

Regular Session, 2014

SENATE BILL NO. 552

BY SENATORS ADLEY AND GARY SMITH

PUBLIC CONTRACTS. Provide relative to early contractor involvement (ECI) method for public contracts. (8/1/14)

1 AN ACT

2 To enact R.S. 38:2225.2.4, relative to public contracts; to provide for public contracts by use
3 of the early contractor involvement method; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. R.S. 38:2225.2.4 is hereby enacted to read as follows:

6 **§2225.2.4. Early contractor involvement**

7 **A.(1) Notwithstanding any other provision of law to the contrary, a**
8 **public entity, may award a contract for public works for construction by the**
9 **"early contractor involvement (ECI)" project delivery method as set forth in**
10 **this Section.**

11 **(2) Purpose. This Section creates an alternative project delivery method,**
12 **known as "early contractor involvement (ECI)", for a public entity to award a**
13 **contract for construction of public works when deemed in the public interest,**
14 **beneficial to the owner, and in accordance with the procedures in this Section.**
15 **The following are reasons to use the ECI delivery method: collaboration and**
16 **cost control; concurrent execution of design and construction; a complex**
17 **project with a tight timeframe; owner, designer, and contractor have mutual**

1 project goals; owner controls risk identification; and, a collaborative project
2 minimizes risk of construction and design disputes.

3 (3) Definitions. When used in this Section, the following words and
4 phrases have the meanings ascribed to them in this Section, unless the context
5 indicates a different meaning:

6 (a) "Design professional" means an engineer, architect, or landscape
7 architect that has received a professional certification by an accredited
8 registration board.

9 (b) "Early contractor involvement (ECI)" means a delivery method by
10 which the owner utilizes a design professional, who is engaged by the owner for
11 professional predesign and design services. The owner contracts separately with
12 a contractor to engage in the preconstruction phase as a consultant. As
13 specified in this Section, the contractor may also provide construction services
14 to build the project.

15 (c) "ECI contractor" means a person, sole proprietorship, partnership,
16 corporation or other legal entity, properly licensed, which:

17 (i) Provides consultation to the owner during the preconstruction phase
18 regarding the construction of the facility.

19 (ii) May contract with the owner to assume the risk to construct the
20 project at the fixed contracted price as a general contractor.

21 (iii) Or both.

22 (d) "Owner" means a public entity as provided for in R.S. 38:2211.

23 (e) All other terms shall have the meanings provided for in R.S. 38:2211.

24 (4) Roles. The roles applicable to the early contractor involvement
25 method are described as follows:

26 (a) The owner is a public entity who selects and contracts with a design
27 professional in accordance with existing laws for the procurement of
28 professional predesign and design services. The owner also selects and
29 contracts with an ECI contractor to provide consultation during the

1 preconstruction phase or to perform construction services during the
2 implementation phase, or both, in accordance with the procedures in this
3 Section.

4 (b) The design professional provides predesign and design services as
5 contracted by the owner.

6 (c) The ECI contractor provides preconstruction consultation or
7 construction services, or both, to build the public works project in accordance
8 with approved plans and specifications designated in the implementation phase.

9 B.(1) An owner that decides to award a public works contract by the
10 early contractor involvement method shall, prior to the advertisement of the
11 RFQ soliciting ECI contractors to perform such services, prepare a written
12 statement justifying why the early contractor involvement method is preferred
13 to the design-bid-build, the design-build, or other public bid methods provided
14 by law applicable to the particular project.

15 (2) The written statement shall identify the specific benefits to the public,
16 which the public entity determines will result from use of the early contractor
17 involvement method.

18 (3) The written statement shall be published by the public entity in the
19 advertisement required by Subsection C of this Section.

20 C. Early contractor involvement selection process.

21 (1)(a) The owner shall select and contract with a design professional for
22 predesign and design services in the manner provided for by law. The design
23 professional shall submit to the owner his opinion of probable cost to construct
24 the project when the final design of the project is not more than thirty percent
25 complete.

26 (b) An owner may utilize the ECI contractor method only if the owner
27 selects an ECI contractor for the project utilizing the selection method provided
28 for in this Subsection and selects the ECI contractor not later than the date the
29 owner's design professional submits his opinion of probable cost to the owner

1 as provided in this Subsection. Final design efforts on the project shall not
2 proceed until the owner selects the ECI contractor.

3 (2) Request for qualifications (RFQ).

4 (a) A request for qualifications (RFQ) to award a contract to an ECI
5 contractor for preconstruction and construction services shall be advertised in
6 the official journal of the owner and, if one exists, the Internet website of the
7 owner. Additionally, the owner may select other publications deemed
8 appropriate by the public entity for advertisement of the notice. The RFQ shall
9 be advertised at least two times within a thirty-day period prior to the deadline
10 for receipt of responses.

11 (b) The RFQ shall include the following information as well as any other
12 pertinent information that the owner determines a proposer may need in order
13 to submit a response to the RFQ:

14 (i) The project scope, including preconstruction services that shall be
15 required of the contractor selected.

16 (ii) Contractor submittal criteria for the project.

17 (iii) Procurement grading criteria for responses to the RFQ.

18 (iv) Scoring methodology for responses to the RFQ.

19 (v) The identity of the members of the selection review committee.

20 (vi) Total fees and compensation payable to the ECI contractor for
21 preconstruction services.

22 (vii) The deadline for responding to the RFQ.

23 (viii) The written statement justifying the use of the early contractor
24 selection method of project delivery required by Subsection B of this Section.

25 (c) The RFQ may request that proposers include the following in
26 response to the RFQ, as well as any other appropriate factors that would, in the
27 opinion of the owner, demonstrate the capability of the proposer to perform the
28 role of ECI contractor:

29 (i) Competence of the proposer.

