

Regular Session, 2011

HOUSE BILL NO. 543

BY REPRESENTATIVE LEGER

PUBLIC CONTRACTS: Authorizes ports to use the design-build method on certain construction projects

## 1 AN ACT

2 To enact R.S. 34:3523, relative to contracts let by ports; to authorize ports to use the design-  
3 build method on certain construction projects; to provide for a selection process for  
4 the design-builder; to provide for requirements, rights and powers for the design-  
5 builder; to provide for notice and advertisement procedures; to authorize a private  
6 design professional to develop project descriptions; to establish an evaluation  
7 committee and its responsibilities; to establish a technical review committee and its  
8 responsibilities; to provide procedures for selection of the winning proposal; to  
9 provide a review process; to provide guidelines relative to legal action; and to  
10 provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 34:3523 is hereby enacted to read as follows:

13 §3523. Design-build contracts

14 A. Notwithstanding any law to the contrary, any port may utilize the design-  
15 build method on any production-related construction project which can be defined  
16 by capacity or throughput design criteria; including but not limited to those with  
17 infrastructure when the infrastructure is not more than fifty percent of the  
18 construction cost of the entire project. As used in this Section, "construction costs"  
19 shall mean the estimated cost to complete the entire project including all planning  
20 services, engineering and design services, land acquisition costs, inspection services,

1 legal services and other similar direct and indirect costs. As used in this Section, the  
2 word "port" shall mean any port commission or port, harbor and terminal district  
3 created and established by law under the provisions of Title 34 of the Louisiana  
4 Revised Statutes of 1950.

5 B. Every design-builder shall be duly licensed and registered to do business  
6 in the state of Louisiana, if required by law, as either an architect, an engineer, or a  
7 general contractor. Each design-builder shall have the following rights and powers:

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

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

15 (3) The design-builder may contract with any individual port, as part of a  
16 design-build contract to provide professional services or construction services that  
17 the design-builder is not itself licensed, registered, or otherwise qualified in  
18 accordance with this Section.

19 C.(1) A notice of intent to select a design-builder for design-build services  
20 and to request letters of interest and statements of qualifications from qualified firms  
21 or teams shall be distributed by the port through advertisement in its official journal  
22 and, if one exists, the Internet website of the port. The port may select other  
23 publications deemed appropriate by the port for advertisement of the notice. All  
24 notices of intent shall be advertised a minimum of thirty days prior to the deadline  
25 for receipt of responses and shall contain a brief description of the project, the  
26 required scope of services, and sufficient information for design build entities to  
27 determine their interest and to enable them to submit a letter of interest and statement  
28 of qualifications. The port may re-advertise the notice of intent using additional

1 media or publications in an attempt to solicit additional responses if the number of  
2 responses received by the port is inadequate.

3 (2)(a) The port may use a private design professional to develop the  
4 description of the project and the required scope of services; however, if the port  
5 uses a private design professional, the private design professional shall be selected  
6 by the port using the procedures set forth in R.S. 38:2310 through 2318.

7 (b) The description of the project and the required scope of services shall  
8 include design criteria, analyses, reports, and cost estimates for the design-build  
9 project as prepared by a private design professional or the port.

10 (c) The design-build entity shall include a registered design professional who  
11 shall be independent from the port's private design professional and shall be named  
12 in the design-build entity's proposal.

13 (d) The port shall identify all required information in the notice of intent and  
14 in the standard response forms provided by the port. The notice of intent shall  
15 include statements of qualification by credentials and experience of design  
16 component members for the areas of expertise specific to the project and statements  
17 of qualification by experience and resources of the constructions team component.  
18 The completed response form and any other required information shall be  
19 transmitted to the port by the responding entity prior to the deadline to submit such  
20 forms and information as provided in the notice of intent. Any response failing to  
21 meet all of the requirements contained in the notice of intent, as determined in the  
22 discretion of the port, shall not be considered by the port. False or misrepresented  
23 information furnished in response to a notice of intent shall be grounds for rejection  
24 by the port and disbarment for future participation in any future work undertaken by  
25 the port.

