

Regular Session, 2009

SENATE BILL NO. 258

BY SENATOR MCPHERSON

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

TRANSPORTATION/DEV DEPT. Provides for authority of DOTD to execute design-build contracts. (gov sig)

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AN ACT

To amend and reenact R.S. 48:250.2(A) and (B) and 250.3, to enact R.S. 44:22.1, and to repeal R.S. 48:250.4, relative to design-build contracts; to provide for requirements for design-build contracts of the Department of Transportation and Development; to provide for the confidentiality of records submitted by a design-builder in response to a request for proposals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 48:250.2(A) and (B) and 250.3 are hereby amended and reenacted to read as follows:

§250.2. Design-build contracts; administration

A. Notwithstanding any law to the contrary or the requirements of this Part, if the secretary determines it is in the best interest of the taxpayers, the Department of Transportation and Development, with approval of the House and Senate transportation, highways, and public works committees, may formulate, develop, and implement a program to combine the design, ~~and construction,~~ or maintenance phases of a transportation facility or facilities, including but not limited to highways, interchanges, or bridges into a single contract.

1 B. Each design-builder shall ~~employ, or have as a partner, member,~~
2 ~~coventurer, or subcontractor persons or a firm with persons who are~~ **be** duly licensed
3 and registered to provide the services required to complete the project and do
4 business in this state. ~~The standard professional engineer and land surveyor~~
5 ~~qualifications as provided for in R.S. 37:681 et seq., the rules and regulations of the~~
6 ~~Louisiana Professional Engineering and Land Surveying Board, and the department's~~
7 ~~standard technical qualification requirements for firms providing professional~~
8 ~~engineering and land surveying services as provided for in R.S. 48:290 shall apply~~
9 ~~to the components providing design services, and the standard contractor~~
10 ~~qualifications as provided for in R.S. 37:2150 et seq., and the current rules and~~
11 ~~regulations of the State Licensing Board for Contractors shall apply to the~~
12 ~~component providing construction services utilized by the design-builder, based~~
13 ~~upon the applicable categories for the specific project. All~~ **registrations and** licenses
14 ~~for each component~~ shall be obtained prior to or concurrent with award of the project
15 to the selected design-builder by the department.

16 C.~~(1)~~ A notice of intent to request letters of interest for a design-build project
17 shall be distributed by the department through advertisement ~~in the Daily Journal of~~
18 ~~Commerce, the Baton Rouge Advocate, by appearance~~ on the Department of
19 Transportation and Development's Internet ~~home~~ **webpage**, ~~and by other means to~~
20 ~~ensure adequate response, including newspapers, trade journals, and other forms of~~
21 ~~media which may be appropriate for specialty services. All notices of intent shall be~~
22 advertised a minimum of ~~thirty~~ **ten business** days prior to the deadline for receipt of
23 responses and shall contain a brief description of the project, ~~the required scope of~~
24 ~~services~~, and sufficient information for a design-builder to determine its interest and
25 to enable it to submit a letter of interest. The department may readvertise the notice
26 of intent using additional media or publications in an attempt to solicit additional
27 responses if the number of responses received by the department is inadequate.

28 ~~(2)(a) The department may use a private design professional to develop the~~
29 ~~description of the project and the required scope of services, however, if the~~

1 department uses a private design professional, the private design professional shall
2 be selected in accordance with the provisions of R.S. 48:291(A).

3 (b) ~~The description of the project and the required scope of services shall~~
4 ~~include design criteria, analyses, reports, and cost estimates for the design-build~~
5 ~~project as prepared by a private design professional or the department.~~

6 D. The department ~~shall~~ **may** provide a "**request for qualifications**" (RFQ)
7 request for a qualifications package to design-builders who submit a letter of interest.

