

**ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS**

**CITY HALL: July 10, 2008
CALENDAR NO: 27,059**

NO. 23168 MAYOR COUNCIL SERIES

BY: COUNCILMEMBER CLARKSON

AN ORDINANCE to adopt the selection process promulgated by the Division of Administration, Office of Facility Planning and Control, establishing procedures for developing plans, specifications, qualifications, and other matters pertaining to procedures for advertising, reviewing and selecting design-builder and letting such design-build contracts for public work as specified in Paragraph (A)(2) of La. R.S. 38:2225.2.1, in order to permit the design-build procedures to be implemented in the City of New Orleans for hurricane remediation projects; to adopt a list of projects for which this procedure may be utilized; and otherwise to provide with respect thereto.

WHEREAS, Hurricane Katrina struck Louisiana on August 29, 2005, resulting in severe flooding and damage to the southeastern part of the state, posing grave threats to the safety, health and security of the citizens of the City of New Orleans and causing severe damage to private property and public facilities in the City of New Orleans; and

WHEREAS, the use of the design-build method will expedite the City of New Orleans' hurricane protection and flood control projects in areas of the City impacted by Hurricane Katrina or Hurricane Rita to allow the City to prepare for future hurricane seasons; now therefore

1 **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS** that the City of New Orleans adopts the selection process promulgated by the Division of
3 Administration, Office of Facility Planning and Control, establishing procedures for developing
4 plans, specifications, qualifications, and other matters pertaining to procedures for advertising,
5 reviewing and selecting design-builder and letting such design-build contracts for public work as

6 specified in Paragraph (A)(2) of La. R.S. 38:2225.2.1, in order to permit the design-build procedures
7 to be implemented in the City of New Orleans for hurricane remediation projects, all as published in
8 the Louisiana Register, Volume 34, No. 4 on April 20, 2008 and forth below:

9 **DECLARATION OF EMERGENCY**

10 **Office of the Governor**

11 **Division of Administration**

12 **Office of Facility Planning and Control**

13 **Design-Build Method of Procuring Design**

14 **and Construction Services**

15 **(LAC 34:III.161-199)**

16 In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and
17 the provisions of RS 39:121, The Division of Administration, Facility Planning and Control hereby
18 gives notice that it is adopting a new Emergency Rule LAC 34:III,Chapter 1, Subchapter C, Design-
19 Build Method of Procuring Design and Construction Services. This Rule is required by Act 373, 2007
20 and provides rules for its use as authorized by the Act. This Emergency Rule will give Facility
21 Planning and Control and certain parishes affected by Hurricanes Katrina and/or Rita the flexibility to
22 deal quickly and effectively with the on going disaster recovery construction work.

23 This Emergency Rule shall be effective, April 10, 2008, and shall remain in effect until the
24 expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of
25 the final Rule, whichever comes first.

26 **Title 34**

27 **GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

28 **Part III. Facility Planning and Control**

29 **Chapter 1. Capital Improvement Projects**

30 **Subchapter C. Design-Build Method of Procuring Design and Construction Services**

31 **§161. Name**

32 A. The name of this process shall be the "design-build selection process" also referred to
33 hereinafter as "process."

34 **AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

35 **HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration,
36 Office of Facility Planning and Control, LR 34:

37 **§163. Authority**

38 A. The process shall be established in accordance with R.S. 38:2225.2.1.

39 **AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

40 **HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration,
41 Office of Facility Planning and Control, LR 34:

42 **§165. Purpose**

43 A. The purpose of this Subchapter shall be to provide for the selection of entities to provide
44 design/build construction services in which the design and construction phases are combined.

45 **AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

46 **HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration,
47 Office of Facility Planning and Control, LR 34:

48 **§167. Applicability**

49 A. The following public agencies may utilize the design-build method in the construction or repair
50 of any public building or structure which has been destroyed or damaged by Hurricanes Katrina, Rita
51 or both: the Division of Administration, the Recovery School District, the City of New Orleans and
52 parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St.
53 Tammany, and Vermilion Parishes and the Port of New Orleans.

54 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

55 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
56 Office of Facility Planning and Control, LR 34:

57 **§169. Definitions**

58 A. For the purposes of this Rule certain terms shall have the following meanings. All required
59 licenses for each component shall be obtained prior to the award of the project to the selected entity.

60 *Architect*—the entity contractually responsible for delivering the project design and duly licensed
61 and registered by the Louisiana State Board of Architectural Examiners as provided for in R.S.
62 37:141 et seq., and its rules and regulations.

