
**Connecticut Statutes on Energy-Savings Performance Contracting for
State Agencies and Municipalities: Public Act 11-80, Section 123**

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Sec. 123. (NEW) (*Effective July 1, 2011*) (a) As used in this section:

(1) "Energy-savings measure" means any improvement to facilities or other energy-consuming systems designed to reduce energy or water consumption and operating costs and increase the operating efficiency of facilities or systems for their appointed functions. "Energy-savings measure" includes, but is not limited to, one or more of the following:

(A) Replacement or modification of lighting and electrical components, fixtures or systems, including daylighting systems, improvements in street lighting efficiency or computer power management software;

(B) Class I renewable energy or solar thermal systems;

(C) Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;

(D) Automated or computerized energy control systems;

(E) Heating, ventilation or air conditioning system modifications or replacements;

(F) Indoor air quality improvements that conform to applicable building code requirements;

(G) Water-conserving fixtures, appliances and equipment or the substitution of non-water-using fixtures, appliances and equipment, or water-conserving landscape irrigation equipment; and

(H) Changes in operation and maintenance practices;

(I) Replacement or modification of windows or doors; and

(J) Installation or addition of insulation.

(2) "Cost effective" means the savings resulting from an energy-savings measure outweigh the costs of such measure, including, but not limited to, any financing costs, provided the payback period for any financing provided pursuant to this section is less than the functional life of the proposed energy-savings measure and the payback period does not exceed fifteen years.

(3) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs and future replacement expenditures that is a direct result of the implementation of one or more utility cost savings measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(4) "Qualified energy service provider" means a corporation approved by the Department of Administrative Services with a record of successful energy performance contract projects experienced in the design, implementation and installation of energy efficiency and

facility improvement measures, the technical capabilities to ensure such measures generate energy and operational cost savings, and the ability to secure the financing necessary to support energy savings guarantees.

(5) "Utility cost savings" means any utility expenses eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service provider; "utility cost savings" does not include merely shifting personnel costs or similar short-term cost savings.

(6) "State agency" has the same meaning as provided in section 1-79 of the general statutes.

(7) "Municipality" has the same meaning as provided in section 4-230 of the general statutes.

(8) "Participating municipality" means a municipality that voluntarily takes part in the standardized energy performance contract process.

(9) "Standardized energy-savings performance contract process" means standard procedures for entering into an energy-savings performance contract and standard energy-savings performance contract documents established by the Department of Energy and Environmental Protection.

(10) "Investment-grade energy audit" means a study by the qualified energy services provider selected for a particular energy-savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the utility and operations and maintenance cost savings projected to result from the recommended improvements.

(11) "Energy-savings performance contract" means a contract between the state agency or municipality and a qualified energy service provider for evaluation, recommendation and implementation of one or more energy-savings measures. An energy-savings performance contract shall be a guaranteed energy-savings performance contract, which shall include, but not be limited to, (A) the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented; and (B) guaranteed annual savings that meet or exceed the total annual contract payments made by the state agency or municipality for such contract, including financing charges to be incurred by the state agency or municipality over the life of the contract.

(b) On or before July 1, 2012, the Commissioner of Energy and Environmental Protection, in coordination with the Energy Conservation Management Board and in consultation with the Office of Policy and Management and the Department of Administrative Services, shall, within available appropriations, establish a standardized energy-savings performance contract process for state agencies and municipalities. The standardized process shall include standard procedures for entering into an energy-savings performance contract and standard energy-savings performance contract documents, including, but not limited to, requests for qualifications, requests for proposals, investment-grade audit contracts, energy-savings performance contracts, including the form of the project savings guarantee, and project financing agreements. A

municipality may use the established state standardized energy-savings performance contract process or establish its own energy-savings performance contract process.

