

THE DESIGN-BUILD ORDINANCE OF
BOARD OF COMMISSIONERS
PORT OF NEW ORLEANS

AN ORDINANCE BY THE BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS (A POLITICAL SUBDIVISION OF THE STATE OF LOUISIANA) TO ADOPT THE DESIGN-BUILD METHOD IN THE CONSTRUCTION OF ANY PUBLIC BUILDING OR STRUCTURE DESTROYED OR DAMAGED BY HURRICANE KATRINA IN ACCORDANCE WITH THE PROCESS PROMULGATED BY THE DIVISION OF ADMINISTRATION OF THE STATE OF LOUISIANA, OFFICE OF FACILITY PLANNING AND CONTROL, ESTABLISHING PROCEDURES FOR DEVELOPING PLANS, SPECIFICATIONS, QUALIFICATIONS AND OTHER MATTERS FOR ADVERTISING, REVIEWING, SELECTING AND AWARDED A DESIGN-BUILD CONTRACT IN COMPLIANCE WITH LA. R.S. 38:2225.2.1 IN ORDER TO PERMIT THE DESIGN-BUILD METHOD TO BE IMPLEMENTED BY THE BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS FOR HURRICANE RECOVERY PROJECTS AND OTHERWISE TO PROVIDE WITH RESPECT THERETO.

Section 1. Title

The title of this Ordinance shall be “the Design-Build Ordinance,” also referred to hereinafter as “the Ordinance.”

Section 2. Authority

The process shall be established in accordance with La. R.S. 38:2225.2.1 and La. R.S. 34:21 *et seq.*

Section 3. Purpose

The purpose of this Ordinance shall be to provide for the selection of entities to provide design-build construction services in which the design and construction phases are combined.

Section 4. Definitions

For the purposes of this Ordinance, certain terms shall have the following meanings.

Architect - the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana State Board of Architectural Examiners as provided for in La. R.S. 37:141 *et seq.*, and its rules and regulations.

Board – the Board of Commissioners of the Port of New Orleans.

Contractor - the entity contractually responsible for delivering the project construction and duly licensed and registered as a general contractor by the State Licensing Board for Contractors as provided for in La. R.S. 37:2150 *et seq.*, and its current rules and regulations.

Design-Build - a construction process in which the design and construction phases are combined and the design-builder is selected by a qualifications-based process with an established schedule and price.

Design-Builder - the entity contractually responsible for delivering the project design and construction that shall be licensed as either a contractor, an architect or an engineer as defined herein. For projects that are primarily architectural, the entity shall be a contractor or an architect. For projects that are primarily engineering, the entity shall be a contractor or an engineer.

Engineer - the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana Professional Engineering and Land Surveying Board as provided for in La. R.S. 37:681 *et seq.*, and its rules and regulations.

Section 5. Rights, Powers and Obligations of Each Design-Builder

Each Design-Builder shall have the following rights and powers:

A. The Design-Builder may subcontract responsibility for professional design services to an individual, firm, or corporation duly licensed in the State of Louisiana to provide professional design services.

B. The Design-Builder may subcontract responsibility for construction or other service requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.

C. The Design-Builder chosen under the process set out below must provide proof of all required licenses prior to the award of the contract.

Section 6. Process for Selection of Design-Builder

A two stage process shall be used to select the Design-Builder. The two stages are:

- i. the request for qualifications stage; and
- ii. the technical proposals stage.

Section 7. Request for A Letter of Interest and a Statement of Qualifications

A. A notice of intent in the form of a public announcement shall be made to solicit letters of interest and statements of qualifications for a design-build project. The announcement shall be distributed through advertisement in publications that will insure adequate competition and opportunities for qualified entities. These shall include at a minimum *the Daily Journal of Commerce, the Baton Rouge Advocate, the New Orleans Times-Picayune, the Shreveport Times, the Monroe News Star, and the Lake Charles American Press*. The announcement shall also appear on the Board's internet home page (www.portno.com) and by any other means to ensure adequate response.

B. All such public announcements shall be advertised a minimum of thirty (30) days prior to the deadline for receipt of responses and shall contain a brief description of the project, the deadline for receipt of responses, the required scope of services and sufficient information for a Design-Builder to determine its interest and to enable it to submit a letter of interest. The public announcement may be re-advertised using additional media or publications in an attempt to solicit additional responses if the initial number of responses received by the deadline is considered inadequate in the opinion of the Board's president and chief

executive officer.

