

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H2/28/01 H3/9/01 S4/3/01

A Bill

Act 1547 of 2001
HOUSE BILL 1874

5 By: Representative Rackley
6
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For An Act To Be Entitled

9 AN ACT PERTAINING TO THE PROCUREMENT AND
10 FINANCING OF PERFORMANCE-BASED EFFICIENCY
11 CONTRACTS FOR STATE AGENCIES; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT PERTAINING TO THE PROCUREMENT AND
15 FINANCING OF PERFORMANCE-BASED EFFICIENCY
16 CONTRACTS FOR STATE AGENCIES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 19, Chapter 4, Subchapter 14 is amended
23 by adding an additional section to read as follows:

24 19-4-1414. (a) For purposes of this act:

25 (1) "Agency" means any state board or commission, agency,
26 department, and institution of higher education;

27 (2) "Efficiency savings" means a cost savings which results from
28 changes that do not degrade the level of service or working conditions, and
29 which cost savings are verifiable by comparing expenditures that occur after
30 the improvements with the same type or expenditures occurring before the
31 improvements are made;

32 (3) "Performance-based efficiency contract" means a contract with
33 a qualified provider for:

34 (A) The design and implementation of any improvement,
35 repair, alteration;

36 (B) The betterment of any building or facility owned or

1 operated by an agency; and

2 (C) Any equipment, fixture, or furnishing to be added to or
3 used in any building or facility, or any maintenance or operational strategy
4 that is designed to reduce utility consumption or lower operating costs, and
5 may include, but is not limited to:

6 (i) Automated or computerized energy control systems;

7 (ii) Heating, ventilating, or air conditioning system
8 modifications or replacements;

9 (iii) Replacements or modifications of lighting
10 fixtures to increase the energy efficiency of the lighting system;

11 (iv) Indoor air quality improvements to increase air
12 quality that conforms to the applicable state building code requirements in
13 lieu of an increase in energy usage;

14 (v) Any additional building infrastructure
15 improvement, cost saving, life safety, or any other improvement that provides
16 long-term operating cost reductions and are in compliance with state building
17 code; and

18 (vi) Any facility operation program that reduces
19 operating costs;

20 (4) "Qualified provider" means a person or business experienced
21 and trained in the design, analysis, and installation of energy conservation
22 and facility management measures; and

23 (5) "Request for proposals" means a negotiated procurement.

24 (b)(1) Any agency may enter into performance-based efficiency contracts
25 for professional services contracts.

26 (2) Performance-based efficiency contracts shall contain a
27 guarantee of cost savings.

28 (3) Any agency may enter into an installment contract or lease
29 purchase agreement for the purpose of financing performance-based efficiency
30 projects for a term not to exceed twenty (20) years.

31 (4) The contract shall provide that all payments, except
32 obligations on termination of the contract before its expiration, are to be
33 made in installments.

34 (5) The contract's cost savings shall be guaranteed each year
35 during the term of the agreement to the agency on a first party basis.

36 (6) The savings shall be sufficient to offset the annual costs of

1 the contract.

2 (c)(1) A qualified provider to whom the contract is awarded shall
3 provide a sufficient bond to the agency for its faithful performance of the
4 equipment installation and the accomplishment of the guaranteed savings.

5 (2) One (1) multi-year performance bond covering the aggregate
6 amount of the guaranteed savings over the contract term shall be required, and
7 shall remain in full force and effect until the termination of the agreement.

8 (3)(A) All work by or for a qualified provider related to the
9 improvements or modifications which are intended to result in the savings
10 guaranteed under the contract shall be performed in accordance with drawings
11 and specifications prepared by a professional engineer licensed to practice in
12 Arkansas.

13 (B) All drawings and specifications shall be sealed by the
14 professional engineer responsible for their preparation.

15 (d)(1) State agencies shall give a notice of the request for proposals.

