

2017 Regular Session

HOUSE BILL NO. 596

BY REPRESENTATIVES LEGER AND BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COASTAL COMMISSION: Provides relative to the contracting authority of the Coastal Protection and Restoration Authority

1 AN ACT

2 To amend and reenact R.S. 49:214.6.2(A) and to enact R.S. 49:214.7, relative to the Coastal
3 Protection and Restoration Authority; to authorize the use of outcome-based
4 performance contracts by the Coastal Protection and Restoration Authority for
5 integrated coastal protection; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 49:214.6.2(A) is hereby amended and reenacted and R.S. 49:214.7
8 is hereby enacted to read as follows:

9 §214.6.2. Functions and responsibilities; coastal activities

10 A. The authority shall administer the programs of the Coastal Protection and
11 Restoration Authority Board. The executive director may use his contracting
12 authority, or the contracting authority of any state department or agency, to
13 implement the provisions of this Chapter. Such contracting authority shall include
14 construction management at risk, operation and maintenance, design-build, design-
15 build-operate and maintain, ~~and~~ design-build-finance-operate and maintain,
16 outcome-based performance contracts, or any combination of design, construction,
17 finance, and services for operation and maintenance of an integrated coastal
18 protection project, where appropriate. The Coastal Protection and Restoration
19 Authority shall have the authority to execute and implement contracts entered into
20 by the board.

21 * * *

1 §214.7. Outcome-based performance contracts

2 A. Notwithstanding any other provision of law to the contrary, the Coastal
3 Protection and Restoration Authority may use the outcome-based performance
4 contract alternative project delivery method to contract for integrated coastal
5 protection projects as set forth in this Section and as is consistent with the purpose
6 and intent set forth in R.S. 49:214.1.

7 B. This Section creates an alternative project delivery method, known as
8 outcome-based performance contracts, for use by the Coastal Protection and
9 Restoration Authority to award a contract to finance, design, construct, and monitor
10 integrated coastal protection when deemed in the public interest, beneficial to the
11 state, consistent with the purpose and intent set forth in R.S. 49:214.1, and in
12 accordance with the procedures set forth in this Section. The following are reasons
13 to use outcome-based performance contracting: financing to construct integrated
14 coastal protection projects; cost of integrated coastal protection projects expected to
15 significantly increase over time; need to access or leverage future funds to construct
16 integrated coastal protection projects more quickly; obtain better overall value,
17 performance, and costs; and control and minimize risk to the authority.

18 C. Outcome-based performance contracts shall not be used for any integrated
19 coastal protection project that is estimated to cost more than one hundred fifty
20 million dollars and shall not exceed a contract term of twenty-five years. Prior to
21 proceeding to use outcome-based performance contracting, the authority through its
22 executive director shall submit a proposed project along with the reason to use
23 outcome-based performance contracting, to the Coastal Protection and Restoration
24 Authority Board for approval.

25 D. When used in this Section, the following words and phrases shall have the
26 meanings ascribed to them unless the context indicates a different meaning:

27 (1) "Outcome-based performance contract" means a delivery method by
28 which the owner contracts with an entity for results-based, specific agreed-upon
29 outcomes, goals, or outputs, with payment provided by an owner upon successful

1 completion of the pre-agreed result, outcome, goal, output, or result. Outcome-based
2 performance contracts shall include the following:

3 (a) A requirement that a substantial portion of the payment be conditioned
4 on the achievement of specific outcomes based on defined performance targets. For
5 purposes of this Subparagraph, "substantial portion" shall mean no less than seventy-
6 five percent of the total project cost.

7 (b) A process through which performance indicators can be assessed by the
8 owner to determine whether performance targets have been met.

9 (c) A schedule and calculation of consequences for contractors based on
10 performance, to include payments that would be earned if performance targets are
11 met or the imposition of penalties or other payment adjustments if performance
12 targets are not met.

13 (2) "Outcome-based performance contractor" means a person, sole
14 proprietorship, partnership, corporation, joint venture, or other legal entity, properly
15 licensed, bonded, and insured, who is contractually responsible to the owner for
16 financing, designing, permitting, constructing, and monitoring, or any combination
17 thereof, the integrated coastal protection project to be delivered.

