

2015 Regular Session

SENATE BILL NO. 159

BY SENATOR HEITMEIER

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

PUBLIC CONTRACTS. Authorizes design-build contracts for new ferries on the Mississippi River and bridges that replace tunnels. (gov sig)

AN ACT

To amend and reenact R.S. 48:250.2(A), and to enact R.S. 38:2225.2.5 and R.S. 48:232.1 and 250.2(D), relative to design-build contracts; to authorize any regional transit authority created by law to let a design-build contract for new ferries on the Mississippi River; to require that the Department of Transportation and Development give priority to any bridge project which replaces a tunnel; to authorize the Department of Transportation and Development to utilize the design-build method to contract for ferries on the Mississippi River and for a bridge project which replaces a tunnel; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2225.2.5 is hereby enacted to read as follows:

**§2225.2.5. Design-build contracts; authorized use by any regional transit authority for new ferries on the Mississippi River**

**A.(1) Notwithstanding any other provision of law to the contrary, and subject to the provisions of this Section, any regional transit authority created by law may let contracts for any new ferry on the Mississippi River in which the design and construction phases of the ferry project are combined into a single**

1           contract.

2                   (2) For the purposes of this Section:

3                   (a) "Authority" means a regional transit authority.

4                   (b) "Design-builder" means the person or entity contractually obligated  
5 to deliver the design and construction of a new ferry on the Mississippi River.

6                   B. Prior to letting any such contract, an authority shall adopt a  
7 resolution establishing the design-build program for any new ferry. The  
8 resolution shall include, at a minimum, the following provisions:

9                   (1) Requirements that a design-builder to whom a design-build contract  
10 is awarded, or any person or entity to whom a design-builder may sublet, shall  
11 be duly registered, licensed, or otherwise qualified to perform such design and  
12 construction service as required by law, and registered to do business in  
13 Louisiana.

14                   (2) Requirements for the composition of a technical review committee to  
15 grade and judge the statements of qualifications and technical proposals  
16 submitted pursuant to the request for qualifications and the request for  
17 technical proposals. At least one member of the technical review committee  
18 shall be a maritime engineer, and the resolution shall so provide.

19                   (3) Specific requirements for the design-build program and the design-  
20 build contract, including but not limited to:

21                   (a) Public announcement procedures for solicitation of interested design-  
22 build competitors. The resolution shall provide that a notice of intent to select  
23 a single legal entity for design-build services and to request letters of interest  
24 and statements of qualifications from qualified firms or teams shall be  
25 distributed by the authority through advertisement in the official journal of the  
26 authority, by appearance on the authority's Internet home page, if any, and by  
27 other means to ensure adequate response, including newspapers, trade journals,  
28 and other forms of media which may be appropriate for specialty services. The  
29 notice of intent shall be advertised a minimum of ten days prior to the deadline

1 for receipt of responses and shall contain a brief description of the project, the  
2 required scope of services, and sufficient information for design-build entities  
3 to determine their interest and to enable them to submit a letter of interest and  
4 statement of qualifications. The authority may readvertise the notice of intent  
5 using additional media or publications in an attempt to solicit additional  
6 responses if the number of responses is inadequate.

7 (b) Scope of service requirements to be met by the design-builder  
8 selected for the contract.

9 (c) Requirements for a request for qualifications and statements of  
10 qualifications to be submitted by competitors for the design-build contract.

11 (d) Criteria and rating procedures for choosing a short list from among  
12 the persons submitting statements of qualifications to whom requests for the  
13 submission of technical proposals will be made.

14 (e) Requirements for cost proposals to be submitted by competitors for  
15 the design-build contract.

16 (f) Requirements concerning how the technical review committee shall  
17 grade, judge, and rank the technical proposals and make recommendations to  
18 the governing authority of the regional transit authority.

19 (g) Requirements for the selection process for the award of the design-  
20 build contract.

21 C. The design-build program and any design-build contract entered into  
22 pursuant to the design-build program shall be subject to the following  
23 procedures and limitations:

24 (1) Statements of qualifications from at least two qualified design-build  
25 competitors must be received in response to a formal request for qualifications  
26 in order to proceed with a request for technical proposals.

27 (2) Technical proposals shall be requested from no fewer than two of the  
28 qualified design-build competitors who submit statements of qualifications for  
29 the design-build program.