26 D.(1) A primary design-build evaluation committee established by the port  
27 shall evaluate the responses to the notice of intent received by the port. The  
28 following general criteria used by the primary evaluation committee in evaluating

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

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

5 (b) Past performance of port projects.

6 (c) Any project-specific criteria, as established by the port, which may apply  
7 to project needs.

8 (2) The primary evaluation committee shall evaluate the letters of interest  
9 from responding entities on the basis of the criteria set forth in this Subsection and  
10 shall select a short list of not more than five of the highest rated entities. However,  
11 if fewer than three letters of interest from responding entities are received by the  
12 port, the port shall have the discretion to proceed with the design-build process. The  
13 primary evaluation committee may, at its discretion, be assisted by other port  
14 personnel in its evaluation of an entity's qualifications. The primary design-build  
15 evaluation committee shall present its short list to the port director or chief  
16 administrative officer of the port. The short-listed entities shall be invited by the port  
17 director or chief administrative officer to submit a detailed technical and cost  
18 proposal, submitted after the technical proposal, but before published results of the  
19 technical scores, for the design-build project. The invitation from the port director  
20 to the short-listed entities shall specify a reasonable deadline for submission of such  
21 proposals.

22 E.(1) Depending upon the complexity of the project and the degree of  
23 flexibility in the approach to design and construction methods, the specific  
24 requirements of the technical proposal shall be identified by the port to the entities  
25 making the short list by means of a "scope of services package". Generally, the  
26 technical proposal shall include discussions of design strategy and preliminary  
27 design concepts, construction sequencing, techniques, materials, and methods, the  
28 schedule for commencement and completion of all phases of work, and a lump sum

1 cost for all services in fulfillment of the requirements and within the constraints of  
2 the "scope of services package".

3 (2) For more complex projects and projects with scopes, which permit  
4 flexibility and innovation in the design and construction approach, the port may  
5 compensate all short-listed entities for the expense of preparing the technical  
6 proposal. The amount of compensation paid for the technical proposal may be  
7 predetermined by the port and may be revealed to the entity at the time the entity is  
8 notified of its selection to the short list. The port may use, without cost to or  
9 payment by the port, concepts submitted by any short-listed entity to design and  
10 construct the project.

11 F. The port director or chief administrative officer of the port, shall establish  
12 a technical review committee for evaluation of design-build proposals. The port  
13 director or chief executive officer, shall assign a project manager, who shall become  
14 chairman of the technical review committee for the project. The technical review  
15 committee, including the project manager, shall identify specific technical elements  
16 of the project, depending upon the characteristics of the project, to be included in the  
17 technical score. Additionally, the port director, may select additional port  
18 engineering and technical experts, and nationally recognized design-build experts to  
19 serve as committee members to score each technical element of the project. Members  
20 of the technical review committee shall not have served as members of the primary  
21 evaluation committee. Each member of the technical review committee shall make  
22 his scoring of assigned elements available for public review. Such scores shall be  
23 considered public record.

24 G.(1) An adjusted score approach shall be used by the port in determining  
25 the winning proposal. An adjusted score shall be determined using the following  
26 three components:

27 (a)(i) The technical score determined by the technical review committee.  
28 Weighing factors may be assigned to each element depending on its relative  
29 magnitude or significance to the overall project. Each technical review committee

1 member shall rate his assigned element of the proposal from each of the entities on  
2 the short list and shall submit such scores to the chairman of the technical review  
3 committee. The schedule and price bid shall not be made known to the technical  
4 review committee during the scoring process. The chairman of the technical review  
5 committee shall adjust the scores for any applicable weighing factors and shall  
6 determine the total technical score for each proposal.

