

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 and local municipalities; 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 Louisiana municipalities; Louisiana airports; air traffic control tower development or redevelopment, aircraft hangar development or redevelopment**

**A. When used in this Section, the following definitions shall apply:**

**(1) "Best value" means a value determined by evaluation of objective criteria that may include but is not limited to price, features, function, life-cycle costs, experience, and past performance.**

1                   (2) "Design-build" means a project delivery method in which both the  
2                   design and construction services of a project are procured from a single design  
3                   professional company for construction of either of the following:

4                   (a) Louisiana airports for air traffic control tower development or  
5                   redevelopment.

6                   (b) Aircraft hangar development or redevelopment.

7                   (c) Any public works project by a municipality.

8                   (3) "Design-builder" means a corporation, limited liability company,  
9                   partnership, joint venture, or other legal entity that is able to provide  
10                  appropriately licensed contracting, architectural, design professional, and  
11                  engineering services as needed pursuant to a design-build contract.

12                  (4) "Design-professional" means:

13                  (a) An engineering and surveying firm providing design and  
14                  design-related services with the design-builder who shall be licensed to perform  
15                  these services by the Louisiana Professional Engineering and Land Surveying  
16                  Board.

17                  (b) An architect or landscape architect who has secured a professional  
18                  license to perform the services by the Louisiana Board of Architectural  
19                  Examiners.

20                  (c) Contractors performing construction work for the design-build  
21                  program licensed by the State Licensing Board for Contractors.

22                  (5) "Entity" means a public entity as defined in R.S. 38:2211.

23                  (6) "Selection review committee" means the committee appointed by the  
24                  entity to review the request for qualifications, score, or rank of the  
25                  design-builders, and recommend award to a design-builder.

26                  (7) "Qualifications-based selection" means the process by which the local  
27                  agency solicits for services from the design-builders and that price is not the sole  
28                  factor as the basis of award.

29                  (8) "Preconstruction services" means advising during the design phase,

1 including but not limited to scheduling, pricing, and phasing to assist in building  
2 a more constructible project. All other terms shall have the meanings as  
3 provided for in R.S. 38:2211.

4 B. Any term not defined in Subsection A of this Section shall have the  
5 meaning provided for in R.S. 38:2211.

6 C.(1) Notwithstanding any other provision of law to the contrary, a  
7 public airport or municipality may use the design-build delivery method to  
8 contract for construction and design-build of a public work as defined in Title  
9 38, an air traffic control tower or hangar development or redevelopment project  
10 when deemed in the public interest, beneficial to the entity, and in accordance  
11 with the procedures set forth in this Section.

12 (2) The following are considerations for using the design-build delivery  
13 method:

14 (a) Collaboration and cost control.

15 (b) Concurrent execution of design and construction.

16 (c) Complex project with a restrictive timeframe.

17 (d) Public entity, designer, and contractor with mutual project goals.

18 (e) Risk identification controlled by entity.

19 (f) Minimization of the risk of construction and design disputes by using  
20 a collaborative process.

21 (3) The entity shall establish a design-build selection review committee  
22 for evaluation of the response to any "request for qualifications" (RFQ) . Prior  
23 to the selection review committee conducting business, the public entity, the  
24 entity's representative, or an assigned RFQ coordinator shall inform the  
25 committee on the RFQ, the project, the scoring and ranking procedure, the  
26 conduct of the committee's responsibility, and any particulars of the project.

27 (a) All selection review committee members shall be required to sign an  
28 ethics statement prior to commencement of any committee meeting. The  
29 committee shall consist of no more than five individuals as follows:

1                    (i) One design professional in the discipline of but not involved in the  
2 project.

3                    (ii) One licensed contractor in the discipline of but not involved in the  
4 project.

5                    (iii) One representative of the design-builder.

6                    (iv) Two members at large appointed by entity.

7                    D. When a public entity uses the design-build method for construction,  
8 the entity shall indicate their intent in the RFQ to procure a design-builder and  
9 the reasons it deems the design-build method to be in the public interest and  
10 beneficial to the entity.