(c) The Commissioner of Energy and Environmental Protection, in consultation with the Office of Policy and Management and the Energy Conservation Management Board, shall manage the established standardized energy-savings performance contract process and apprise state agencies and participating municipalities of opportunities to develop and finance energy-savings performance contract projects and provide technical and analytical support, including, but not limited to, (1) procurement of energy-savings performance contract services; (2) reviewing verification procedures for energy savings; and (3) assisting in the structuring and arranging of financing for energy-savings performance contract projects. The Energy Conservation and Management Board, in consultation with the Office of Policy and Management, shall create promotional materials to explain the energy-savings performance contract program.

(d) The Department of Energy and Environmental Protection may fix, charge and collect fees to cover costs incurred for any administrative support and resources or services provided under this section from the state agencies and participating municipalities that use its technical support services. State agencies and participating municipalities may add the costs of these fees to the total cost of the energy-savings performance contract. All such fees shall be disclosed prior to services being rendered. Any participating municipality may opt out of the state energy-savings performance contract process rather than incur such fees. Initial administrative funding to establish and manage the energy-savings performance contracting process for state agencies and participating municipalities shall be recovered from the Energy Conservation Management Board.

(e) The standardized energy-savings performance contract process for state agencies and participating municipalities shall include requests for qualifications or requests for proposals.

(1) The Department of Administrative Services, in consultation with the Department of Energy and Environmental Protection, shall issue a request for qualifications from companies that can offer energy-savings performance contract services to create a list of qualified energy service providers. A state agency shall use the qualified list. A municipality may use the qualified list or establish its own qualification process.

(2) When reviewing requests for qualifications, the department shall consider a company's experience with (A) design, engineering, installation, maintenance and repairs associated with energy-savings performance contracts; (B) conversions to a different energy or fuel source, associated with a comprehensive energy efficiency retrofit; (C) post-installation project monitoring, data collection and reporting of savings; (D) overall project management and qualifications; (E) accessing long-term financing; (F) financial stability; (G) projects of similar size and scope; (H) in-state projects and Connecticut-based subcontractors; (I) United States Department of Energy programs; (J) professional certifications; and (K) other factors determined by the department to be relevant and appropriate.

(3) Before entering into an energy-savings performance contract pursuant to this section, a state agency or participating municipality shall issue a request for proposals from three or more

qualified energy service providers. A state agency or participating municipality may award the energy-savings performance contract to the qualified energy service provider that best meets the needs of the state agency or participating municipality, which need not be the lowest cost provided. A cost-effective feasibility analysis shall be prepared in response to the request for proposals.

(4) The cost-effective feasibility analysis included in the response to the request for proposals shall serve as the selection document for purposes of selecting a qualified energy service provider to engage in final contract negotiations. Factors to be included in selecting among the qualified energy service providers shall include, but not be limited to, (A) contract terms, (B) comprehensiveness of the proposal, (C) financial stability of the provider, (D) comprehensiveness of cost savings measures, (E) experience and quality of technical approach, and (F) overall benefits to the state agency or municipality.

(f) One qualified energy service provider selected as a result of the request for proposals set forth in subsection (e) of this section shall prepare an investment-grade audit, which, upon acceptance, shall be part of the final energy-savings performance contract entered into by the state agency or participating municipality. Such investment-grade energy audit shall include estimates of the amounts by which utility cost savings and operation and maintenance cost savings would increase and estimates of all costs of such utility cost savings measures or energy-savings measures, including, but not limited to, (1) itemized costs of design, (2) engineering, (3) equipment, (4) materials, (5) installation, (6) maintenance, (7) repairs, and (8) debt service. The qualified energy service provider and the state agency or participating municipality shall agree on the cost of the investment-grade audit before it is conducted. If, after preparation of the investment-grade audit, the state agency or participating municipality decides not to execute an energy-savings performance contract and the costs and benefits described in the investment-grade audit are not materially different from those described in the cost-effective feasibility analysis submitted in response to the request for proposals, the state agency or participating municipality shall pay the costs incurred in preparing such investment-grade audit. In all other instances, the costs of the investment-grade audit shall be deemed part of the costs of the energy-savings performance contract.

