

**THE LEGISLATIVE AUDITOR'S SUMMARY  
OF LOUISIANA'S ENERGY EFFICIENCY LAW  
FOR LOCAL POLITICAL SUBDIVISIONS**



The Louisiana Legislature has provided that local political subdivisions and state agencies may enter into performance-based energy efficiency contracts for services and equipment. The purpose behind the energy efficiency law is to allow public entities to upgrade their physical plants to a more modern and efficient condition, while at the same time ensuring that the guaranteed savings thus achieved actually pay for the upgrades themselves. In other words, the entity is saving as much money as the new upgrades cost.

These contracts are considered a contract for services and are exempt from the provisions of R.S. 38:2212, but must follow the statutes authorizing them. The statutes are divided into two categories, local political subdivisions and state agencies.

This Summary shall discuss the requirements and procedures for:

**Municipalities, Parishes and Other Local Political Subdivisions**

- 1) [R.S. 33:4547.1–Authorization](#);
- 2) [R.S. 33:4547.2–Procedures](#); and
- 3) [R.S. 33:4547.3–Term; Guarantee of Energy Savings](#)

**Municipalities, Parishes and Other Local Political Subdivisions**

[R.S. 33:4547.1](#)

Any political subdivision may enter into a performance-based energy efficiency contract for services and equipment. Performance-based energy efficiency contracts are defined as a contract for energy efficiency services and equipment in which the payment obligation for each year of the contract is:

- (a) Set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or
- (b) Guaranteed by the person under contract to be less than the annual energy cost savings attributable to the services or equipment under the contract.

**Purposes For Which Energy Efficiency Contracts May Be Utilized**

The statute, at [R.S. 33:4547.1\(B\)\(2\)](#), gives a list of various purposes for which energy efficiency contracts are meant to be utilized. Though not meant to be exhaustive, the list includes the most commonly undertaken upgrades:

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Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building.



Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.



Automated or computerized energy control systems, including computer software and technical data licenses.



Heating, ventilating, or air conditioning system modifications or replacements.



Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made.



Energy recovery systems.



Electric system improvements.



Building operation programs that reduce operating costs.



Other energy conservation-related improvements or equipment, including improvements or equipment related to renewable energy.



Water and other natural resource conservation, including accuracy and measurement of water distribution and consumption.



An alteration or measure identified through a comprehensive audit or assessment of new or existing facilities.

### **Definitions**

The statute also provides important definitions for the terms used in the law at [R.S. 33:4547.1\(B\)\(3\)](#) and [R.S. 33:4547.1\(C\) and \(D\)](#).



**“Energy efficiency”** means an alteration to an existing facility that is designed for the reduction of the consumption of energy or natural resources or the reduction of operating costs as a result of changes that meet the following criteria:

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(i) They do not degrade the level of service or working conditions below recognized acceptable standards.

(ii) They are measurable and verifiable under the International Performance Measurement and Verification Protocol as it existed on January 1, 2006, or subsequently amended verification protocols or alternative protocols and verification standards and methodologies acceptable to political subdivisions.

[R.S. 33:4547.1\(B\)\(3\)\(a\)\(i\)\(ii\)](#)



**“Reduction of operating costs”** means the elimination of operating expenses or the avoidance of future capital replacement expenditures as a result of new equipment installed or services performed by the performance contractor. A contract may satisfy the requirements allowing use of a performance-based energy efficiency contract even if the sole cost being eliminated or reduced is cost related to maintenance, or as otherwise defined as “Annual energy savings”.

[R.S. 33:4547.1\(B\)\(3\)\(b\)](#)



**“Annual energy savings”** means, when calculating annual energy cost savings attributable to the services or equipment installed pursuant to a performance-based energy efficiency contract as defined in [R.S. 39:1484\(14\)](#), the savings in electricity, gas, water, propane, oil, diesel, steam or other like utility costs increased revenues obtained from upgrades or modifications to a water, wastewater, gas or electric utility infrastructure, systems or accounting and billing systems and must include future capital expenditures avoided and maintenance savings. Capital replacement expenditures avoided and maintenance savings must be itemized separately.

[R.S. 33:4547.1\(C\)](#)



**“Performance contracting”** means all programs designed to save energy that are guaranteed by a company or contractor for the political subdivision. The company or contractor guaranteeing such programs may include, but are not limited to, lighting, water conservation, water management companies, or contractors that specialize in servicing such energy savings equipment such as mechanical or electrical systems and **energy services companies (hereinafter referred to as ESCO)**.