1 (ii) Construction methodology previously utilized by the proposer on
2 other projects.

3 (iii) Extent to which the proposer intends to self-perform portions of the
4 work.

5 (iv) Past performance by the proposer including timely completion of
6 other public works projects.

7 (v) Proposed management and staffing for the project.

8 (vi) The proposer's last safety record to include current experience,
9 modification rate (EMR), recordable incident rate (RIR), lost work time
10 incident rate, or other data as required by the owner.

11 (vii) The proposer's standard safety plan.

12 D. Request for qualifications reviews and award. Within ninety days
13 after the deadline for responses to the RFQ, a selection review committee
14 chosen by the owner and identified in the RFQ shall make a written
15 recommendation to the owner as to which proposer should be awarded the
16 contract. The results of the selection review committee, inclusive of its findings,
17 grading, score sheets, and recommendations shall be available for review by all
18 proposers and shall be deemed public records.

19 E. After selection of the ECI contractor for the project, the design
20 professional in consultation with the ECI contractor shall proceed to design the
21 project. The owner shall obtain an opinion of probable cost of the project from
22 both the ECI contractor and the design professional when final design of the
23 project is not more than fifty percent complete and again when final design of
24 the project is not more than ninety percent complete.

25 F. Early contractor involvement fixed price.

26 (1) The ECI contractor shall provide to the owner a fixed price for
27 construction of the project, before or upon completion of the final design.

28 (2) If the owner and ECI contractor are able to negotiate, establish, and
29 agree upon such guarantee maximum price for rendering construction services

1 for constructing the project, and, in addition, constructability, construction
 2 phasing and sequencing, and the maximum number of construction days for
 3 completion of the project, the owner shall then authorize and contract with the
 4 ECI contractor for the construction phase of the contract.

5 (3) If the owner and the ECI contractor are not able to agree upon
 6 constructability, construction phasing and sequencing, a guaranteed maximum
 7 price for the project, and the maximum number of construction days for
 8 completion of the project to reach a negotiated agreement, then the project shall
 9 be re-advertised and publicly bid utilizing the design-bid-build delivery method.

10 G. The provisions of this Section shall supersede any conflicting
 11 provisions of any law, including but not limited to the requirements of Chapter
 12 10 of this Title, but the provisions of such Chapter shall otherwise be applicable
 13 to such contracts.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Sharon F. Lyles.

DIGEST

Adley (SB 552)

Prior law prohibits 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.

Proposed law permits an owner who is a public entity to award a public works contract by the early contractor involvement (ECI) project delivery method.

Proposed law defines the "early contractor involvement (ECI) method" to mean a delivery method by which the owner utilizes a design professional, who is engaged by the owner for professional pre-design and design services. The owner contracts separately with a contractor to engage in the pre-construction phase as a consultant. The contractor may also provide construction services to build the project. Defines a "design professional" to be an engineer, architect, or landscape architect that has received a professional certification by an accredited registration board. Defines an "ECI contractor" to be a person, sole proprietorship, partnership, corporation or other legal entity, properly licensed, that assumes the risk for the construction at the contracted price as a general contractor, or provides consultation to the owner during the pre-construction phase of the facility, or both.

Proposed law requires the owner, prior to using the ECI method, to give written justification why such method is preferred to the design-bid-build, the design-build, or public bid methods provided by law for the particular project, and how its use benefits the public. Requires its inclusion in the advertisement of owner's request for qualifications (RFQ).

Proposed law requires the owner's design professional to submit its opinion of probable cost to construct the project when the project's final design is not more than 30% complete. Requires the owner to select the ECI contractor before the design professional proceeds to further design the project. Prohibits the project to proceed to final design until the owner selects the ECI contractor in order to use the ECI method.

Proposed law requires advertisement of the RFQ to award a contract for ECI services in the owner's official journal, and on the owner's Internet website, if available. Authorizes the owner to select other appropriate publications in which to also advertise the notice.

Proposed law lists specific items the owner shall include in the RFQ. Allows the owner to include other listed items in the RFQ. Requires review and grading of proposals by a review committee identified in the RFQ. Provides that the review committee results, inclusive of its findings, grading, score sheets and recommendations are available for review by all proposers and shall be deemed public records.

Proposed law requires the review committee to make its recommendations to the owner within 90 days after the deadline for submission of responses to the RFQ. Requires the proposer recommended by the committee as the ECI contractor to work with the owner's design professional for the project on constructability and construction phasing and sequencing prior to the owner's award to construct the project.

Proposed law requires the owner to obtain an opinion of probable cost from the design professional and the ECI contractor when final project design is not more than 50% and 90% complete.

Proposed law requires the ECI contractor to provide the owner a fixed price before or upon completion of design, before or upon completion of the final design.

Proposed law provides that, if the owner and ECI contractor are able to negotiate, establish, and agree upon such fixed price for rendering construction services for portions of the project, or, with respect to constructing the entire project, such fixed price for constructing the entire project, and, in addition, constructability, construction phasing and sequencing, and the maximum number of construction days for completion of the project, the owner may then authorize and contract with the ECI contractor to render construction services for the construction phase of the project.

Proposed law provides that, if the owner and the ECI contractor are not able to reach a negotiated agreement on such matters, then the project must re-advertised and publicly bid utilizing the design-bid-build delivery method.

Proposed law provides that its provision do not supersede any conflicting provisions of any law, including but not limited to the requirements of Chapter 10 of Title 38, but that the provisions of that Chapter shall otherwise be applicable to such contracts.

Effective August 1, 2014.

(Adds R.S. 38:2225.2.4)