

**ACT No. 356**

2017 Regular Session

HOUSE BILL NO. 596

BY REPRESENTATIVES LEGER AND BISHOP

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 \* \* \*

22 §214.7. Outcome-based performance contracts

23 A. Notwithstanding any other provision of law to the contrary, the authority  
24 may use the outcome-based performance contract alternative project delivery method

1 to contract for integrated coastal protection projects as set forth in this Section and  
2 as is consistent with the purpose and intent set forth in R.S. 49:214.1.

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

14 C. Outcome-based performance contracts shall not be used for any integrated  
15 coastal protection project that is estimated to cost more than two hundred fifty  
16 million dollars or exceeds a contract term of twenty-five years. Prior to proceeding  
17 to use outcome-based performance contracting, the authority through its executive  
18 director shall submit a proposed project along with the reason to use outcome-based  
19 performance contracting to the board and shall report to the Senate Committee on  
20 Natural Resources and the House Committee on Natural Resources and Environment  
21 for review.

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

24 (1) "Outcome-based performance contract" means a delivery method by  
25 which the owner contracts with an entity for results-based, specific agreed-upon  
26 outcomes, goals, or outputs, with payment provided by an owner upon successful  
27 completion of the pre-agreed result, outcome, goal, output, or result. Outcome-based  
28 performance contracts shall include the following:

29 (a) A requirement that a substantial portion of the payment be conditioned  
30 on the achievement of specific outcomes based on defined performance targets. For

1 purposes of this Subparagraph, "substantial portion" shall mean no less than seventy-  
 2 five percent of the total project cost.

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

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

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

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

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

18 (5) "Resident business" means one authorized to do and doing business  
 19 under the laws of this state, that meets one of the following criteria:

20 (a) Maintains its principal place of business in the state.

21 (b) Employs a minimum of two employees who are residents of the state.

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

23 E. The authority shall not consider any unsolicited proposals for an  
 24 outcome-based performance contract. However, nothing in this Subsection shall  
 25 prohibit a private company from bringing to the authority suggestions for new  
 26 projects or alterations to solicited proposals. Any award of a contract shall be made  
 27 only after issuance of a request for proposal and competitive bid process as required  
 28 by the provisions of this Section.

1           F. The authority may develop and adopt any guidelines, rules, or regulations  
2           necessary to effectuate the provisions of this Section in accordance with the  
3           Administrative Procedure Act.

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

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

17           I. An outcome-based performance contractor shall employ, or have as a  
18           partner, member, coventurer, or subcontractor, persons or a firm with persons who  
19           are duly licensed and registered to provide the services required to complete the  
20           project and to do business in the state. The standard professional engineer and land  
21           surveyor requirements provided for in R.S. 37:681 et seq., and the rules and  
22           regulations of the Louisiana Professional Engineering and Land Surveying Board,  
23           shall apply to the components providing design services, and the standard contractor  
24           qualifications as provided for in R.S. 37:2150 et seq., and the current rules and  
25           regulations of the State Licensing Board for Contractors shall apply to the  
26           component providing construction services utilized by the outcome-based  
27           performance contractor, based upon the applicable categories for the specific project  
28           to be delivered and as specified by the authority. All registrations and licenses for  
29           each component shall be obtained prior to the award of the project to the selected  
30           outcome-based performance contractor.

1                   J.(1) The authority shall solicit a request for statement of interest and  
2                   qualifications or "RSIQ".

3                   (2) The RSIQ shall include the following:

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

5                   (b) Scoring methodology and selection grading criteria.

6                   (c) Statements of qualification and experience for key proposed management  
7                   and staffing.

8                   (d) Statements of qualification and experience of the financing members of  
9                   the team.

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

12                  (f) Statements of qualification, experience, and resources of the construction  
13                  team component.

14                  (g) A statement of the proposer's ability and intention to provide equal  
15                  opportunities in recruitment, selection, appointment, promotion, training, and related  
16                  employment areas in connection with the outcome-based performance contract.

17                  (3) The authority may request that proposers include the following in  
18                  response to the RSIQ, as well as any other pertinent information relative to the  
19                  qualifications of a proposer that the authority determines needs to be submitted in a  
20                  response to an RSIQ:

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

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

24                  (c) Extent to which the proposer intends to utilize resident businesses to  
25                  perform the contract.

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

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

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

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

1           (4) Any response that does not meet all of the requirements contained in the  
2           RSIQ shall be deemed nonresponsive and shall not be considered by the authority.  
3           False or misrepresented information furnished in response to an RSIQ shall be  
4           grounds for rejection. Additionally, the authority reserves the right to cancel any  
5           solicitation at its discretion.

6           (5)(a) The authority shall establish a qualification review committee for  
7           evaluation of the responses to the RSIQ. The qualification review committee shall  
8           evaluate the responses in accordance with the scoring methodology and criteria as  
9           identified and set forth in the RSIQ, and shall evaluate all aspects of the proposed  
10          project, including finance, design, construction, and monitoring components of any  
11          proposer.

12          (b) Within sixty days of the deadline for receipt of responses, the  
13          qualification review committee shall select a short list of the highest-rated proposers  
14          in a number to be determined by the qualification review committee. However, if  
15          fewer than three eligible responses are received for review by the qualifications  
16          review committee, then the executive director may either approve proceeding with  
17          the outcome-based performance contracting process or readvertising in accordance  
18          with this Section.

19          (c) The qualification review committee shall present a list of the highest-  
20          rated proposers to the executive director. The highest-rated proposers shall be  
21          invited by the executive director to submit a detailed technical and cost proposal for  
22          the proposed outcome-based performance project by means of an issued request for  
23          proposal or "RFP".

24          K.(1) The executive director shall issue an RFP to the proposers making the  
25          list of the highest-rated proposers in accordance with Subsection J of this Section.

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

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

28               (b) Scoring methodology and selection grading criteria.

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

30               (d) Design strategy and preliminary design concepts.

1                   (e) Construction sequencing, techniques, materials, methodology, schedule  
2                   and phasing.

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

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

6                   (4) The authority may, at its discretion, compensate those unsuccessful and  
7                   responsive highest-rated proposers for the expense of preparing the response to the  
8                   RFP. The amount of compensation, if any, shall be predetermined by the authority  
9                   in its sole discretion and shall be included in the RFP.

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

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

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

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

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

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

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

26                  L. Within sixty days of the award of the outcome-based performance  
27                  contract, the authority and the selected outcome-based performance contractor shall  
28                  execute a contract. If the authority and the outcome-based performance contractor  
29                  are not able to agree upon a contract, then the authority reserves the right to re-

1           advertise the project in accordance with this Section or any other contracting method  
2           available for the authority.

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

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

9           O. The provisions of this Section shall supersede and control to the extent  
10           of any conflict with any other provisions of any law including but not limited to the  
11           requirements of R.S. 38:2181 through 2320 and R.S. 39:1551 through 1755.

12           Section 2. This Act shall become effective upon signature by the governor, or if not  
13           signed by the governor, upon expiration of the time for bills to become law without signature  
14           by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If  
15           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
16           effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_