C. The brief description of the project shall include but not be limited to the following: the proposed function and purpose of the project; approximate size in terms of square feet, capacity, level of quality, and code requirements; key factors; a brief description of any existing buildings or structures; special systems; any specialized skill(s) required of the Design-Builder; a preliminary budget based on the Board's best information and funding; and any other information that will allow potential Design-Builders to determine whether or not they are interested in the project.

Section 8. Request for Qualifications (RFQ) – Qualifications Package

The Board shall provide and/or make available via the Internet a request for qualifications package to applicant entities who submit a letter of interest either by mail, electronic mail, or telefacsimile. The qualifications package shall include the technical proposal requirements as defined in Section 12 *et seq.* below, including the intention of awarding a stipend if the Board should so determine. All required information shall be identified in the request for qualifications package and in the standard response forms. The response 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. The completed response form and any other required information shall be transmitted by the responding applicant entities by the deadline to submit such forms and information as provided in the request for qualifications package. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered by the Board. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection. After the deadline, a received submittal may not be withdrawn and substituted by an applicant entity.

Section 9. RFQ — Qualifications Evaluation Committee

A. A qualifications evaluation committee shall evaluate the responses to the request for qualifications package received by the Board. The qualifications evaluation committee shall consist of a minimum of three members designated by the Board's president and chief executive officer, who shall also appoint the chairman of the committee.

B. Each member of the qualifications evaluation committee shall make a written scoring of the evaluation criteria as set out in Section 10 below, and the scoring shall be available for public review. Such scores shall be considered public record. The Board shall make all scores available to the public on request.

Section 10. RFQ — Evaluation Criteria

The following general criteria used by the qualifications 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. Each factor set out below shall have equal weight in the evaluation process.

A. 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.

- B. Past and current professional accomplishments, for which opinions of clients or former clients and information gathered by inspection of current or recent projects may be considered.
- C. Capacity for timely completion of the work, taking into consideration the Design-Builder's current and projected workload and professional and support manpower.
- D. The nature, quantity, and value of Board work awarded to both the design and construction components of the applicant entity, it being generally desirable to allocate such work among Design-Builders who desire to perform such work.
- E. Past performance on public projects, including any problems with time delays, cost overruns, and design inadequacies for which the Design-Builder or any entity used in accordance with Section 5 above was held to be at fault.
- F. Whether problems as indicated in Section E above resulted in litigation between the Board or any other public entity and the Design-Builder or any entity used in accordance with Section 5 above performing professional services, particularly if the Design-Builder or any entity used in accordance with Section 5 above is currently involved in unresolved litigation with the Board or another public entity or has been involved in litigation with the Board or another public entity where the Board or another public entity has prevailed.
- G. Any project-specific criteria as may apply to project needs.

Section 11. RFQ — Qualifications Short List Selection

The qualifications evaluation committee shall select a short list of not fewer than three of the highest rated entities. However, if fewer than three responses are received, the Board's president and chief executive officer may approve proceeding with the evaluation process. The qualifications evaluation committee may at its discretion be assisted by other Board personnel in its evaluation of any entity's qualifications. The qualifications evaluation committee shall present its short list to the Board's president and chief executive officer.

Section 12. Technical Proposal — Notification

The entities included on the short list shall be notified in writing of their selection and invited to submit a detailed technical proposal for the Design-Build project. Such notice shall specify a deadline for submission of the proposal. The specific requirements of the technical proposal shall be identified by the Board to the entities included in the short list by means of a "scope of services package," which shall be provided to all entities invited to submit a technical proposal. The scope of services package may include enhancements, clarifications and modifications to the scope of services included with the request for qualifications only if they fall within the scope of the project.

Section 13. Technical Proposal — Scope of Services Package

Generally the scope of services package shall define the scope of work or architectural program. The scope of services package shall also establish the format and set out the required information, including, but

not limited to, the following:

- i. statement of purpose;
- ii. definition of terms;
- iii. time factors;
- iv. point of contact;
- v. requirements for submission;
- vi. Design-Builder responsibilities;
- vii. Board responsibilities;
- viii. detailed evaluation criteria including scoring and weighting factors;
- ix. form of contract;
- x. insurance, indemnification and limits of liability;
- xi. surety requirements;
- xii. payment terms;
- xiii. termination;
- xiv. audit requirements;
- xv. quality standards and adherence to applicable codes;
- xvi. requirements of the scope which are critical to the Board; and
- xvii. design strategy preliminary design concepts;
- xviii. space standards; and
- xix. space planning.