18 (3) "Owner" means the Coastal Protection and Restoration Authority.

19 (4) "Licensed design professional" means an engineer, architect, or
20 landscape architect who has secured a professional license from a Louisiana
21 registration board as required by state law.

22 (5) "Louisiana resident contractor" means a person, partnership, association,
23 corporation, joint venture, or other legal entity and is defined as one that either:

24 (a) Is an individual who has been a resident of Louisiana for two years or
25 more immediately prior to contracting in accordance with this Section.

26 (b) Is any partnership, association, corporation, joint venture, or other legal
27 entity whose majority interest is owned by and controlled by residents of Louisiana
28 as defined in Subparagraph (a) of this Paragraph.

1 (c) For two years prior to bidding has maintained a valid Louisiana
2 contractor's license and has operated a permanent facility in the state of Louisiana
3 and has not had a change in ownership or control throughout those two years.

4 (d) For the purposes of Subparagraph (b) of this Paragraph, ownership
5 percentages shall be determined on the basis of the following:

6 (i) For corporations, all common and preferred stock, whether voting or
7 nonvoting, and all bonds, debentures, warrants, or other instruments convertible into
8 common or preferred stock.

9 (ii) For partnerships, capital accounts together with any and all other capital
10 advances, loans, bonds, debentures, whether or not convertible into capital accounts.

11 (6) All other terms shall have the meaning provided for in R.S. 49:214.2.

12 E. The authority shall not consider any unsolicited proposals for an
13 outcome-based performance contract.

14 F. The authority may develop and adopt any guidelines, rules, or regulations
15 necessary to effectuate the provisions of this Section.

16 G. Any financing of integrated coastal protection projects pursuant to this
17 Section may be in such amounts and upon such terms and conditions as may be
18 agreed upon by the owner and the outcome-based performance contractor.
19 Additionally, the authority, with the approval of the board, may utilize any and all
20 funding resources available to it. Any revenues or earnings apportioned to the
21 authority and derived from any integrated coastal protection programs, projects, or
22 activities as described in this Section shall be deposited in and credited to the Coastal
23 Protection and Restoration Fund in accordance with R.S. 49:214.5.4(F).

24 H. If necessary and upon request from the outcome-based performance
25 contractor, the authority may exercise any statutorily created power for the purpose
26 of acquiring lands or estates or interests in such, including but not limited to
27 easements and access agreements, in such to the extent that the authority finds that
28 such action serves the public purpose of this Section.

1 I. An outcome-based performance contractor shall employ, or have as a
2 partner, member, coventurer, or subcontractor, persons or a firm with persons who
3 are duly licensed and registered to provide the services required to complete the
4 project and to do business in the state. The standard professional engineer and land
5 surveyor requirements provided for in R.S. 37:681, et seq., and the rules and
6 regulations of the Louisiana Professional Engineering and Land Surveying Board,
7 shall apply to the components providing design services, and the standard contractor
8 qualifications as provided for in R.S. 37:2150, et seq., and the current rules and
9 regulations of the Louisiana State Licensing Board for Contractors shall apply to the
10 component providing construction services utilized by the outcome-based
11 performance contractor, based upon the applicable categories for the specific project
12 to be delivered and as specified by the authority. All registrations and licenses for
13 each component shall be obtained prior to the award of the project to the selected
14 outcome-based performance contractor.

15 J. Request for Statement of Interest and Qualifications or "RSIQ".

16 (1) The authority shall solicit an RSIQ.

17 (2) The RSIQ shall include the following:

18 (a) Submittal criteria, deadlines, and requirements for proposal package.

19 (b) Scoring methodology and selection grading criteria.

20 (c) Statements of qualification and experience for key proposed management
21 and staffing.

22 (d) Statements of qualification and experience of the financing members of
23 the team.

24 (e) Statements of qualification and experience of design component members
25 for the areas of expertise specific to the project.

26 (f) Statements of qualification, experience, and resources of the construction
27 team component.

28 (3) The authority may request that proposers include the following in
29 response to the RSIQ, as well as any other pertinent information relative to the

1 qualifications of a proposer that the authority determines needs to be submitted in a
2 response to an RSIQ:

3 (a) The proposer's surety and any other financial assurances.