1           **(3) The authority may use a private design professional or its own staff**  
2           **to develop a description of the project and the required scope of services. The**  
3           **description of the project and the required scope of services shall include design**  
4           **criteria, analyses, reports, and cost estimates for the design-build project as**  
5           **prepared by a private design professional or the authority staff.**

6           **(4) The technical review committee shall grade, judge, and rank the**  
7           **technical proposals and make a recommendation to the authority's governing**  
8           **authority for the awarding of the contract in accordance with requirements of**  
9           **this Section, the resolution, the request for qualifications, and the request for**  
10          **technical proposals.**

11          **(5)(a) The final selection of the design-build competitor to whom the**  
12          **contract shall be awarded shall be made by the authority's governing authority.**

13          **(b) Such selection shall be made upon the basis of the best design for the**  
14          **purposes set forth in the request for qualifications and the best cost for that**  
15          **design, taking into account costs of construction and operation and maintenance**  
16          **of that design. Competitors from the short list from whom technical proposals**  
17          **have been requested may submit alternate designs and costs to ensure the**  
18          **greatest number of options from which the award may be made so as to**  
19          **promote best cost, as described above in this Subparagraph, and the interests**  
20          **of the taxpayers.**

21          **(6)(a) An adjusted score approach shall be used by the authority in**  
22          **determining the winning proposal. An adjusted score shall be determined using**  
23          **the following components:**

24          **(i) The technical score determined by the technical review committee.**  
25          **Weighing factors may be assigned to each element depending on its relative**  
26          **magnitude or significance to the overall project. Each technical review**  
27          **committee member shall rate his assigned element of the proposal from each of**  
28          **the entities on the short list and shall submit such scores to the chairman of the**  
29          **technical review committee. The schedule and price bid shall not be made**

1 known to the technical review committee during the scoring process. The  
2 chairman of the technical review committee shall adjust the scores for any  
3 applicable weighing factors and shall determine the total technical score for  
4 each proposal.

5 (ii) Prior to determining the adjusted score, the chairman of the technical  
6 review committee shall notify each design-build proposer, in writing, of each  
7 proposer's final total technical score. A proposer may request, in writing, a  
8 review of its final total technical score by the authority's designated  
9 representative. If any proposer requests a review of its total technical score, the  
10 designated representative shall hold a hearing to review such within a  
11 reasonable time after the request has been received by the designated  
12 representative. The designated representative shall give the requesting proposer  
13 reasonable notice of the time and place of such hearing. The requesting  
14 proposer may appear at the hearing and present facts and arguments in support  
15 of the request for review of its final total technical score.

16 (iii) The individual scoring of each member of the technical review  
17 committee shall be considered a public record and available for public view.

18 (iv) The designated representative shall present his findings from the  
19 hearing to the governing authority of the authority. The governing authority  
20 shall determine what action shall be taken regarding the proposer's request to  
21 review its final total technical score. Except as provided for in Subsection D of  
22 this Section, the governing authority's decision shall be final and not subject to  
23 appeal by any legal process.

24 (v) The time value, consisting of the product of the proposed contract  
25 time expressed in calendar days multiplied by the value-per-calendar-day  
26 expressed in dollars established by the authority and included in the "Scope of  
27 Services Package".

28 (vi) The price proposal.

29 (b) The chairman of the technical review committee shall recommend the

1 proposal with the lowest adjusted score to the authority's governing authority.

2 The adjusted score for each entity's design-build proposal shall be determined  
3 by the following formula: Adjusted Score = (Price Bid + Time Value) divided  
4 by Technical Score. If the Time Value is not used, the Adjusted Score shall be  
5 determined by the following formula: Adjusted Score = Price Bid divided by  
6 Technical Score.

7 D. There shall be no challenge by any legal process to the choice of the  
8 successful designer-builder unless filed and served on the presiding officer of  
9 the authority's governing authority within seven calendar days after the award  
10 of the design-build contract. Any such challenge shall be limited to fraud, bias  
11 for pecuniary or personal reasons not related to the interests of the taxpayers,  
12 or arbitrary and capricious selection of the successful design-builder. Any such  
13 challenge shall be heard as a summary proceeding by the district court of  
14 proper venue for the authority not less than ten days after service of the  
15 petition, excluding legal holidays.

16 E. Once the design-builder has been chosen, a contract for a stipulated  
17 maximum total cost may be executed, as provided in the authority's award  
18 resolution. The final cost of the design-build contract may be increased or  
19 decreased to account for inflation if provided for in the contract, for changes in  
20 the scope of work, or for a combination thereof, or for other conditions of which  
21 the design-builder had no knowledge and should not have had knowledge as a  
22 reasonable possibility concerning the design and construction provided any  
23 change is related to the original project and scope of services.

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

27 Section 2. R.S. 48:250.2(A) is hereby amended and reenacted, and R.S. 48:232.1 and  
28 250.2(D) are hereby enacted to read as follows:

1           §232.1. Apportionment of appropriated funds by the department; tunnel  
 2                                   replacement priority

3           The Department of Transportation and Development may give priority  
 4           and advance to construction as expeditiously as possible any bridge project  
 5           where a bridge replaces a tunnel. The department may use any available source  
 6           of funds to finance such projects, and may use any available source of funds,  
 7           including the secretary's emergency fund, as matching funds to meet federal  
 8           requirements in order to receive federal aid funds. Notwithstanding any other  
 9           provision of law to the contrary, the department may contract for such projects  
 10           using any contract method provided by law, including design-build or  
 11           construction management at risk.