[R.S. 33:4547.1\(D\)](#)

### Independent Third-Party Evaluators

[R.S. 33:4547.1\(E\)](#)

Knowing the technical nature of these contracts, the Legislature provided for experts to evaluate the proposals of energy services companies (“ESCO”). Prior to the award of any performance-based energy efficiency contract, the political subdivision selects an independent third-party evaluation consultant to review and evaluate submitted proposals.

In order to ensure the third-party’s independence, no person, entity, or ESCO which assists the political subdivision in the development of the request for proposals are allowed to be a respondent to those request for proposals.

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The independent third-party consultant submits the results of his evaluation in an open meeting to the political subdivision for its review. The political subdivision must require that the consultant selected participate on its behalf in the negotiation of the contract.

Before he is chosen, the independent third-party consultant must certify that has no conflict of interest as to the political subdivision, the proposals which he is to evaluate, or to any proposer.

An independent third-party evaluation consultant must, at a minimum, be licensed by the state of Louisiana as a professional engineer or a professional architect with experience in energy efficiency contracting. Each political subdivision is responsible for verifying the credentials of the consultant to ensure that he possesses the minimum qualifications and has no conflict of interest to the political subdivision or the proposers.

In order to fund the cost of the independent third-party consultant, evaluation, review, approval, oversight (and required performance audits), the request for proposals for the award of a performance-based energy efficiency contract shall require the proposer to pay a sum not to exceed two and one-half percent of the total value of the performance-based energy efficiency contract at the time that a contract is executed by that proposer.

### Terms



### Time

A performance-based energy efficiency contract can only be for a period equal to the lesser of twenty years or the average life of the equipment installed by the performance contractor and must contain a guarantee of energy savings. The guarantee of energy savings must, at a minimum, ensure a total annual savings sufficient to fully fund any financing arrangement entered into to fund the contract.

[R.S. 33:4547.1\(F\)\(1\)](#)

### Clauses

[R.S. 33:4547.1\(F\)\(1\)](#)

Certain clauses are also required to be in the contract. Every performance-based energy efficiency contract must contain the following clause:

**“The continuation of this contract is contingent upon the appropriation of funds by the political subdivision to fulfill the requirements of the contract. If the political subdivision fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the political subdivision except for payments which have been earned prior to the termination date.”**

Every performance-based energy efficiency contract must also include the total units of energy saved, the method, device or financial arrangement to establish a firm amount for









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the savings, the cost per unit of energy, and, if applicable, the basis for any adjustment in the stated cost for the term of the contract.

For each energy saving measure included in the contract, you must also provide the following: [R.S. 33:4547.1\(F\)\(2\)](#)

-  Detailed scope of work.
-  Price to be paid by the political subdivision as the initial cost.
-  Annual energy cost savings.
-  Annual maintenance savings including any maintenance and operational savings associated with installation, including but not limited to services, parts, materials, labor, and equipment.
-  Annual new maintenance cost including operating expenses added as a result of new equipment installed or services performed by the contractor.
-  Total annual savings, which shall be determined by adding annual energy cost savings to annual maintenance savings and subtracting any annual new maintenance costs.
-  All savings shall be guaranteed and measured on an annual basis.
-  A schedule for submission of the annual savings audit reports.

### Public Records

[R.S. 33:4547.1\(F\)\(3\)](#)

And finally, the Legislature made it so that except for proprietary company financial information, the responses to a request for proposals are public records pursuant the Public Records Law, R.S. 44:1, et seq.

### Procedures

[R.S. 33:4547.2](#)

### Advertising

A political subdivision must provide adequate public notice of the request for proposals for performance-based energy efficiency contracts by advertising in its official journal at least once a week for three different weeks. The first advertisement will appear at least forty-two days before the last day that proposals will be accepted.

In addition, written notice must be mailed to persons, firms, or corporations who are known to be in a position to furnish such services at least forty-two days before the last day that proposals will be accepted.

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### Request For Proposals

The request for proposals must indicate the relative importance of price and other evaluation factors and clearly define the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Fifty percent of the total weighted evaluation criteria of the proposal shall be determined by shortest payback, maximum savings, scope of the work, quality of the product, cost of maintenance, and quoted amount of the **energy conservation measure (ECM)** selected.

Every request for proposals must include the following mandatory provisions:

[R.S. 33:4547.2\(C\)](#)

- (1) Each ECM shall be listed separately and for each such proposed ECM the energy savings, operational savings, total savings, cost and payback shall be provided separately. Energy Conservation Measure (ECM) also means measures that are applied to existing buildings that improve energy efficiency and are life cycle cost effective. Operational savings means reduction of actual budget line items currently being expended or savings realized from the implementation or installation of energy cost savings measures.
- (2) Detailed scope shall be provided for each ECM proposed, which describes each piece of equipment proposed and provides details for all services proposed.
- (3) The required maintenance that must be performed to guarantee the savings forecast shall be described in detail for each ECM proposed and the cost of maintenance, if included in the proposed contract.

