

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Procurement Practices Act of 1985 to allow District of Columbia agencies to enter into energy conservation contracts that provide for guaranteed energy savings.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Energy and Operational Efficiency Performance-Based Contracting Amendment Act of 2002”.

Sec. 2. The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code § 2-301.01 *et seq.*), is amended as follows:

(a) Section 107 (D.C. Official Code § 2-301.07) is amended by adding new paragraphs (23A), (23B), (23C), (33A), (35A), and (38A) to read as follows:

Amend
§ 2-301.07

"(23A) “Energy conservation measure” means a training program or any improvement, repair, replacement, or alteration designed to reduce energy consumption or operating costs, including:

“(A) Insulation of the facility structure and systems within a facility;

“(B) Replacement of storm windows or doors; caulking or weatherstripping; multiglazed windows or doors; heat-absorbing, or heat-reflective, glazed and coated window and door systems; or additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

“(C) Installation, repair, or upgrade of automated or computerized energy control systems, including related software;

“(D) Repair, renovation, or redesign of heating, ventilating, or air-conditioning system modifications or replacements to increase energy efficiency;

“(E) Replacement or modifications of lighting fixtures to increase energy efficiency;

“(F) Installation of energy recovery systems;

“(G) Installation of cogeneration systems that produce steam or forms of energy, such as heat and electricity, for use primarily within a facility or complex;

energy;

charges; and

and provide long-term operating cost reductions.

"(23B) "Energy cost savings" means a measured reduction in fuel, energy, or operational and maintenance costs created from the implementation of one or more energy conservation measures when compared with an established baseline for previous fuel, energy, or operation and maintenance costs; provided, that the computation of energy cost savings attributable to the service performed or equipment installed pursuant to the performance-based efficiency contract shall include operational savings.

"(23C) "Energy performance-based contract" means a contract for evaluation, recommendation, and implementation of one or more energy conservation measure that includes:

"(A) The design and installation or equipment to implement one or more energy conservation measures and, if applicable, operation and maintenance of such measures;

"(B) The amount of any actual annual savings which shall equal or exceed total contract payments made by the contracting entity for such contract; and

"(C) Financing charges to be incurred by the contracting entity for the contract.

"(23D) "Energy performance contractor" means the qualified provider selected by the agency to install the energy conservation measures pursuant to an energy performance-based contract.

"(33A) "Operational savings" means the operating expenses eliminated, and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the energy performance contractor. The contractor may claim credit for future capital expenditures avoided, only if the estimated expenditures were identified in the energy performance-based contract as costs that would be avoided due to the implementation of the energy conservation measures.

"(35A) "Performance guarantee bond" means a bond, furnished annually by an energy performance contractor, in an amount at least equal to the guaranteed measured and verifiable annual savings set forth in the program.

"(38A) "Qualified provider" means a person or business whose employees are experienced in the design, implementation, and installation of energy conservation measures."

(b) A new section 322 is added to read as follows:

"Sec. 322. Energy performance-based contract procedures; required contract provisions.

"(a)(1) A contracting officer may enter into an energy performance-based contract

with an energy performance contractor to significantly reduce energy costs to a level established by the agency or operating cost of a facility through one or more energy conservation or operational efficiency measures.

"(2) The energy performance contractor shall be selected through an open and competitive selection process utilizing request for proposals or qualifications for public solicitation in accordance with Title III.

"(3) Before entering into a contract for energy conservation measures, the contracting officer shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures and modernization measures in an amount equal to, but not greater than, the guaranteed measured and verifiable annual savings set forth in the program.

"(4) Prior to the design and installation of the energy conservation measure, including maintenance, the contracting officer shall obtain from the energy performance contractor a report disclosing all costs associated with the energy conservation measured and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting officer may enter into an energy performance-based contract if he or she finds: (A) the amount the agency would spend on the conservation measures recommended in the report will not exceed the amount to be saved in energy and operation costs within 15 years from the date of installation, based on life cycle costing calculations, if the recommendations in the report were followed, and (B) the energy performance contractor provides a written guarantee that the energy and operating cost savings will exceed the cost of the system. The contract may provide for payment over a period of time not to exceed 15 years.

"(b) The term of an energy performance-based contract shall expire after 10 years, shall provide an option to renew for an additional 5 years, and shall not exceed 15 years in the aggregate, subject to annual appropriations based on continued realized cost savings. An energy performance-based contract shall not constitute a debt, liability, or obligation, or a pledge of the faith and credit, of the District of Columbia and the contract shall so provide. An energy performance-based contract may also provide that the payments for the purchase and installation of energy conservation measures shall be totally funded by the energy cost savings and operational savings.

"(c) An energy performance-based contract shall include the following provisions:

"(1) A guarantee by the energy performance contractor that annual energy cost savings and operational savings will equal or exceed the amortized cost of energy conservation measures. The guarantee shall provide that either the energy cost savings or operational cost savings, or both, will equal or exceed within 15 years the costs of the energy conservation measures and operational savings measures.

"(2) That the qualified provider shall be liable for any savings shortfall that may occur, and reimburse the District of Columbia for any shortfall in the guaranteed energy cost savings projected in the contract.

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"(3) That the energy performance contractor will furnish a 100% performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as set forth in the contract.

"(4) That:

"(A) The energy performance contractor provide to the contracting officer an annual reconciliation of the guaranteed energy cost savings; and

"(B) The District government's senior program or technical representative responsible for administering the contract certify to the contracting officer, in writing, his or her agreement with the contractor's reconciliation of the energy cost savings.

"(d) The contracting officer shall submit to the Council an annual contract monitoring report of each energy performance-based contract, which report shall include an annual reconciliation of the guaranteed energy cost savings.”.

Sec. 3. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 4. This act shall take effect following the approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

Mayor
District of Columbia