

Regular Session, 2013

SENATE BILL NO. 210

BY SENATOR MURRAY

PUBLIC CONTRACTS. Authorizes a political subdivision to execute design-build contracts in the construction or repair of any public building or structure or other public work in an area where a gubernatorial declared state of emergency exists. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 38:2212(A)(1)(e) and to enact R.S. 2225.2.6, relative to the

3 Sewerage and Water Board of New Orleans; to provide for a maximum fee under

4 certain circumstances; to provide relative to public contracts; to authorize the

5 Sewerage and Water Board of New Orleans to utilize the design-build method for

6 the construction or repair of any public building or structure or any other public work

7 in certain circumstances; to provide for procedures, requirements, and limitations;

8 to provide relative to preference of and procedures for evaluation and selection of a

9 design-builder; to provide for public announcement procedures; to provide relative

10 to legal challenges; to provide for effectiveness; and to provide for related matters.

11 Notice of intention to introduce this Act has been published.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 38:2212(A)(1)(e) is hereby amended and reenacted and R.S.

14 2225.2.6 is hereby enacted to read as follows:

15 §2212. Advertisement and letting to lowest responsible bidder; public work;

16 electronic bidding; participation in mentor-protégé program;

17 exemptions

1 (A)(1) * * *

2 (e)(i) Each public entity advertising and letting for bid a public works
3 contract under the provisions of this Section shall furnish all prime bidders who
4 request bid documents and who are properly licensed by the Louisiana State
5 Licensing Board for Contractors with at least one set of complete bid documents.
6 The public entity may require a deposit on the bid documents; however, the total cost
7 of the deposit, including handling fees and other costs shall not exceed twice the
8 actual cost of reproduction. Deposits on the first set of documents furnished bona
9 fide prime bidders will be fully refunded upon return of the documents no later than
10 ten days after receipt of bids. On other sets of documents furnished to bidders the
11 deposit less actual cost of reproduction, will be refunded upon return of the
12 documents no later than ten days after receipt of bids. Where the public entity, itself,
13 prepares and distributes the contract documents, the public entity may, in lieu of a
14 deposit, charge a fee for the documents, which shall not exceed the actual cost of
15 reproduction.

16 **(ii) Where the Sewerage and Water Board of New Orleans, itself,**
17 **prepares and distributes electronic contract documents, the Sewerage and**
18 **Water Board of New Orleans may, in lieu of a deposit, charge a fee for each**
19 **paper document, which shall not exceed the actual cost of reproduction.**

20 * * *

21 **§2225.2.6. Design-build contracts; authorized use by the Sewerage and Water**
22 **Board of New Orleans; damage by Hurricane Katrina, Hurricane**
23 **Rita, or both**
24 **A.(1) Notwithstanding any law to the contrary, the Sewerage and Water**
25 **Board of New Orleans may use the design-build method in the construction or**
26 **repair of any public building or structure which has been destroyed or damaged**
27 **by Hurricane Katrina, Hurricane Rita, or both, or any public building or**
28 **structure to be constructed or repaired to meet a homeland security or criminal**
29 **justice need pursuant to a hurricane recovery plan.**

1 (2) Whenever the Sewerage and Water Board of New Orleans resolves
2 to construct or repair any public building or structure using the design-build
3 method as authorized by Paragraph (1) of this Subsection, it shall adopt a list
4 of projects under which design-build contracts will be utilized; and adopt the
5 selection process specifying the selection process for the awarding of a design-
6 build contract in compliance with the provisions of this Section.

7 (3) For the purposes of this Section, "design-builder" means the entity
8 contractually responsible for delivering the project design and construction.
9 This authority shall extend for eight years from July 10, 2007, after which time
10 only those projects that were contracted for prior to that date may proceed.

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

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

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

22 C. Prior to letting any such contract, the Sewerage and Water Board of
23 New Orleans shall adopt a resolution adopting procedures establishing
24 procedures for developing plans, specifications, qualifications, and other
25 matters pertaining to procedures for advertising, reviewing and selecting
26 design-builders, and letting such design-build contracts for public work as
27 specified in Paragraph (A)(2) of this Section.

28 D. The procedures provided for in Subsection C of this Section shall
29 include, at a minimum, the following provisions:

1 **(1) Requirements that:**

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

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

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

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

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

19 **(ii) Such public announcement procedures shall include a requirement**
20 **for advertisement in the Daily Journal of Commerce, the Baton Rouge**
21 **Advocate, the New Orleans Times-Picayune, and by appearance on the internet**
22 **home page of the Sewerage and Water Board of New Orleans, if any.**

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

28 **(b) These decisions shall be made on the basis of the criteria set forth in**
29 **this Subsection. Members of the technical review committee shall not have**

1 served as members of the primary evaluation committee. Each member of the
2 technical review committee shall score assigned elements. Such scores shall be
3 considered public record.

