

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1237

By: Stanislawski

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5
6 AS INTRODUCED

7 An Act relating to public contracts; amending 62 O.S.
8 2011, Section 318, which relates to performance-based
9 efficiency contracts; modifying definitions;
10 modifying requirements relating to certain efficiency
11 gains; and declaring an emergency.

12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 62 O.S. 2011, Section 318, is
14 amended to read as follows:

15 Section 318. A. For purposes of this section:

16 1. "Public entity" means any political subdivision of this
17 state, or a public trust which has as a beneficiary a political
18 subdivision of this state, or any institution of higher education
19 which is part of The Oklahoma State System of Higher Education;

20 2. "Performance-based efficiency contract" means a contract
21 between a public entity and a provider of energy or water
22 conservation or usage measures for the design, development,
23 financing, installation and service of any improvement, repair,
24 alteration or betterment of any building ~~or~~, facility or public

1 utility system, which is owned, operated or planned by a public
2 entity; or any equipment, fixture or furnishing to be added to or
3 used in any such building ~~or,~~ facility or utility system; or any
4 maintenance or operational strategy that is designed and implemented
5 ~~that will~~ to reduce utility consumption ~~or,~~ lower operating costs,
6 increase meter accuracy and associated billable revenue or avoid
7 capital costs or capital outlay, in which such estimated efficiency
8 gains resulting from the measures are designed to offset the cost of
9 the energy or water conservation or usage measures over a term not
10 to exceed twenty (20) years or the useful life of the measures, and
11 may include, but is not limited to, one or more of the following:
12 a. utility services,
13 b. heating, ventilating or air conditioning system
14 modifications or replacements and automated control
15 systems,
16 c. replacement or modifications of lighting fixtures,
17 d. indoor air quality improvements to increase air
18 quality that conform to the applicable state or local
19 building code requirements when done in conjunction
20 with other cost-saving measures,
21 e. any additional building infrastructure improvement,
22 cost saving, life safety or any other improvement that
23 provides long-term operating cost reductions and is in
24 compliance with state and local codes, ~~or~~

- 1 f. any facility operation and support programs that
2 reduce operating cost,
3 g. metering or related equipment or systems that improve
4 the accuracy of billable revenue generation systems,
5 or
6 h. automated, electronic or remotely controlled systems
7 or measures that reduce operating costs; and

8 3. "Qualified provider" means a person or business experienced
9 or trained in the design, analysis and installation of energy
10 conservation and facility management measures. A qualified provider
11 must employ a professional engineer registered in the State of
12 Oklahoma; and

13 4. "Guarantee" means a written guarantee of a provider that the
14 energy savings, operational savings, avoided capital costs, or
15 capital outlay or increase in meter accuracy and associated billable
16 revenues from the energy or water conservation or usage measures,
17 will at least equal the cost of the energy or water conservation or
18 usage measures all causally connected work and ancillary
19 improvements provided for in a performance-based efficiency
20 contract.

21 B. In addition to any other legally permissible alternatives of
22 entering into contracts, any public entity may enter into
23 performance-based efficiency contracts with a qualified provider
24 pursuant to the provisions of this section. Further, any public

1 entity may enter into an installment contract, lease purchase
2 agreement or other contractual obligation for the purpose of
3 financing performance-based efficiency projects for a term not to
4 exceed twenty (20) years or the useful life of the project. A
5 qualified provider to whom the contract is awarded shall be required
6 to give a sufficient bond to the public entity for its faithful
7 performance of the contract. In addition, the public entity may
8 require performance bonds covering the annual amount of guaranteed
9 savings over the contract term.

10 C. The performance based efficiency contract's cost savings
11 efficiency gains to the public entity must be ~~guaranteed each year~~
12 ~~during the term of the agreement. The savings must be~~ sufficient to
13 offset the annual costs of the contract and may be utilized to meet
14 the annual debt service. The contract shall provide for
15 reimbursement to the public entity annually for any shortfall of
16 guaranteed savings. ~~Savings must be measured, verified and~~
17 ~~documented during each year of the term and may be utilized to meet~~
18 ~~the annual debt service~~ efficiency gains in accordance with the
19 performance-based efficiency contract. Efficiency gains must be
20 measured, verified and documented, at a minimum, during each of the
21 first three (3) years of the term, after which time the public
22 entity may choose to discontinue the measurement, verification, and
23 documentation services and associated guarantee. Performance-based
24 efficiency contracts that include metering or related equipment or

1 systems that improve the accuracy of billable revenue generation
2 systems are required to test a statistically relevant sample of the
3 meters installed no later than the fifth anniversary of the
4 effective date on a performance-based efficiency contract. This
5 section shall constitute the sole authority necessary to enter into
6 performance-based efficiency contracts, without regard to compliance
7 with other laws which may specify additional procedural requirements
8 for execution of contracts.

9 SECTION 2. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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