

Prior law prohibited a construction manager or any other third-party consultant employed by a public entity from managing a construction project as a general contractor or acting in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or accepting bids or itself bid on the public work or components of the public work with respect to which the manager or consultant is employed or contracted to manage or consult.

New law retains prior law and permits the New Orleans Aviation Board (NOAB) to award a contract relative to the initial construction of an airport terminal and related support facility, aviation facility, or any combination thereof, by the construction manager at risk method.

New law defines the "construction management at risk method" to mean a delivery method by which the NOAB utilizes architects or engineers employed by NOAB or contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction of a facility. Defines a "construction manager-at-risk" to be a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the initial construction of an airport terminal and related support facility, aviation facility, or any combination thereof at the contracted price as a general contractor and provides consultation to NOAB regarding construction during and after the design of the facility.

New law requires NOAB, prior to using the construction management at risk method, to give written justification the method is preferred over the design-bid-build, the design-build, or public bid methods for the particular project.

Requires that a request for proposals (RFP) to award a contract for construction manager at risk services be advertised in the official journal NOAB and the NOAB Internet website. Authorizes NOAB to select other appropriate publications in which to also advertise the notice.

New law requires that the construction management at risk act as the general contractor be properly licensed, bonded, and insured and that the risk services be for the performance of the project work and guarantee the maximum price for the project. Authorizes NOAB to set the guaranteed maximum price for the project which is to be disclosed in the RFP and include the maximum number of construction days required to complete the project.

New law lists specific items to be included in the RFP. Requires that proposals be reviewed and graded by a review committee comprised of at least five individuals appointed by NOAB which are to include the following:

- (1) One or more representatives of the board.
- (2) One design professional not involved in the project.
- (3) One construction industry representative not involved as a proposer on the project.
- (4) One representative of the DOTD.
- (5) One representative of the office of facility planning and control.

Provides that the portion of the response to the RFPs addressing total fees and compensation to be paid to the construction manager-at-risk be considered by a review committee only after its consideration of all other factors contained in the proposals. Provides that the results of the review committee result, inclusive of its findings, grading, score sheets and recommendations be made available for review by all proposers and be subject to a public records request.

New law requires the review committee to make its recommendations to NOAB within 45 days after the deadline for responses to the RFP are to be submitted. Provides that the proposer recommended by the committee serve as the construction manager at risk and work with NOAB's design professional for the project on constructability, the construction phasing and sequencing prior to the board awarding the contract.

Requires that any non-recommended proposer have the opportunity to protest the review committee's recommendation and NOAB's award and may ask for a hearing before NOAB within ten days following the receipt of the review committee's recommendation. Requires a public hearing to consider such protests not later than ten days after the request for a hearing and that the non-recommended proposer may seek legal review in the state judicial district court where the project is to be constructed.

New law requires NOAB to award the construction management at risk contract to the proposer recommended by the review committee if the guaranteed maximum price and maximum number of construction days required to complete the project are set forth in the RFP the parties agree on constructability and the construction phasing and sequencing.

Provides that if the guaranteed maximum price for the project was not set by NOAB in the RFP, then within 30 days of the completion of the plans, specifications and scope of the project, the recommended proposer is to furnish the board a guaranteed maximum price for the project including the maximum number of construction days required for completion of the project. Provides that if the parties agree upon constructability, construction phasing and sequencing, a guaranteed maximum price for the project, and the maximum number of construction days for completion of the project, then NOAB is to award the construction management at risk contract to the proposer recommended by the review committee. Provides that if the guaranteed maximum price provided by the recommended proposer exceeds NOAB's construction budget for the project, then the parties are to enter into negotiations to establish an agreed upon guaranteed maximum price. Provides that if the parties are unable to agree, then the project is to be re-advertised and publicly bid under new law.

New law provides that NOAB is not relieved from complying with all other applicable provisions of Title 38 not in conflict with new law and Federal Aviation Administration (FAA) guidelines.

Effective August 1, 2013.

(Adds R.S. 38:2225.2.3)