WEST VIRGINIA CODE CHAPTER 5a ARTICLE 3B

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§5A-3B-1. Definitions.

As used in this article:

(a) “Agency” means any state department, division, office, commission, authority, board or other unit authorized by law to enter into contracts for the provision of goods or services;

(b) “Energy-conservation measures” means goods or services, or both, to reduce energy consumption operating costs of agency facilities. They include, but are not limited to, installation of one or more of the following:

(1) Insulation of a building structure and systems within a building;

(2) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;

(3) Automatic energy control systems;

(4) Heating, ventilating or air conditioning systems, including modifications or replacements;

(5) Replacement or modification of lighting fixtures to increase energy efficiency;

(6) Energy recovery systems;

(7) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the agency; or

(8) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(c) “Energy-savings contract” means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more measures.

(d) “Qualified provider” means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

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§5A-3B-2. Energy-savings contracts.

(a) Agencies are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of agency owned buildings, subject to the requirements of this section.

(b) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the agency finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the agency may enter into a contract with the provider pursuant to this section.

(c) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the agency will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(4) A provision relating to guaranteed energy cost savings and payments due the State for any deficiency, in a form substantially similar to the following: In the event the energy and cost savings achieved during a guarantee year are less than the guaranteed energy cost savings for that year, the qualified provider shall pay the agency an amount equal to the deficiency. In no event shall a qualified provider use credit for excess savings to satisfy saving guarantees in future years of the contract. Savings achieved by the installed projects must comply with requirements contained in this section and sufficiently cover all project costs, including, as applicable, debt service and contractor fees, maintenance, monitoring, and other services, for the duration of the contract term. If a project does not generate the guaranteed level of savings in any predefined reconciliation term, the qualified provider is liable to the agency for the amount of the shortfall plus related costs.

(d) An agency may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(e) An energy-savings contract is subject to competitive bidding requirements and other

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requirements of article three of this chapter.

(f) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: *Provided*, That such a contract may not exceed a fifteen-year term: *Provided*, however, That the long term contract will be void unless the agreement provides that the agency shall have the option during each fiscal year of the contract to terminate the agreement.

(g) Agencies may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(h) The agency may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

(i) Upon the issuance of a request for proposals or request for quotations for an energy-savings contract, the agency shall provide a copy thereof to the Joint Committee on Government and Finance.

(j) Before signing an energy-savings contract or extending an existing energy-savings contract, the agency shall give thirty days' written notice, which notice shall include a copy of the proposal containing the information required by subsection (b) of this section, to the Joint Committee on Government and Finance.

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