### Awards

[R.S. 33:4547.2\(D-F\)](#)

Award are made to the responsible offerer whose proposal is determined to be the most advantageous, taking into consideration price and the evaluation factors set forth in the request for proposals.

Written or oral discussions must be conducted with all responsible offerers who submit proposals determined to be reasonably susceptible of being selected for award.

A request for proposals or other solicitation may be cancelled or all proposals may be rejected if it is determined that such action is taken in the best interest of the political subdivision.

### Other Requirements

[R.S. 33:4547.2\(G,H\)](#)

For any systems such as facility automation and control systems proposed, full capabilities must be provided and made available to the using political subdivision or its designee. The entity must be able to operate, maintain, repair, update, reconfigure and engineer changes necessary to accommodate facility or operational changes or incorporate new energy savings control strategies. Access to the operating system of the contractor is not required, but the user interface software must provide for all capabilities mentioned.

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Further, each proposal must clearly identify any and all responsibility of the political subdivision, if any, under the guarantee for each Energy Conservation Measure (ECM) including, but not limited to, operating hours, maintenance requirements, and operating protocols.

### **Term: Guarantee of Energy Savings**

[R.S. 33:4547.3](#)

Every performance-based energy efficiency contract must be for a period equal to the lesser of twenty years, or, the average life of the equipment installed by the performance contractor. The contract must contain a guarantee of energy savings for at least the term of the bonds sold or financing arrangement of the political subdivision to support the terms of the energy performance contract.

When calculating “annual energy cost savings attributable to the services or equipment” installed pursuant to a performance-based energy efficiency contract maintenance savings must be included.

“**Maintenance savings**” means operating expenses that are eliminated and future capital replacement expenditures that are avoided as a result of new equipment installed or services performed by the performance contractor.

### **PROBLEMS WITH STIPULATED SAVINGS**

The savings in any performance-based energy efficiency contract must be guaranteed. The guarantee of operation and maintenance savings component was the focal point of a lawsuit filed by Siemens Business Technologies, Inc. (Siemens) against the Iberville Parish School Board (Iberville) in 2007 (Parish of Iberville, 18th Judicial District Court Div. B, No. 64,935). See *Siemens Building Technologies, Inc. v. Iberville Parish School Board*, 978 So.2d 328, 2008 WL 1765598 (La.), 2008-0336 (La. 4/4/08) *writs denied*. The parties had included savings that were stipulated to rather than actually being measured.

The District Court decided in favor of Iberville (both the First Circuit and the La. Supreme Court denied writs) and found that the contract was invalid because stipulated savings do not satisfy the statutory requirement of a guarantee for operation and maintenance savings. The failure to strictly comply with this statutory exemption invalidates the contract and mandates compliance with the Public Bid Law. [R.S. 38:2220](#) provides that any contract for public works that is contrary to the law is “null and void.” Siemens’ requests for review and reversal by the First Circuit Court of Appeal and the Supreme Court were rejected.

The Attorney General examined the same contract and its amendments to determine whether the stipulated savings clause for operation and maintenance savings was tantamount to the guarantees required by [R.S. 33:4547.1](#), *et seq.* In AG Op. No. [07-0002](#), the AG stated that “in order for the operational savings to be guaranteed, the Contract would have to provide for some type of measurement and/or verification of the operational savings, and require Siemens to reimburse Iberville for any deficiency.”

For a more thorough analysis of the problem, please see our discussion and solution for performance-based energy efficiency contracts using stipulated savings clauses at:

[Energy Efficiency Contracts-Problems with Stipulated Savings](#)

**AG Opinions**

Because the stipulated savings in the contract at issue are not guaranteed, the contract does not meet the statutory definition of a performance-based energy efficiency contract. [AG Op. No. 07-0002](#).

Parish project to replace existing water meters with new water meters that will contain automatic reading technology and leak detection equipment, increase billable water usage, and eliminate operating expenses for the functions involved, but which will not result in the direct reduction of energy consumption is not a “performance-based energy efficiency contract.” pursuant. [AG Op. No. 05-0024](#).

The requirements to form a valid performance-based energy efficiency contract are set by statute. Pursuant to statute, the annual energy cost savings must be guaranteed. There is no prohibition against having stipulated savings. However, these stipulated savings must be measured and verified and the contract must contain a mechanism to require a reimbursement for any deficiency and/or default. [AG Op. No. 10-0138](#).

The AG’s latest opinion on performance-based energy efficiency contracts also says the parties of the contract are free to include their understanding as to the measurement and verification of any savings not previously measured or verified in the contract. [AG Op. No. 10-0138](#).