

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 1874

"AN ACT RELATING TO THE PROCUREMENT AND FINANCING OF PERFORMANCE-
BASED EFFICIENCY CONTRACTS FOR ARKANSAS STATE BUILDING SERVICES."

Amendment No. 1 to House Bill No. 1874.

Amend House Bill No. 1874 as originally introduced:

Page 1, line 10, delete "ARKANSAS"

AND

Page 1, line 11, delete "BUILDING SERVICES" and substitute "AGENCIES"

AND

Page 1, line 16, delete "ARKANSAS"

AND

Page 1, line 17, delete "BUILDING SERVICES" and substitute "AGENCIES"

AND

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code Title 19, Chapter 11 is amended by adding an additional subchapter to read as follows:

19-11-901. Title.

This chapter may be referred to as the "Performance-Based Efficiency Contracting Act".

19-11-902. Definitions

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

(1) The design and implementation of any improvement, repair, alteration;

(2) The betterment of any building or facility owned or operated by a state agency;

(3) Any equipment, fixture, or furnishing to be added to or used in any such 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) Automated or computerized energy control systems;
- (B) Heating, ventilating, or air conditioning system modifications or replacements;
- (C) Replacements or modifications of lighting fixtures to increase the energy efficiency of the lighting system;
- (D) 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;
- (E) 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 state building code; and
- (F) Any facility operation programs that reduces operating costs;

(b) "Qualified provider" means a person or business experienced and trained in the design, analysis, and installation of energy conservation and facility management measures.

(c) "Request for proposals" means a negotiated procurement.

19-11-902 Performance-based efficiency contracting

(a)(1) Any agency of the state may enter into performance-based efficiency contracts for professional services contracts.

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

(b)(1) Any agency of the state 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.

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

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

(4) 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 state agency for its faithful performance of the equipment installation and the accomplishment of the guarantee savings.

(2) One (1) multi-year 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 qualified provider shall employ a professional engineer that is registered with the State Board of Registration for Professional Engineers and Land Surveyors.

(d)(1) State 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 not less 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 state agency shall evaluate the proposals.

(e)(1) The request for proposals 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, and 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 state agency director 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 state 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) A state agency may enter into a performance-based efficiency contract with a qualified provider if it 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 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 savings to the state agency every year during the term of the contract and shall reconcile such guaranteed savings on an annual basis.

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

The Amendment was read _____

By: Representative Rackley

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Chief Clerk