

ARKANSAS SENATE
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 engrossed, H3/9/01:

Page 1, delete lines 9 through 12 and substitute:
"AN ACT PERTAINING TO THE PROCUREMENT AND FINANCING OF PERFORMANCE-BASED
EFFICIENCY CONTRACTS FOR STATE AGENCIES; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 15 through 18 and substitute:
"AN ACT PERTAINING TO THE PROCUREMENT AND FINANCING OF PERFORMANCE-BASED
EFFICIENCY CONTRACTS FOR STATE AGENCIES."

AND

Delete everything after the enacting clause and substitute:
"SECTION 1. Arkansas Code Title 19, Chapter 4, Subchapter 14 is
amended by adding an additional section to read as follows:
19-4-1414. (a) For purposes of this act:
(1) "Agency" means any state board or commission, agency,
department, and institution of higher education;
(2) "Efficiency savings" means a cost savings which results from
changes that do not degrade the level of service or working conditions, and
which cost savings are verifiable by comparing expenditures that occur after
the improvements with the same type or expenditures occurring before the
improvements are made;
(3) "Performance-based efficiency contract" means a contract
with a qualified provider for:
(A) The design and implementation of any improvement,
repair, 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:

systems;

(i) Automated or computerized energy control

system modifications or replacements;

(ii) Heating, ventilating, or air conditioning

fixtures to increase the energy efficiency of the lighting system;

(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 state building

code; and

(vi) Any facility operation program that reduces

operating costs;

(4) "Qualified provider" means a person or business experienced

and trained in the design, analysis, and installation of energy conservation

and facility management measures; and

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

(b)(1) Any agency may enter into performance-based efficiency

contracts for professional services contracts.

(2) 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.

(4) The contract shall provide that all payments, except

obligations on termination of the contract before its expiration, are to be

made in installments.

(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.

(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) 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 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 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 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 agency every year during the term of the contract and shall reconcile the guaranteed savings on an annual basis.

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

(i)(1) The provisions of preceding 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 through 22-9-212, §§ 19-11-101 through 19-11-604, and §§ 19-11-802 through 19-11-806 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 through 22-9-104, § 22-9-213, §§ 19-11-701 through 19-11-717, §§ 22-9-301 through 22-9-315, §§ 22-9-401 through 22-9-404 shall remain in full force and effect and not be affected hereby.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly that Arkansas State Building Services urgently needs a way to finance, procure and install energy conservation and operational efficiency measures that will reduce operating costs of state owned and operated facilities, and it is necessary that Arkansas State Building Services be able to pay for the energy conservation and operational efficiency measures over a period not to exceed twenty (20) years in order for the savings generated from the improvements to pay for the recommended measures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

**By: Senator D. Malone
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Secretary