

Current Through the 2015 Regular Session

TITLE 50. STATE GOVERNMENT
CHAPTER 37. GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING

O.C.G.A. § 50-37-1 (2015)

§ 50-37-1. Short title

This chapter shall be known and may be cited as the "Guaranteed Energy Savings Performance Contracting Act."

§ 50-37-2. Definitions

Unless otherwise provided, as used in this chapter, the term:

(1) "Allowable costs" means equipment and project costs that:

(A) The governmental unit reasonably believes will be incurred during the term of the guaranteed energy savings performance contract; and

(B) Are documented by industry engineering standards.

(2) "Authority" means the Georgia Environmental Finance Authority.

(3) "Director" means the executive director of the Georgia Environmental Finance Authority.

(4) "Energy conservation measure" means a program or facility alteration or technology upgrade designed to reduce energy, water, waste-water, or other consumption or operating costs. The term may include, without limitation:

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

(B) Storm windows or doors, caulking or weather stripping, multiglazed 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 or replacements;

(E) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is

necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;

(F) Energy recovery ventilation systems;

(G) A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in costs for contracted services;

(H) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures;

(I) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, or use of alternative suppliers as otherwise provided by law, such as, but not limited to:

(i) Changes to more favorable rate schedules;

(ii) Negotiation of lower rates, where applicable; and

(iii) Auditing of energy service billing and meters;

(J) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy using equipment;

(K) Indoor air quality improvements;

(L) Daylighting systems;

(M) Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other technologies as identified in the project, provided that all metered distribution and deliveries of electric energy are made by an electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the "Georgia Territorial Electric Service Act";

(N) Geothermal HVAC systems;

(O) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure;

(P) Equipment upgrades that improve accuracy of billable revenue generating systems; and

(Q) Automated, electronic, or remotely controlled systems or measures that reduce direct and other operating costs.

(5) "Guaranteed energy savings performance contract" means a contract between the governmental unit

and a qualified energy service provider for evaluation, recommendation, and implementation of one or more energy conservation measures which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented, and guaranteed annual savings which must meet or exceed the total annual contract payments made by the governmental unit for such contract, including financing charges to be incurred by the governmental unit over the life of the contract.

(6) "Governmental unit" means any authority, board, bureau, commission, department, agency, or institution of state or local government, including, but not limited to, any state-aided institution, or any county, municipal corporation, consolidated government, or school district which has the authority to contract for the construction, reconstruction, alteration, or repair of any public building or other public work.

(7) "Industry engineering standards" means:

(A) Life cycle costing;

(B) The R.S. Means-estimated costing method developed by the R.S. Means Company;

(C) Historical data;

(D) Manufacturer's data;

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards;

(F) International Performance Measurement and Verification Protocol; and

(G) Other applicable technical performance standards established by nationally recognized standards authorities.

(8) "Investment grade energy audit" means a study by the qualified energy services provider selected for a particular guaranteed energy savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the utility and operation and maintenance cost savings projected to result from the recommended improvements. The investment grade energy audit shall also include a detailed economic analysis of the project's performance over the life of the contract term.

(9) "Operational cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more energy conservation measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(10) "Qualified energy services provider" means a person or business with a record of documented guaranteed energy savings performance contract projects that is experienced in the design, implementation, and installation of energy conservation measures; has the technical capabilities to verify

that such measures generate guaranteed energy and operational cost savings or enhanced revenues; has the ability to secure or arrange the financing necessary to support energy savings guarantees; and is approved by the authority for inclusion on the prequalifications list.

(11) "State agency" means every state agency, authority, board, bureau, commission, and department, including, without limitation, the Board of Regents of the University System of Georgia.

§ 50-37-3. State agencies to enter into guaranteed energy savings performance contracts

(a) Where not otherwise authorized by another provision of general law or local Act, a governmental unit may enter into a guaranteed energy savings performance contract with a qualified provider in accordance with the provisions of this chapter. The provisions of this chapter shall apply only to contracts entered into by a governmental unit pursuant to the authority granted by this chapter.

(b) Reserved.