11                   E. There shall be no challenge by any legal process to the choice of the  
12 successful design-builder except for fraud, bias for pecuniary or personal  
13 reasons not related to the taxpayers' interest, or arbitrary and capricious  
14 selection by the entity.

15                   F.(1) An RFQ, to award a contract for a design-builder for design,  
16 preconstruction, and construction services shall be advertised in the official  
17 journal of the entity and, if one exists, on the internet website of the entity. The  
18 RFQ shall be advertised at least two times within the thirty-day period prior to  
19 the deadline for receipt of responses.

20                   (2) The RFQ may include, at minimum, the following:

21                   (a) Preconstruction scope of services.

22                   (b) Submittal criteria for the project.

23                   (c) Procurement grading criteria.

24                   (d) Scoring methodology.

25                   (e) Total fees and compensation payable to the design-builder for design  
26 and preconstruction services.

27                   (f) Estimate of the probable construction costs for the project.

28                   (g) The design-builder's general company information including  
29 headquarters address, number of employees, and any past projects within the

1 same metropolitan statistical area as the proposed project.

2 (h) Evidence that the design-builder has been domiciled in the state of  
3 Louisiana for a minimum of five years as verified on the Secretary of State's  
4 website.

5 (i) Any other pertinent information limited to the qualifications of a  
6 proposer that the entity determines a design-builder may need to submit in a  
7 response.

8 (3) The selection review committee shall be identified in the RFQ.

9 (4) The RFQ may request that design-builders include the following:

10 (a) The design-builder's surety.

11 (b) Construction methodologies previously used by the design-builder on  
12 other projects.

13 (c) Extent to which the design-builder intends to self-perform portions  
14 of the work, if applicable.

15 (d) Past performance of the design-builder including timely completion  
16 of other public works projects of similar complexity and size.

17 (e) Proposed management and staffing for the project.

18 (f) The design-builder's last safety record to include current "experience  
19 modification rate" (EMR), "recordable incident rate" (RIR), lost work time  
20 incident rate, or other data as required by the entity.

21 (g) The design-builder's standard safety plan.

22 (5) Within ninety days after the deadline for responses to the RFQ, the  
23 selection review committee shall make a written recommendation to the entity  
24 as to which design-builder should be awarded the contract. The soliciting entity  
25 shall take into consideration proposed design-builder's headquarters address,  
26 number of employees, and any past projects within the same metropolitan  
27 statistical area as the proposed project, when recommending an award.  
28 Notwithstanding any other law to the contrary, preference shall be given to  
29 companies with headquarters within the same metropolitan statistical area as

1 the proposed project. The results of the selection review committee, inclusive of  
2 its findings, grading, score sheets, and recommendations, shall be available for  
3 review by all design-builders and shall be deemed public records. The  
4 exceptions to the Open Meetings Law are applicable to the selection review  
5 committee meetings where individual design-builders will be interviewed  
6 pursuant to R.S. 42:17(A)(10).

7 (6) If the entity deems the highest-scored or ranked design-builder to be  
8 nonresponsive then the public entity may award the project to the next  
9 highest-scored or ranked design-builder.

10 (7) After selecting a design-builder based on a combination of  
11 qualifications and best value, the entity may enter into a contract and direct the  
12 design-builder to begin design and preconstruction activities.

13 (8) The entity shall select and contract with a design-builder for design  
14 and construction services in the manner provided for by law.

15 G. After selecting a design-builder the following actions shall commence:

16 (1) The entity shall enter into a contract and direct the design-builder to  
17 begin design and preconstruction activities sufficient to establish a "guaranteed  
18 maximum price" (GMP) for the project.

19 (2) The entity shall obtain an opinion of probable cost of the project from  
20 the design-builder when final design of the project is not more than sixty  
21 percent complete, and again when final design of the project is not more than  
22 ninety percent complete.

