

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2179

"TO AMEND ARKANSAS CODE § 19-4-1414 PERTAINING TO PERFORMANCE BASED
EFFICIENCY CONTRACTS."

Amendment No. 2 to House Bill No. 2179.

Amend House Bill No. 2179 as engrossed, H3/14/03:

Delete everything after the enacting clause and substitute the following:

“SECTION 1. Arkansas Code § 19-4-1414 is amended to read as follows:
19-4-1414. Performance-based efficiency contracts.

(a) For purposes of this section:

(1) "Agency" means any state board, commission, agency, department, ~~and~~ institution of higher education, city, county, school district, or other political subdivision of the State of Arkansas;

(2) "Bond" means any surety company bond issued by a surety company that is licensed to do business in the State of Arkansas;

~~(2)(3)~~ (3) "Efficiency savings" means cost savings which result from utility, operational, and cost avoidance measures that do not degrade the level of service or working conditions ~~changes that do not degrade the level of service or working conditions and which are verifiable by comparing expenditures that occur after the improvements with the same type or expenditures occurring before the improvements are made;~~

(4) "Energy conservation measures" means the improvement, installation, repair, or alteration of any equipment, fixture, furnishing, or other improvement to be added to or used in any building or facility, or any maintenance or operational strategy that is designed to reduce utility consumption or lower operating costs, and may include, but is not limited to:

(A) Insulation of the building structure or system within the building;

(B) Windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(C) Automated or computerized energy control systems;

(D) Heating, ventilating, or air conditioning system modifications, replacements, or conversions;

(E) Replacements, retrofits, or modifications of lighting fixtures to increase the energy efficiency of the lighting system



that conform to the Illuminating Engineers Society standards, or comparable successors thereto;

(F) Indoor air quality improvements to increase air quality that conforms to the applicable state building code requirements;

(G) Any additional building infrastructure improvement, cost saving, life safety, or any other improvement that provides long term operating cost reductions and are in compliance with the state building code;

(H) Equipment used to produce electricity; and

(I) Any facility operation, administration, or management program that reduces operating costs.

(3)(5) "Performance-based efficiency contract" means a contract with a qualified provider for: the construction, installation, and implementation of energy conservation measures that may or may not include provisions in the contract, or in an accompanying agreement, under which the costs associated with the construction, installation, and implementation of energy conservation measures may be financed and paid over a specified period of time with interest;

~~(A) The design and implementation of any improvement, repair, or alteration;~~

~~(B) The betterment of any building or facility owned or operated by an agency; and~~

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

~~(i) Automated or computerized energy control systems;~~

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

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

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

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

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

(4)(6) "Qualified provider" means a person or business experienced and trained in the design, analysis, and installation, verification and efficiency measurement of energy conservation and facility management measures who is properly licensed as a contractor in the State of Arkansas; and

(5)(7) "Request for proposals" means a negotiated procurement for a qualified provider to provide services.

(b)(1) Any agency may enter into performance-based efficiency contracts for professional services contracts with a qualified provider and may finance the costs associated with the purchase of equipment, labor, and services associated with the implementation of the energy conservation

measures provided for in the performance based efficiency contracts or otherwise through the agency's execution either in favor of a qualified provider or third party financing source of any installment contract or lease purchase agreement possessing a financing term not to exceed twenty (20) years, provided that all utility costs, operational costs, cost avoidance, and other savings associated with the installation of the energy conservation measures provided in the performance based efficiency contract along with any other available and lawful funds that the agency might designate shall be sufficient to offset the annual debt service and other costs of the performance based efficiency contract.

~~(2) Performance based efficiency contracts shall contain a guarantee of cost savings.~~ All performance based efficiency contracts shall contain a guarantee of cost savings.

