

SENATE BILL NO. 212

BY SENATOR MCMATH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AN ACT

To amend and reenact R.S. 33:4547.1(C), (E)(1), (F)(2)(g) and 4547.2(A) through (F), to enact R.S. 33:4547.1(G) through (I), and to repeal R.S. 33:4547.2(G) and (H), relative to performance-based energy efficiency contracts; to provide for requirements for political subdivisions to procure a contract; to provide for definitions; to authorize political subdivisions to use requests for qualifications; to provide for procurement procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:4547.1(C), (E)(1), (F)(2)(g) and 4547.2(A) through (F) are hereby amended and reenacted and R.S. 33:4547.1(G) through (I) are hereby enacted to read as follows:

§4547.1. Authorization; performance-based energy efficiency contracts

* * *

C. "Annual energy savings" shall mean, when calculating annual energy cost savings attributable to the services or equipment installed pursuant to a performance-based energy efficiency contract as defined in R.S. 39:1484(14), the savings in **reductions in utility costs, including** electricity, gas, water, propane, oil, diesel, steam or other fuels ~~like utility costs increased revenues obtained from upgrades or modifications to a water, wastewater, gas or electric utility infrastructure, systems or accounting and billing systems and shall include future capital expenditures avoided and maintenance savings. Capital replacement expenditures avoided and maintenance savings shall be itemized separately.~~, **and may include capital cost avoidance, deferred maintenance, labor savings, and increased revenues from utility infrastructure upgrades or optimization. All savings shall be supported by verifiable methods under accepted measurement and verification protocols.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

* * *

E.(1) Prior to award of any ~~performance-based energy efficiency~~ contract, the **a** political subdivision shall ~~select~~ **engage** an energy efficiency independent third-party evaluation consultant ~~to review and evaluate the submitted proposals.~~

* * *

F.

* * *

(2) Any contract entered into pursuant to this Chapter shall include the total units of energy saved, the method, device or financial arrangement to establish a firm amount for the savings, the cost per unit of energy, and, if applicable, the basis for any adjustment in the stated cost for the term of the contract, and for each energy saving measure included in the contract, shall also provide the following:

* * *

(g) All savings shall be guaranteed and measured on an annual basis, **unless otherwise approved by the energy efficiency independent third party evaluation consultant based on the reasonableness of continued savings after measured and verified year one performance.**

* * *

G.(1) A political subdivision may require the completion of an investment grade audit by a qualified proposer prior to executing a performance-based energy efficiency contract. The cost of such audit may:

(a) Be reimbursed as part of the executed contract if the proposer is selected; or

(b) Be included in the total project cost financed under the contract.

(2) Political subdivisions may also provide stipends or partial reimbursement for investment grade audits submitted by nonselected proposers, at their discretion.

H. A political subdivision may enter into performance-based energy efficiency contracts in a variety of structures, including but not limited to guaranteed-savings contracts in which payments are contingent upon realized

1 savings.

2 I.(1) A political subdivision may use a qualifications-based selection
 3 process to identify the most qualified energy services provider prior to the
 4 development of a comprehensive technical proposal or investment grade audit.

5 (2) Under this method, the subdivision shall issue a Request For
 6 Qualifications (RFQ) that includes evaluation criteria based on provider
 7 experience, technical capacity, past performance, financial strength, and project
 8 team qualifications and other criteria as determined by the political subdivision.

9 (3) The political subdivision may then:

10 (a) Select the highest-ranked firm for contract negotiation; or

11 (b) Shortlist multiple firms and request technical proposals or
 12 investment grade audits in a second phase.

13 §4547.2. Procedures

14 A. Notwithstanding any other provision of law to the contrary, a political
 15 subdivision shall provide adequate public notice of the request for ~~proposals~~
 16 **qualifications** for performance-based energy efficiency contracts by advertising in
 17 its official journal at least once a week for three different weeks. The first
 18 advertisement shall appear at least forty-two days before the last day that proposals
 19 will be accepted. In addition, written notice shall be mailed to persons, firms, or
 20 corporations who are known to be in a position to furnish such services at least forty-
 21 two days before the last day that proposals will be accepted.

22 ~~B. The request for proposals shall indicate the relative importance of price~~
 23 ~~and other evaluation factors and shall clearly define the criteria to be used in~~
 24 ~~evaluating the proposals and the time frames within which the work must be~~
 25 ~~completed. Fifty percent of the total weighted evaluation criteria of the proposal shall~~
 26 ~~be determined by shortest payback, maximum savings, scope of the work, quality of~~
 27 ~~the product, cost of maintenance, and quoted amount of the energy conservation~~
 28 ~~measure (hereinafter referred to as ECM) selected.~~

29 ~~C. Every request for proposals shall include the following mandatory~~
 30 ~~provisions:~~

1 (1) Each ECM shall be listed separately and for each such proposed ECM the
2 ~~energy savings, operational savings, total savings, cost and payback shall be~~
3 ~~provided separately. Energy Conservation Measure (ECM) also means measures that~~
4 ~~are applied to existing buildings that improve energy efficiency and are life cycle~~
5 ~~cost effective. Operational savings means reduction of actual budget line items~~
6 ~~currently being expended or savings realized from the implementation or installation~~
7 ~~of energy cost savings measures.~~

8 (2) Detailed scope shall be provided for each ECM proposed, which describes
9 ~~each piece of equipment proposed and provides details for all services proposed.~~

10 (3) The required maintenance that must be performed to guarantee the
11 savings forecast shall be described in detail for each ECM proposed and the cost of
12 ~~maintenance, if included in the proposed contract.~~

13 ~~D.~~**B.** Award shall be made to the responsible offerer whose ~~proposal~~
14 **response** is determined by the using agency of the governing body of the political
15 subdivision to be the most advantageous, taking into consideration price and the
16 evaluation factors set forth in the request for ~~proposals~~ **qualifications**.

17 ~~E.~~**C.** Written or oral discussions shall be conducted with all responsible
18 offerers who submit ~~proposals~~ **responses** determined to be reasonably susceptible
19 of being selected for award.

20 ~~F.~~**D.** A request for ~~proposals~~ **qualifications** or other solicitation may be
21 cancelled or all proposals may be rejected if it is determined that such action is taken
22 in the best interest of the political subdivision.

23 ~~G.~~**E.** For any systems, including but not limited to facility automation and
24 control systems proposed pursuant to this Chapter, there shall be provided full
25 capabilities to operate, maintain, repair, update, reconfigure and engineer changes
26 necessary to accommodate facility or operational changes or incorporate new energy
27 savings control strategies. Such shall be available to the using political subdivision
28 or its designee. There is no requirement under this law to provide any political
29 subdivision with access to the operating system of the contractor. However, the user
30 interface software must provide for all capabilities listed in this Section.

1 ~~H.F.~~ Each ~~proposal~~ **request for qualifications** shall clearly identify any and
2 all responsibility of the political subdivision, if any, under the guarantee for each
3 ECM including but not limited to operating hours, maintenance requirements, and
4 operating protocols.
5 Section 2. R.S. 33:4547.2(G) and (H) are hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____