

ENERGY PERFORMANCE CONTRACTING FOR STATE GOVERNMENT

Colorado Statutes :
TITLE 24 GOVERNMENT - STATE : PRINCIPAL DEPARTMENTS :
**ARTICLE 30 DEPARTMENT OF PERSONNEL - STATE ADMINISTRATIVE
SUPPORT SERVICES**

PART 20 UTILITY COST-SAVINGS MEASURES

24-30-2001. Definitions.

24-30-2002. Contracts for energy analysis and recommendations.

24-30-2003. Utility cost-savings contracts.

24-30-2001. Definitions.

As used in this part 20, unless the context otherwise requires:

(1) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more utility cost-savings measures designed to produce utility cost savings or operation and maintenance cost savings, which contract:

(a) Sets forth savings attributable to the calculated utility cost savings or operation and maintenance cost savings for each year during the contract period;

(b) Provides that the amount of actual savings for each year during the contract period shall exceed annual contract payments, including maintenance costs, to be made during such year by the state agency contracting for the utility cost-savings measures;

(c) Requires the party entering into the energy performance contract with the state agency to provide a written guarantee that the sum of utility cost savings and operation and maintenance cost savings for each year during the first three years of the contract period shall not be less than the calculated savings for that year described in paragraph (a) of this subsection (1); and

(d) Requires payments by a state agency to be made within twelve years after the date of the execution of the contract; except that the maximum term of the payments shall be less than the cost-weighted average useful life of utility cost-savings equipment for which the contract is made, not to exceed twenty-five years.

(2) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs 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.

(3) "Shared-savings contract" means a contract for one or more utility cost-savings measures that do not involve capital equipment projects, which contract:

(a) Provides that all payments to be made by the state agency contracting for the utility cost-savings measures shall be a stated percentage of calculated savings of energy costs attributable to such measures over a defined period of time and that such payments shall be made only to the extent that such savings occur; except that this paragraph (a) shall not apply to payments for maintenance and repairs and obligations on termination of the contract prior to its expiration;

(b) Provides for an initial contract period of no longer than ten years; and

(c) Requires no additional capital investment or contribution of funds.

(4) "State agency" means a department or institution of this state, including institutions of higher education.

(5) "Utility cost savings" means:

(a) A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more energy conservation measures when compared with an established baseline of usage; or

(b) A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

(6) "Utility cost-savings contract" means an energy performance contract or a shared-savings contract or any other agreement in which utility cost savings are used to pay for services or equipment.

(7) "Utility cost-savings measure" means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

- (c) Automatic energy control systems;
- (d) Replacement or modification of lighting fixtures;
- (e) Energy recovery systems;
- (f) Renewable energy and alternate energy systems;
- (g) Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
- (h) Devices that reduce water consumption or sewer charges;
- (i) Changes in operation and maintenance practices;
- (j) Procurement of low-cost energy supplies of all types, including electricity, natural gas, and other fuel sources, and water;
- (k) Indoor air quality improvements that conform to applicable building code requirements;
- (l) Daylighting systems;
- (m) Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- (n) Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules under which service is provided; and
- (o) Any other installation, modification of installation, or remodeling of building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes.

Source: L. 2001: Entire part added, p. 1088, § 1, effective August 8.

24-30-2002. Contracts for energy analysis and recommendations.

(1) Subject to subsection (2) of this section, a state agency may contract with any entity or person experienced in the design and implementation of energy conservation for an energy analysis and recommendations pertaining to measures that would significantly increase utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the state agency.

(2) The state personnel director or the state personnel director's designee may authorize a state agency to enter into such a contract. The contract shall be negotiated by the state agency pursuant to the negotiation requirements described in part 14 of this

article; except that direct, indirect, overhead, and other costs and rates may be solicited and considered in the evaluation of qualifications and included in any resulting contract. The contract may include provisions that define the rate, amount, and nature of costs that may be proposed in any subsequent utility cost-savings contract, that describe the content of the analysis, and that reserve the option of the state agency to negotiate a suitable utility cost-savings contract.

(3) Such energy analysis and recommendations 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, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service.

(4) Payment by a state agency for an energy analysis and recommendations contract may be made from moneys appropriated to the state agency for operating expenses or utilities, or payments may be deferred and incorporated into a subsequent utility cost-savings contract.

Source: L. 2001: Entire part added, p. 1090, § 1, effective August 8.

24-30-2003. Utility cost-savings contracts.