(c) When a governmental unit is acting pursuant to the power granted by this chapter and not under any otherwise applicable law, the process of implementing guaranteed energy savings performance contracts for governmental units shall be subject to the following:

(1) The authority shall be authorized to assemble a list of prequalified energy services providers. The director shall attempt to use objective criteria in the selection process. The criteria for evaluation shall include the following factors to assess the capability of the qualified energy services provider in the areas of design, engineering, installation, maintenance, and repairs associated with guaranteed energy savings performance contracts: postinstallation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; experience with projects of similar size and scope; and other factors determined by the director to be relevant and appropriate and relate to the ability to perform the project. The prequalification term of the established list of qualified energy services providers shall be three years. The director may add additional qualified energy services providers to the list of qualified energy services providers at any time during the prequalification term. A qualified energy services provider may be removed from the list upon a determination by the director that said qualified energy services provider fails to meet the criteria for continued inclusion; and

(2) Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit that is a state agency shall issue a request for proposals from at least three qualified energy services providers on the prequalifications list prepared and maintained by the director. Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit that is a county, municipality, or other local governmental entity shall be required to issue a request for proposals from at least two qualified energy services providers if such providers are available. In addition, a local governmental entity shall publicly advertise the energy services contract opportunity and post notice of such opportunity in the local governmental entity's office and, if available, on the governmental entity's

Internet website. A local governmental entity shall not be required to request proposals from providers on the prequalifications list maintained by the director or otherwise be required to utilize the authority's list of prequalified energy services providers.

(3) A governmental unit may thereafter award the guaranteed energy savings performance contract to the qualified energy services provider that best meets the needs of the governmental unit, which need not be the lowest cost provided. A preliminary technical proposal shall be prepared by the qualified energy services provider in response to the request for proposals. Factors to be included in selecting the most qualified energy services provider for award of the guaranteed energy savings performance contract shall include, but not be limited to, the experience of the provider, quality of the project approach, type of technology employed by the provider, overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant to the implementation of the project.

(d) The governmental unit shall select the qualified energy services provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit.

(e) Before executing the guaranteed energy savings performance contract, the qualified energy services provider shall provide the governmental unit with an energy audit report summarizing recommendations for energy conservation measures based on anticipated energy, operational water, or waste-water cost savings or revenue increases resulting from the energy conservation measures. The energy audit report shall include estimates of all costs of installation, maintenance, repairs, and debt service and estimates of the amounts by which energy or operating costs will be reduced.

(f) A governmental unit may enter into guaranteed energy savings performance contracts with each qualified energy services provider selected in accordance with the provisions of this chapter. The governmental unit may elect to implement the energy conservation measures in one or more phases with the selected qualified energy services provider.

§ 50-37-4. Contracts provisions

(a) A guaranteed energy savings performance contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. The contract shall require the energy performance contractor to provide to the governmental unit an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall which may occur. In the event that such reconciliation reveals an excess in annual energy cost savings, such excess savings shall not be used to cover potential energy cost savings shortages in subsequent contract years. The guaranteed energy savings performance contract shall be for a firm fixed price. The governmental unit may require the qualified energy services provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100 percent of the guaranteed energy savings performance contract.

(b) A guaranteed energy savings performance contract shall include a written guarantee that energy, water,

waste-water, or operating cost savings or revenue increases will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented, or installed under the contract within a 20 year period from the date of final acceptance of installation or implementation. Calculation of the energy, water, waste-water, or operating cost savings or revenue increases may take into account rebates, grants, incentives, or similar payments available under published programs which are reasonably anticipated to be received by the governmental unit as a direct result of the work performed by the qualified energy services provider even though such payments are not included in the qualified energy services provider's contractual guarantee. Escalations and other financial considerations assumed in savings calculations shall be defined in the contract if they are included in the savings calculations and are required to meet the payback criteria and life cycle analysis. Performance guarantees with stipulated savings that have been measured in accordance with the International Performance Measurement and Verification Protocol or other recognized and documented industry engineering standard are allowable and shall be explicitly stated in the contract.

(c) A governmental unit may enter into a third-party installment payment or lease purchase agreement to finance the costs associated with the guaranteed energy savings performance contract and any related hazardous materials abatement. The installment payment or lease purchase agreement may provide for payments over a period of time not to exceed 20 years.

(d) An improvement that is not causally connected to an energy conservation measure may be included in a guaranteed energy savings performance contract if:

(1) The total value of the improvement does not exceed 15 percent of the total value of the guaranteed energy savings performance contract; and

(2) Either:

(A) The improvement is necessary to conform to a law, a rule, or an ordinance; or

(B) An analysis within the guaranteed energy savings performance contract demonstrates that there is an economic advantage to the governmental unit implementing an improvement as part of the guaranteed energy savings performance contract, and the savings justification for the improvement is documented by industry engineering standards.

(e) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures may be included as part of a guaranteed energy savings performance contract without being included in the savings guarantee. In such case, notwithstanding any other provision of law, the installation of these additional measures may be supervised by the contractor performing the guaranteed energy savings performance contract.