23 (3) The design-builder shall provide to the entity a GMP for construction  
24 of the project, before or upon completion of the final design.

25 (4) If the entity and design-builder are able to negotiate, establish, and  
26 agree upon a GMP to render construction services for the project, and  
27 additionally, to agree upon constructability, construction phasing and  
28 sequencing, and the maximum number of contract days to complete the project,  
29 the entity may then award the contract for construction services to the

1 design-builder for the construction phase of the contract.

2 (5) Once a GMP is agreed upon, the entity may contract with the  
3 design-builder to undertake construction services. Additionally, the entity may  
4 determine and contract with the design-builder to undertake specific terms of  
5 construction services prior to agreement upon a GMP for the terms, provided  
6 such undertaking is for the benefit of the project and a GMP for the  
7 undertaking can be agreed upon between the entity and design-builder. The  
8 terms may benefit the project, including but not limited to terms that require  
9 a long lead time, may further the understanding of unknown site conditions, or  
10 other matters.

11 (6) If the entity and the design-builder are not able to agree upon  
12 constructability, construction phasing and sequencing, the GMP for the project,  
13 the maximum number of contract days to complete the project, and to reach a  
14 negotiated agreement, then the project shall be readvertised and publicly bid  
15 utilizing the design-bid-build delivery method. The previously selected  
16 design-builder shall be prohibited from bidding on the project.

17 H. The provisions of this Section shall supersede any conflicting  
18 provisions of any law, including but not limited to the requirements of Chapter  
19 10 of this Title, but the provisions of such Chapter shall otherwise be applicable  
20 to such contracts.

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

23 §250.3. Design-build contracts; qualifications of design-build entities; public  
24 announcement procedures; letters of interest; selection of short list;  
25 bid proposals by competitors; qualifications evaluation committee;  
26 proposal review committee; selection and process of award

27 \* \* \*

28 B.(1) Each design-builder shall employ, or have as a partner, a member,  
29 coventurer, ~~or~~ subcontractor persons, or a firm with persons, who are duly licensed

1 and registered to provide the services required to complete the project and do  
2 business in this state.

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

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

12 **(b) The** standard contractor qualifications as provided for in R.S. 37:2150 et  
13 seq., and the current rules and regulations of the State Licensing Board for  
14 Contractors shall apply to the component providing construction services utilized by  
15 the design-builder, based upon the applicable categories for the specific project. ~~All~~  
16 ~~registrations and licenses for each component shall be obtained prior to or concurrent~~  
17 ~~with award of the project to the selected design-builder by the department.~~

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

29 D. The department shall provide a ~~"Request for Qualifications"~~ **"request for**

1 **qualifications"** (RFQ) to design-builders who submit a letter of interest. The  
 2 department shall identify all required information in the ~~request for qualifications~~  
 3 **RFQ** and in the standard response forms provided by the department. **Any response**  
 4 **that fails to meet all requirements contained in the RFQ may not be considered**  
 5 **by the department. False or misrepresented information furnished in response**  
 6 **to an RFQ shall be grounds for rejection by the department.** The response to the  
 7 request for qualifications **RFQ** shall include **both of the following:**

8 (1) ~~statements~~ **Statements** of qualification by credentials and experience of  
 9 design component members for the areas of expertise specific to the project or type  
 10 of work.

11 (2) ~~and statements~~ **Statements** of qualification by experience and resources  
 12 of the construction team component. ~~The completed response form and any other~~  
 13 ~~required information shall be transmitted to the department by the responding~~  
 14 ~~design-builder by the deadline to submit such forms and information as provided in~~  
 15 ~~the request for qualifications. Any response failing to meet all of the requirements~~  
 16 ~~contained in the request for qualifications shall not be considered by the department.~~  
 17 ~~False or misrepresented information furnished in response to a request for~~  
 18 ~~qualifications shall be grounds for rejection by the department.~~

19 E.(1) The chief engineer, with concurrence of the secretary, shall establish  
 20 a design-build qualifications evaluation committee for evaluation of the responses  
 21 to the request for qualifications received by the department. The following general  
 22 criteria used by the ~~qualifications evaluation~~ committee in evaluating responses ~~to~~  
 23 ~~the request for qualifications for design-build services~~ shall apply to both the design  
 24 and construction components of any responding entity:

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

27 (b) Past performance on department projects.