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

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

69 *Design-Builder*—the entity contractually responsible for delivering the project design and
70 construction who shall be licensed as either a contractor, an architect or an engineer as defined herein.

71 For projects that are primarily architectural, the entity shall be a contractor or an architect. For
72 projects that are primarily engineering, the entity shall be a contractor or an engineer.

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

76 *Public Agency* - a state or local governmental unit. For the purposes of this rule these are limited
77 to those defined in §167 of this Chapter.

78 B. All required licenses for each component shall be obtained prior to the award of the project to
79 the selected entity.

80 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

81 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
82 Office of Facility Planning and Control, LR 34:

83 **§171. Rights and Powers of Each Design-Builder**

84 A. Each design-builder shall have the following rights and powers.

85 1. The design-builder may sublet responsibility for professional design services to an individual,
86 firm, or corporation duly licensed and registered in the state of Louisiana to provide professional
87 design services.

88 2. The design-builder may sublet responsibility for construction or other services requiring a
89 contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or
90 otherwise qualified to provide those services as required by law.

91 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

92 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
93 Office of Facility Planning and Control, LR 34:

94 **§173. Process for Selection of Design-Builder**

95 A. A two stage process shall be used to select the design-builder. The two stages are:

- 96 1. request for qualifications stage;
- 97 2. technical proposals stage.

98 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

99 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
100 Office of Facility Planning and Control, LR 34:

101 **§175. Request for Qualifications—Letter of Interest**

102 A. A public announcement shall be made to solicit letters of interest for a design-build project. The
103 announcement shall be distributed through advertisement in publications that will insure adequate
104 competition and opportunities for qualified entities. These shall include at a minimum the Daily
105 Journal of Commerce, the Baton Rouge Advocate, the New Orleans Times-Picayune, the Shreveport
106 Times, the Monroe News Star, the Lake Charles American Press. The announcement shall also appear
107 on the internet home page of the public agency, if any, and by other means to ensure adequate
108 response.

109 B. All such public announcements shall be advertised a minimum of 30 days prior to the deadline
110 for receipt of responses and shall contain a brief description of the project, the required scope of
111 services and sufficient information for a design-builder to determine its interest and to enable it to
112 submit a letter of interest. The notice of intent may be re-advertised using additional media or
113 publications in an attempt to solicit additional responses if the initial number of responses received is
114 inadequate.

115 C. A brief description of the project shall be included in the letter. The description shall include but
116 not limited to the following: The proposed function(s); approximate size or capacity in terms of
117 square feet, number of occupants, beds, cars, books, etc.; level of quality; key factors in the public

118 agency's program; a brief description of any existing buildings or structures; special systems; any
119 specialized skill(s) required; preliminary budget based on the agencies best information and any other
120 information that will allow potential design-builders to determine whether or not they are interested
121 in the project.

122 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

123 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
124 Office of Facility Planning and Control, LR 34:

125 **§177. Request for Qualifications - Qualifications Package**

126 A. The public agency shall provide a request for a qualifications package to design-builders who
127 submit a letter of interest. The qualifications package shall include the technical proposal as defined
128 in §185 including the intention of awarding a stipend. All required information shall be identified in
129 the request for qualifications package and in the standard response forms. The response to a request
130 for qualifications package shall include statements of qualification by credentials and experience of
131 design component members for the areas of expertise specific to the project and statements of
132 qualification by experience and resources of the construction team component. The completed
133 response form and any other required information shall be transmitted by the responding design-
134 builder by the deadline to submit such forms and information as provided in the request for
135 qualifications package. Any response failing to meet all of the requirements contained in the request
136 for qualifications package shall not be considered by the public agency. False or misrepresented
137 information furnished in response to a request for qualifications package shall be grounds for
138 rejection.

139 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

140 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
141 Office of Facility Planning and Control, LR 34:

142 **§179. Request for Qualifications—Evaluation Committee**

143 A. A qualifications evaluation committee shall evaluate the responses to the request for
144 qualifications package received by the public agency. The qualifications evaluation committee shall
145 consist of a minimum of three members designated by the Director of Facility Planning and Control
146 for projects administered by that agency or the equivalent agency head for other agencies.

147 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

148 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
149 Office of Facility Planning and Control, LR 34:

150 **§181. Request for Qualifications—Evaluation Criteria**

151 A. The following general criteria used by the qualifications evaluation committee in evaluating
152 responses to the request for qualifications package for design-build services shall apply to both the
153 design and construction components of any responding entity.

154 1. Professional training and experience of both the design and construction entity components
155 and of key personnel in general and as related to the project under consideration.

