

**PENNSYLVANIA LAW RELATED TO
GUARANTEED ENERGY SAVINGS CONTRACTS**

**Applicable Law
Act 57 of 1998,
Act 77 of 2004, and
Act 39 of 2010**

The following text is taken from the printer's version of the Acts referenced above. Text has been revised in cases where the more current Act modifies the previous language.

TITLE 62
PROCUREMENT

PART II
GENERAL PROCUREMENT PROVISIONS

CHAPTER 37
CONTRACT CLAUSES AND PREFERENCE PROVISIONS

SUBCHAPTER E
GUARANTEED ENERGY SAVINGS CONTRACTS

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3751. Short title of subchapter

This subchapter shall be known and may be cited as the Guaranteed Energy Savings Act.

3752. Definitions

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Allowable costs" - Equipment and project costs that:

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

(2) Are documented by industry engineering standards.

"Energy conservation measure" - A training program, facility alteration or technology upgrade designed to reduce energy, water, wastewater or other consumption or operating costs. The term may include, without limitation:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weather stripping, multi-glazed 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.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating or air-conditioning system modifications or replacements.

(5) 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.

(6) Energy recovery systems.

(7) Systems that produce steam or forms of energy such as heat, as well as electricity, for use within a building or complex of buildings.

(8) Energy conservation measures that provide operating cost reductions based on life-cycle cost analysis.

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

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

(11) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, and/or use of alternative energy suppliers, such as, but not limited to:

(i) Changes to more favorable rate schedules;

(ii) Negotiation of lower rates, same supplier or new suppliers, where applicable; and

(iii) Auditing of energy service billing and meters.

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

(13) Indoor air quality improvements.

(14) Day-lighting systems.

(15) Renewable and/or on-site distributed power generation systems.

(16) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure.

(17) Equipment upgrades that improve accuracy of billable revenue generating systems.

(18) Automated, electronic or remotely controlled systems or measures that reduce operating costs.

(19) Other energy, water or wastewater measures as may provide measurable, long-term operating costs reductions or billable revenue increases.

"Guaranteed energy savings contract" - A contract for the evaluation and recommendation of energy conservation measures and for implementation of one or more such measures.

"Governmental Unit" – Any officer, employee, authority, board, bureau, commission, department, agency or institution of a government agency, including, but not limited to, any Commonwealth agency, state-aided institution or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, borough, incorporated town, township, poor district, county institution district, other incorporated district or other public instrumentality which has the authority to contract for the construction, reconstruction, alteration or repair of any public building or other public work or public Improvement, including, but not limited to, highway work.

"Industry engineering standards" - Industry engineering standards may include the following:

(1) Life cycle costing.

(2) The R.S. Means estimated method developed by the R.S. Means Company.

(3) Historical data.

(4) Manufacturer's data.

(5) American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) standards.

"Qualified provider" - A person or business which is responsible and capable of evaluating, recommending, designing, implementing, and installing energy conservation measures as determined by the governmental unit.

3753. Contracting procedures

(A) General rule -- Notwithstanding any other contrary or inconsistent provision of law, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider in accordance with the provisions of this subchapter or in accordance with another statutorily authorized procurement process.

(B) Guaranteed energy savings contract -- If in accordance with applicable law the award of a contract by a governmental unit requires action at a public meeting, a governmental unit may award a guaranteed energy savings contract at a public meeting if it has provided public notice as per the manner prescribed under 65 Pa. C.S. Ch. 7 (relating to open meetings). The notice will include the names of the parties to the contract and the purpose of the contract. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit may award a guaranteed energy savings contract in accordance with the procedures adopted by the governmental unit and the requirements of all applicable laws.

(C) Competitive sealed proposals -- for the purpose of entering into a guaranteed energy savings contract, all governmental units are authorized to utilize the competitive sealed proposal method of procurement. The governmental unit shall evaluate any proposal that meets the requirements of the governmental unit and is timely submitted by a qualified provider. The Request for Proposals (RFP) shall be announced through a public notice from the governmental unit which will administer the program. The request for proposal shall provide all interested parties with sufficient information necessary to submit a timely and responsive proposal.