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

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

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

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

29 (iii) Past performance on public projects or projects of a similar nature

1 to the project described in the notice of intent.

2 (iv) The quantity and value of Sewerage and Water Board of New
3 Orleans work awarded to both the design and construction entity components.

4 (v) Any project-specific criteria as may apply to project needs.

5 (b) The primary design-build evaluation committee shall consist of a
6 minimum of three members designated by the General Superintendent of the
7 Sewerage and Water Board of New Orleans according to the rules established
8 pursuant to this Subsection.

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

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

1 work, and a lump sum cost for all services in fulfillment of the requirements
2 and within the constraints of the "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 Sewerage and Water
5 Board of New Orleans may compensate unsuccessful and responsive short-listed
6 entities for the expense of preparing the technical proposal. The determination
7 of whether or not compensation will be paid for the technical proposal and the
8 amount shall be predetermined by the Sewerage and Water Board of New
9 Orleans and shall be included in the scope of services package. The Sewerage
10 and Water Board of New Orleans may use concepts submitted by any paid
11 short-listed design-builder in the construction of the project.

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

22 (a) An adjusted score approach shall be used by the Sewerage and Water
23 Board of New Orleans in determining the winning proposal. An adjusted score
24 shall be determined using the following components:

25 (i) The technical score determined by the technical review committee.
26 Weighing factors may be assigned to each element depending on its relative
27 magnitude or significance to the overall project. Each technical review
28 committee member shall rate his assigned element of the proposal from each of
29 the design-builders on the short list and shall submit such scores to the

1 chairman of the technical review committee. The schedule and price bid shall
2 not be made known to the technical review committee during the scoring
3 process. The chairman of the technical review committee shall adjust the scores
4 for any applicable weighing factors and shall determine the total technical score
5 for each proposal. Prior to determining the adjusted score, the chairman of the
6 technical review committee shall notify each design-builder, in writing, of each
7 design-builder's final total technical score.

8 (ii) The price proposal.

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

15 (7) Design-builders who have submitted bona fide proposals may, within
16 seven days of the announcement of the award, challenge the award based on any
17 of the foregoing reasons, and only those reasons, by submitting a letter to the
18 purchasing agent of the Sewerage and Water Board of New Orleans describing
19 in detail the reasons for the challenge. The General Superintendent of the
20 Sewerage and Water Board of New Orleans shall have the authority to resolve
21 any challenge concerning the award of a contract. A written decision shall be
22 rendered within fourteen days and shall be mailed or otherwise furnished
23 immediately to the design-builder making the challenge. The decision shall be
24 final and conclusive unless:

25 (a) The decision is fraudulent; or

26 (b) Any person adversely affected by the decision has timely appealed to
27 the court of proper venue.

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
 3 design-builder had no knowledge and should not have had knowledge as a
 4 reasonable possibility existing at the site or concerning the design and
 5 construction.

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

9 Section 2. This Act shall become effective upon signature by the governor or, if not
 10 signed by the governor, upon expiration of the time for bills to become law without signature
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 13 effective on the day following such approval.

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

DIGEST

Present law authorizes a public entity that is advertising and letting for bid a public works contract to require a deposit from a prime bidder who requests a complete set of bid documents. Provides that the deposit is refundable. Present law also authorizes in instances where the public entity, itself, prepares and distributes the contract documents, to charge a fee for the documents, which shall not exceed the actual cost of reproduction.

Proposed law retains present law and also provides that when the Sewerage and Water Board of New Orleans, itself, prepares and distributes electronic contract documents, it may, in lieu of a deposit, charge a fee for each paper document, not to exceed the actual cost of reproduction.

Proposed law authorizes the Sewerage and Water Board of New Orleans to utilize the design-build method in the construction or repair of any public building or structure or any other public work which has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both.

Provides for the Sewerage and Water Board of New Orleans to prepare plans and specifications of the work when it resolves to construct or repair any public building or structure using the design-build method. Requires that the Sewerage and Water Board of New Orleans adopt a list of projects under which design-build contracts will be utilized and to adopt the selection process specifying the selection process for awarding the design-build contract.

Proposed law provides that the authority granted in proposed law extends for eight years from the effective date after which time only those projects that were contracted for prior to such may proceed.

Requires every design-builder to be licensed and registered to do business in the state as either an architect, an engineer, or a general contractor. Authorizes the design-builder to sublet responsibility for professional design services to another individual, firm, or corporation licensed and registered in the state to provide professional design services. Further authorizes the design-builder to sublet responsibility for construction or other services to persons or entities registered, licensed, or otherwise qualified to provide those services.

