

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2013-396  
SENATE BILL 547**

AN ACT TO AMEND THE STATUTES GOVERNING GUARANTEED ENERGY SAVINGS CONTRACTS FOR GOVERNMENTAL UNITS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-64.17 reads as rewritten:

**"§ 143-64.17. Definitions.**

As used in this Part:

- ...
- (5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation ~~measures~~measures who has been prequalified by the State Energy Office according to the prequalification criteria established by that Office.
- (5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in this State and (ii) experienced in the design, implementation, and installation of energy efficiency measures.
- ...."

**SECTION 2.** G.S. 143-64.17A reads as rewritten:

**"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

(a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, or fewer than two qualified providers attend the mandatory prebid meeting, the governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed proposal from any qualified provider. ~~Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.~~ A qualified reviewer shall be required to evaluate the proposals and will provide the governmental unit with a letter report containing both qualitative and quantitative evaluation of the proposals. The report may include a recommendation for selection, but the governmental unit is not obligated to follow it.

(c) Receipt of Proposals for Unit of Local Government. – In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by ~~a licensed architect or engineer~~ a qualified reviewer on the basis of:

- (1) The information required in subsection (b) of this section; and
- (2) The criteria stated in the request for proposals.



The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for the evaluation of the proposal by a licensed architect or professional engineer ~~qualified reviewer~~ not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) Receipt of Proposals for Unit of State Government. – In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit ~~by a licensed architect or engineer~~ by a qualified reviewer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information and report required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal ~~by a licensed architect or professional engineer~~ by a qualified reviewer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) Criteria for Selection of Provider. – The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by evaluating all of the ~~following:~~ following and following the procedures set forth in subsection (d1) of this section:

- (1) ~~Prices offered.~~
- (2) ~~Proposed costs of construction, financing, maintenance, and training.~~
- (3) Quality of the products and energy conservation measures proposed.
- (4) ~~Amount of energy savings.~~
- (5) General reputation and performance capabilities of the qualified providers.
- (6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.
- (7) Time specified in the proposals for the performance of the contract.
- (8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(d1) Process for Selection of Provider. – The governmental unit shall select a short list of finalists on the basis of its rankings of the written proposals under the criteria set forth in subsection (d) of this section as well as references from past clients. The governmental unit shall have the highest ranked qualified provider prepare a cost-savings analysis for the proposed contract showing at a minimum a comparison of the total estimated project savings to the total estimated project costs for the proposed term. If the governmental unit and the qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the governmental unit may terminate the process and begin negotiations with the second highest ranked qualified provider. The State Energy Office shall review the selected qualified provider's proposal, cost-benefit analysis, and other relevant documents prior to the governmental unit announcing the award.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter."

**SECTION 3.** G.S. 143-64.17B reads as rewritten:

**"§ 143-64.17B. Guaranteed energy savings contracts.**

...

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the ~~total cost~~ guaranteed savings for the term of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a

guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

...

(g) ~~In the case of a State governmental unit, a~~ qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting, the International Performance Measurement and Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the nonconformance of specific project characteristics, none of the three methodologies listed in this subsection is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the State governmental unit or its assignee any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. ~~A~~In the case of a governmental unit, a surplus in any one year shall not be carried forward or applied to a shortfall in any other year."

**SECTION 4.(a)** G.S. 143-64.17L(e) reads as rewritten:

"(e) The Board of Governors may authorize North Carolina State University and the University of North Carolina at Charlotte to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section."

**SECTION 4.(b)** G.S. 142-63 reads as rewritten:

**"§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, (i) a State governmental unit that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, (ii) a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars (\$500,000,000) at any one time.

~~Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars (\$500,000,000) at any one time."~~

**SECTION 5.** This act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 25<sup>th</sup> day of July, 2013.

s/ Tom Apodaca  
Presiding Officer of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:47 a.m. this 23<sup>rd</sup> day of August, 2013