12   \*       \*       \*

13           §250.2. Design-build contracts; administration

14                       A. Notwithstanding any law to the contrary or the requirements of this Part,  
 15           if the secretary determines it is in the best interest of the taxpayers, the Department  
 16           of Transportation and Development, with approval of the House and Senate  
 17           transportation, highways, and public works committees, may formulate, develop, and  
 18           implement a program to combine the design and construction phases of a  
 19           transportation facility or facilities, including but not limited to highways,  
 20           interchanges, ~~or~~ bridges, **ferries on the Mississippi River, or tunnels** into a single  
 21           contract.

22   \*       \*       \*

23                       **D. The department shall consider a design-build contract to replace the**  
 24           **tunnel on Louisiana Highway 23 and shall submit a written report of its**  
 25           **recommendation to the House and Senate committees on transportation,**  
 26           **highways, and public works not later than February 1, 2016.**

27           Section 3. This Act shall become effective upon signature by the governor or, if not  
 28           signed by the governor, upon expiration of the time for bills to become law without signature  
 29           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Sharon F. Lyles.

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## DIGEST

SB 159 Engrossed

2015 Regular Session

Heitmeier

Proposed law authorizes any regional transit authority created by law to let a single contract combining the design and construction phases for any new ferry project on the Mississippi River. Proposed law defines a "design-builder" as a person or entity contractually obligated to deliver the design and construction of a new Mississippi River ferry.

Proposed law requires that the authority adopt a resolution establishing the design-build program for any new ferry. Provides that the resolution shall:

- (1) Require that a design-builder be duly registered, licensed, or otherwise qualified to perform design and construction service as required by law and registered to do business in the state.
- (2) Provide for a technical review committee which shall include at least one maritime engineer.
- (3) Provide for public announcement procedures for solicitation of interested design-build competitors, scope of service requirements, requests for statements of qualifications, criteria and rating procedures, requirements for cost proposals, requirements concerning how the technical review committee shall grade, judge, and rank the technical proposals and make recommendations to the authority's governing authority, and requirements for the selection process for the award of the design-build contract.
- (4) Require that a notice of intent to select a single legal entity for design-build services and to request letters of interest and statements of qualifications from qualified firms or teams shall be distributed by the authority through advertisement in the official journal of the authority, by appearance on the authority's Internet home page, if any, and by other means to ensure adequate response, including newspapers, trade journals, and other forms of media which may be appropriate for specialty services. Provides relative to the content of such notice.

Proposed law additionally establishes the following procedures and limitations regarding the design-build contract:

- (1) Statements of qualifications from at least two qualified design-build competitors must be received in order to proceed with a request for technical proposals.
- (2) Technical proposals shall be requested from no fewer than two of the qualified design-build competitors.
- (3) The authority may use a private design professional or its own staff to develop a description of the project and the required scope of services.
- (4) The technical review committee shall grade, judge, and rank the technical proposals and make a recommendation to the authority for the awarding of the contract.
- (5) The final selection of the design-build competitor to whom the contract shall be

awarded shall be made by the authority's governing authority. Such selection shall be made upon the basis of the best design for the purposes set forth in the request for qualifications and the best cost for that design, taking into account costs of construction and operation and maintenance of that design. Competitors may submit alternate designs and costs to ensure the greatest number of options.

Proposed law requires that legal challenge to the choice of the designer-builder be filed and served within seven calendar days after the award of the contract. Requires that any such challenge be limited to fraud, bias for pecuniary or personal reasons not related to the interests of the taxpayers, or arbitrary and capricious selection of the successful designer-builder.

Proposed law provides that once the design-builder has been chosen, a contract for a stipulated maximum total cost may be executed, as provided in the authority's award resolution.

Proposed law authorizes increases or decreases in the final cost of the contract to account for inflation if provided for in the contract, for changes in the scope of the work, or for other conditions of which the design-builder had no knowledge or should not have had knowledge as a reasonable possibility concerning the design and construction provided any change is related to the original project and scope of services.

Proposed law supersedes conflicting provisions of law relative to bidding for public contracts.

Proposed law authorizes the Department of Transportation and Development (DOTD) to give priority and advance to construction as expeditiously as possible any bridge project that replaces a tunnel.

Proposed law authorizes use of any source of funds for such projects or as matching funds for federal-aid funds, including the secretary's emergency fund.

Proposed law authorizes use of any contract method provided by law, including design-build or construction management at risk.

Present law authorizes DOTD to combine the design and construction phases for a transportation facility or facilities, including but not limited to highways, interchanges, or bridges into a single contract.

Proposed law adds ferries on the Mississippi River and tunnels to the illustrative list of transportation facilities.

Proposed law requires DOTD to consider a design-build contract to replace the tunnel on LA 23 and to submit a written report of its recommendation to the House and Senate committees on transportation, highways, and public works not later than February 1, 2016.

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

(Amends R.S. 48:250.2(A); adds R.S. 38:2225.2.5, R.S. 48:232.1 and 250.2(D))

#### Summary of Amendments Adopted by Senate

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

1. Makes discretionary the prioritization and advancement to construction of any bridge project where a bridge replaces a tunnel.