

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)

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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; 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 airport authorities**

**A.(1) Notwithstanding any other provision of law to the contrary, an airport authority may use the design-build project delivery method to contract for construction and design-build when deemed in the public interest, beneficial to the airport, and in accordance with the procedures set forth by law.**

**(2) Whenever the airport authority resolves to construct or repair any building or structure using the design-build method as authorized by Paragraph**

1 (1) of this Subsection, it shall adopt a list of projects under which design-build  
2 contracts will be utilized; and an ordinance adopting the selection process  
3 promulgated by the division of administration, office of facility planning and  
4 control, specifying the selection process for the awarding of a design-build  
5 contract in compliance with the provisions of this Section.

6 (3) For the purposes of this Section, "design builder" means the entity  
7 contractually responsible for delivering the project design and construction.

8 B. Every design builder shall be duly licensed and registered to do  
9 business in the state of Louisiana as either an architect, an engineer, or a  
10 general contractor. Each design builder shall have the following rights and  
11 powers:

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

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

19 C. Prior to letting any contract, the airport authority shall adopt an  
20 ordinance adopting procedures promulgated by the division of administration,  
21 office of facility planning and control, establishing procedures for developing  
22 plans, specifications, qualifications, and other matters pertaining to procedures  
23 for advertising, reviewing and selecting design builders, and letting the  
24 design-build contracts for public work as specified in Paragraph (A)(2) of this  
25 Section.

26 D. The procedures promulgated by the division of administration, office  
27 of facility planning and control, provided for in Subsection C of this Section  
28 shall include, at a minimum, the following provisions:

29 (1) Requirements that:

1           (a) All engineering and surveying firms providing design and design  
2           related services with the design builder to which the design-build contract is  
3           awarded shall be licensed to perform these services by the Louisiana  
4           Professional Engineering and Land Surveying Board.

5           (b) All architectural firms providing design services with the design  
6           builder to which the design-build contract is awarded shall be licensed to  
7           perform the services by the Louisiana Board of Architectural Examiners or the  
8           Louisiana Horticulture Commission.

9           (c) All contractors performing construction work for the design-build  
10          program shall be licensed by the Louisiana State Licensing Board for  
11          Contractors.

12          (2) A two-stage selection process that will utilize a request for  
13          qualifications graded and judged by a primary evaluation committee and a  
14          request for technical proposals graded and judged by a separate technical  
15          review committee shall be used to select the design builder and shall include the  
16          following specific provisions:

17               (a)(i) Public announcement procedures for solicitation of interested  
18               design-build competitors and a procedure for requesting letters of interest and  
19               statements of qualifications from qualified firms or teams.

20               (ii) Public announcement procedures shall include a requirement for  
21               advertisement in the official journal of the parish the project is to take place.

22               (iii) All notices of intent to select design-build contractors shall be  
23               advertised a minimum of thirty days prior to the deadline for receipt of  
24               responses and shall contain a brief description of the project, the required scope  
25               of services, and sufficient information for design-build entities to determine  
26               their interest.

27               (b) These decisions shall be made on the basis of the criteria set forth in  
28               this Subsection. Members of the technical review committee shall not have  
29               served as members of the primary evaluation committee. Each member of the

1 technical review committee shall score assigned elements. Scores shall be  
2 considered public record.

3 (3) The airport authority shall provide a request for a qualifications  
4 package to design builders who submit a letter of interest. All required  
5 information shall be identified in the request for qualifications package and in  
6 the standard response forms. The response to a request for qualifications  
7 package shall include statements of qualification by credentials and experience  
8 of design component members for the areas of expertise specific to the project  
9 and statements of qualification by experience and resources of the construction  
10 team component. The completed response form and any other required  
11 information shall be transmitted by the responding design builder by the  
12 deadline to submit forms and information as provided in the request for  
13 qualifications package. Any response failing to meet all of the requirements  
14 contained in the request for qualifications package shall not be considered.  
15 False or misrepresented information furnished in response to a request for  
16 qualifications package shall be grounds for rejection.