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

(3) Recognizing that Amendment 65 to the Arkansas Constitution and the Revenue Bond Act of 1987, Arkansas Code § 19-9-601 et seq., authorize agencies to issue installment contracts or lease purchase agreements, it is the intent of the General Assembly that energy savings realized through the implementation of energy conservation measures shall be deemed and considered to constitute special revenues that are derived from a source other than assessments for local improvements and taxes, and that the savings can be pledged in support of the repayment of financial obligations incurred under this section to finance energy conservation measures.

~~(4) The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made in installments.~~ All cost savings identified in performance based efficiency contracts shall be guaranteed to the agency by a qualified provider each year during the term of the contract.

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

~~(6) The savings shall be sufficient to offset the annual costs of the contract.~~

~~(c)(1) A qualified provider to whom the contract is awarded shall provide a sufficient bond to the agency for its faithful performance of the equipment installation and the accomplishment of the guaranteed savings. A qualified provider to whom a performance based efficiency contract is awarded shall provide a bond assuring the faithful and full construction and installation of the equipment that is the subject of the performance based efficiency contract and may be required to provide, at the request of the agency, an annually renewable bond or other assurance that is acceptable to the agency that guarantees the agency's realization of those cost savings that are identified in the performance based efficiency contract.~~

~~(2) One (1) multiyear performance bond covering the aggregate amount of the guaranteed savings over the contract term shall be required and shall remain in full force and effect until the termination of the agreement.~~

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

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

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

(2) Notice of the request for proposals shall be published one (1) time each week for no fewer than two (2) consecutive weeks in a newspaper having circulation in the county or city where the contract is to be performed.

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

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

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

(B) Tasks to be performed under the contract;

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

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

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

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

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

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

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

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

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

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

(3)~~(A) The qualified provider shall reimburse the agency for any shortfall of guaranteed savings~~ The qualified provider shall guarantee the annual dollar or cost savings, when compared with an established baseline for previous fuel and utility costs, to the agency every year during the term of the performance based efficiency contract and shall reconcile the guaranteed savings on an annual basis.

(B) All calculations of cost savings shall be conducted in

accordance with Federal Energy Management Policy or the International Performance, Measurement and Verification Protocol, or successor comparables thereto.

(i)(1) The provisions of other sections of this subchapter and of all other provisions of law governing construction of public facilities and the purchasing of commodities, including, but not limited to, the provisions of §§ 22-9-201 - 22-9-212, 19-11-101 - 19-11-118, 19-11-201 - 19-11-210, 19-11-301 - 19-11-306, 19-11-501 - ~~19-11-504 [repealed]~~ 19-11-503, 19-11-601 - 19-11-604, and 19-11-802 - 19-11-805 shall not be applicable to performance-based efficiency contracts.

(2) Notwithstanding anything in this subsection to the contrary, the provisions of §§ 19-11-801, 22-9-101, 22-9-103, 22-9-104, 22-9-213, 19-11-701 et seq., 22-9-301 et seq., and 22-9-401 et seq. shall remain in full force and effect and not be affected hereby.

(j)(1) The financial obligations of agencies that might be incurred under this section shall be solely and exclusively evidenced by a resolution or ordinance that is adopted at a properly convened meeting of that entity that is responsible for overseeing the daily policies and operations of the agency.

(2) Nothing in this section shall require an agency to seek the approval of the State Building Services or any other third party prior to incurring financial obligations under this section.

(k) Title to all energy conservation measures that are constructed or installed under this section shall pass to the agency upon installation or implementation, and the agency is authorized and empowered to grant a security interest and pledge its rights in and to the energy conservation measures to the qualified provider of its assignees to secure those financial obligations incurred by the agency under this section.

(l) All plans and specifications associated with the construction and installation of energy conservation measures shall be submitted to State Building Services for review, except for institutions of higher education that are exempt from review and approval of State Building Services which shall follow those procedures otherwise established by their governing boards.”

The Amendment was read _____
By: Representative Hutchinson
LDH/MHF - 040720031203
MHF534

Chief Clerk