

SENATE BILL NO. 65

BY SENATOR MURRAY

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AN ACT

To enact R.S. 38:2225.2.3, relative to the utilization of the construction manager at risk method by the New Orleans Aviation Board; to permit the New Orleans Aviation Board to construct certain projects utilizing the construction manager at risk method; and to provide for related matters.

Notice of intention to introduce this Act has been published.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2225.2.3 is hereby enacted to read as follows:

§2225.2.3. Construction management at risk

A.(1) Notwithstanding any provisions of law to the contrary, the New Orleans Aviation Board, hereinafter referred to as the board, may award a public works contract for the initial construction of an airport terminal and related support facility, aviation facility, or any combination thereof by the construction management at risk method as set forth in this Section.

(2) However, the provisions of this Section shall not apply to the construction of any additions or modifications of an airport terminal and related support facility, aviation facility, or any combination thereof, constructed by the board following the completion of the initial construction of such terminal or facility.

(3) For purposes of this Section, the following terms shall be assigned the following definitions:

(a) "Construction management at risk method" shall mean a delivery method by which the board utilizes architects or engineers employed by the board or contracts with an architect or engineer for design and construction management services and contracts separately with a construction manager at

1 risk to serve as the general contractor and to provide consultation during the
2 design and construction of a facility.

3 (b) "Construction manager at risk" shall mean a sole proprietorship,
4 partnership, corporation, or other legal entity that assumes the risk for the
5 initial construction of an airport terminal and related support facility, aviation
6 facility, or any combination thereof at the contracted price as a general
7 contractor and provides consultation to the board regarding construction of the
8 facility.

9 B.(1) Should the board choose to award a public works contract by the
10 construction management at risk method, prior to the advertisement for such
11 services, the board shall prepare a written statement justifying why the
12 construction management at risk method is preferred over the design-bid-build,
13 the design-build, or public bid methods allowed by statute for the particular
14 project in question.

15 (2) The written statement shall identify the specific benefits to the public
16 which the board determines will result from the use of the construction
17 management at risk method.

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

20 C. A request for proposals (RFP) to award a contract for construction
21 manager at risk services shall be advertised in the official journal of the board
22 and, if one exists, the Internet website of the board. Additionally, the board
23 may select other publications deemed appropriate by the board for
24 advertisement of the notice. All RFPs shall be advertised two times within a
25 thirty-day time period prior to the deadline for receipt of responses.

26 D. Construction Management at Risk Services. (1) Construction
27 management at risk proposers awarded a contract pursuant to this Section shall
28 act as the general contractor for the project and shall be properly licensed,
29 bonded, and insured.

30 (2) Construction management at risk services shall be for the

1 performance of the project work and shall guarantee the maximum price for
2 the project.

3 E. Guaranteed Maximum Price.

4 (1) The guaranteed maximum price for the project may be set by the
5 board.

6 (2) If the board sets the guaranteed maximum price for the project, that
7 guaranteed maximum price shall be disclosed in the RFP and shall include the
8 maximum number of construction days required to complete the project.

9 (3) If the guaranteed maximum price will not be set by the board until
10 after the selection of the construction manager at risk, as provided in Paragraph
11 (2) of this Subsection, then the advertisement for the RFP shall disclose this fact
12 and proposals submitted in response to the RFP shall not be required to include
13 a guaranteed maximum price for the project.

14 F. Request for Proposals (RFP). (1) The RFP shall include the following
15 as well as any other pertinent information that a proposer would need to submit
16 to respond to an RFP:

17 (a) Requirements for the project.

18 (b) Procedures for construction of the project.

19 (c) Grading criteria of responses to the RFP.

20 (d) Scoring methodology of responses to the RFP.

21 (2) The RFP may request that proposers include the following in
22 response to the RFP, as well as any other appropriate factors that would
23 demonstrate the capability of the proposer to perform the role of construction
24 manager at risk for the project:

25 (a) Bonding capacity of the proposer.

26 (b) Competence of the proposer.

27 (c) Construction methodology previously utilized by the proposer on
28 other projects.

29 (d) Experience of the proposer with the construction management at risk
30 method and other methods of project delivery.