8 **If the department provides a request for qualifications,** ~~The~~ **the** department shall
9 identify all required information in the request for qualifications package ~~and in the~~
10 ~~standard response forms provided by the department. The response to a request for~~
11 ~~qualifications package shall include statements of qualification by~~ **which shall at a**
12 **minimum include design, construction or maintenance** credentials and experience
13 of ~~design component members~~ for the areas of expertise specific to the project,
14 **experience of key personnel as related to the project under consideration, past**
15 **performance on department projects, and any project-specific criteria as may**
16 **apply to project needs** and statements of qualification by experience and resources
17 of the ~~construction team component~~. The completed response form and any other
18 ~~required information shall be transmitted to the department by the responding~~
19 ~~design-builder by the deadline to submit such forms and information as provided in~~
20 ~~the request for qualifications package. Any response failing to meet all of the~~
21 ~~requirements contained in the request for qualifications package shall not be~~
22 ~~considered by the department. False or misrepresented information furnished in~~
23 ~~response to a request for qualifications package shall be grounds for rejection by the~~
24 ~~department.~~

25 E.(1) ~~A primary~~ **The chief engineer, with concurrence of the secretary,**
26 **shall establish a** design-build **qualifications** evaluation committee, ~~whose~~
27 ~~membership is provided for in R.S. 48:291(A), shall evaluate~~ **for evaluation of** the
28 responses to the request for qualifications package received by the department. ~~The~~
29 following general criteria used by the ~~primary evaluation committee in evaluating~~

1 responses to the request for qualifications package for design-build services shall
2 apply to both the design and construction components of any responding entity:

3 (a) Experience of both the design and construction entity components and of
4 key personnel as related to the project under consideration.

5 (b) Past performance on department projects.

6 (c) Any project-specific criteria as may apply to project needs.

7 (2) The **primary qualifications** evaluation committee shall evaluate the
8 qualifications of responding entities **design-builders** on the basis of the criteria set
9 forth in this Subsection **identified in the request for qualifications** and shall select
10 a short list of ~~not fewer than three and not more than five~~ of the highest rated entities
11 **in a number to be determined by the department**; however, if fewer than three
12 responses are received, the secretary **or his designated representative** may approve
13 proceeding with the design-build process. The **primary qualifications** evaluation
14 committee may, at its discretion, be assisted by other department personnel in its
15 evaluation of an entity's qualifications. The **primary design-build qualifications**
16 evaluation committee shall present its short list to the chief engineer for
17 recommendation to the secretary. The short-listed entities shall be ~~invited by the~~
18 **secretary requested** to submit a ~~detailed technical and cost~~ proposal for the
19 design-build project. The ~~invitation from the secretary request~~ to the short-listed
20 entities shall specify a deadline for submission of such proposals.

21 F. (1) ~~Depending upon the complexity of the project and the degree of~~
22 ~~flexibility in the approach to design and construction methods, the~~ **The** specific
23 requirements of the ~~technical~~ proposal shall be identified by the department to the
24 entities making the short list by means of a "**Scope of Services Package request for**
25 **proposal (RFP)**". ~~Generally, the technical~~ **The "request for proposal (RFP)"**
26 ~~proposal shall include discussions of request~~ design strategy and preliminary design
27 concepts, construction sequencing, techniques, materials, and methods, the schedule
28 for 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"~~ **"request for proposal"**.

2 (2) For more complex projects and projects with scopes which permit
3 flexibility and innovation in the design and construction approach, the department
4 ~~shall~~ **may** compensate unsuccessful and responsive short-listed ~~entities~~ **design-**
5 **builders** for the expense of preparing the technical proposal. The amount of
6 compensation to be paid, **if any**, for the ~~technical~~ proposal shall be predetermined
7 by the department and shall be included in the department's ~~scope of services~~
8 ~~package~~ **request for proposal (RFP)**. The department may use concepts submitted
9 by any paid short-listed ~~entity to design and construct the project~~ **design-build**
10 **proposer**.

11 G. The chief engineer, with concurrence of the secretary, shall establish a
12 ~~technical~~ **proposal** review committee for evaluation of design-build proposals. The
13 ~~technical~~ **proposal** review committee shall **be identified in the request for**
14 **proposals (RFP)** ~~include representatives from the construction, road design, bridge~~
15 ~~design, and planning sections of the department.~~ The chief engineer, with
16 concurrence of the secretary, shall assign a project manager, who shall become the
17 chairman of the ~~technical~~ **proposal** review committee for the project. The ~~technical~~
18 ~~review committee, including the project manager,~~ **request for proposals (RFP)** shall
19 identify ~~specific~~ technical elements of the project, ~~depending on the characteristics~~
20 ~~of the project,~~ to be included in the ~~technical score~~ **evaluation**. Additionally, the
21 chief engineer, with concurrence of the secretary, may select additional department
22 engineering and technical experts, and nationally recognized design-build experts to
23 serve as committee members to ~~score~~ **evaluate** each technical element of the project.
24 Members of the ~~technical~~ **proposal** review committee shall not have served as
25 members of the ~~primary~~ **qualifications** evaluation committee. ~~Each member of the~~
26 ~~technical review committee shall make his scoring of assigned elements available for~~
27 ~~public review. Such scores shall be considered public record.~~ **Records in the**
28 **custody of the department pertaining to an active design-build procurement**
29 **conducted under the provisions of this Section shall be confidential and shall not**

