permit
3 flexibility and innovation in the design approach, the airport authority may
4 compensate unsuccessful and responsive short-listed entities for the expense of
5 preparing the technical proposal. The determination of whether or not
6 compensation will be paid for the technical proposal and the amount shall be
7 predetermined by the airport authority and shall be included in the scope of
8 services package. The airport authority may use concepts submitted by any paid
9 short-listed design builder in the construction of the project.

10 (6) A technical review committee for evaluation of design-build proposals
11 shall be established according to the rules established in this Subsection. This
12 committee shall be made up of building construction professionals as defined
13 by the rules established in this Subsection. The technical review committee shall
14 identify specific technical elements of the project, depending on the
15 characteristics of the project, to be included in the technical score. The technical
16 review committee may select additional engineering, architectural and technical
17 experts, and nationally recognized design-build experts to serve as committee
18 members to score each technical element of the project.

19 (a) An adjusted score approach shall be used by the airport authority in
20 determining the winning proposal. An adjusted score shall be determined using
21 the following components:

22 (i) The technical score determined by the technical review committee.
23 Weighing factors may be assigned to each element depending on its relative
24 magnitude or significance to the overall project. Each technical review
25 committee member shall rate his assigned element of the proposal from each of
26 the design builders on the short list and shall submit the scores to the chairman
27 of the technical review committee. The schedule and price bid shall not be made
28 known to the technical review committee during the scoring process. The
29 chairman of the technical review committee shall adjust the scores for any

1 applicable weighing factors and shall determine the total technical score for
2 each proposal. Prior to determining the adjusted score, the chairman of the
3 technical review committee shall notify each design builder, in writing, of each
4 design builder's final total technical score.

5 (ii) The time value, consisting of the product of the proposed contract
6 time expressed in calendar days multiplied by the value-per-calendar-day
7 expressed in dollars established by the authority and included in the scope of
8 services package.

9 (iii) The price proposal.

10 (b) The winning proposal shall be the proposal with the lowest adjusted
11 score. The adjusted score for each entity's design-build proposal shall be
12 determined by the following formula: Adjusted Score = (Price Bid + Time
13 Value) divided by Technical Score. Use of the Time Value is not mandatory and
14 if it is not used, the Adjusted Score shall be determined by the following
15 formula: Adjusted Score = Price Bid divided by Technical Score.

16 (7) Design builders who have submitted bona fide proposals may, within
17 seven days of the announcement of the award, challenge the award based on any
18 of the foregoing reasons, and only those reasons, by submitting a letter to the
19 head of the airport authority describing in detail the reasons for the challenge.
20 The head of the airport authority shall have the authority to resolve any
21 challenge concerning the award of a contract. A written decision shall be
22 rendered within fourteen days and shall be mailed or otherwise furnished
23 immediately to the design builder making the challenge. The decision shall be
24 final and conclusive unless the decision is fraudulent or if the person adversely
25 affected by the decision has timely appealed to the court of proper venue for the
26 airport authority.

27 E. Once the design builder has been chosen and a contract for a
28 stipulated schedule and sum certain price is executed, the price of the
29 design-build contract shall not be increased other than for inflation as

1 prescribed in the contract and for site or other conditions of which the design
2 builder had no knowledge and should not have had knowledge as a reasonable
3 possibility existing at the site or concerning the design and construction.

4 F. The provisions of this Section shall supersede any conflicting
5 provisions of any other law, including but not limited to the requirements of
6 Chapter 10 of this Title.

7 Section 2. R.S. 48:250.3 (B), (C), (D), and (E) are hereby amended and reenacted and
8 R.S. 48:250.3.1 is hereby enacted to read as follows:

9 §250.3. Design-build contracts; qualifications of design-build entities; public
10 announcement procedures; letters of interest; selection of short list;
11 bid proposals by competitors; qualifications evaluation committee;
12 proposal review committee; selection and process of award

13 * * *

14 B.(1) Each design-builder shall employ; or have as a partner; a member,
15 coventurer, ~~or~~ subcontractor persons, or a firm with persons, who are duly licensed
16 and registered to provide the services required to complete the project and do
17 business in this state.

18 (2) All registrations and licenses for each component shall be obtained
19 prior to or concurrent with award of the project to the selected design-builder
20 by the department.