7 (ii) Prior to determining the adjusted score, the chairman of the technical  
8 review committee shall notify each design-build proposer, in writing, of each  
9 proposer's final technical score. A proposer may request, in writing, no later than ten  
10 business days from the date of the chairman's notice, a review of its final technical  
11 score by the port director or his designated representative. If any proposer requests  
12 a review of its total technical score, the port director shall hold a hearing to review  
13 such within a reasonable time after the request has been received by the port director.  
14 The port director shall give the requesting proposer reasonable notice of the time and  
15 place of such hearing. The requesting proposer may appear at the hearing and  
16 present facts and arguments in support of the request for review of its final total  
17 technical score.

18 (iii) The port director shall present his findings from the hearing to the  
19 governing authority of the port. The governing authority shall determine what action  
20 shall be taken regarding the proposer's request to review its final technical score. The  
21 decision of the governing authority of the port shall be final and not subject to appeal  
22 or review by any legal process or otherwise; except upon clear and convincing  
23 evidence of fraud by the port, or arbitrary and capricious action by the port.

24 (b) The time value, consisting of the product of the proposed contract time  
25 expressed in calendar days multiplied by the value-per-calendar-day expressed in  
26 dollars established by the port and included in the "scope of services package".

27 (c) The price proposal which will be publicly opened after the published  
28 results of the technical scores.

1           (2) The winning proposal shall be the proposal with the lowest adjusted  
2           score. 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 by the  
4           technical score. If the time value is not used, the adjusted score shall be determined  
5           by the following formula: adjusted score = price bid divided by technical score.

6           H. Any decision of the governing authority of the port, the port director or  
7           chief administrative officer of the port, or other employee of the port or any member  
8           of the primary evaluation committee or the technical review committee relating to  
9           the provisions of this Section shall be final and not subject to appeal or review by  
10          any legal process or otherwise; except upon clear and convincing evidence of fraud  
11          or arbitrary and capricious action by the port or any person acting on behalf of the  
12          port. Further, any legal process commenced or filed relating to any action or any  
13          inaction arising out of the provisions of this Section shall be filed within ten days of  
14          such action or inaction.

15          Section 2. The provisions of this Act shall have no effect on projects that have not  
16          initiated advertisement of a notice of intent after June 30, 2017.

17          Section 3. This Act shall become effective upon signature by the governor or, if not  
18          signed by the governor, upon expiration of the time for bills to become law without signature  
19          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
20          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
21          effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Leger

HB No. 543

**Abstract:** Authorizes ports to use the design-build method on certain construction projects. Further provides for the design-builder to meet certain requirements and provides for rights and powers. Provides procedures for notice and advertisement requirements and use of a private design professional. Creates a primary evaluation committee to evaluate responses to the notice of intent and a technical review committee to evaluate design-build proposals.

Proposed law authorizes any port to utilize the design-build method on any production-related construction project

Proposed law requires every design-builder to be duly licensed and registered to do business in the state, if required by law, as either an architect, an engineer, or a general contractor. Each design-builder shall have the following rights and powers:

- (1) To sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of Louisiana to provide professional design services.
- (2) To sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.
- (3) To contract with any individual port, as part of a design-build contract to provide professional services or construction services that the design-builder is not itself licensed, registered, or otherwise qualified in accordance with this proposed law.

Proposed law requires the port to distribute a notice of intent and to request letters of interest and statements of qualifications from qualified firms or teams through its official journal and the internet website of the port, if one exists for a minimum of 30 days prior to the deadline of receipt of responses and to contain sufficient information to enable the design build entities to respond. Further authorizes the port to use additional publications for advertisement and to re-advertise using additional media or publication if responses are inadequate.

Proposed law authorizes the port to use private design professionals using the procedures set forth in present law regarding selection of professional services for professional contracts, to develop the description of the project and the requires scope of services.

Proposed law requires the description of the project and scope of services to include design criteria, analyses, reports, and cost estimates for the design-build project as prepared by a private design professional or the port.

Proposed law requires the design-build entity to include a registered design professional who shall be independent from the port's private design professional and shall be named in the design-build entity's proposal.