17 (4)(a)A primary design-build evaluation committee shall evaluate the  
18 responses to the request for qualifications package received by the airport  
19 authority. The following general criteria used by the primary evaluation  
20 committee in evaluating responses to the request for qualifications package for  
21 design-build services shall apply to both the design and construction  
22 components of any responding entity:

23 (i) Professional training and experience of both the design and  
24 construction entity components and of key personnel in general and as related  
25 to the project under consideration.

26 (ii) Capacity for timely completion of the work.

27 (iii) Past performance on public projects or projects of a similar nature  
28 to the project described in the notice of intent.

29 (iv) The quantity and value of governing authority work awarded to both

1 the design and construction entity components.

2 (b) Notwithstanding the provisions of R.S. 38:2225(B), the primary  
3 design-build evaluation committee may consider additional project-specific  
4 needs, including but not limited to the design-builder's past projects in the same  
5 metropolitan statistical area as the proposed project and the domicile address  
6 of the responding design builder verified by the Louisiana Secretary of State  
7 online business filing database.

8 (c) The primary design-build evaluation committee shall consist of a  
9 minimum of three members designated by the head of the airport authority  
10 according to the rules established pursuant to this Subsection.

11 (d) The primary evaluation committee shall evaluate the qualifications  
12 of responding design builders on the basis of the criteria set forth in this  
13 Subsection and the rules established pursuant to this Subsection and shall select  
14 a short list of not fewer than three of the highest rated entities; however, if  
15 fewer than three responses are received, the head of the airport authority may  
16 approve proceeding with the design-build process. The primary evaluation  
17 committee may, at its discretion, be assisted by other airport authority  
18 personnel in its evaluation of a design builder's qualifications. The primary  
19 design-build evaluation committee shall present its short list to the head of the  
20 airport authority. The short-listed design builders shall be invited to submit a  
21 detailed technical proposal for the design-build project. The invitation to the  
22 short-listed entities shall specify a deadline for submission of proposals.

23 (5)(a) The specific requirements of the technical proposal shall be  
24 identified by the airport authority to the design builders making the short list  
25 by means of a "Scope of Services Package". Generally, the technical proposal  
26 shall include discussions of design strategy and preliminary design concepts,  
27 space standards, space planning, fundamental requirements, quality standards,  
28 capacities, other design related issues, materials, the schedule for  
29 commencement and completion of all phases of work, and a lump sum cost for

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

3 (b) For more complex projects and projects with scopes which permit  
4 flexibility and innovation in the design approach, the airport authority may  
5 compensate unsuccessful and responsive short-listed entities for the expense of  
6 preparing the technical proposal. The determination of whether or not  
7 compensation will be paid for the technical proposal and the amount shall be  
8 predetermined by the airport authority and shall be included in the scope of  
9 services package. The airport authority may use concepts submitted by any paid  
10 short-listed design builder in the construction of the project.

11 (6) A technical review committee for evaluation of design-build proposals  
12 shall be established according to the rules established in this Subsection. This  
13 committee shall be made up of building construction professionals as defined  
14 by the rules established in this Subsection. The technical review committee shall  
15 identify specific technical elements of the project, depending on the  
16 characteristics of the project, to be included in the technical score. The technical  
17 review committee may select additional engineering, architectural and technical  
18 experts, and nationally recognized design-build experts to serve as committee  
19 members to score each technical element of the project.

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

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

1 chairman of the technical review committee shall adjust the scores for any  
2 applicable weighing factors and shall determine the total technical score for  
3 each proposal. Prior to determining the adjusted score, the chairman of the  
4 technical review committee shall notify each design builder, in writing, of each  
5 design builder's final total technical score.

6 (ii) The time value, consisting of the product of the proposed contract  
7 time expressed in calendar days multiplied by the value-per-calendar-day  
8 expressed in dollars established by the authority and included in the scope of  
9 services package.

10 (iii) The price proposal.

11 (b) The winning proposal shall be the proposal with the lowest adjusted  
12 score. The adjusted score for each entity's design-build proposal shall be  
13 determined by the following formula: Adjusted Score = (Price Bid + Time  
14 Value) divided by Technical Score. Use of the Time Value is not mandatory and  
15 if it is not used, the Adjusted Score shall be determined by the following  
16 formula: Adjusted Score = Price Bid divided by Technical Score.

