

No. 2004-77

AN ACT

HB 1996

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, further providing for cooperative purchasing, for legislative reports and for guaranteed energy savings and contracts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1902, 2107, 3752, 3753 and 3754 of Title 62 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1902. Cooperative purchasing authorized.

A public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. *The Department of General Services is authorized to enter into cooperative purchasing contracts solely for the use of local public procurement units or State-affiliated entities. The department shall enter into cooperative purchasing contracts for the use of local public procurement units or State-affiliated entities if the number of contractors under a previously existing contract for the same supply or service is reduced to a single contractor or reduced by more than 50% of the number existing on September 30, 2003, and shall award such contracts pursuant to section 517 (relating to multiple awards) using an invitation for bids. Nothing in this section shall prohibit a local public procurement unit or State-affiliated entity from participating in or procuring from other cooperative purchasing agreements awarded by the department.* Cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended purchasing agency contracts which are made available to local public procurement units.

§ 2107. Report to General Assembly.

The department shall annually, before October 1, report in writing to the General Assembly concerning the awarding of contracts to small and disadvantaged businesses during the preceding fiscal year. *The report shall include a list of all small and disadvantaged businesses that participated as contractors, subcontractors or suppliers during the preceding fiscal year for contracts if the number of contractors under a previously existing contract for the same supply or service is reduced to a single contractor or reduced by more than 50% of the number existing on September 30, 2003. In preparing the report, the department shall verify whether commitments*

made to small and disadvantaged businesses in the course of awarding these contracts have been maintained.

§ 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 or facility alteration designed to reduce energy 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, 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.

(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) Daylighting systems.

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

“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 Standard Heating Refrigeration 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 in the manner prescribed [by the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act,] under 65 Pa.C.S. Ch. 7 (relating to open meetings), the notice including 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 shall be announced through a public notice from the governmental unit which will administer the program. The request for proposals 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 to be saved in both energy and operational costs within a [ten-year] **15-year** period from the date of installation if the recommendations in the proposal were followed and the qualified provider provides a written guarantee that the energy or operating cost savings will meet or exceed the cost of the contract.

(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 shall provide that the savings in any 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 [ten] 15 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.*

Section 2. Title 62 is amended by adding a section to read:

§ 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.

Section 3. This act shall take effect in 60 days.

APPROVED—The 15th day of July, A.D. 2004.

EDWARD G. RENDELL