4 (b) Construction methodologies previously used by the proposer on other
5 projects of similar size, type, and complexity.

6 (c) Extent to which the proposer intends to utilize Louisiana resident
7 contractors to perform the contract.

8 (d) Extent to which the proposer intends to self-perform any work.

9 (e) Past performance of the proposer, including timely and successful
10 completion of other projects of similar size and complexity.

11 (f) The proposer's safety record and safety plan.

12 (g) Any other project-specific criteria as may apply to project needs.

13 (4) Any response that does not meet all of the requirements contained in the
14 RSIQ shall be deemed nonresponsive and shall not be considered by the authority.

15 False or misrepresented information furnished in response to an RSIQ shall be
16 grounds for rejection. Additionally, the authority reserves the right to cancel any
17 solicitation at its discretion.

18 (5)(a) The authority shall establish a qualification review committee for
19 evaluation of the responses to the RSIQ. The qualification review committee shall
20 evaluate the responses in accordance with the scoring methodology and criteria as
21 identified and set forth in the RSIQ, and shall evaluate all aspects of the proposed
22 project, including finance, design, construction, and monitoring components of any
23 proposer.

24 (b) Within sixty days of the deadline for receipt of responses, the
25 qualification review committee shall select a short list of the highest rated proposers
26 in a number to be determined by the qualification review committee. However, if
27 fewer than three eligible responses are received for review by the qualifications
28 review committee, then the executive director may either approve proceeding with

1 the outcome-based performance contracting process or readvertising in accordance
2 with this Section.

3 (c) The qualification review committee shall present its short list to the
4 executive director. The short-listed proposers shall be invited by the executive
5 director to submit a detailed technical and cost proposal for the proposed
6 outcome-based performance project by means of an issued request for proposal or
7 "RFP".

8 K.(1) The executive director shall issue an RFP to the proposers making the
9 short list in accordance with Subsection J of this Section.

10 (2) The RFP shall include, at a minimum, the following:

11 (a) Submittal criteria, deadlines, and requirements for proposal package.

12 (b) Scoring methodology and selection grading criteria.

13 (c) The proposer's surety and financial assurances.

14 (d) Design strategy and preliminary design concepts.

15 (e) Construction sequencing, techniques, materials, methodology, schedule
16 and phasing.

17 (f) Proposed pricing and payment schedule for delivery of project.

18 (3) The RFP may also include any other requirements that the authority
19 deems necessary.

20 (4) The authority may, at its discretion, compensate unsuccessful and
21 responsive short-listed proposers for the expense of preparing the response to the
22 RFP. The amount of compensation, if any, shall be predetermined by the authority
23 in its sole discretion and shall be included in the RFP.

24 (5) The executive director shall establish a proposal review committee to
25 review, score, and recommend award to an outcome-based performance contractor.

26 (a) The proposal review committee shall consist of no more than seven
27 individuals as follows:

28 (i) Three representatives of the owner, one of whom shall also serve as the
29 chairman of the committee.

1 (ii) One design professional in the discipline of but not involved with the
2 project.

3 (iii) One licensed contractor in the discipline of but not involved with the
4 project.

5 (iv) Two members at-large, as selected by the owner.

6 (b) Within ninety days after the deadline for responses to the RFP, the
7 proposal review committee shall make a written recommendation for award to the
8 executive director. The results of the proposal review committee, inclusive of its
9 findings, grading, score sheets, and recommendations, shall be available for review
10 by all proposers and shall be deemed public records.

11 L. Within sixty days of the award of the outcome-based performance
12 contract, the authority and the selected outcome-based performance contractor shall
13 execute a contract. If the authority and the outcome-based performance contractor
14 are not able to agree upon a contract, then the authority reserves the right to re-
15 advertise the project in accordance with this Section or any other contracting method
16 available for the authority.

17 M. The authority may cancel any solicitation and decline to award any
18 contract if a determination is made that it is in the best interest of the state.

19 N. There shall be no challenge by any legal process to the choice of the
20 successful outcome-based performance contractor except for fraud, bias for
21 pecuniary or personal reasons not related to the taxpayers' interest, or arbitrary and
22 capricious selection by the authority.