(1) A state agency may enter into a utility cost-savings contract with any person or entity experienced in the design and implementation of utility cost-savings measures for buildings or other facilities or with the entity or person who performed the energy analysis and recommendations pursuant to section 24-30-2002 if:

(a) The energy analysis and recommendations made pursuant to section 24-30-2002 indicate that the expected annual payments required under the contract and any additional maintenance costs for one or more utility cost-savings measures are expected to be equal to or less than the sum of the utility cost savings and operation and maintenance cost savings achieved by the implementation of such measures on an annual basis; and

(b) The state personnel director or the director's designee, pursuant to criteria contained in procedures established by such director, approves the energy analysis and recommendations made pursuant to section 24-30-2002.

(2) (a) Except as provided in paragraph (b) of this subsection (2), a utility cost-savings contract shall be negotiated by the state agency pursuant to the negotiation requirements described in part 14 of this article.

(b) The negotiation requirements described in part 14 of this article and any other state competitive bidding or procurement provision shall not apply to a state agency that enters into a utility cost-savings contract with the entity or person who performed the energy analysis for and made recommendations to the state agency pursuant to section 24-30-2002.

(3) A utility cost-savings contract may include appropriate lease-purchase or other authorized financing agreements.

(4) The legislative authorization required by section 24-82-801 (2) shall not apply to a lease-purchase agreement in a utility cost-savings contract and no subsequent legislative authorization shall be required for any payment made pursuant to such an agreement.

(5) Payments by a state agency required under a utility cost-savings contract may be made from moneys appropriated to the state agency for operating expenses or utilities appropriations available to the state agency at the time the contract payments are due.

(6) The provisions of articles 91 and 92 of this title shall not apply to utility cost-savings contracts.

(7) Utility cost-savings contracts shall be subject only to the supervisory provisions of part 13 of this article.

(8) All savings realized as a result of a utility cost-savings contract that are in excess of the annual calculated savings by such contract may be utilized as provided in section 24-75-108 (3).

(9) The utility cost-savings contracts authorized by this section shall provide that all of the obligations of the state under such contracts shall be subject to the action of the general assembly in annually making moneys available for all payments thereunder and that the obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the state constitution or the laws of the state concerning or limiting the creation of indebtedness by the state and shall not constitute a multiple fiscal-year direct or indirect debt or other financial obligation of the state within the meaning of section 20 (4) of article X of the constitution.

(10) The state personnel director may establish procedures containing criteria for authorization of utility cost-savings contracts.

Source: L. 2001: Entire part added, p. 1091, § 1, effective August 8.

24-75-108. Intradepartmental transfers between appropriations - repeal.

(3) (a) Transfers within a principal department from an operating expense item to a utilities item, from an operating expense item to a leased space item, or from a utilities item to a utilities item, which are made on or after May 1 and before the forty-fifth day after the close of each fiscal year, shall be deemed to be between like purposes within the meaning of subsection (1) of this section.

(b) Any savings realized in a utilities item resulting from a utility cost-savings contract pursuant to section 24-30-2003 may be transferred to an operating expense item for the purpose of making an annual payment on a lease-purchase agreement under such contract.

(8) The total amount of moneys transferred between items of appropriation made to principal departments of state government and to the office of the governor pursuant to this section, other than transfers within a principal department from an operating expense item to a utilities item, from a utilities item to an operating expense item pursuant to paragraph (b) of subsection (3) of this section, or from a utilities item to a utilities item, shall not exceed two million dollars.

(12) As used in this section, "utilities" means water, sewer service, electricity, or other fuel sources, equipment purchased for the purpose of utility cost savings, payments made to private companies for services rendered or equipment installed for the purpose of reducing utility costs, lease-purchase payments to private companies for the purpose of reducing utility costs, and all heating fuels.

Source: L. 86: Entire section added, p. 962, § 1, effective May 27. **L. 89:** Entire section RC&RE, p. 1095, § 4, effective May 16; entire section repealed, p. 1095, § 4, effective September 1, 1990. **L. 91:** Entire section RC&RE, p. 848, § 4, effective April 27. **L. 94:** (8) and (11) amended, p. 1460, § 4, effective May 25. **L. 99:** (11) amended, p. 697, § 5, effective May 19. **L. 2001:** (3) and (8) amended and (12) added, p. 1092, § 2, effective August 8. **L. 2004:** (11) amended, p. 1520, § 5, effective May 28.

Editor's note: Prior versions of subsections (9) and (11) provided for the repeal of this section, effective September 1, 1986 (see L. 86, p. 963) and September 1, 1990 (see L. 89, p. 1096).