156 2. Past and current professional accomplishments, for which opinions of clients or former clients
157 and information gathered by inspection of current or recent projects may be considered.

158 3. Capacity for timely completion of the work, taking into consideration the person's or firm's
159 current and projected workload and professional and support manpower.

160 4. The nature, quantity, and value of agency work awarded to both the design and construction
161 components the applicant entity, it being generally desirable to allocate such work among persons
162 who are desirous and qualified to perform such work.

163 5. Past performance on public projects, including any problems with time delays, cost overruns,
164 and design inadequacies for which the designer was held to be at fault.

6. Whether problems as indicated in Subclause (e) herein resulted in litigation between the public agency and the person performing professional services, particularly if the designer is currently involved in unsettled litigation with a public agency or has been involved in litigation with a public agency where the public agency prevailed.

7. Any project-specific criteria as may apply to project needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:

§183. Request for Qualifications—Short List Selection

A. 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 head of the public agency may approve proceeding with the evaluation process. The qualifications evaluation committee may, at its discretion, be assisted by other agency personnel in its evaluation of an entity's qualifications. The qualifications evaluation committee shall present its short list to the Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:

§185. Technical Proposal—Notification

A. The entities included on the short list shall be notified of their selection and invited to submit a detailed technical proposal for the design-build project. The specific requirements of the technical proposal shall be identified by the agency 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

189 scope of services package may include enhancements, clarifications and modifications to the scope of
190 services included with the request for qualifications only if they fall within the scope of the project.

191 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

192 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
193 Office of Facility Planning and Control, LR 34:

194 **§187. Technical Proposal—Scope of Services Package**

195 A. Generally the scope of services package shall define the scope of work or architectural program.
196 The scope of services package shall also define the response including the format and the required
197 information including, but not limited to, the following:

- 198 1. statement of purpose;
- 199 2. definition of terms;
- 200 3. time factors;
- 201 4. point of contact;
- 202 5. requirements for submission;
- 203 6. design-builder responsibilities;
- 204 7. public agency responsibilities;
- 205 8. detailed evaluation criteria including scoring and weighting factors;
- 206 9. form of contract;
- 207 10. insurance, indemnification and limits of liability;
- 208 11. surety requirements;
- 209 12. payment terms;
- 210 13. termination;
- 211 14. audit requirements;
- 212 15. level of quality;

213 16. requirements of the scope which are critical to the public agency.

214 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

215 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
216 Office of Facility Planning and Control, LR 34:

217 **§189. Technical Proposal—Submittal**

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

- 219 1. discussion of the entity's understanding of the scope of services;
- 220 2. discussion of the entity's understanding of the scope of work or architectural program;
- 221 3. discussion of design strategy to implement the scope of work or architectural program;
- 222 4. proposed design approach;
- 223 5. materials and methods of construction;
- 224 6. construction techniques and sequencing;
- 225 7. schedule for commencement and completion of all phases of work;
- 226 8. lump sum cost for all services in fulfillment of the requirements and within the constraints of
227 the "scope of services package."

228 B. The invitation to the short-listed entities shall specify a deadline for submission of such
229 proposals.

230 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

231 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
232 Office of Facility Planning and Control, LR 34:

233 **§191. Technical Proposal—Compensation for Proposals**

234 A. For more complex projects and projects with scopes which permit flexibility and innovation in
235 the design approach, the agency shall compensate unsuccessful and responsive short-listed entities for
236 the expense of preparing the technical proposal. The determination of whether or not compensation

237 will be paid for the technical proposal and the amount shall be predetermined by the agency and shall
238 be included in the scope of services package. The agency may use concepts submitted by any paid
239 short-listed entity to construct the project. Compensation shall be appropriate for the scope and
240 complexity of the project and for the opportunities for innovation.

241 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

242 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
243 Office of Facility Planning and Control, LR 34:

244 **§193. Technical Proposal—Evaluation Committee**

245 A. The Director of Facility Planning and Control for projects administered by that agency or the
246 equivalent agency head for other agencies shall establish a technical review committee for evaluation
247 of design-build proposals. The technical review committee shall consist of at least three but no more
248 than five building construction professionals with expertise in diverse fields of the construction
249 industry including at least one design professional and one contractor. At least one of the members
250 shall be from the private sector and at least one shall be from the public sector.

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

254 C. The technical review committee shall identify specific technical elements of the project, based
255 on the specific requirements of the technical proposal and depending on the characteristics of the
256 project, to be included in the technical score.

