

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 547
Commerce Committee Substitute Adopted 4/16/13

Short Title: Energy Savings Contracting Amendments.

(Public)

Sponsors:

Referred to:

April 1, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATUTES GOVERNING GUARANTEED ENERGY
3 SAVINGS CONTRACTS FOR GOVERNMENTAL UNITS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-64.17 reads as rewritten:

6 "**§ 143-64.17. Definitions.**

7 As used in this Part:

8 ...

9 (5) "Qualified provider" means a person or business experienced in the design,
10 implementation, and installation of energy conservation ~~measures~~measures
11 who has been prequalified by the State Energy Office according to the
12 prequalification criteria established by that Office.

13 (5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in
14 this State and (ii) experienced in the design, implementation, and installation
15 of energy efficiency measures.

16"

17 **SECTION 2.** G.S. 143-64.17A reads as rewritten:

18 "**§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

19 (a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a
20 governmental unit shall issue a request for proposals. Notice of the request shall be published at
21 least 15 days in advance of the time specified for opening of the proposals in at least one
22 newspaper of general circulation in the geographic area for which the local governmental unit
23 is responsible or, in the case of a State governmental unit, in which the facility or facilities are
24 located. No guaranteed energy savings contract shall be awarded by any governmental unit
25 unless at least two proposals have been received from qualified providers. Provided that if after
26 the publication of the notice of the request for proposals, fewer than two proposals have been
27 received from qualified providers or fewer than two qualified providers attend the mandatory
28 pre-bid meeting, the governmental unit shall again publish notice of the request and if as a
29 result of the second notice, one or more proposals by qualified providers are received, the
30 governmental unit may then open the proposals and select a qualified provider even if only one
31 proposal is received.

32 (b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed
33 proposal from any qualified provider. ~~Proposals shall contain estimates of all costs of~~
34 ~~installation, modification, or remodeling, including costs of design, engineering, installation,~~
35 ~~maintenance, repairs, debt service, and estimates of energy savings.~~ A qualified reviewer shall
36 be required to evaluate the proposals and will provide the governmental unit with a letter report



1 containing both qualitative and quantitative evaluation of the proposals. The report may include
2 a recommendation for selection, but the governmental unit is not obligated to follow it.

3 (c) Receipt of Proposals for Unit of Local Government. – In the case of a local
4 governmental unit, proposals received pursuant to this section shall be opened by a member or
5 an employee of the governing body of the local governmental unit at a public opening at which
6 the contents of the proposals shall be announced and recorded in the minutes of the governing
7 body. Proposals shall be evaluated for the local governmental unit by ~~a licensed architect or~~
8 ~~engineer~~ a qualified reviewer on the basis of:

9 (1) The information required in subsection (b) of this section; and

10 (2) The criteria stated in the request for proposals.

11 The local governmental unit may require a qualified provider to include in calculating the cost
12 of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local
13 governmental unit for the evaluation of the proposal by a licensed architect or professional
14 ~~engineer~~ qualified reviewer not employed as a member of the staff of the local governmental
15 unit or the qualified provider.

16 (c1) Receipt of Proposals for Unit of State Government. – In the case of a State
17 governmental unit, proposals received pursuant to this section shall be opened by a member or
18 an employee of the State governmental unit at a public opening and the contents of the
19 proposals shall be announced at this opening. Proposals shall be evaluated for the State
20 governmental unit ~~by a licensed architect or engineer~~ by a qualified reviewer who is either
21 privately retained, employed with the Department of Administration, or employed as a member
22 of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the
23 information and report required in subsection (b) of this section and the criteria stated in the
24 request for proposals.

25 The State governmental unit shall require a qualified provider to include in calculating the
26 cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the
27 State governmental unit for evaluation of the proposal ~~by a licensed architect or professional~~
28 ~~engineer~~ by a qualified reviewer not employed as a member of the staff of the State
29 governmental unit or the qualified provider. The Department of Administration may charge the
30 State governmental unit a reasonable fee for the evaluation of the proposal if the Department's
31 services are used for the evaluation and the cost paid by the State governmental unit to the
32 Department of Administration shall be calculated in the cost of the proposal under this
33 subsection.

