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

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## 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)