17 (7) Design builders who have submitted bona fide proposals may, within  
18 seven days of the announcement of the award, challenge the award based on any  
19 of the foregoing reasons, and only those reasons, by submitting a letter to the  
20 head of the airport authority describing in detail the reasons for the challenge.  
21 The head of the airport authority shall have the authority to resolve any  
22 challenge concerning the award of a contract. A written decision shall be  
23 rendered within fourteen days and shall be mailed or otherwise furnished  
24 immediately to the design builder making the challenge. The decision shall be  
25 final and conclusive unless the decision is fraudulent or if the person adversely  
26 affected by the decision has timely appealed to the court of proper venue for the  
27 airport authority.

28 E. Once the design builder has been chosen and a contract for a  
29 stipulated schedule and sum certain price is executed, the price of the

1 design-build contract shall not be increased other than for inflation as  
 2 prescribed in the contract and for site or other conditions of which the design  
 3 builder had no knowledge and should not have had knowledge as a reasonable  
 4 possibility existing at the site or concerning the design and construction.

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

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

10 §250.3. Design-build contracts; qualifications of design-build entities; public  
 11 announcement procedures; letters of interest; selection of short list;  
 12 bid proposals by competitors; qualifications evaluation committee;  
 13 proposal review committee; selection and process of award

14 \* \* \*

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

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

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

28 (b) The standard contractor qualifications as provided for in R.S. 37:2150 et  
 29 seq., and the current rules and regulations of the State Licensing Board for



1 Contractors shall apply to the component providing construction services utilized by  
2 the design-builder, based upon the applicable categories for the specific project. ~~All~~  
3 ~~registrations and licenses for each component shall be obtained prior to or concurrent~~  
4 ~~with award of the project to the selected design-builder by the department.~~

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

16 D. The department shall provide a ~~"Request for Qualifications"~~ **"request for**  
17 **qualifications"** (RFQ) to design-builders who submit a letter of interest. The  
18 department shall identify all required information in the ~~request for qualifications~~  
19 **RFQ** and in the standard response forms provided by the department. **Any response**  
20 **that fails to meet all requirements contained in the RFQ may not be considered**  
21 **by the department. False or misrepresented information furnished in response**  
22 **to an RFQ shall be grounds for rejection by the department.** The response to the  
23 request for qualifications **RFQ** shall include **both of the following:**

24 **(1) statements** **Statements** of qualification by credentials and experience of  
25 design component members for the areas of expertise specific to the project or type  
26 of work,

27 **(2) and statements** **Statements** of qualification by experience and resources  
28 of the construction team component. ~~The completed response form and any other~~  
29 ~~required information shall be transmitted to the department by the responding~~

1 ~~design-builder by the deadline to submit such forms and information as provided in~~  
2 ~~the request for qualifications. Any response failing to meet all of the requirements~~  
3 ~~contained in the request for qualifications shall not be considered by the department.~~  
4 ~~False or misrepresented information furnished in response to a request for~~  
5 ~~qualifications shall be grounds for rejection by the department.~~

6 E.(1) The chief engineer, with concurrence of the secretary, shall establish  
7 a design-build qualifications evaluation committee for evaluation of the responses  
8 to the request for qualifications received by the department. The following general  
9 criteria used by the ~~qualifications evaluation~~ committee in evaluating responses to  
10 ~~the request for qualifications for design-build services~~ shall apply to both the design  
11 and construction components of any responding entity:

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

14 (b) Past performance on department projects.

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

16 (2) The qualifications evaluation committee shall evaluate the qualifications  
17 of responding design-builders on the basis of the criteria identified in the request for  
18 qualifications and set forth in this Subsection and shall select a short list of the  
19 highest rated entities in a number to be determined by the department; ~~however, if~~  
20 **. If** fewer than three responses are received, the secretary or designated  
21 representative may approve proceeding with the design-build process. The  
22 qualifications evaluation committee may, at its discretion, be assisted by other  
23 department personnel in its evaluation of an entity's qualifications. The design-build  
24 qualifications evaluation committee shall present its short list to the chief engineer  
25 for recommendation to the secretary. The short-listed entities shall be invited by the  
26 secretary or designated representative to submit a detailed technical and cost  
27 proposal for the design-build project. The invitation to the short-listed entities shall  
28 specify a deadline for submission of such proposals.