Section 14. Technical Proposal — Submittal

A. Generally, the technical proposal shall include, but not be limited to, the following:

- i. discussion of the Design-Builder's understanding of the scope of services;
- ii. discussion of the Design-Builder's understanding of the scope of work or architectural program;
- iii. discussion of design strategy to implement the scope of work or architectural program;
- iv. the proposed design approach;
- v. materials and methods of construction;
- vi. construction techniques and sequencing;
- vii. schedule for commencement and completion of all phases of work, including total contract time in calendar days; and
- viii. lump sum cost for all services in fulfillment of the requirements and within the constraints of the "scope of services package."

B. The Board shall establish in the scope of services package the deadline for the submission of the technical proposal.

C. Any response failing to meet all of the requirements contained in the Technical Proposal shall not be considered by the Board.

Section 15. Technical Proposal — Compensation for Proposals

For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the Board acting through its president and chief executive officer in his discretion may decide to 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 Board and shall be included in the scope of services package. The Board may use concepts submitted by any paid short-listed entity to construct the project. Compensation shall be appropriate in the sole discretion of the Board acting through its president and chief executive officer for the scope and complexity of the project and for the opportunities for innovation.

Section 16. Technical Proposal — Technical Review Evaluation Committee

A. The Board's president and chief executive officer shall establish a technical review committee for evaluation of design-build technical proposals. The technical review committee shall consist of three building construction professionals with expertise in diverse fields of the construction industry including at least one design professional and one contractor. At least one of the members shall be from the private sector, and at least one shall be from the public sector. The Board's president and chief executive officer shall appoint the chairman of the committee.

B. The technical review committee may select additional Board engineering and technical experts and nationally recognized design-build experts to serve as committee members to score each technical element of the project.

C. In addition to Items i. through vi. as listed in Section 14(A) above, the technical review committee shall identify specific technical elements of the project based on the specific requirements of the technical proposal and depending on the characteristics of the project, to be included in the technical score.

D. Members of the technical review committee shall not have served as members of the qualifications evaluation committee.

E. Each member of the technical review committee shall make a written scoring of the assigned elements, and the scoring shall be available for public review. Such scores shall be considered public record. The Board shall make all scores available to the public simultaneously.

Section 17. Technical Proposal — Adjusted Score

A. An adjusted score approach shall be used by the Board in determining the winning proposal. An adjusted score shall be determined using the following components:

i. the technical score determined by the technical review committee. Weighing factors may be assigned to each element set out in Section 14 above depending on its relative magnitude or significance to the overall project. Each technical review committee member shall rate each assigned element of the proposal from each of the Design-Builders on the short list and shall submit such scores to the chairman of the technical review committee. The schedule and price bid shall not be made known to the technical review committee during the scoring process. The chairman of the technical review committee shall adjust the scores for any applicable weighting factors and shall then determine the total technical score for each proposal by adding the total weighted score of each technical review committee member. Prior to determining the adjusted score as defined in Section 17(B) below, the chairman of the technical review committee shall notify each Design-Builder in writing of each Design-Builder's final technical score; and

ii. the time value, consisting of the product of the proposed contract time expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars established by the Board and included in the scope of services package; and

iii. the price proposal.

B. The winning proposal shall be the proposal with the lowest adjusted

score. The adjusted score for each design-build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. Use of the Time Value is not mandatory, and if it is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by Technical Score.

Section 18. Technical Proposal — Appeal

Design-Builders who have submitted bona fide proposals may within seven (7) days of the announcement of the award challenge the scores based on any of the following reasons and only those reasons by submitting a letter to the Board's president and chief executive officer describing in detail the reasons for the challenge. The Board's president and chief executive officer or his designee shall have the authority to resolve any challenge concerning the award of a contract. A written decision shall be rendered within fourteen (14) days and shall be mailed or otherwise furnished immediately to the Design-Builder making the challenge. The decision shall be final, and no appeal based on price will be allowed unless:

- A. the decision is fraudulent; or
- B. the person affected by the decision has timely appealed to the court of proper venue for the Board.

Section 19. Technical Proposal - Finality

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 shall not be increased other than (1) for changes on the scope of work by the Board; (2) for inflation as prescribed in the contract; and (3) 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.

Section 20. Effective Date

This Design-Build Ordinance shall become effective at midnight on October 1, 2009.