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

259 E. Each member of the technical review committee shall make his scoring of assigned elements
260 available for public review. Such scores shall be considered public record. The public agency shall
261 make all scores available to the public simultaneously.

262 F. The price shall not be opened until the appeal period defined in §195 is passed.

263 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

264 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
265 Office of Facility Planning and Control, LR 34:

266 **§195. Technical Proposal—Adjusted Score**

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

- 269 1. the technical score determined by the technical review committee. Weighing factors may be
270 assigned to each element depending on its relative magnitude or significance to the overall project.
271 Each technical review committee member shall rate his assigned element of the proposal from each
272 of the design-builders on the short list and shall submit such scores to the chairman of the technical
273 review committee. The schedule and price bid shall not be made known to the technical review
274 committee during the scoring process. The chairman of the technical review committee shall adjust
275 the scores for any applicable weighing factors and shall determine the total technical score for each
276 proposal. Prior to determining the adjusted score, the chairman of the technical review committee
277 shall notify each design-builder, in writing, of each design-builder's final total technical score;
- 278 2. the time value, consisting of the product of the proposed contract time expressed in calendar
279 days multiplied by the value-per-calendar-day expressed in dollars established by the public agency
280 and included in the scope of services package;
- 281 3. the price proposal.

282 B. The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score
283 for each design-build proposal shall be determined by the following formula: Adjusted Score = (Price
284 Bid + Time Value) divided by Technical Score. If the Time Value is not mandatory and if it is not
285 used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid
286 divided by Technical Score.

287 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

288 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
289 Office of Facility Planning and Control, LR 34:

290 **§197. Technical Proposal—Appeal**

291 A. Design-builders who have submitted bona fide proposals may, within seven days of the
292 announcement of the technical scores, challenge the scores based on any of the foregoing reasons,
293 and only those reasons, by submitting a letter to the head of the public agency describing in detail the
294 reasons for the challenge. The head of the public agency shall have the authority to resolve any
295 challenge concerning the award of a contract. A written decision shall be rendered within 14 days and
296 shall be mailed or otherwise furnished immediately to the design-builder making the challenge. The
297 decision shall be final and no appeal based on price will be allowed unless:

298 1. the decision is fraudulent; or

299 2. the appeal is timely:

300 a. if the public agency is a state entity, the person adversely affected by the decision has timely
301 appealed to the court in accordance with R.S. 39:1691(A);

302 b. if the public agency is a non-state entity, the person adversely affected by the decision has
303 timely appealed to the court of proper venue for the public agency.

304 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

305 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
306 Office of Facility Planning and Control, LR 34:

307 **§199. Technical Proposal—Finality**

308 A. Once the design-builder has been chosen and a contract for a stipulated schedule and sum
309 certain price executed, the price of the design-build contract shall not be increased other than for
310 inflation as prescribed in the contract and for site or other conditions of which the design-builder had
311 no knowledge and should not have had knowledge as a reasonable possibility existing at the site or
312 concerning the design and construction or for changes on the scope of work by the public agency.

313 AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and R.S. 38:2225.2.1.

314 HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration,
315 Office of Facility Planning and Control, LR 34:

316 Jerry W. Jones

317 Director

318 0804#050

1 **SECTION 2.** The following list of projects is hereby authorized, utilizing the procedures set
2 forth in Section 1 of this ordinance.

3 EMD Central Maintenance Facility

4 Mosquito, Termite and Rodent Control Buildings

5 EMS Headquarters

6 Milne Campus

7 Crime Lab/Property Evidence/Clerk of Court/ NOPD Property

8 Criminal Justice Complex (All Structures)

9 Gert Town Pool

10 NOPD Special Operations Division

- 11 NOPD 3rd District Station
12 NOFD Station No. 3
13 NOFD Station No. 21
14 NOFD Station No. 8
15 NOFD Engine No. 22/39
16 Copelin-Byrd-Pete Sanchez Center
17 Youth Study Center
18 Coroner's Office
19 District Attorney's Office
20 NOPD 5th District Station
21 NOPD 7th District Station

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JULY 10, 2008

JACQUELYN B. CLARKSON
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON JULY 11, 2008

APPROVED:
~~DISAPPROVED:~~ JULY 18, 2008

C. RAY NAGIN
MAYOR

RETURNED BY THE MAYOR ON JULY 21, 2008 AT 11:15 A.M.

PEGGY LEWIS
CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS: Clarkson, Fielkow, Head, Hedge-Morrell, Midura, Willard-Lewis - 6
NAYS: 0
ABSENT: Carter - 1

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TO BE TRUE AND CORRECT COPY


CLERK OF COUNCIL