29 \* \* \*

1           **§250.3.1. Progressive design-build contracts**

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

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

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

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

17           **(b) The standard contractor qualifications as provided for in R.S.**  
18           **37:2150 et seq. and the current rules and regulations of the State Licensing**  
19           **Board for Contractors shall apply to the component providing construction**  
20           **services utilized by the design-builder, based upon the applicable categories for**  
21           **the specific project.**

22           **C. A "notice of intent" (NOI) to request letters of interest for a**  
23           **design-build project shall be distributed by the department through**  
24           **advertisement on the Department of Transportation and Development's**  
25           **internet webpage. All NOIs shall be advertised a minimum of ten days prior to**  
26           **the deadline for receipt of responses. The NOI shall contain a description of the**  
27           **project or type of work and sufficient information for a design-builder to**  
28           **determine its interest and to enable it to submit a letter of interest. The**  
29           **department may re-advertise the NOI using additional media or publications**

1 in an attempt to solicit additional responses if the number of responses received  
2 by the department is inadequate.

3 D. The department shall provide a "request for qualifications" (RFQ)  
4 to design-builders who submit a letter of intent. The department shall identify  
5 all required information in the RFQ and in the standard response forms  
6 provided by the department. The RFQ shall include but is not limited to the  
7 following:

8 (1) Project description.

9 (2) Pre-construction scope of services.

10 (3) Submittal criteria for the project.

11 (4) Procurement grading criteria.

12 (5) Scoring methodology.

13 (6) Total fees and compensation payable to the design-builder for  
14 preconstruction services.

15 (7) Estimate of the probable construction cost of the project.

16 E. The response to the RFQ shall include "statements of qualifications"  
17 (SOQ) submitted by the design-builder. If the department only receives one  
18 response, the secretary or designated representative may approve proceeding  
19 with the progressive design-build process. The information contained within the  
20 SOQ shall include but not be limited to the following:

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

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

26 (3) Information regarding proposed key personnel's experience and  
27 training to competently manage and complete the design and construction of the  
28 project.

29 (4) Past performance on projects.

1                   **(5) The design-builder's ability to obtain all bonding and insurance**  
2                   **requirements.**

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

4                   **F. The chief engineer, with the concurrence of the secretary, shall**  
5                   **establish a design-build qualifications evaluation committee for evaluation of**  
6                   **the responses to the RFQ received by the department. The chief engineer, with**  
7                   **the concurrence of the secretary, shall assign a project manager who shall**  
8                   **become the chairman of the qualifications evaluation committee for the project.**  
9                   **The qualifications evaluation committee may, at its discretion, be assisted by**  
10                  **other department personnel in its evaluation of a design-builder's SOQ.**

11                  **G. The department may evaluate submissions based solely upon the**  
12                  **information provided in each design-build entity SOQ. The department may**  
13                  **also interview some or all of the design-build entities to further evaluate their**  
14                  **qualifications for the project.**

15                  **H. After selecting a design-builder based upon qualifications, the**  
16                  **department may enter into a contract and direct the design-builder to begin**  
17                  **design and preconstruction activities sufficient to establish an estimated price,**  
18                  **lump sum, or guaranteed maximum price, for the project.**

19                  **I. If the department and the design-builder do not reach an agreement**  
20                  **on the estimated price for the project or the department otherwise elects not to**  
21                  **amend the design-builder's contract to complete the remaining work, the**  
22                  **department may solicit proposals to complete the project from firms that**  
23                  **submitted SOQ or formally solicit bids or proposals from other entities using**  
24                  **any public procurement method available to the department. The selected**  
25                  **design-builder shall be prohibited from bidding on the project.**

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

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DIGEST

SB 167 Engrossed 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 airports.

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)

#### Summary of Amendments Adopted by Senate

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

1. Removes local municipalities from being eligible to use the design-build method.