Proposed law requires the port to identify all required information in the notice of intent and in the standard response forms provided by the port. Provides that the notice of intent shall include statements of qualification by credentials and experience of design component members for the areas of expertise specific to the project and statements of qualification by experience and resources of the constructions team component.

Proposed law provides that any response failing to meet all of the requirements contained in the notice of intent, shall not be considered by the port. False or misrepresented information furnished in response to a notice of intent shall be grounds for rejection by the port and disbarment for future participation in any future work undertaken by the port.

Proposed law establishes a primary design-build evaluation committee to evaluate the responses to the notice of intent received by the port. Further provides the following criteria to be applied in evaluating the design and construction components:

- (1) Experience of both the design and construction entity components and of key personnel as related to the project under construction.
- (2) Past performance of port projects.



(3) Any project-specific criteria, as established by the port, which may apply to project needs.

Proposed law requires the evaluating committee to select a short list of not more than 5 of the highest rated entities and the short list must be presented to the port director or chief administrative officer of the port. Further provides that the short-listed entities shall be invited a detailed technical and cost proposal, submitted after the technical proposal, but before published results of the technical scores, for the design-build project. Provides that the invitation shall specify a reasonable deadline for submission of such proposals.

Proposed law requires the specific requirements of the technical proposal to be identified by the port to the short-listed entities by means of a "scope of services package," which shall include discussions of design strategy and preliminary design concepts, construction sequencing, techniques, materials, and methods, the schedule for commencement and completion of all phases of work, and a lump sum cost for all services in fulfillment of the requirements and within the constraints of the "scope of services package".

Proposed law provides that for more complex projects and projects with scope compensation may be provided for all short-listed entities for the expense of preparing the technical proposal and the compensation may be predetermined by the court and revealed to the entity upon notification of short list selection.

Proposed law authorizes the port to use concepts submitted by any short-listed entity to design and construct the project without cost or payment by the port.

Proposed law establishes a technical review committee for evaluation of design-build proposals with a project manager, who shall also be the chairman of the committee, to be assigned by the port director or chief executive officer as well as any additional port engineering and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project. Prohibits members of the evaluation committee from serving on the technical review committee. Each member's score shall be available for public review and considered public record.

Proposed law provides that the winning proposal shall be selected by using an adjusted score approach. Further provides that the adjusted score shall be determined by 3 components.

Proposed law provides that the 1<sup>st</sup> component consists of the technical score determined by the technical review committee. Provides that each technical review committee member shall rate his assigned element of the proposal from each of the entities on the short list and shall submit such scores to the chairman of the technical review committee. Further provides that the chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each proposal.

Proposed law requires the chairman of the committee to notify each proposer in writing prior to determination of the adjusted score. Authorizes a proposer to request in writing no later than 10 business days from the date of notice, a review of its final technical score by the port director or his designee.

Proposed law requires a hearing for any proposer who requests a review of its total technical score to present facts and arguments in support of the request for review, and the hearing shall be within a reasonable time of the request and the proposer shall receive notice of the time and place of the hearing.

Proposed law requires the director to present the findings from the hearing to the governing authority of the port, who shall determine the action for review and that decision shall be final and not subject to appeal or review by any legal process unless there is evidence of fraud or arbitrary and capricious actions by the port.

Proposed law provides that the 2<sup>nd</sup> component is the time value, expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars by the port and contained in the "scope of services package."

Proposed law provides that the 3<sup>rd</sup> component is the price proposal which will be publicly opened after the published results of the technical scores.

Proposed law requires the winning proposal to be the one with the lowest adjusted score, which shall be determine by a certain formula.

Proposed law provides that any decision made by the governing authority of the port, the evaluation or technical committee, or employees of the port shall be a final decision and not subject to appeal or review by any legal process unless there is evidence of fraud or arbitrary and capricious actions by the port. Further provides that any legal process commenced or filed shall be within 10 days of the action or inaction.

Effective upon signature of governor a lapse of time for gubernatorial action.

(Adds R.S. 34:3523)