

SENATE BILL NO. 159

BY SENATOR HEITMEIER

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

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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 contract.

(2) For the purposes of this Section:

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

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

B. Prior to letting any such contract, an authority shall adopt a resolution establishing the design-build program for any new ferry. The

1 resolution shall include, at a minimum, the following provisions:

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

7 (2) Requirements for the composition of a technical review committee to
8 grade and judge the statements of qualifications and technical proposals
9 submitted pursuant to the request for qualifications and the request for
10 technical proposals. At least one member of the technical review committee
11 shall be a maritime engineer, and the resolution shall so provide.

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

14 (a) Public announcement procedures for solicitation of interested design-
15 build competitors. The resolution shall provide that a notice of intent to select
16 a single legal entity for design-build services and to request letters of interest
17 and statements of qualifications from qualified firms or teams shall be
18 distributed by the authority through advertisement in the official journal of the
19 authority, by appearance on the authority's Internet home page, if any, and by
20 other means to ensure adequate response, including newspapers, trade journals,
21 and other forms of media which may be appropriate for specialty services. The
22 notice of intent shall be advertised a minimum of ten days prior to the deadline
23 for receipt of responses and shall contain a brief description of the project, the
24 required scope of services, and sufficient information for design-build entities
25 to determine their interest and to enable them to submit a letter of interest and
26 statement of qualifications. The authority may readvertise the notice of intent
27 using additional media or publications in an attempt to solicit additional
28 responses if the number of responses is inadequate.

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

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

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

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

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

11 (g) Requirements for the selection process for the award of the design-
12 build contract.

13 C. The design-build program and any design-build contract entered into
14 pursuant to the design-build program shall be subject to the following
15 procedures and limitations:

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

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

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

27 (4) The technical review committee shall grade, judge, and rank the
28 technical proposals and make a recommendation to the authority's governing
29 authority for the awarding of the contract in accordance with requirements of
30 this Section, the resolution, the request for qualifications, and the request for

1 technical proposals.

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

4 (b) Such selection shall be made upon the basis of the best design for the
5 purposes set forth in the request for qualifications and the best cost for that
6 design, taking into account costs of construction and operation and maintenance
7 of that design. Competitors from the short list from whom technical proposals
8 have been requested may submit alternate designs and costs to ensure the
9 greatest number of options from which the award may be made so as to
10 promote best cost, as described in this Subparagraph, and the interests of the
11 taxpayers.

12 (6)(a) An adjusted score approach shall be used by the authority in
13 determining the winning proposal. An adjusted score shall be determined using
14 the following components:

15 (i) The technical score determined by the technical review committee.
16 Weighing factors may be assigned to each element depending on its relative
17 magnitude or significance to the overall project. Each technical review
18 committee member shall rate his assigned element of the proposal from each of
19 the entities on the short list and shall submit such scores to the chairman of the
20 technical review committee. The schedule and price bid shall not be made
21 known to the technical review committee during the scoring process. The
22 chairman of the technical review committee shall adjust the scores for any
23 applicable weighing factors and shall determine the total technical score for
24 each proposal.

25 (ii) Prior to determining the adjusted score, the chairman of the technical
26 review committee shall notify each design-build proposer, in writing, of each
27 proposer's final total technical score. A proposer may request, in writing, a
28 review of its final total technical score by the authority's designated
29 representative. If any proposer requests a review of its total technical score, the
30 designated representative shall hold a hearing to review such within a

1 reasonable time after the request has been received by the designated
2 representative. The designated representative shall give the requesting proposer
3 reasonable notice of the time and place of such hearing. The requesting
4 proposer may appear at the hearing and present facts and arguments in support
5 of the request for review of its final total technical score.

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

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

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

18 (vi) The price proposal.

19 (b) The chairman of the technical review committee shall recommend the
20 proposal with the lowest adjusted score to the authority's governing authority.
21 The adjusted score for each entity's design-build proposal shall be determined
22 by the following formula: Adjusted Score = (Price Bid + Time Value) divided
23 by Technical Score. If the Time Value is not used, the Adjusted Score shall be
24 determined by the following formula: Adjusted Score = Price Bid divided by
25 Technical Score.

26 D. There shall be no challenge by any legal process to the choice of the
27 successful designer-builder unless filed and served on the presiding officer of
28 the authority's governing authority within seven calendar days after the award
29 of the design-build contract. Any such challenge shall be limited to fraud, bias
30 for pecuniary or personal reasons not related to the interests of the taxpayers,

1 or arbitrary and capricious selection of the successful design-builder. Any such
2 challenge shall be heard as a summary proceeding by the district court of
3 proper venue for the authority not less than ten days after service of the
4 petition, excluding legal holidays.

5 E. Once the design-builder has been chosen, a contract for a stipulated
6 maximum total cost may be executed, as provided in the authority's award
7 resolution. The final cost of the design-build contract may be increased or
8 decreased to account for inflation if provided for in the contract, for changes in
9 the scope of work, or for a combination thereof, or for other conditions of which
10 the design-builder either did not have knowledge of, or could not have
11 reasonably foreseen the possibility of, concerning the design and construction
12 provided any change is related to the original project and scope of services.

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

16 Section 2. R.S. 48:250.2(A) is hereby amended and reenacted, and R.S. 48:232.1 and
17 250.2(D) are hereby enacted to read as follows:

18 §232.1. Apportionment of appropriated funds by the department; tunnel
19 replacement priority

20 The Department of Transportation and Development may give priority
21 and advance to construction as expeditiously as possible any bridge project
22 where a bridge replaces a tunnel. The department may use any available source
23 of funds to finance such projects, and may use any available source of funds,
24 including the secretary's emergency fund, as matching funds to meet federal
25 requirements in order to receive federal aid funds. Notwithstanding any other
26 provision of law to the contrary, the department may contract for such projects
27 using any contract method provided by law, including design-build or
28 construction management at risk.

29 * * *

30 §250.2. Design-build contracts; administration

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

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____