16 (2) Notice of the request for proposals shall be published one
17 (1) time each week for not less than two (2) consecutive weeks in a newspaper
18 having circulation in the county or city where the contract is to be
19 performed.

20 (3) Proposals shall be sealed and opened in a public forum at
21 least thirty (30) calendar days after the last publication and the agency
22 shall evaluate the proposals.

23 (e)(1) The request for proposal shall state the:

24 (A) Relative importance of price and other evaluation
25 factors;

26 (B) Tasks to be performed under the contract;

27 (C) Criteria to be used in evaluating the proposals; and

28 (D) Time frames within which the work shall be completed.

29 (2) Requests for proposals shall solicit quotations and shall
30 specify the relative importance of guaranteed savings, price, return on
31 investment, financial performance, stability, quality, technical ability,
32 experience, or other evaluation factors.

33 (f)(1) Negotiations shall be entered into with the person or firm whose
34 proposal is determined in writing by the agency's chief financial officer to
35 be the most advantageous to the state, taking into consideration price and the
36 evaluation factors set forth in the request for proposals.

1 (2) Discussions shall not disclose any information derived from
2 proposals submitted by competing offerers.

3 (3) The contract shall be awarded to the responsible offerer
4 whose proposal, following negotiations, is determined to be the most
5 advantageous to the state considering the guaranteed savings and other
6 evaluation factors set forth in the request for proposals.

7 (g)(1) To obtain the best final offers, the agency may allow proposal
8 revisions after submissions and before the award of the contract.

9 (2) State agencies shall select the provider deemed best
10 qualified and capable of performing the desired work and negotiate a contract
11 for the project.

12 (h)(1) State agencies may enter into a performance-based efficiency
13 contract with a qualified provider if it finds that the amount it would spend
14 on the measures recommended in the proposal would not exceed the amount to be
15 saved in either utility or operational costs, or both, within a twenty-year
16 period after the date of installation, if the recommendations in the proposal
17 are followed.

18 (2) The qualified provider shall guarantee the annual savings to
19 the agency every year during the term of the contract and shall reconcile the
20 guaranteed savings on an annual basis.

21 (3) The qualified provider shall reimburse the agency for any
22 shortfall of guaranteed savings.

23 (i)(1) The provisions of preceding sections of this subchapter and of
24 all other provisions of law governing construction of public facilities and
25 the purchasing of commodities, including, but not limited to, the provisions
26 of §§ 22-9-201 through 22-9-212, §§ 19-11-101 through 19-11-604, and §§ 19-11-
27 802 through 19-11-806 shall not be applicable to Performance Based Efficiency
28 Contracts.

29 (2) Notwithstanding anything in this subsection to the contrary,
30 the provisions of § 19-11-801, § 22-9-101 through 22-9-104, § 22-9-213, §§ 19-
31 11-701 through 19-11-717, §§ 22-9-301 through 22-9-315, §§ 22-9-401 through
32 22-9-404 shall remain in full force and effect and not be affected hereby.

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34 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General
35 Assembly that Arkansas State Building Services urgently needs a way to
36 finance, procure and install energy conservation and operational efficiency

1 measures that will reduce operating costs of state owned and operated
2 facilities, and it is necessary that Arkansas State Building Services be able
3 to pay for the energy conservation and operational efficiency measures over a
4 period not to exceed twenty (20) years in order for the savings generated from
5 the improvements to pay for the recommended measures. Therefore, an emergency
6 is declared to exist and this act being immediately necessary for the
7 preservation of the public peace, health and safety shall become effective on
8 the date of its approval by the Governor. If the bill is neither approved nor
9 vetoed by the Governor, it shall become effective on the expiration of the
10 period of time during which the Governor may veto the bill. If the bill is
11 vetoed by the Governor and the veto is overridden, it shall become effective
12 on the date the last house overrides the veto.

13 /s/ Rackley

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16 APPROVED: 4/12/2001
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