21 (a) The standard professional engineer and land surveyor qualifications as
22 provided for in R.S. 37:681 et seq., the rules and regulations of the Louisiana
23 Professional Engineering and Land Surveying Board, and the department's standard
24 technical qualification requirements for firms providing professional engineering and
25 land surveying services as provided for in R.S. 48:290 shall apply to the components
26 providing design services, ~~and the.~~

27 (b) The standard contractor qualifications as provided for in R.S. 37:2150 et
28 seq., and the current rules and regulations of the State Licensing Board for
29 Contractors shall apply to the component providing construction services utilized by

1 the design-builder, based upon the applicable categories for the specific project. ~~All~~
2 ~~registrations and licenses for each component shall be obtained prior to or concurrent~~
3 ~~with award of the project to the selected design-builder by the department.~~

4 C. A ~~notice of intent~~ **"notice of intent" (NOI)** to request letters of interest
5 for a design-build project, or for a pool of prequalified design-builders that shall
6 remain prequalified for up to two years, shall be distributed by the department
7 through advertisement on the Department of Transportation and Development's
8 internet webpage. All ~~notices of intent~~ **NOIs** shall be advertised a minimum of ten
9 days prior to the deadline for receipt of responses, ~~and~~ **The NOI** shall contain a
10 description of the project or type of work and sufficient information for a
11 design-builder to determine its interest and to enable it to submit a letter of interest.
12 The department may readvertise the ~~notice of intent~~ **NOI** using additional media or
13 publications in an attempt to solicit additional responses if the number of responses
14 received by the department is inadequate.

15 D. The department shall provide a ~~"Request for Qualifications"~~ **"request for**
16 **qualifications"** (RFQ) to design-builders who submit a letter of interest. The
17 department shall identify all required information in the ~~request for qualifications~~
18 **RFQ** and in the standard response forms provided by the department. **Any response**
19 **that fails to meet all requirements contained in the RFQ may not be considered**
20 **by the department. False or misrepresented information furnished in response**
21 **to an RFQ shall be grounds for rejection by the department.** The response to the
22 ~~request for qualifications~~ **RFQ** shall include **both of the following:**

23 **(1) statements** **Statements** of qualification by credentials and experience of
24 design component members for the areas of expertise specific to the project or type
25 of work.

26 **(2) and statements** **Statements** of qualification by experience and resources
27 of the construction team component. ~~The completed response form and any other~~
28 ~~required information shall be transmitted to the department by the responding~~
29 ~~design-builder by the deadline to submit such forms and information as provided in~~

1 ~~the request for qualifications. Any response failing to meet all of the requirements~~
 2 ~~contained in the request for qualifications shall not be considered by the department.~~
 3 ~~False or misrepresented information furnished in response to a request for~~
 4 ~~qualifications shall be grounds for rejection by the department.~~

5 E.(1) The chief engineer, with concurrence of the secretary, shall establish
 6 a design-build qualifications evaluation committee for evaluation of the responses
 7 to the request for qualifications received by the department. The following general
 8 criteria used by the ~~qualifications evaluation~~ committee in evaluating responses to
 9 ~~the request for qualifications for design-build services~~ shall apply to both the design
 10 and construction components of any responding entity:

11 (a) Experience of both the design and construction entity components and of
 12 key personnel ~~as~~ related to the project or type of work under consideration.

13 (b) Past performance on department projects.

14 (c) Any project-specific criteria ~~as~~ **that** may apply to project needs.

15 (2) The qualifications evaluation committee shall evaluate the qualifications
 16 of responding design-builders on the basis of the criteria identified in the request for
 17 qualifications and set forth in this Subsection and shall select a short list of the
 18 highest rated entities in a number to be determined by the department; ~~however, if,~~
 19 **If** fewer than three responses are received, the secretary or designated representative
 20 may approve proceeding with the design-build process. The qualifications evaluation
 21 committee may, at its discretion, be assisted by other department personnel in its
 22 evaluation of an entity's qualifications. The design-build qualifications evaluation
 23 committee shall present its short list to the chief engineer for recommendation to the
 24 secretary. The short-listed entities shall be invited by the secretary or designated
 25 representative to submit a detailed technical and cost proposal for the design-build
 26 project. The invitation to the short-listed entities shall specify a deadline for
 27 submission of such proposals.

28 * * *

29 **§250.3.1. Progressive design-build contracts**

1 A. For purposes of this Section, "design-builder" means the entity
2 contractually responsible for delivering the project design and construction.

3 B.(1) Each design-builder shall employ or have as a partner a member,
4 coventurer, subcontractor persons, or a firm with persons, who are duly
5 licensed and registered to provide the services required to complete the project
6 and do business in this state.

7 (2) All registrations and licenses for each component shall be obtained
8 prior to or concurrent with award of the project to the selected design-builder
9 by the department.

10 (a) The standard professional engineer and land surveyor qualifications
11 as provided for in R.S. 37:681 et seq., the rules and regulations of the Louisiana
12 Professional Engineering and Land Surveying Board, and the department's
13 standard technical qualification requirements for firms providing professional
14 engineering and land surveying services, as provided for in R.S. 48:290, shall
15 apply to the components providing design services.

