

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1996 Session of
2003

INTRODUCED BY ADOLPH, BAKER, BARRAR, CAPPELLI, BARD, CIVERA,
CRAHALLA, DAILEY, DENLINGER, GEORGE, GRUCELA, HARPER,
HENNESSEY, HERSHEY, HORSEY, JOSEPHS, KELLER, KENNEY,
LAUGHLIN, LEACH, LEH, MICOZZIE, R. MILLER, PAYNE, PETRI,
READSHAW, RUBLEY, SAYLOR, SCAVELLO, SHANER, SOLOBAY,
E. Z. TAYLOR, TIGUE, WASHINGTON, WATSON, WEBER, YOUNGBLOOD,
GEIST AND GINGRICH, SEPTEMBER 18, 2003

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, MARCH 30, 2004

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, DEFINING "BUNDLING A COMMODITY SECTOR"; ADDING <—
3 PROVISIONS RELATING TO COMMODITY SECTOR BUNDLING; AND further
4 providing for guaranteed energy savings and contracts.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. Sections 3752, 3753 and 3754 of Title 62 of the~~ <—
8 ~~Pennsylvania Consolidated Statutes are amended to read:~~

9 SECTION 1. SECTION 103 OF TITLE 62 OF THE PENNSYLVANIA <—
10 CONSOLIDATED STATUTES IS AMENDED BY ADDING A DEFINITION TO READ:
11 § 103. DEFINITIONS.

12 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT
13 PROVISIONS OF THIS PART WHICH ARE APPLICABLE TO SPECIFIC
14 PROVISIONS OF THIS PART, THE FOLLOWING WORDS AND PHRASES WHEN
15 USED IN THIS PART SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS

SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

* * *

"BUNDLING A COMMODITY SECTOR." CONSOLIDATING TWO OR MORE
PROCUREMENT REQUIREMENTS FOR GOODS OR SERVICES PREVIOUSLY
PROVIDED OR PERFORMED UNDER SEPARATE SMALLER CONTRACTS INTO A
REQUEST FOR PROPOSAL FOR A SINGLE CONTRACT THAT IS LIKELY TO BE
UNSUITABLE FOR AWARD TO A SMALL BUSINESS DUE TO ANY OF THE
FOLLOWING:

(1) THE DIVERSITY, SIZE OR SPECIALIZED NATURE OF THE
ELEMENTS OF THE PERFORMANCE SPECIFIED.

(2) THE AGGREGATE DOLLAR VALUE OF THE ANTICIPATED AWARD.

(3) THE GEOGRAPHICAL DISPERSION OF THE CONTRACT
PERFORMANCE SITES.

(4) ANY COMBINATION OF THE FACTORS DESCRIBED IN
PARAGRAPHS (1), (2) AND (3).

* * *

SECTION 2. TITLE 62 IS AMENDED BY ADDING A SECTION TO READ:
§ 109. COMMODITY SECTOR BUNDLING.

(A) NOTICE OF INTENT TO BUNDLE COMMODITY SECTOR.--WHENEVER
THE DEPARTMENT PREPARES TO ISSUE A REQUEST FOR PROPOSAL THAT
WOULD HAVE THE EFFECT OF BUNDLING A COMMODITY SECTOR, THE
DEPARTMENT SHALL NOTIFY ALL VENDORS BY FIRST CLASS MAIL AND
PUBLISH THE NOTIFICATION IN THE PENNSYLVANIA BULLETIN OF ITS
INTENT TO BUNDLE THE COMMODITY SECTOR AT LEAST 120 DAYS PRIOR TO
THE ISSUANCE OF THE REQUEST FOR PROPOSAL. THE NOTIFICATION SHALL
ALSO INCLUDE THE DRAFT REQUEST FOR PROPOSAL AND A SOLICITATION
FOR COMMENTS ON THE PROPOSAL. SUCH COMMENTS SHALL BE ACCEPTED UP
TO 60 DAYS AFTER THE NOTICE IS MAILED OR PUBLISHED, WHICHEVER IS
LATER.

(B) SUMMARY OF COMMENTS.--AFTER RECEIVING COMMENTS AS A

1 RESULT OF THE NOTIFICATION UNDER SUBSECTION (A), THE DEPARTMENT
2 SHALL PREPARE A DETAILED SUMMARY OF THE COMMENTS AND MAKE THE
3 SUMMARY AVAILABLE FOR PUBLIC INSPECTION, INCLUDING POSTING THE
4 SUMMARY ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE WORLD WIDE WEB
5 SITE. THE SUMMARY SHALL BE MADE AVAILABLE NO LATER THAN 30 DAYS
6 AFTER THE COMMENT DEADLINE IN SUBSECTION (A).

7 (C) REVISED REQUEST.--NO SOONER THAN 30 DAYS AFTER THE
8 SUMMARY IS MADE AVAILABLE TO THE PUBLIC, THE DEPARTMENT SHALL
9 PUBLISH A REVISED REQUEST FOR PROPOSAL IN THE PENNSYLVANIA
10 BULLETIN.

11 (D) TIME TO SUBMIT PROPOSALS.--NOTWITHSTANDING ANY OTHER
12 PROVISION OF THIS PART, ON A REQUEST FOR PROPOSAL THAT WOULD
13 HAVE THE EFFECT OF BUNDLING A COMMODITY SECTOR, THE DEPARTMENT
14 SHALL PROVIDE AT LEAST 90 DAYS FROM ISSUANCE OF THE REQUEST FOR
15 PROPOSALS TO BE SUBMITTED.

16 SECTION 3. SECTIONS 3752, 3753 AND 3754 OF TITLE 62 ARE
17 AMENDED TO READ:

18 § 3752. Definitions.

19 The following words and phrases when used in this subchapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Allowable costs." Equipment and project costs that:

23 (1) the governmental unit reasonably believes will be
24 incurred during the term of the guaranteed energy savings
25 contract; and

26 (2) are documented by industry engineering standards.

27 "Energy conservation measure." A [training] program or
28 facility alteration designed to reduce energy consumption or
29 operating costs. The term may include, without limitation:

30 (1) Insulation of the building structure or systems

1 within the building.

2 (2) Storm windows or doors, caulking or weather
3 stripping, multiglazed windows or doors, heat-absorbing or
4 heat-reflective glazed and coated window or door systems,
5 additional glazing, reductions in glass area or other window
6 and door system modifications that reduce energy consumption.

7 (3) Automated or computerized energy control systems.

8 (4) Heating, ventilating or air conditioning system
9 modifications or replacements.

10 (5) Replacement or modification of lighting fixtures to
11 increase the energy efficiency of the lighting system without
12 increasing the overall illumination of a facility, unless an
13 increase in illumination is necessary to conform to
14 applicable State or local building codes for the lighting
15 system after the proposed modifications are made.

16 (6) Energy recovery systems.

17 (7) Systems that produce steam or forms of energy such
18 as heat as well as electricity for use within a building or
19 complex of buildings.

20 (8) Energy conservation measures that provide operating
21 cost reductions based on life cycle cost analysis.

22 (9) A training program or facility alteration that
23 reduces energy consumption or reduces operating costs,
24 including allowable costs, based on future reductions in
25 labor costs or costs for contracted services.

26 (10) A facility alteration which includes expenditures
27 that are required to properly implement other energy
28 conservation measures.

29 (11) A program to reduce energy costs through rate
30 adjustments, load shifting to reduce peak demand, and/or use

1 of alternative energy suppliers, such as, but not limited to:

2 (i) changes to more favorable rate schedules;

3 (ii) negotiation of lower rates, same supplier or

4 new suppliers, where applicable; and

5 (iii) auditing of energy service billing and meters.

6 (12) The installation of energy information and control
7 systems that monitor consumption, redirect systems to optimal
8 energy sources, and manage energy-using equipment.

9 (13) Indoor air quality improvements.

10 (14) Daylighting systems.

11 (15) Renewable and/or on-site distributed power
12 generation systems.

13 "Guaranteed energy savings contract." A contract for the
14 evaluation and recommendation of energy conservation measures
15 and for implementation of one or more such measures.

16 "Governmental unit." Any officer, employee, authority,
17 board, bureau, commission, department, agency or institution of
18 a government agency, including, but not limited to, any
19 Commonwealth agency, State-aided institution or any county,
20 city, district, municipal corporation, municipality, municipal
21 authority, political subdivision, school district, educational
22 institution, borough, incorporated town, township, poor
23 district, county institution district, other incorporated
24 district or other public instrumentality which has the authority
25 to contract for the construction, reconstruction, alteration or
26 repair of any public building or other public work or public
27 improvement, including, but not limited to, highway work.

28 "Industry engineering standards." Industry engineering
29 standards may include the following:

30 (1) Life cycle costing.

1 (2) The R.S. Means estimated method developed by the
2 R.S. Means Company.

3 (3) Historical data.

4 (4) Manufacturer's data.

5 (5) American Standard Heating Refrigeration Air-
6 Conditioning Engineers (ASHRAE) standards.

7 "Qualified provider." A person or business which is
8 responsible and capable of evaluating, recommending, designing,
9 implementing and installing energy conservation measures as
10 determined by the governmental unit.

11 § 3753. Contracting procedures.

12 (a) General rule.--Notwithstanding any other contrary or
13 inconsistent provision of law, a governmental unit may enter
14 into a guaranteed energy savings contract with a qualified
15 provider in accordance with the provisions of this subchapter or
16 in accordance with another statutorily authorized procurement
17 process.

18 (b) Guaranteed energy savings contract.--If in accordance
19 with applicable law the award of a contract by a governmental
20 unit requires action at a public meeting, a governmental unit
21 may award a guaranteed energy savings contract at a public
22 meeting if it has provided public notice in the manner
23 prescribed [by the act of July 3, 1986 (P.L.388, No.84), known
24 as the Sunshine Act,] under 65 Pa.C.S. Ch. 7 (relating to open
25 meetings) the notice including the names of the parties to the
26 contract and the purpose of the contract. For governmental units
27 that are not required to take actions on contracts at public
28 meetings, the governmental unit may award a guaranteed energy
29 savings contract in accordance with the procedures adopted by
30 the governmental unit and the requirements of all applicable

1 laws.

2 (c) Competitive sealed proposals.--For the purpose of
3 entering into a guaranteed energy savings contract, all
4 governmental units are authorized to utilize the competitive
5 sealed proposal method of procurement. The governmental unit
6 shall evaluate any proposal that meets the requirements of the
7 governmental unit and is timely submitted by a qualified
8 provider. The request for proposals shall be announced through a
9 public notice from the governmental unit which will administer
10 the program. The request for proposals shall provide all
11 interested parties with sufficient information necessary to
12 submit a timely and responsive proposal.

13 (d) Selection and notice.--The governmental unit shall
14 select the qualified provider that best meets the needs of the
15 governmental unit in accordance with criteria established by the
16 governmental unit. For governmental units that are not required
17 to take actions on contracts at public meetings, the
18 governmental unit shall provide public notice of the award of
19 the guaranteed energy savings contract within 30 days in the
20 Pennsylvania Bulletin. The notice shall include the names of the
21 parties to the contract and the purpose of the contract. For
22 governmental units that are required to take actions on
23 contracts at public meetings, the public notice shall be made at
24 least ten days prior to the meeting. After reviewing the
25 proposals pursuant to subsection (e), a governmental unit may
26 enter into a guaranteed energy savings contract with a qualified
27 provider if it finds that the amount it would spend on the
28 energy conservation measures recommended in the proposal would
29 not exceed the amount to be saved in both energy and operational
30 costs within a [ten-year] 15-year period from the date of

1 installation if the recommendations in the proposal were
2 followed and the qualified provider provides a written guarantee
3 that the energy or operating cost savings will meet or exceed
4 the cost of the contract.

5 (e) Report.--

6 (1) Before the award of a guaranteed energy savings
7 contract, the qualified provider shall provide a report as
8 part of its proposal which shall be available for public
9 inspection, summarizing estimates of all costs of
10 installation, maintenance, repairs and debt service and
11 estimates of the amounts by which energy or operating costs
12 will be reduced.

13 (2) The report shall contain a listing of contractors
14 and subcontractors to be used by the qualified provider with
15 respect to the energy conservation measures.

16 (f) Bond.--A qualified provider to whom a contract is
17 awarded shall give a sufficient bond to the governmental unit
18 for its faithful performance. Commonwealth agencies shall obtain
19 such bonds in accordance with the provisions of section 533
20 (relating to security and performance bonds). All other
21 governmental units shall obtain such bonds in accordance with
22 the act of December 20, 1967 (P.L.869, No.385), known as the
23 Public Works Contractors' Bond Law of 1967.

24 (g) Award of contract.--Notwithstanding any other provision
25 of law governing the letting of public contracts, a governmental
26 unit may enter into a single guaranteed energy savings contract
27 with each responsible provider selected in accordance with the
28 provisions of this subchapter.

29 § 3754. Contract provisions.

30 (a) General rule.--A guaranteed energy savings contract may

1 provide that all payments, except obligations on termination of
2 the contract before its scheduled expiration, shall be made over
3 a period of time. Every guaranteed energy savings contract shall
4 provide that the savings in any year are guaranteed to the
5 extent necessary to make payments under the contract during that
6 year.

7 (b) Written guarantee.--A guaranteed energy savings contract
8 shall include a written guarantee that savings will meet or
9 exceed the cost of the energy conservation measures to be
10 evaluated, recommended, designed, implemented or installed under
11 the contract.

12 (c) Payments.--A guaranteed energy savings contract may
13 provide for payments over a period of time not to exceed [ten]
14 15 years and for the evaluation, recommendation, design,
15 implementation and installation of energy conservation measures
16 on an installment payment or lease purchase basis.

17 (d) Improvements not causally connected to an energy
18 conservation measure.--An improvement that is not causally
19 connected to an energy conservation measure may be included in a
20 guaranteed energy savings contract if:

21 (1) the total value of the improvement does not exceed
22 15% of the total value of the guaranteed energy savings
23 contract; and

24 (2) either:

25 (i) the improvement is necessary to conform to a
26 law, a rule or an ordinance; or

27 (ii) an analysis within the guaranteed energy
28 savings contract demonstrates that there is an economic
29 advantage to the governmental unit implementing an
30 improvement as part of the guaranteed energy savings

1 contract;
2 and the savings justification for the improvement is documented
3 by industry engineering standards.

4 (e) Other expenditures.--A facility alteration which
5 includes expenditures that are required to properly implement
6 other energy conservation measures may be included as part of a
7 guaranteed energy savings contract. In such case,
8 notwithstanding any other provision of law, the installation of
9 these additional measures may be supervised by the contractor
10 performing the guaranteed energy savings contract.

11 Section 2 4. Title 62 is amended by adding a section to <—
12 read:

13 § 3758. Review of proposed capital improvement projects.

14 Prior to entering into a guaranteed energy savings contract
15 every governmental unit shall review all proposed capital
16 improvement projects for potential applicability of this
17 subchapter, and shall consider proceeding with a guaranteed
18 energy savings contract under this subchapter where appropriate.

19 Section 3 5. This act shall take effect in 60 days. <—