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

29 (2) The qualifications evaluation committee shall evaluate the qualifications

1 of responding design-builders on the basis of the criteria identified in the request for  
2 qualifications and set forth in this Subsection and shall select a short list of the  
3 highest rated entities in a number to be determined by the department; ~~however, if~~  
4 . If fewer than three responses are received, the secretary or designated  
5 representative may approve proceeding with the design-build process. The  
6 qualifications evaluation committee may, at its discretion, be assisted by other  
7 department personnel in its evaluation of an entity's qualifications. The design-build  
8 qualifications evaluation committee shall present its short list to the chief engineer  
9 for recommendation to the secretary. The short-listed entities shall be invited by the  
10 secretary or designated representative to submit a detailed technical and cost  
11 proposal for the design-build project. The invitation to the short-listed entities shall  
12 specify a deadline for submission of such proposals.

13 \* \* \*

14 **§250.3.1. Progressive design-build contracts**

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

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

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

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

1           **(b) The standard contractor qualifications as provided for in R.S.**  
2           **37:2150 et seq. and the current rules and regulations of the State Licensing**  
3           **Board for Contractors shall apply to the component providing construction**  
4           **services utilized by the design-builder, based upon the applicable categories for**  
5           **the specific project.**

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

16           **D. The department shall provide a "request for qualifications" (RFQ)**  
17           **to design-builders who submit a letter of intent. The department shall identify**  
18           **all required information in the RFQ and in the standard response forms**  
19           **provided by the department. The RFQ shall include but is not limited to the**  
20           **following:**

21                   **(1) Project description.**

22                   **(2) Pre-construction scope of services.**

23                   **(3) Submittal criteria for the project.**

24                   **(4) Procurement grading criteria.**

25                   **(5) Scoring methodology.**

26                   **(6) Total fees and compensation payable to the design-builder for**  
27           **preconstruction services.**

28                   **(7) Estimate of the probable construction cost of the project.**

29           **E. The response to the RFQ shall include "statements of qualifications"**

1 (SOQ) submitted by the design-builder. If the department only receives one  
2 response, the secretary or designated representative may approve proceeding  
3 with the progressive design-build process. The information contained within the  
4 SOQ shall include but not be limited to the following:

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

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

10 (3) Information regarding proposed key personnel's experience and  
11 training to competently manage and complete the design and construction of the  
12 project.

13 (4) Past performance on projects.

14 (5) The design-builder's ability to obtain all bonding and insurance  
15 requirements.

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

17 F. The chief engineer, with the concurrence of the secretary, shall  
18 establish a design-build qualifications evaluation committee for evaluation of  
19 the responses to the RFQ received by the department. The chief engineer, with  
20 the concurrence of the secretary, shall assign a project manager who shall  
21 become the chairman of the qualifications evaluation committee for the project.  
22 The qualifications evaluation committee may, at its discretion, be assisted by  
23 other department personnel in its evaluation of a design-builder's SOQ.

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

28 H. After selecting a design-builder based upon qualifications, the  
29 department may enter into a contract and direct the design-builder to begin

1           design and preconstruction activities sufficient to establish an estimated price,  
2           lump sum, or guaranteed maximum price, for the project.

3           I. If the department and the design-builder do not reach an agreement  
4           on the estimated price for the project or the department otherwise elects not to  
5           amend the design-builder's contract to complete the remaining work, the  
6           department may solicit proposals to complete the project from firms that  
7           submitted SOQ or formally solicit bids or proposals from other entities using  
8           any public procurement method available to the department. The selected  
9           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 Original

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 airport traffic control tower and hanger development and redevelopment.

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)