

Regular Session, 2004

ACT No. 869

HOUSE BILL NO. 1256

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

1

AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

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

11 §1496.1. Performance-based energy efficiency contracts

12 * * *

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

21 "The continuation of this contract is contingent upon the appropriation of
22 funds by the legislature to fulfill the requirements of the contract. If the legislature
23 fails to appropriate sufficient monies to provide for the continuation of the contract,
24 the contract shall terminate on the last day of the fiscal year for which funds have
25 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)~~ 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 (e) The provisions of Subparagraphs (a) through (d) of this Paragraph shall
2 not be applicable when the requests for proposals or the proposed contract was
3 received by the division of administration prior to January 1, 2004.

4 * * *

5 (3)(a)(i) In order to fund the cost of the evaluation, review, approval,
6 oversight, and performance audits as provided in this Section, the request for
7 proposal for the award of a performance-based energy efficiency contract shall
8 require the proposer to pay a sum not to exceed two and one-half percent of the total
9 value of the performance-based energy efficiency contract at the time that a contract
10 is executed by that proposer.

11 (ii) Notwithstanding the provisions of Item (i) of this Subparagraph, where
12 a request for proposal or a proposed contract is exempt from the application of
13 Subparagraphs (a) through (d) of Paragraph (1) of this Subsection, the proposer shall
14 be required to pay a sum not to exceed one percent of the total value of the
15 performance-based energy efficiency contract at the time that a contract is executed
16 by that proposer.

17 (b) The determination of the sum to be paid shall be made by the
18 commissioner of administration according to the rules and regulations adopted herein
19 pursuant to this Section.

20 Section 2. Section 2 of Act 989 of the 2003 Regular Session of the Legislature is
21 hereby amended and reenacted to read as follows:

22 Section 2. The commissioner of administration shall submit his proposed
23 initial rules and regulations pursuant to the Act shall be adopted no sooner than
24 February 1, 2004 and to the Joint Legislative Committee on the Budget no later than
25 the convening of the 2004 Regular Session of the Legislature August 1, 2004.
26 Within ten days of the approval by the Joint Legislative Committee on the Budget of
27 the proposed initial rules and regulations, the commissioner of administration shall
28 submit the proposed initial rules and regulations to the Louisiana Register in
29 accordance with R.S. 49:953(A)(1)(b)(i).

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: _____