(D) Selection and notice -- The governmental unit shall select the qualified provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit shall provide public notice of the award of the guaranteed energy savings contract within 30 days in the Pennsylvania Bulletin. The notice shall include the names of the parties to the contract and the purpose of the contract. For governmental units that are required to take actions on contracts at public meetings, the public notice shall be made at least ten days prior to the meeting. After reviewing the

proposals pursuant to subsection (E), a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation, if the recommendations in the proposal were followed and the qualified provider provides a written guarantee that the energy, water, wastewater, or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the contract, provided, however, that when determining the operational cost savings from any contract or project of the type defined in paragraphs (17), (18) and (19) of the definition of "energy conservation measure" in section 3752 (relating to definitions), the governmental unit shall not consider savings that result from reductions in the size of its work force if the reductions are related to or generated by outsourcing or using contract workers to perform tasks previously performed by employees of the governmental unit.

(E) Report –

(1) Before the award of a guaranteed energy savings contract, the qualified provider shall provide a report as part of its proposal which shall be available for public inspection summarizing 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.

(2) The report shall contain a listing of contractors and subcontractors to be used by the qualified provider with respect to the energy conservation measures.

(F) Bond -- A qualified provider to whom a contract is awarded shall give a sufficient bond to the governmental unit for its faithful performance. Commonwealth agencies shall obtain such bonds in accordance with the provisions of section 533 (relating to security and performance bonds). All other Governmental units shall obtain such bonds in accordance with the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors' Bond Law of 1967.

(G) Award of contract -- Notwithstanding any other provision of law governing the letting of public contracts, a governmental unit may enter into a single guaranteed energy savings contract with each responsible provider selected in accordance with the provisions of this subchapter.

3754. Contract provisions

(A) General rule -- A guaranteed energy savings 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. Every guaranteed energy savings contract that requires payments over a period of time shall provide that, after the initial year of the contract, the savings in every subsequent year are guaranteed to the extent necessary to make payments under the contract during that year.

(B) Written guarantee -- A guaranteed energy savings contract shall include a written guarantee that savings will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented or installed under the contract.

(C) Payments -- A guaranteed energy savings contract may provide for payments over a period of time, not to exceed 20 years, and for the evaluation, recommendation, design, Implementation, and installation of energy conservation measures on an installment payment or lease purchase basis.

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

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

(2) Either:

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

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

(E) Other expenditures -- 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 contract. 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 contract.

3755. Funding

(A) General rule -- Guaranteed energy savings contracts which have terms which extend beyond one fiscal year of the governmental unit must include a provision which allows the governmental unit to terminate the contract if in any fiscal year during the term of the contract the governmental unit does not receive sufficient funds in its annual appropriations to make the payments required under the contract.

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

(C) Grants, subsidies or other payments -- Grants, subsidies, or other payments from the Commonwealth to a governmental unit shall not be reduced as a result of energy savings obtained as a result of a guaranteed energy savings contract during the life of the contract.

3756. Commonwealth contracts

In connection with the letting of any guaranteed energy savings contract for a governmental unit under this subchapter, the department shall have the power to waive the process for selection of architects or engineers otherwise prescribed under section 905 (relating to procurement of design professional services). In exercising its discretion under this section, the department shall consider the best interests of this Commonwealth and any relevant circumstances peculiar to the proposed contract.

3757. Construction

This subchapter shall not be construed to abrogate any duty to comply with prevailing wage or residency requirements contained in any other act or part thereof.

3758. Review of proposed capital improvement projects

Prior to entering into a guaranteed energy savings contract every governmental unit shall review all proposed capital improvement projects for potential applicability of this subchapter, and shall consider proceeding with a guaranteed energy savings contract under this subchapter where appropriate.