34 (d) Criteria for Selection of Provider. – The governmental unit shall select the qualified
35 provider that it determines to best meet the needs of the governmental unit by evaluating all of
36 the ~~following:~~ following and following the procedures set forth in subsection (d1) of this
37 section:

38 (1) ~~Prices offered.~~

39 (2) ~~Proposed costs of construction, financing, maintenance, and training.~~

40 (3) Quality of the products and energy conservation measures proposed.

41 (4) ~~Amount of energy savings.~~

42 (5) General reputation and performance capabilities of the qualified providers.

43 (6) Substantial conformity with the specifications and other conditions set forth
44 in the request for proposals.

45 (7) Time specified in the proposals for the performance of the contract.

46 (8) Any other factors the governmental unit deems necessary, which factors
47 shall be made a matter of record.

48 (d1) Process for Selection of Provider. – The governmental unit shall select a short list of
49 finalists on the basis of its rankings of the written proposals under the criteria set forth in
50 subsection (d) of this section as well as references from past clients. The governmental unit
51 shall have the highest ranked qualified provider prepare a cost-savings analysis for the

1 proposed contract showing at a minimum a comparison of the total estimated project savings to
2 the total estimated project costs for the proposed term. If the governmental unit and the
3 qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the
4 governmental unit may terminate the process and begin negotiations with the second highest
5 ranked qualified provider. The State Energy Office shall review the selected qualified
6 provider's proposal, cost-benefit analysis, and other relevant documents prior to the
7 governmental unit announcing the award.

8 (e) Nothing in this section shall limit the authority of governmental units as set forth in
9 Article 3D of this Chapter."

10 **SECTION 3.** G.S. 143-64.17B reads as rewritten:

11 "**§ 143-64.17B. Guaranteed energy savings contracts.**

12 ...
13 (c) A qualified provider entering into a guaranteed energy savings contract under this
14 Part shall provide security to the governmental unit in the form acceptable to the Office of the
15 State Treasurer and in an amount equal to one hundred percent (100%) of the ~~total cost~~
16 guaranteed savings for the term of the guaranteed energy savings contract to assure the
17 provider's faithful performance. Any bonds required by this subsection shall be subject to the
18 provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a
19 guaranteed energy savings contract are not as great as projected under the contract and all
20 required shortfall payments to the governmental unit have not been made, the governmental
21 unit may terminate the contract without incurring any additional obligation to the qualified
22 provider.

23 ...
24 (g) ~~In the case of a State governmental unit, a~~ A qualified provider shall provide an
25 annual reconciliation statement based upon the results of the measurement and verification
26 review. The statement shall disclose any shortfalls or surplus between guaranteed energy and
27 operational savings specified in the guaranteed energy savings contract and actual, not
28 stipulated, energy and operational savings incurred during a given guarantee year. Any
29 guaranteed energy and operational savings shall be determined by using one of the
30 measurement and verification methodologies listed in the United States Department of Energy's
31 Measurement and Verification Guidelines for Energy Savings Performance Contracting, the
32 International Performance Measurement and Verification Protocol (IPMVP) maintained by the
33 Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating,
34 Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the
35 nonconformance of specific project characteristics, none of the three methodologies listed in
36 this subsection is sufficient for measuring guaranteed savings, the qualified provider shall
37 develop an alternate method that is compatible with one of the three methodologies and
38 mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month
39 term commencing from the time that the energy conservation measures become fully
40 operational. A qualified provider shall pay the ~~State governmental unit~~ or its assignee any
41 shortfall in the guaranteed energy and operational savings after the total year savings have been
42 determined. ~~A~~ In the case of a governmental unit, a surplus in any one year shall not be carried
43 forward or applied to a shortfall in any other year."

44 **SECTION 4.(a)** G.S. 143-64.17L and G.S. 143-64.17M are repealed.