1 (e) Extent to which the proposer intends to self-perform portions of the
2 work.

3 (f) Financial capacity of the proposer.

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

6 (h) Proposed management and staffing for the project.

7 (i) The proposer's last safety record.

8 (3) The responses to the RFPs shall include the following:

9 (a) A guaranteed maximum price if required by the advertisement as
10 published by the board.

11 (b) Total fees and compensation to be paid to the construction manager
12 at risk if selected by the board to receive the contract for the project.

13 G. (1) The proposals submitted shall be reviewed and graded by a review
14 committee comprised of at least five individuals appointed by the board,
15 including but not limited to the following:

16 (a) One or more representatives of the board.

17 (b) One design professional not involved in the project.

18 (c) One construction industry representative not involved as a proposer
19 on the project.

20 (d) One representative of the Department of Transportation and
21 Development.

22 (e) One representative of the office of facility planning and control.

23 (2) The review committee shall evaluate, grade, and score the responses
24 to the RFP in the areas set out in the RFP. The portion of the response to the
25 RFPs addressing total fees and compensation to be paid to the construction
26 manager at risk will be considered by a review committee only after its
27 consideration of all other factors contained in the proposals.

28 (3) The results of the review committee, inclusive of its findings, grading,
29 score sheets and recommendations shall be available for review by all proposers
30 and shall also be subject to a public records request.

1 **H. (1) Within forty five days after the deadline for responses to the RFP**
2 **to be submitted, the review committee shall make a recommendation to the**
3 **board as to which proposer it recommends should be awarded the contract. The**
4 **proposer recommended by the committee to serve as the construction manager**
5 **at risk shall work with the board's design professional for the project on**
6 **constructability, the construction phasing and sequencing prior to the board**
7 **awarding the contract.**

8 **I. (1) Any non-recommended proposers shall have the opportunity to**
9 **protest the review committee's recommendation and the board's award.**

10 **(2)(a) Any non-recommended proposer may ask for a hearing before the**
11 **board within ten days following the receipt of the review committee's**
12 **recommendation.**

13 **(b) The board shall then conduct a public hearing to consider any protest**
14 **or protests no later than ten days following the last request for a hearing by a**
15 **non-recommended proposer.**

16 **(c) Following any hearing required by Subparagraph (b) of this**
17 **Paragraph, any non-recommended proposer may seek legal review in the state**
18 **judicial district court where the project is to be constructed.**

19 **J. (1) If the guaranteed maximum price and maximum number of**
20 **construction days required to complete the project were set forth in the RFP**
21 **and the board and the recommended proposer agree on constructability, the**
22 **construction phasing and sequencing, the board shall award the construction**
23 **management at risk contract to the proposer recommended by the committee.**

24 **(2) If the guaranteed maximum price for the project was not set by the**
25 **board in the RFP, then within thirty days of the completion of the plans,**
26 **specifications and scope of the project, the recommended proposer shall furnish**
27 **the board a guaranteed maximum price for the project including the maximum**
28 **number of construction days required for completion of the project.**

29 **(3) If the board and recommended proposer are able to agree upon**
30 **constructability, construction phasing and sequencing, a guaranteed maximum**

1 price for the project, and the maximum number of construction days for
2 completion of the project, the board shall then award the construction
3 management at risk contract to the proposer recommended by the review
4 committee.

5 (4) If the guaranteed maximum price provided by the recommended
6 proposer exceeds the board's construction budget for the project, then the
7 board and recommended proposer shall enter into negotiations to establish an
8 agreed upon guaranteed maximum price.

9 (5) If the board and the recommended proposer are unable to agree upon
10 a guaranteed maximum price for the project, and the maximum number of
11 construction days for completion of the project, then the project will be
12 re-advertised and publicly bid as per this Section.

13 K. The provisions of this Section shall supersede any conflicting
14 provisions of any law including but not limited to the requirements of Chapter
15 10 of this Title. However, the provisions of this Section shall not relieve the
16 board from complying with Federal Aviation Administration guidelines or all
17 other applicable provisions of this Title that do not conflict with the provisions
18 of this Section.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____