

2018 Regular Session

HOUSE BILL NO. 573

BY REPRESENTATIVE ZERINGUE

COASTAL RES/COASTAL ZONE: Allows political subdivisions to perform integrated coastal projects through outcome-based contracting

1 AN ACT

2 To enact Part XI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 38:2320.1, relative to contracting for integrated coastal protection
4 projects; to authorize political subdivisions to use outcome-based performance
5 contracts for integrated coastal protection projects; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Part XI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of
8 1950, to be comprised of R.S. 38:2320.1, is hereby enacted to read as follows:

9 PART XI. OUTCOME-BASED PERFORMANCE CONTRACTS

10 FOR INTEGRATED COASTAL PROTECTION

11 PROJECTS BY POLITICAL SUBDIVISIONS

12 §2320.1. Outcome-based performance contracts

13 A. Notwithstanding any other provision of law to the contrary, political
14 subdivisions may use the outcome-based performance contract alternative project
15 delivery method to contract for integrated coastal protection projects as set forth in
16 this Section and consistent with the purpose and intent set forth in R.S. 49:214.1 or
17 consistent with the Louisiana’s Comprehensive Master Plan for a Sustainable Coast.

18 B. This Section creates an alternative project delivery method, known as
19 outcome-based performance contracts, for use by political subdivisions to award a
20 contract to finance, design, construct, and monitor integrated coastal protection when

1 deemed in the public interest, beneficial to the state and political subdivisions,
2 consistent with the purpose and intent set forth in R.S. 49:214.1, and in accordance
3 with the procedures set forth in this Section. The following are reasons to use
4 outcome-based performance contracting: financing to construct integrated coastal
5 protection projects; cost of integrated coastal protection projects expected to
6 significantly increase over time; need to access or leverage future funds to construct
7 integrated coastal protection projects more quickly; obtain better overall value,
8 performance, and costs; and control and minimize risk to the political subdivision.

9 C. Outcome-based performance contracts shall not be used for any integrated
10 coastal protection project that is estimated to cost more than twenty-five million
11 dollars or exceeds a contract term of seven years.

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

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

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

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

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

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

6 (3) "Owner" means the political subdivision awarding the contract in
7 cooperation with the Coastal Protection and Restoration Authority.

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

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

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

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

15 (6) "Annual plan" means the state integrated coastal protection plan
16 submitted annually to the legislature.

17 (7) "Coastal area" means the Louisiana Coastal Zone and contiguous areas
18 subject to storm or tidal surge and the area comprising the Coastal Louisiana
19 Ecosystem as defined in Section 7001 of P.L. 110-114.

20 (8) "Integrated coastal protection" means plans, projects, policies, and
21 programs intended to provide hurricane protection or coastal conservation or
22 restoration, and shall include but not be limited to coastal restoration; coastal
23 protection; infrastructure; storm damage reduction; flood control; water resources
24 development; erosion control measures; marsh management; diversions; saltwater
25 intrusion prevention; wetlands and central wetlands conservation, enhancement, and
26 restoration; barrier island and shoreline stabilization and preservation; coastal passes
27 stabilization and restoration; mitigation; storm surge reduction; or beneficial use
28 projects.

1 (9) "Master plan" or "comprehensive master coastal protection plan" means
2 the long-term comprehensive integrated coastal protection plan combining coastal
3 restoration, coastal zone management, storm damage reduction, hurricane protection,
4 flood control, and the protection, conservation, restoration, and enhancement of
5 coastal wetlands, marshes, cheniers, ridges, coastal forests, and barrier shorelines or
6 reefs, including amendments, as determined by the Coastal Protection and
7 Restoration Authority Board to the plan. It shall include but not be limited to state
8 and political subdivision operations plans.

9 E. The political subdivision shall not consider any unsolicited proposals for
10 an outcome-based performance contract. However, nothing in this Subsection shall
11 prohibit a private company from bringing to a political subdivision suggestions for
12 new projects or alterations to solicited proposals. Any award of a contract shall be
13 made only after issuance of a request for proposal and competitive bid process as
14 required by the provisions of this Section.

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

17 G. Any financing of integrated coastal protection projects pursuant to this
18 Section may be in such amounts and upon such terms and conditions as may be
19 agreed upon by the owner and the outcome-based performance contractor.
20 Additionally, the political subdivision may utilize any and all funding resources
21 available to it.

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

27 I. An outcome-based performance contractor shall employ, or have as a
28 partner, member, coventurer, or subcontractor, persons or a firm with persons who
29 are duly licensed and registered to provide the services required to complete the

1 project and to do business in the state. The standard professional engineer and land
2 surveyor requirements provided for in R.S. 37:681 et seq., and the rules and
3 regulations of the Louisiana Professional Engineering and Land Surveying Board,
4 shall apply to the components providing design services, and the standard contractor
5 qualifications as provided for in R.S. 37:2150 et seq., and the current rules and
6 regulations of the State Licensing Board for Contractors shall apply to the
7 component providing construction services utilized by the outcome-based
8 performance contractor, based upon the applicable categories for the specific project
9 to be delivered and as specified by the political subdivision. All registrations and
10 licenses for each component shall be obtained prior to the award of the project to the
11 selected outcome-based performance contractor.

12 J.(1) The political subdivision shall solicit a request for statement of interest
13 and qualifications or "RSIQ".

14 (2) The RSIQ shall include the following:

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

16 (b) Scoring methodology and selection grading criteria.

17 (c) Statements of qualification and experience for key proposed management
18 and staffing.

19 (d) Statements of qualification and experience of the financing members of
20 the team.

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

23 (f) Statements of qualification, experience, and resources of the construction
24 team component.