Requires the Sewerage and Water Board of New Orleans to adopt a resolution adopting and establishing procedures for developing plans, specifications, qualifications, and other matters pertaining to procedures for advertising, reviewing and selecting design-builders, and letting such design-build contracts for public work prior to letting such contracts, which must include the following provisions:

- (1) Licensing requirements for all engineering and surveying firms providing design and design related services and contractors performing the construction work.
- (2) All architectural firms providing design services with the design-builder to which the contract is awarded must be licensed to perform the services by the Louisiana Board of Architectural Examiners.
- (3) A two stage selection process that will utilize a request for qualifications graded and judged by a primary evaluation committee and a request for technical proposals graded and judged by a separate technical review committee shall be used to select the design-builder.

Provides for design-build contracts to be subject to the following procedures and limitations:

- (1) Decisions are to be made on the basis of criteria set forth in proposed law. Members of the technical review committee shall not have served as members of the primary evaluation committee. Requires each member of the technical review committee to score assigned elements and such scores shall be considered public record.
- (2) The Sewerage and Water Board shall provide a request for a qualifications package to design-builders who submit a letter of interest and all required information shall be identified in the request for qualifications package and in the standard response forms.

Responses to a request for qualifications package 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 construction team component. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection.

- (3) (a) A primary design-build evaluation committee shall evaluate the responses to the request for qualifications package received by the department. The following general criteria used by the primary evaluation committee in evaluating responses to the request for qualifications package for design-build services shall apply to both the design and construction components of any responding entity:
 - (i) Professional training and experience of both the design and construction entity components and of key personnel in general and as related to the project under consideration.
 - (ii) Capacity for timely completion of the work.

- (iii) Past performance on public projects.
 - (iv) The quantity and value of Sewerage and Water Board of New Orleans work awarded to both the design and construction entity components.
 - (v) Any project-specific criteria as may apply to project needs.
- (b) The primary design-build evaluation committee shall consist of a minimum of three members designated by the General Superintendent of the Sewerage and Water Board of New Orleans.
- (c) The primary evaluation committee shall evaluate the qualifications of responding design-builders on the basis of the criteria set forth in proposed law and the rules established pursuant to proposed law. Authorizes the primary evaluation committee, at its discretion, to obtain assistance from other Sewerage and Water Board of New Orleans personnel in its evaluation of a design-builder's qualifications.
- (4)
 - (a) The specific requirements of the technical proposal shall be identified by the Sewerage and Water Board of New Orleans to the design-builders making the short list by means of a "Scope of Services Package". Generally, the technical proposal shall include discussions of design strategy and preliminary design concepts, space standards, space planning, fundamental requirements, quality standards, capacities, other design related issues, materials, 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".
 - (b) For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the Sewerage and Water Board of New Orleans may compensate unsuccessful and responsive short-listed entities for the expense of preparing the technical proposal. The determination of whether or not compensation will be paid for the technical proposal and the amount shall be predetermined by the Sewerage and Water Board of New Orleans and shall be included in the "Scope of Services Package ". The Sewerage and Water Board of New Orleans may use concepts submitted by any paid short-listed design-builder in the construction of the project.
- (5) Requires establishment of a technical review committee for evaluation of design-build proposals and that it be composed of building construction professionals. Requires that this technical review committee identify specific technical elements of the project, depending on the characteristics of the project, to be included in the technical score. Authorizes the technical review committee to select additional engineering, architectural and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project.
 - (a) Requires that an adjusted score approach be used by the Sewerage and Water Board of New Orleans in determining the winning proposal and that the adjusted score shall be determined using components enumerated in proposed law.
 - (b) Requires that the winning proposal be the proposal with the lowest adjusted score and provides a formula for determining the adjusted score.
- (6) Authorizes design-builders who have submitted bona fide proposals, within seven

days of the announcement of an award, to challenge the award based on reasons in proposed law by submitting a letter to the purchasing agent of the Sewerage and Water Board of New Orleans describing in detail the reasons for the challenge. Authorizes the General Superintendent of the Sewerage and Water Board of New Orleans to resolve any challenge concerning the award of a contract and that a written decision be rendered within 14 days shall be mailed or otherwise furnished immediately to the design-builder making the challenge. Provides that the decision is final and conclusive unless:

- (a) The decision is fraudulent; or
- (b) Any person adversely affected by the decision has timely appealed to the court of proper venue.

Provides that once the design-builder has been chosen and a contract for a stipulated schedule and sum certain price executed, the price of the design-build contract can not be increased other than for inflation as prescribed in the contract and for site or other conditions of which the design-builder had no knowledge and should not have had knowledge as a reasonable possibility existing at the site or concerning the design and construction.

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

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

(Amends R.S. 38:2212(A)(1)(e); adds R.S. 38:2225.2.6)