23 O. The provisions of this Section shall supersede any conflicted provisions
24 of any law, including but not limited to, the requirements of R.S. 38:2181 through
25 2320 and R.S. 39:1551 through 1755.

26 Section 2. This Act shall become effective upon signature by the Governor, or if not
27 signed by the Governor, upon expiration of the time for bills to become law without
28 signature by the Governor, as provided in Article III, Section 18 of the Constitution of

- 1 Louisiana. If vetoed by the Governor and subsequently approved by the legislature, this Act
2 shall become effective on the day following such approval.
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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 596 Engrossed

2017 Regular Session

Leger

Abstract: Authorizes the Coastal Protection and Restoration Authority (CPRA) to use outcome-based performance contracts.

Proposed law adds outcome-based performance contracts to the contracting authority of the executive director of the CPRA.

Proposed law authorizes the CPRA to use an outcome-based performance contract alternative project delivery method to contract for financing, designing, constructing, and monitoring integrated coastal protection projects.

Proposed law prohibits the use of outcome-based performance contracts for projects estimated to exceed \$150 million and with terms exceeding 25 years.

Proposed law provides for a general definition of "outcome-based performance contract" as a contract with specific outcomes or goals and for payment upon completions of those agreed-upon outcomes or goals.

Proposed law provides for a definition of "outcome-based performance contractor" as any person or entity properly licensed, bonded, and insured who is responsible to the owner for the integrated coastal protection project to be delivered.

Proposed law provides for a definition of "owner" as the CPRA.

Proposed law provides for a definition of "licensed design professional" as a licensed engineer, architect, or landscape architect.

Proposed law provides for a general definition of "La. resident contractor" as an individual or entity with certain connections relative to La.

Proposed law provides that all other terms in proposed law have the same meaning as those terms in present law.

Proposed law prohibits the CPRA from accepting unsolicited proposals for outcome-based performance contracts.

Proposed law allows the CPRA to formulate rules and guidelines to implement proposed law.

Proposed law provides for financing terms and conditions of outcome-based performance contracts to be determined by the CPRA and the outcome-based performance contractor.

Proposed law also provides for any revenues or earnings from activities pursuant to proposed law to be deposited in the Coastal Protection and Restoration Fund.

Proposed law allows the CPRA to acquire land and easements in order to serve the purpose of proposed law.

Proposed law requires outcome-based performance contractors to employ duly licensed professionals. Proposed law states that the rules and regulations of the La. Professional Engineering and Land Surveying Board and the State Licensing Board for Contractors shall apply to proposed law.

Proposed law provides that the CPRA shall provide a request for statement of interest and qualification (RSIQ) and includes the requirements of what must be included in the RSIQ.

Proposed law requires that the CPRA establish a qualification review committee which must evaluate the responses to the RSIQ. Proposed law additionally requires the qualification review committee to create a short list of the highest rated proposers and present the list to the executive director.

Proposed law requires that the executive director issue a request for proposal (RFP) to those making the short list. Proposed law provides for what must be included in the RFP.

Proposed law provides that the executive director shall establish a proposal review committee to select the outcome-based performance contractor.

Proposed law states that the proposal review committee shall consist of seven individuals: three representatives of the owner, a design professional not involved with the project, a licensed contractor not involved with the project, and two at-large members selected by the owner.

Proposed law provides that the proposal review committee shall make recommendations to the executive director within 90 days of the deadline for responses to the RFP.

Proposed law provides that the authority and the selected outcome-based performance contractor shall execute a contract within 60 days of the award of the outcome-based performance contract. If no contract is executed within those 60 days, authorizes the authority to re-advertise the project.

Proposed law provides that the authority may decline to award a contract if it is in the best interest of the state.

Proposed law provides that there shall be no challenge by legal process to any selection of an outcome-based performance contractor except for fraud, bias, or arbitrary and capricious selection by the authority.

Proposed law states that proposed law shall supercede any conflicting provisions of present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 49:214.6.2(A); Adds R.S. 49:214.7)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Authorize the authority to re-advertise the project if no contract has been executed within the allowed 60 days.