

ACT No. 869

Regular Session, 2004

HOUSE BILL NO. 1256

BY REPRESENTATIVES ALARIO, SALTER, AND RICHMOND AND SENATORS HEITMEIER AND HINES

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AN ACT

To amend and reenact R.S. 39:1496.1(C) and (E) and Section 2 of Act 989 of the 2003 Regular Session of the Legislature, relative to performance-based energy efficiency contracts; to provide for review and execution of such contracts; to provide for energy savings conservation measure information to be submitted; to provide for the review and evaluation of such contracts; to provide for the effectiveness of the provisions of the Act; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 39:1496.1(C) and (E) are hereby amended and reenacted to read as follows:

§1496.1. Performance-based energy efficiency contracts

* * *

C.(1) Notwithstanding the requirements of R.S. 39:1514(A), any performance-based energy efficiency contract entered into shall be for a period equal to the lesser of twenty years or the average life of the equipment installed by the performance contractor and shall contain a guarantee of energy savings. The guarantee of energy savings shall, at a minimum, ensure a total annual savings sufficient to fully fund any financing arrangement entered into to fund the contract.

In addition, any performance-based energy efficiency contract shall contain the following clause:

"The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the

1 agency, board, or commission except for payments which have been earned prior to
2 the termination date.

3 (2) Any contract entered into pursuant to this Section shall include the total
4 units of energy saved, the method, device or financial arrangement to establish a firm
5 amount for the savings, the cost per unit of energy, and, if applicable, the basis for
6 any adjustment in the stated cost for the term of the contract, and for each energy
7 saving measure included in the contract, provide the following:

8 (a) Detailed scope of work.

9 (b) Price to be paid by the state agency as the initial cost.

10 (c) Annual energy cost savings.

11 (d) Annual maintenance savings including any maintenance and operational
12 savings associated with installation; including but not limited to, services, parts,
13 materials, labor, and equipment.

14 (e) Annual new maintenance cost including operating expenses added as a
15 result of new equipment installed or services performed by the contractor.

16 (f) Total annual savings by adding annual energy cost savings to annual
17 maintenance savings minus any annual new maintenance costs.

18 (3) No payment shall be made by a state agency pursuant to a contract
19 entered into in accordance with this Section, until there is compliance with Paragraph
20 (2). However, Paragraph (2) and this Paragraph shall not invalidate nor require the
21 reissuance of a request for proposal for which notice was given pursuant to this
22 Chapter prior to June 17, 2004.

23 * * *

24 E.(1) Prior to award of any performance-based energy efficiency contract, the
25 response to the requests for proposals shall be evaluated as follows:

26 (a) A state agency that seeks to enter into a contract pursuant to this Section
27 shall conduct an initial evaluation of proposals submitted to it. Such evaluation shall
28 be consistent with the provisions of this Chapter, except that a state agency shall not
29 make a final selection from among submitted proposals. A state agency shall submit

1 such evaluation, along with all responsive and responsible proposals, to the
 2 Department of Natural Resources.

3 ~~(a)~~ (b) ~~The initial~~ An evaluation of the submitted proposals shall be
 4 conducted by the Department of Natural Resources. The Department of Natural
 5 Resources shall forward the results of its evaluation of each such proposal to the
 6 commissioner of administration. The commissioner of administration ~~shall~~ may
 7 select an independent ~~third-party~~ third-party evaluation consultant to review and
 8 evaluate the submitted proposals together with the evaluation of the Department of
 9 Natural Resources. The consultant shall submit the result of his evaluation to the
 10 commissioner of administration who shall review the initial evaluation by the
 11 Department of Natural Resources and the evaluation of the independent ~~third-party~~
 12 third-party evaluation consultant. Upon completion of such review, the
 13 commissioner of administration shall notify the agency as to whether ~~the contract has~~
 14 ~~been approved or disapproved. If such contract is disapproved, the commissioner~~
 15 ~~shall provide the reasons therefor in writing to the agency~~ it may proceed with
 16 negotiation of the contract in accordance with the provisions of this Chapter. The
 17 commissioner of administration may require that the consultant selected pursuant to
 18 this Section participate on behalf of the agency in the negotiation of the contract.
 19 Every contract negotiated pursuant to this Section must be approved by the
 20 commissioner of administration.

21 (c) Notwithstanding any other provision of this Chapter, no proposer shall
 22 be selected pursuant to this Section nor shall any contract be awarded pursuant to this
 23 Section, except by the commissioner of administration.

24 ~~(b)~~ (d) An independent ~~third-party~~ third-party evaluation consultant shall
 25 have no ~~present, contemplated, or future~~ direct conflict of interest as to the agency,
 26 the proposals which the consultant is to evaluate, or to any proposer. Prior to the
 27 selection of such consultant, the legislative auditor shall certify that the consultant
 28 has no ~~present, contemplated, or future~~ direct conflict of interest as to the agency, the
 29 proposals which the consultant is to evaluate, or to any proposer.

1 Section 3. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____