45 **SECTION 4.(b)** G.S. 143-64.17F(b) reads as rewritten:

46 "(b) The Department of Administration, in consultation with the Department of
47 Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of
48 guaranteed energy savings contracts; (ii) establishing time periods for consideration of
49 guaranteed energy savings contracts by the Office of State Budget and Management, the Office
50 of the State Treasurer, and the Council of State, and (iii) setting measurements and verification
51 criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to

1 this section, the Department shall consult with and obtain approval of those rules from the State
2 Treasurer. ~~The rules adopted pursuant to this subsection shall not apply to energy conservation~~
3 ~~measures implemented pursuant to G.S. 143-64.17L."~~

4 **SECTION 4.(c)** G.S. 143-64.17H reads as rewritten:

5 **"§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State**
6 **governmental units.**

7 A State governmental unit that enters into a guaranteed energy savings contract ~~or~~
8 ~~implements an energy conservation measure pursuant to G.S. 143-64.17L~~ must report either (i)
9 the contract and the terms of the contract or (ii) the implementation of the measure to the State
10 Energy Office of the Department of Commerce within 30 days of the date the contract is
11 entered into or the measure is implemented. In addition, within 60 days after each annual
12 anniversary date of a guaranteed energy savings contract, the State governmental unit must
13 report the status of the contract to the State Energy Office, including any details required by the
14 State Energy Office. The State Energy Office shall compile the information for each fiscal year
15 and report it to the Joint Legislative Commission on Governmental Operations and to the Local
16 Government Commission annually by December 1. In compiling the information, the State
17 Energy Office shall include information on the energy savings expected to be realized from a
18 contract or implementation and shall evaluate whether expected savings have in fact been
19 realized."

20 **SECTION 4.(d)** G.S. 142-63 reads as rewritten:

21 **"§ 142-63. Authorization of financing contract.**

22 ~~Subject to the terms and conditions set forth in this Article, (i) a State governmental unit~~
23 ~~that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and~~
24 ~~financing it pursuant to this Article, (ii) a State governmental unit that has solicited a~~
25 ~~guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B, or~~
26 ~~(iii) the State Treasurer, as designated by the Council of State, is authorized to execute and~~
27 ~~deliver, for and on behalf of the State of North Carolina, a financing contract to finance the~~
28 ~~costs of the energy conservation measure. The aggregate outstanding amount payable by the~~
29 ~~State under financing contracts entered pursuant to this Article shall not exceed five hundred~~
30 ~~million dollars (\$500,000,000) at any one time.~~

31 Subject to the terms and conditions set forth in this Article, a State governmental unit that
32 has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or
33 G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to
34 execute and deliver, for and on behalf of the State of North Carolina, a financing contract to
35 finance the costs of the energy conservation measure. The aggregate outstanding amount
36 payable by the State under financing contracts entered pursuant to this Article shall not exceed
37 five hundred million dollars (\$500,000,000) at any one time."

38 **SECTION 4.(e)** G.S. 142-64 reads as rewritten:

39 **"§ 142-64. Procedure for incurrence or issuance of financing contract.**

40 (a) When a State governmental unit ~~(i) is implementing an energy conservation~~
41 ~~measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article or (ii) has~~
42 solicited a guaranteed energy conservation measure, the State governmental unit shall request
43 that the State Treasurer approve the State governmental unit's entering into a financing contract
44 to finance the cost of the energy conservation measure. In connection with the request, the State
45 governmental unit shall provide to the State Treasurer any information the State Treasurer
46 requests in order to evaluate the request. In the event that the State Treasurer determines that
47 financing efficiencies will be realized through the combining of financing contracts, then the
48 State Treasurer is authorized to execute and deliver, for and on behalf of the State of North
49 Carolina, subject to the terms and conditions set forth in this Article, a financing contract for
50 the purpose of financing the cost of the multiple energy conservation measures.

51"

1 **SECTION 4.(f)** Notwithstanding this section, North Carolina State University may
2 continue to self-perform any of the projects listed in this section. The projects are subject to the
3 requirements of Part 2 of Article 3B of Chapter 143 of the General Statutes, including any of
4 the requirements in the statutes repealed or amended by this section. The authorized projects
5 are:

6 (1) The Phytotron Energy Savings Performance Contract authorized pursuant to
7 Section 9.6D of S.L. 2011-145 and S.L. 2012-164.

8 (2) An energy conservation measure for which a request for proposal has been
9 issued prior to December 31, 2013, and financing has been put in place by
10 December 31, 2014.

11 **SECTION 5.** This act is effective when it becomes law.