

No. 1996-29

AN ACT

SB 1083

Authorizing Commonwealth entities, political subdivisions and authorities organized by the Commonwealth or one or more political subdivisions to enter into guaranteed energy savings contracts.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“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.

“Governmental unit.” Any contracting body as defined in section 2 of the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors’ Bond Law of 1967.

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

“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.

“Request for proposals (RFP).” A type of competitive procurement.

Section 3. 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 act or in accordance with another statutorily authorized competitive process.

(b) Guaranteed 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, 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 protocol for action on contracts adopted by the governmental unit and the requirements of this act.

(c) Request for proposals.—Before entering into a guaranteed energy savings contract under this section, a governmental unit shall issue a request for proposals. The governmental unit shall evaluate any proposal that meets the requirements of the governmental unit and is timely submitted by a qualified provider. The RFP shall be announced through a public notice from the governmental unit which will administer the program. The request for proposal shall include all of the following:

- (1) The name and address of the governmental unit.
- (2) The name, address, title and phone number of a contact person.
- (3) Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
- (4) The date, time and place where proposals must be received.
- (5) The information to be included in the proposal.
- (6) Any other stipulations and clarifications the governmental unit may require.

(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 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 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 through the request for proposals process in accordance with the provisions of this act.

Section 4. 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 years, and for the evaluation, recommendation, design, implementation and installation of energy conservation measures on an installment payment or lease purchase basis.

Section 5. 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.

Section 6. Commonwealth contracts.

In connection with the letting of any guaranteed energy savings contract for the Commonwealth under this act, the Department of General Services shall have the power to waive the process for selection of architects or engineers otherwise prescribed under section 2401.1(19) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. In exercising its discretion under this section, the Department of General Services shall consider the best interests of this Commonwealth and any relevant circumstances peculiar to the proposed contract.

Section 7. Construction.

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

Section 8. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 9. Effective date.

This act shall take effect immediately.

APPROVED—The 10th day of May, A.D. 1996.

THOMAS J. RIDGE