16 (b) The standard contractor qualifications as provided for in R.S.
17 37:2150 et seq. and the current rules and regulations of the State Licensing
18 Board for Contractors shall apply to the component providing construction
19 services utilized by the design-builder, based upon the applicable categories for
20 the specific project.

21 C. A "notice of intent" (NOI) to request letters of interest for a
22 design-build project shall be distributed by the department through
23 advertisement on the Department of Transportation and Development's
24 internet webpage. All NOIs shall be advertised a minimum of ten days prior to
25 the deadline for receipt of responses. The NOI shall contain a description of the
26 project or type of work and sufficient information for a design-builder to
27 determine its interest and to enable it to submit a letter of interest. The
28 department may re-advertise the NOI using additional media or publications
29 in an attempt to solicit additional responses if the number of responses received

1 by the department is inadequate.

2 D. The department shall provide a "request for qualifications" (RFQ)
3 to design-builders who submit a letter of intent. The department shall identify
4 all required information in the RFQ and in the standard response forms
5 provided by the department. The RFQ shall include but is not limited to the
6 following:

7 (1) Project description.

8 (2) Pre-construction scope of services.

9 (3) Submittal criteria for the project.

10 (4) Procurement grading criteria.

11 (5) Scoring methodology.

12 (6) Total fees and compensation payable to the design-builder for
13 preconstruction services.

14 (7) Estimate of the probable construction cost of the project.

15 E. The response to the RFQ shall include "statements of qualifications"
16 (SOQ) submitted by the design-builder. If the department receives only one
17 response, the secretary or designated representative may approve proceeding
18 with the progressive design-build process. The information contained within the
19 SOQ shall include but not be limited to the following:

20 (1) The design-builder's formation and organizational documents at the
21 time of the SOQ submission.

22 (2) Experience of both the design and construction components of the
23 design-build entity on projects of similar size, scope, and may include the
24 complexity of previous projects.

25 (3) Information regarding proposed key personnel's experience and
26 training to competently manage and complete the design and construction of the
27 project.

28 (4) Past performance on projects.

29 (5) The design-builder's ability to obtain all bonding and insurance

1 requirements.

2 (6) The design-builder's safety plan.

3 F. The chief engineer, with the concurrence of the secretary, shall
4 establish a design-build qualifications evaluation committee for evaluation of
5 the responses to the RFQ received by the department. The chief engineer, with
6 the concurrence of the secretary, shall assign a project manager who shall
7 become the chairman of the qualifications evaluation committee for the project.
8 The qualifications evaluation committee may, at its discretion, be assisted by
9 other department personnel in its evaluation of a design-builder's SOQ.

10 G. The department may evaluate submissions based solely upon the
11 information provided in each design-build entity SOQ. The department may
12 also interview some or all of the design-build entities to further evaluate their
13 qualifications for the project.

14 H. After selecting a design-builder based upon qualifications, the
15 department may enter into a contract and direct the design-builder to begin
16 design and preconstruction activities sufficient to establish an estimated price,
17 lump sum, or guaranteed maximum price, for the project.

18 I. If the department and the design-builder do not reach an agreement
19 on the estimated price for the project or the department otherwise elects not to
20 amend the design-builder's contract to complete the remaining work, the
21 department may solicit proposals to complete the project from firms that
22 submitted SOQ or formally solicit bids or proposals from other entities using
23 any public procurement method available to the department. The selected
24 design-builder shall be prohibited from bidding on the project.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Archana Cadge.

DIGEST

SB 167 Reengrossed

2023 Regular Session

Abraham

Present law provides for design-build contracts, qualifications of design-build entities, and procedures for design-build bid process. Proposed law provides for design-build contracts relative to airports.

Proposed law provides for the bid process for design-build for traffic control towers and hangars including the request for qualifications, and establishment of a selection review committee. Proposed law further provides for the requirements necessary to be used by the selection review committee when choosing a design-builder.

Proposed law further provides for the process to enter into a contract with the entity and the design-builder after the design-builder has been selected.

Present law provides for design-build contracts, qualifications of design-build entities, and procedures for design-build bid process. Proposed law retains present law and provides for technical changes.

Proposed law provides any response by the proposed design-builder during request for qualifications that is false or misleading shall be grounds for rejection by the department.

Proposed law provides definitions and requirements for progressive design-build contracts and contractors.

Proposed law provides for the procurement process for progressive design-build projects including requirements for the notice of intent, request for qualifications, and statement of qualifications from the contractor.

Proposed law provides for the establishment and standards of review for the design-build qualification evaluation committee.

Effective August 1, 2023.

(Amends R.S. 48:250.3(B), (C), (D), and (E); adds R.S. 38:2225.2.6 and R.S. 48:250.3.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Removes local municipalities from being eligible to use the design-build method.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.