

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 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/14/03

A Bill

HOUSE BILL 2179

5 By: Representative Hutchinson
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 19-4-1414
10 PERTAINING TO PERFORMANCE BASED EFFICIENCY
11 CONTRACTS.
12

Subtitle

14 TO AMEND ARKANSAS CODE § 19-4-1414
15 PERTAINING TO PERFORMANCE BASED
16 EFFICIENCY CONTRACTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 19-4-1414 is amended to read as follows:
22 19-4-1414. Performance-based efficiency contracts.

23 (a) For purposes of this section:

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

27 (2) "Bond" means any surety company bond, corporate guarantee of
28 performance, or other financial assurance that the agency may deem
29 appropriate from time to time;

30 ~~(2)(3)~~ (3) "Efficiency savings" means cost savings which result from
31 operational, cost avoidance, and other energy related savings and changes
32 *that do not degrade the level of service or working conditions and which are*
33 *verifiable by comparing ~~expenditures~~ energy usage that occur after the*
34 *improvements with the same type or ~~expenditures~~ energy usage occurring before*
35 *the improvements are made;*

36 (4) "Energy conservation measures" means the improvement,



1 installation, repair, or alteration of any equipment, fixture, furnishing, or
 2 other improvement to be added to or used in any building or facility, or any
 3 maintenance or operational strategy that is designed to reduce utility
 4 consumption or lower operating costs, and may include, but is not limited to:

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

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

11 (C) Automated or computerized energy control
 12 systems;

13 (D) Heating, ventilating, or air conditioning system
 14 modifications or replacements, including the conversion or retrofitting of
 15 existing heating, ventilating, or air conditioning systems to geothermal
 16 based or ground looped heating, ventilation, or air conditioning systems;

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

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

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

25 (H) Any facility operation, administration, or
 26 management program that reduces operating costs;

27 ~~(3)(5)~~ "Performance-based efficiency contract" means a contract
 28 with a qualified provider for+ the construction, installation, and
 29 implementation of energy conservation measures that may or may not include
 30 provisions in the contract, or in an accompanying agreement, under which the
 31 costs associated with the construction, installation, and implementation of
 32 energy conservation measures may be financed and paid over a specified period
 33 of time with interest;

34 ~~(A) The design and implementation of any improvement,~~
 35 ~~repair, or 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~~
3 ~~or used in any building or facility, or any maintenance or operational~~
4 ~~strategy that is designed to reduce utility consumption or lower operating~~
5 ~~costs, and may include, but is not limited to:~~

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

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

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

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

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

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

21 ~~(4)(6)~~ "Qualified provider" means a person or business
22 experienced and trained in the design, analysis, and installation of energy
23 conservation and facility management measures who is properly licensed as a
24 contractor in the State of Arkansas; and

25 ~~(5)(7)~~ "Request for proposals" means a negotiated procurement.

26 (b)(1) Any agency may enter into performance-based efficiency
27 contracts for professional services contracts and may finance the costs
28 associated with the purchase of equipment, labor, and services associated
29 with the implementation of the energy conservation measures provided for in
30 the performance based efficiency contracts or otherwise through the agency's
31 execution either in favor of a qualified provider or third party financing
32 source of any installment contract or lease purchase agreement possessing a
33 financing term not to exceed twenty (20) years, provided that all energy
34 cost, operation, cost avoidance, and other savings associated with the
35 installation of the energy conservation measures provided in the performance
36 based efficiency contract along with any other available and lawful funds

1 that the agency might designate shall be sufficient to offset the annual debt
 2 service and other costs of the performance based efficiency contract.

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

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

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

17 ~~(4) The contract shall provide that all payments, except~~
 18 ~~obligations on termination of the contract before its expiration, are to be~~
 19 ~~made in installments.~~

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

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

24 (c)(1) A qualified provider to whom ~~the~~ a performance based efficiency
 25 contract is awarded shall provide a ~~sufficient~~ bond to the agency for its
 26 faithful performance of the equipment installation and the accomplishment of
 27 ~~the guaranteed~~ energy usage savings.

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

31 ~~(3)(A)(2)(A)~~ (2)(A) All work performed by ~~or for~~ a qualified provider
 32 related to the ~~improvements or modifications~~ energy conservation measures
 33 which are intended to result in ~~the~~ efficiency savings ~~guaranteed under the~~
 34 ~~contract~~ shall be performed in accordance with drawings and specifications
 35 prepared by a professional engineer licensed to practice in Arkansas and
 36 drawings and specifications shall be sealed by the professional engineer

1 responsible for their preparation.

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

4 (B) All air conditioning products used to accomplish an
5 energy conservation measure shall have capacity and efficiency certified in
6 accordance with the appropriate certification program of the Air Conditioning
7 and Refrigeration Institute or its successor organization and shall display
8 the seal of the certifying agency.

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

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

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

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

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

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

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

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

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

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

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

34 (3) The contract shall be awarded to the responsible offerer
35 whose proposal, following negotiations, is determined to be the most
36 advantageous to the state considering the guaranteed savings and other

1 evaluation factors set forth in the request for proposals.

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

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

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

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

16 (3) The qualified provider shall reimburse the agency for any
17 *shortfall of guaranteed energy usage savings. The amount of the*
18 *reimbursement shall be based upon averaged energy rates in effect during the*
19 *calendar year in which the shortfall occurred.*

20 (i)(1) The provisions of other sections of this subchapter and of all
21 other provisions of law governing construction of public facilities and the
22 purchasing of commodities, including, but not limited to, the provisions of
23 §§ 22-9-201 - 22-9-212, 19-11-101 - 19-11-118, 19-11-201 - 19-11-210, 19-11-
24 301 - 19-11-306, 19-11-501 - ~~19-11-504 [repealed]~~ 19-11-503, 19-11-601 - 19-
25 11-604, and 19-11-802 - 19-11-805 shall not be applicable to performance-
26 based efficiency contracts.

27 (2) Notwithstanding anything in this subsection to the contrary,
28 the provisions of §§ 19-11-801, 22-9-101, 22-9-103, 22-9-104, 22-9-213, 19-
29 11-701 et seq., 22-9-301 et seq., and 22-9-401 et seq. shall remain in full
30 force and effect and not be affected hereby.

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

36 (2) Nothing in this section shall require an agency to seek the

1 approval of the State Building Services or any other third party prior to
2 incurring financial obligations under this section.

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

9 (l) All plans and specifications associated with the construction and
10 installation of energy conservation measures shall be submitted to State
11 Building Services for review.

12 /s/ Hutchinson
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