(f) The guaranteed energy savings performance contract shall include an agreement for the provision of measurement and verification services to be paid for from the energy and operational cost savings generated by the project for the term of the contract. It may include maintenance services for the measures

installed under the contract. The measurement and verification services shall be performed in accordance with industry standard methods for measuring and verifying savings and equipment performance. Savings which are stipulated shall be specifically noted as such in the guaranteed energy savings performance contract.

(g) Upon execution of a guaranteed energy savings performance contract that reduces the governmental unit's annual electric usage by more than 100 megawatt hours, the governmental unit shall provide written notice to its utility providers describing the energy conservation measures to be installed. Additionally, the authority shall make publicly available an annual list of all guaranteed energy savings performance contracts that are signed in each calendar year.

§ 50-37-5. Funding for contracts

(a) A governmental unit may use funds designated for operating, utilities, or capital expenditures for any guaranteed energy savings performance contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(b) During the life of the contract, grants, subsidies, or other payments from the state to a governmental unit shall not be reduced as a result of energy savings obtained as a result of a guaranteed energy savings performance contract.

§ 50-37-6. Review of capital improvement projects

Every state agency shall periodically review all proposed capital improvement projects for potential applicability of this chapter and shall first consider proceeding with a guaranteed energy savings performance contract under this chapter where appropriate.

§ 50-37-7. Requirements for state agencies

Requirements for state agencies:

(1) The director shall be authorized to promulgate any rules, regulations, stipulations, and policies necessary to carry out the terms and provisions of this Code section regarding contracting and procurement procedures for state agencies. Any rules, regulations, and policies as prescribed by the director shall be published, and state agencies shall be furnished with copies of the same. The director may fix, charge, and collect reasonable fees for any administrative support and technical assistance or other services provided by the director under this paragraph;

(2) The authority shall provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the authority for promoting and

facilitating guaranteed energy savings performance contracts by state agencies. The director shall develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy savings performance contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the director for review and approval;

(3) With regard to the authority's procedures for awarding multiyear guaranteed energy savings performance contracts, the Georgia State Financing and Investment Commission may establish a total multiyear contract value based upon the Governor's revenue estimate for subsequent fiscal years and other information as the Georgia State Financing and Investment Commission may require. In setting the multiyear guaranteed energy savings performance contract authority, the Georgia State Financing and Investment Commission shall take into consideration the known and anticipated obligations of the state agencies proposing to enter into multiyear guaranteed energy savings performance contracts, including, but not limited to, any multiyear guaranteed energy savings performance contracts the state agencies have entered into previously. The Georgia State Financing and Investment Commission may set a total multiyear contract value authority for the authority each fiscal year and may, during the fiscal year, revise such contract value authority as necessary as determined by the Georgia State Financing and Investment Commission. Any multiyear guaranteed energy savings performance contract entered into by state agencies that is not in compliance with the multiyear contract value authority set by the Georgia State Financing and Investment Commission shall be void and of no effect;

(4) At the beginning of each fiscal year, a governmental unit's appropriations shall be encumbered for the estimated payments for multiyear guaranteed energy savings performance contract work to be performed in the appropriation fiscal year. Payment for multiyear guaranteed energy savings performance contract work performed pursuant to contract in any fiscal year other than the current fiscal year shall be subject to appropriations by the General Assembly. Multiyear guaranteed energy savings performance contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the authority, provided funds are available. State agencies shall have the right to terminate without further obligation any multiyear guaranteed energy savings performance contract, provided that the cancellation is subject to the termination provisions of the multiyear guaranteed energy savings performance contract, if the state agency determines that adequate funds will not be available for all of the payment obligations of the state agency. The state agency's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications;

(5) The provisions of paragraph (4) of this Code section shall be incorporated verbatim in all multiyear guaranteed energy savings performance contracts;

(6) The provisions of this Code section shall not apply to energy efficiency contracts awarded by the authority prior to July 1, 2010. No multiyear guaranteed energy savings performance contracts shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment

Commission has established the total multiyear contract value authority for the current and future fiscal years and adopted such fiscal policies regarding multiyear guaranteed energy savings performance contracts authorized under this Code section; and

(7) The authority shall approve any guaranteed energy savings performance contract containing the provisions of subsection (d) of Code Section 50-37-4, regarding improvements not causally connected to an energy conservation measures, or subsection (e) of Code Section 50-37-4, regarding facility alterations required to properly implement other energy conservation measures.

§ 50-37-8. Statutory construction

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter.