

200 KAR 5:350. Guaranteed energy savings performance contracting.

RELATES TO: KRS 56.770-56.784

STATUTORY AUTHORITY: KRS 56.784(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.784(2) requires the Finance and Administration Cabinet to promulgate administrative regulations to establish a process for procurement of energy savings performance contracts, including required contract language. This administrative regulation establishes the process for procurement of energy-savings performance contracts.

Section 1. Definitions.

- (1) "GESPC" means a guaranteed energy savings performance contract as defined in KRS 56.770(5), and further described at KRS 56.774(5).
- (2) "Memorandum of understanding" is defined alternatively as "memorandum of agreement" at KRS 45A.690(1)(d).
- (3) "Offeror" is defined at KRS 45A.070(6).
- (4) "Owner" means:
 - (a) The Finance and Administration Cabinet; or
 - (b) The governing board of an institution of postsecondary education that, pursuant to KRS 164A.560(1), has elected to perform in accordance with KRS 164A.555 to 164A.630 regarding capital construction.
- (5) "RFP" means a request for proposals as defined in KRS 45A.070(5).

Section 2. Contracting Process.

- (1) A GESPC shall be awarded by competitive negotiation in accordance with KRS 45A.085, 200 KAR 5:307, and this administrative regulation.
- (2) If a GESPC is needed, owner shall form a selection committee and issue an RFP.
- (3) The selection committee shall conduct a walk-through of the proposed project facility which interested potential offerors shall attend, if indicated in the RFP.
- (4) An offeror shall submit qualifications, a preliminary proposal, and other information and documentation as set out in the RFP.
- (5) The selection committee shall evaluate, rank, and interview each offeror in accordance with the criteria set out in the RFP.
- (6) The top-ranked offeror shall:
 - (a) Be notified and authorized to perform a technical energy audit; and
 - (b) Submit a final proposal indicating the scope of the guaranteed energy savings performance project.
- (7) If an acceptable energy audit and project proposal have not been approved by the selection committee within sixty (60) days from the date of notification provided for in subsection (6) of this section, negotiations with the next highest ranked offeror shall be initiated, unless owner has granted an extension of time to the top-ranked offeror.
- (8) Owner shall enter into a memorandum of understanding with an entity occupying facilities involved in a guaranteed energy savings performance project. The memorandum shall state the responsibilities and obligations of each party, including reporting, administration, and repayment.

Section 3. Required Contract Terms. A GESPC shall contain the following language.

- (1) "All savings projected shall be guaranteed to owner."
- (2) "A professional engineer licensed in the state of Kentucky shall supervise, review, and approve all design work done in relation to this project."
- (3) "The term of this contract shall not exceed the life of the energy savings generated from implementation of the energy efficiency measures financed by the contract, in accordance with KRS 56.770(5)."

(4) "The contractor shall maintain specific standards of comfort, safety, and functionality as determined by the owner. Persistent failure to maintain the defined climate and lighting conditions shall constitute a breach of contract by the contractor."

(5) "Combined savings achieved by the installed projects shall be sufficient to cover all project costs, including debt service and contractor fees maintenance, monitoring, and other services, for the duration of the contract term. If a project does not generate the guaranteed level of savings in any predefined reconciliation term, the contractor shall be liable to owner for the amount of the shortfall plus related costs, in accordance with KRS 56.770(5)."

(6) "The contractor shall provide a sufficient number of sets of operation and maintenance manuals for all equipment replacements or upgrades at each location. The number of sets of manuals shall be determined by owner."

(7) "Owner shall have the right to inspect, test, and approve the work conducted under this contract during construction and operation."

(8) "All drawings, reports, and materials prepared by the contractor in performance of the contract shall become the property of owner and shall be delivered to owner as needed or upon completion of construction."

(29 Ky.R. 1429; Am. 2087; eff. 2-16-03; Crt eff. 2-10-2020.)