1 be subject to the provisions of R.S. 44:31, 32, or 33. Upon execution of the
2 design-build contract or termination of the design-build procurement the
3 records shall become subject to the provisions of Title 44 of the Louisiana
4 Revised Statutes of 1950.

5 H. (1) ~~An adjusted score approach shall be used by the department in~~
6 ~~determining the winning proposal. An adjusted score shall be determined using the~~
7 ~~following three components:~~

8 (a) (i) ~~The technical score determined by the technical review committee.~~
9 ~~Weighing factors may be assigned to each element depending on its relative~~
10 ~~magnitude or significance to the overall project. Each technical review committee~~
11 ~~member shall rate his assigned element of the proposal from each of the entities on~~
12 ~~the short list and shall submit such scores to the chairman of the technical review~~
13 ~~committee. The schedule and price bid shall not be made known to the technical~~
14 ~~review committee during the scoring process. The chairman of the technical review~~
15 ~~committee shall adjust the scores for any applicable weighing factors and shall~~
16 ~~determine the total technical score for each proposal.~~

17 (ii) ~~Prior to determining the adjusted score, the chairman of the technical~~
18 ~~review committee shall notify each design-build proposer, in writing, of each~~
19 ~~proposer's final total technical score.~~

20 (b) ~~The time value, consisting of the product of the proposed contract time~~
21 ~~expressed in calendar days multiplied by the value-per-calendar-day expressed in~~
22 ~~dollars established by the department and included in the "Scope of Services~~
23 ~~Package".~~

24 (c) ~~The price proposal.~~ **The proposal review committee shall evaluate the**
25 **proposals received in response to the request for proposals.**

26 (2) ~~The winning proposal shall be the proposal with the lowest adjusted~~
27 ~~score. The adjusted score for each entity's design-build proposal shall be determined~~
28 ~~by the following formula: Adjusted Score = (Price Bid + Time Value) divided by~~
29 ~~Technical Score. If the Time Value is not used, the Adjusted Score shall be~~

1 ~~determined by the following formula: Adjusted Score – Price Bid divided by~~
2 ~~Technical Score.~~

3 **(2) After receipt of design-build proposals, the secretary or designated**
4 **representative may conduct clarifications or discussions with design-build**
5 **proposers.**

6 **(3) Prior to contract execution, the secretary or designated**
7 **representative may conduct negotiations with the selected design-builder.**

8 **(4) After considering all factors identified in the request for proposals,**
9 **the department may award the contract to the responsive, responsible design-**
10 **builder whose proposal provides the best value to the department.**

11 **(5) The award decision will be documented, including but not limited to,**
12 **the rationale for judgments, trade-offs or benefits associated with the selected**
13 **design-builder.**

14 **I. Notwithstanding the provisions of this Section, the department may**
15 **elect to follow the design-build procedures promulgated by the Federal**
16 **Highway Administration in Title 23 Code of Federal Regulations, Part 636,**
17 **Design-Build Contracting, to procure design-build contracts.**

18 Section 2. R.S. 44:22.1 is hereby enacted to read as follows:

19 **§22.1 Department of Transportation and Development; design-build proposal**
20 **confidentiality**

21 **A. Notwithstanding any other provision of this Chapter to the contrary,**
22 **records submitted by a design-builder in response to a request for proposals**
23 **and records in the custody of the Department of Transportation and**
24 **Development pertaining to an active design-build procurement conducted under**
25 **the provisions of R.S. 48:250.2 and 250.3 shall be confidential and shall not be**
26 **subject to the provisions of R.S. 44:31, 32, or 33. Upon execution of the design-**
27 **build contract or upon termination of a design-build procurement without**
28 **execution of a contract, records of a design-build proposal or procurement shall**
29 **be subject to the provisions of this Chapter.**