(g) The guidelines adopted pursuant to this section may require that the cost savings projected by the qualified provider be reviewed by a professional engineer licensed in this state who has a minimum of three years experience in energy calculation and review, is not an officer or employee of a qualified provider for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract.

(h) A municipality may use funds designated for operating and capital expenditures or utilities for any energy-savings performance contract, including, but not limited to, contracts entered into pursuant to this section.

(i) A guaranteed energy-savings performance contract may provide for financing, including tax exempt financing, by a third party. The contract for third-party financing may be separate from the energy-savings performance contract. A state agency or participating municipality may use designated funds, bonds, lease purchase agreements or master lease for any energy-savings performance contracts, provided its use is consistent with the purpose of the appropriation.

(j) Each energy-savings performance contract shall provide that all payments between parties, except obligations on termination of the contract before its expiration, shall be made over time and the objective of such energy-savings performance contracts is implementation of cost savings measures and energy and operational cost savings.

(k) An energy-savings performance contract, and payments provided thereunder, may extend beyond the fiscal year in which the energy-savings performance contract became effective, subject to appropriation of moneys, if required by law, for costs incurred in future fiscal years. The energy-savings performance contract may extend for a term not to exceed twenty years. The allowable length of the contract may also reflect the useful life of the cost savings measures. An energy-savings performance contract may provide for payments over a period not to exceed deadlines specified in the energy-savings performance contract from the date of the final installation of the cost savings measures.

(l) The energy-savings performance contract may provide that reconciliation of the amounts owed under the energy-savings performance contract shall occur in a period beyond one year with final reconciliation occurring within the term of the energy-savings performance contract. An energy-savings performance contract shall include contingency provisions in the event that actual savings do not meet predicted savings.

(m) The energy-savings performance contract shall require the qualified energy service provider to provide to the state agency or participating municipality an annual reconciliation of the guaranteed energy cost savings. If the reconciliation reveals a shortfall in annual energy cost savings, the qualified energy service provider shall make payment to the state agency or participating municipality in the amount of the shortfall. If the reconciliation reveals an excess in annual energy cost savings, the excess savings shall remain with the state agency or municipality, and shall not be used to cover potential energy cost savings shortages in subsequent years or actual energy cost savings shortages in previous contract years.

(n) During the term of each energy performance contract, the qualified energy service provider shall monitor the reductions in energy consumption and cost savings attributable to the cost savings measures installed pursuant to the energy-savings performance contract and shall, not less than annually, prepare and provide a report to the state agency or participating municipality documenting the performance of the cost savings measures to the state agency or participating municipality. The report shall adhere to the most current version of the International Performance Measurement and Verification Protocol.

(o) The qualified energy service provider and state agency or participating municipality may agree to modify savings calculations based on any of the following:

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- (1) Subsequent material change to the baseline energy consumption identified at the beginning of the energy-savings performance contract;
 - (2) Changes in the number of days in the utility billing cycle;
 - (3) Changes in the total square footage of the building;
 - (4) Changes in the operational schedule of the facility;
 - (5) Changes in facility temperature;
 - (6) Material change in the weather;
 - (7) Material changes in the amount of equipment or lighting used at the facility; or
 - (8) Any other change which reasonably would be expected to modify energy use or energy costs.
- (p) Any state agency or participating municipality that enters into an energy-savings performance contract pursuant to this section shall report the name of the project, the project host, the investment on the project and the expected energy savings to the Office of Policy and Management and the Department of Energy and Environmental Protection. Such reporting shall be done at the same time that the energy-savings performance contract is executed.
- (q) A state agency or participating municipality may direct savings realized under the energy-savings performance contract to contract payment and other required expenses and may, when practicable, reinvest savings beyond that required for contract payment and other required expenses into additional energy-savings measures.