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

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

1 to the qualifications of a proposer that the political subdivision determines needs to
2 be submitted in a 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 resident businesses to
7 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 political
15 subdivision. False or misrepresented information furnished in response to an RSIQ
16 shall be grounds for rejection. Additionally, the political subdivision reserves the
17 right to cancel any solicitation at its discretion.

18 (5)(a) The political subdivision may establish a qualification review
19 committee for evaluation of the responses to the RSIQ. The qualification review
20 committee shall evaluate the responses in accordance with the scoring methodology
21 and criteria as identified and set forth in the RSIQ, and evaluate all aspects of the
22 proposed project, including finance, design, construction, and monitoring
23 components of any 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 political subdivision 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 a list of the highest-
4 rated proposers to the political subdivision. The highest-rated proposers shall be
5 invited by the political subdivision to submit a detailed technical and cost proposal
6 for the proposed outcome-based performance project by means of an issued request
7 for proposal or "RFP".

8 K.(1) The political subdivision shall issue an RFP to the proposers making
9 the list of the highest-rated proposers 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 political
19 subdivision deems necessary.

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

24 (5)(a) The political subdivision may establish a proposal review committee
25 to review, score, and recommend award to an outcome-based performance
26 contractor. The proposal review committee may consist of representatives of the
27 owner, one of whom shall also serve as the chairman of the committee; a design
28 professional with appropriate expertise; and a licensed contractor with appropriate
29 expertise.

1 (b) Within ninety days after the deadline for responses to the RFP, the
2 proposal review committee shall make a written recommendation for award to the
3 political subdivision. The results of the proposal review committee, inclusive of its
4 findings, grading, score sheets, and recommendations, shall be available for review
5 by all proposers and shall be deemed public records.

6 L. Within sixty days of the award of the outcome-based performance
7 contract, the political subdivision and the selected outcome-based performance
8 contractor shall execute a contract. If the political subdivision and the
9 outcome-based performance contractor are not able to agree upon a contract, then the
10 political subdivision reserves the right to readvertise the project in accordance with
11 this Section or any other contracting method available to the political subdivision.

12 M. The political subdivision shall cancel any solicitation and decline to
13 award any contract if a determination is made that it is in the best interest of the state
14 and the political subdivision.

15 N. There shall be no challenge by any legal process to the choice of the
16 successful outcome-based performance contractor except for fraud, bias for
17 pecuniary or personal reasons not related to the taxpayers' interest, or arbitrary and
18 capricious selection by the political subdivision.

19 O. The provisions of this Section shall supersede and control to the extent
20 of any conflict with any other provisions of any law including but not limited to the
21 requirements of R.S. 38:2181 through 2320 and R.S. 39:1751 through 1755.

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

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 573 Engrossed

2018 Regular Session

Zeringue

Abstract: Allows political subdivisions to perform integrated coastal projects through outcome-based contracting.

Proposed law authorizes political subdivisions 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 that cost more than \$25 million or with terms exceeding 7 years.

Proposed law generally defines "outcome-based performance contract" to be a contract with specific outcomes or goals and for payment upon completion of those agreed-upon outcomes or goals.

Proposed law defines "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 defines "owner" to be the political subdivision.

Proposed law defines "licensed design professional" as a licensed engineer, architect, or landscape architect.

Proposed law defines "resident business" as one authorized to do and doing business under the laws of this state that either maintains its principal place of business in the state or that employs a minimum of two employees who are residents of La.

Proposed law also defines "coastal area", integrated coastal protection", and "comprehensive master coastal protection plan".

Proposed law prohibits the political subdivision from accepting unsolicited proposals for outcome-based performance contracts. Provides that nothing in the law prohibits a company from making suggestions for new projects or alterations to solicited proposals. Provides that the award of any contract may be made only after the issuance of a request for proposal and competitive bid.

Proposed law allows the political subdivision to formulate rules and guidelines necessary to implement proposed law.

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

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

Proposed law requires outcome-based performance contractors employ duly licensed professionals. Further states that the rules and regulations of the La. Professional

Engineering and Land Surveying Board and the State Licensing Board for Contractors apply to proposed law.

Proposed law authorizes the political subdivision to provide a request for statement of interest and qualification (RSIQ). Delineates the requirements of what must be included in the RSIQ including a statement of the ability and intention of a contractor to provide equal opportunities in recruitment, selection, appointment, promotion, training, and other employment areas associated with an outcome-based performance contract.

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

Proposed law requires that the political subdivision to issue a request for proposal (RFP) to those making the list of highest rated proposers. Proposed law delineates what must be included in the RFP.

Proposed law authorizes the political subdivision to establish a proposal review committee consisting of representatives of the owner, a design professional with appropriate expertise, and a licensed contractor with appropriate expertise.

Proposed law requires the proposal review committee to make recommendations to the political subdivision within 90 days of the deadline for responses to the RFP.

Proposed law requires the political subdivision and the selected outcome-based performance contractor to execute a contract within 60 days of the award of the outcome-based performance contract. Specifies that if no contract is executed within those 60 days, the political subdivision may readvertise the project.

Proposed law requires the political subdivision to cancel any solicitation and decline to award a contract if a determination is made that the cancellation or declination is in the best interests of the political subdivision.

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 specifies that proposed law supersedes any conflicting provisions of present law.

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

(Adds R.S. 38:2320.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Lower the estimated maximum threshold to prohibit outcome-based performance contracts for any integrated coastal protection projects from \$250 million to \$25 million.
2. Decrease the contract term threshold to prohibit outcome-based performance contracts for any integrated coastal protection projects from a contract term of 25 years to a contract term of 7 years.