1 **B. For the purposes of this Section, "design-build proposal" shall mean**
 2 **a proposal submitted to the Department of Transportation and Development in**
 3 **response to a request for proposals (RFP) by a design builder for which a**
 4 **design-build contract has not been executed or upon termination of a design-**
 5 **build procurement without execution of a contract, whichever occurs first.**

6 Section 3. R.S. 48:250.4 is hereby repealed.

7 Section 4. This Act shall become effective upon signature by the governor or, if not
 8 signed by the governor, upon expiration of the time for bills to become law without signature
 9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 11 effective on the day following such approval.

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

DIGEST

Present law authorizes DOTD, with the approval of the joint legislative transportation committee, to formulate, develop, and implement a program to combine the design and construction phases of a transportation project into a single contract "design-build". Present law authorizes the secretary of DOTD to select additional projects or combine a program of projects to utilize the design-build method and requires submission of such addition to the legislative transportation committees for approval.

Proposed law authorizes DOTD to include maintenance phases in a design-build in a single contract and removes the requirement that additional projects selected for design-build be submitted to the legislative transportation committees for approval.

Present law requires each design-builder to employ or have a partner, member, conventurer or subcontractor persons or a firm with persons duly licensed and registered in this state.

Proposed law requires only that each design-builder be duly licensed and registered to provide the services required to complete the project and do business in this state.

Present law requires that license for each component of the design-build project be obtained prior to or concurrent with the contract award by DOTD.

Proposed law further requires that all registrations be obtained prior to or concurrent with the award of the project.

Present law defines "design-builder" as the entity responsible for delivering the project design and construction.

Proposed law redefines "design-builder" to be an entity contractually responsible for delivering any combination of a project's design, construction, or maintenance.

Proposed law provides relative to the selection procedure and other requirements for

selecting a design-builder.

Present law requires a notice of intent to request letters of interest for a design-build project be distributed by DOTD through advertisement in certain publications, newspapers, DOTD's website, and any other means to ensure adequate response for a minimum of 30 days.

Proposed law deletes the requirement for advertisement in specific publications and requires a notice of intent to be distributed only on DOTD's website for a minimum of 10 days.

Proposed law requires the chief engineer, with the concurrence of the secretary of DOTD, to establish a design-build qualifications committee for evaluation of the responses to the RFP's. Requires the committee to select a short list of the highest rated firms. Authorizes the secretary of DOTD or his designated representative to approve the design-build process if three or less responses are received.

Present law requires the chief engineer, with concurrence of the secretary of DOTD, to establish a "technical" proposal review committee for evaluation of design-build proposals. Further provides a scoring procedure for evaluation of design-build proposals.

Proposed law requires the chief engineer, with concurrence of the secretary of DOTD, to establish a "proposal" review committee to evaluation of design-build proposals and removes the scoring procedure.

Proposed law authorizes the records in custody of DOTD be confidential and not subject to the public records law.

Proposed law authorizes the secretary of DOTD or his representative to conduct negotiations with the selected design-builder before contract execution.

Proposed law authorizes DOTD to award the design-build contracts to the most responsive, responsible design-builder whose proposal provides the best value to DOTD.

Present law provides for the confidentiality of certain communications, documents, files, and records.

Proposed law includes records submitted by a design-builder in response to a RFP and other records in the custody of DOTD pertaining to an active design-build procurement, conducted under the provisions of present law, until the contract is executed. Proposed law provides for such proposals or records to become public upon execution or termination of the contract or procurement, whichever occurs first.

Present law authorizes DOTD to utilize the design-build method for any transportation infrastructure project in an area impacted by a hurricane, including those areas where infrastructure is adversely impacted by increased population and traffic as a result of a hurricane. Further requires the department to comply with the provisions of present law when selecting a design-build entity for any authorized project.

Proposed Law repeals present law provisions relative to utilizing design-build in areas impacted by a hurricane.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 48:250.2(A) and (B) and 250.3; adds R.S. 44:22.1; repeals R.S. 48:250.4)