

# APPENDIX A-2: MISSISSIPPI ENERGY PERFORMANCE CONTRACTING POLICIES AND PROCEDURES

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## Energy Savings Performance Contracting and Shared Savings Contracting Code Section: 31-7-14

The Mississippi Development Authority (MDA) promulgates the following policy and procedures in accordance with Section 31-7-14 of the Mississippi Code of 1972, as amended, to provide for the approval of “energy saving performance contracts” and “shared-savings contracts” between public entities and Energy Service Companies (ESCO) wherein energy savings and related cost savings are guaranteed over a period of time not to exceed 20 years by the performance contractors.

These contracts authorized in Section 31-7-14 (4) (b) differ from “energy services contracts” authorized in Section 31-7-14 (1) (b) that do not require MDA-Energy and Natural Resources Division (ENR) involvement and do not require energy or cost savings to be guaranteed. MDA-ENRD’s role in eligible “energy saving performance contracts” and “shared savings contracts” is to assure that entities can rely upon projected and guaranteed energy savings and related cost savings. Consequently, this policy and procedures for “energy saving performance contracts” and “shared savings contracts” are construed to fit MDA-ENRD’s role. Projects where there are minimal scientifically quantifiable and measurable energy savings, i.e., MDA-ENRD’s expertise is not required, may be pursued under this Section 31-7-14 (1) (b) as “Energy Services Contract.”

MDA-ENRD will construe proposed contracts submitted pursuant to 31-7-14(4) so that economic benefits to the entity may be maximized.

1. Any state agency or local governing authority (entity), as defined in Section 31-7-1 subparagraphs (a) and (b) respectively of the Mississippi Code of 1972, as amended, may contract on a shared savings or energy saving performance contract basis for:
  - energy efficiency equipment;
  - services relating to the installation, operation or maintenance of equipment;
  - and improvements reasonably required to existing or new equipment and existing or new improvements and facilities.

- Alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel motor vehicles.
2. Section 31-7-14 does not prohibit an entity from entering into a companion “energy services contract” at the same time it enters into an “energy savings performance contract” or “shared-savings contract.” Any such dual-purpose contract must clearly state its dual nature under the law and distinguish the guaranteed portion by including a separate scope of work for such contract as a specific addendum.
  3. An “energy saving performance contract” or “shared-savings contract” means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency. The energy savings plus related cost savings are guaranteed by the ESCO and must be used to repay the cost of the project. The guaranteed savings must be more than sufficient to pay the total costs of the project over the guarantee period. The terms of any shared -savings or energy saving performance contract entered into must contain a guarantee of savings clause from the performance contractor.
  4. Energy systems or equipment such as below are considered eligible measures:
    - heating, ventilation, and air conditioning systems;
    - lighting;
    - windows;
    - insulation;
    - energy management controls;
    - life safety measures that provide long-term, operating-cost reductions;
    - building operation programs that reduce operating costs;
    - renewable energy systems and equipment;
    - water conservation systems and equipment, including accuracy and measurement of water distribution and/or consumption; and
    - facilities improvements or enhancements directly related to the above;
    - alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel motor vehicles;
    - and other equipment, services and improvements providing energy efficiency as determined by the division.
  5. A “shared-savings contract” differs from a “energy saving performance contract” in that the ESCO and the entity each receive a pre-agreed percentage or dollar value of the energy cost savings over the life of the contract, rather than the contractor receiving a fee.
  6. Any entity desiring to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment, or improvements reasonably required to existing or new equipment and existing or new improvements and

facilities on a shared savings basis or performance-contracting basis, shall issue a Request for Qualifications (RFQ) in the manner prescribed in Section 31-7-14 (1)(b) of the Mississippi Code of 1972, as amended. It is recommended that the entity use the RFQ template located in the MDA Energy Savings Performance Contracting Manual.

7. The entity shall notify the MDA-ENRD in writing in advance of its determination to issue a RFQ to develop an Energy Saving Performance Contract or a Shared Savings Contract project.
8. The entity may request, at its discretion, that the MDA-ENRD reviews its RFQ before it is published, but if not, the RFQ must be forwarded to MDA after it has been published.
9. Any entity intending to contract for a shared-savings or Energy Saving Performance Contract for energy services must advertise once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such entity is located. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice.
10. For “energy saving performance contracts” and for “shared savings contracts,” MDA-ENRD defines “energy savings plus related cost savings” as scientifically quantifiable and measurable savings from energy and/or water usage reductions plus cost savings from related operations and maintenance reductions and other cost-avoidance measures. For building operation programs, related cost savings may also include savings from the elimination of future expenses and from the avoidance of future replacement expenditures as a result of new equipment installed or services performed.
11. Guaranteed energy savings plus guaranteed related cost savings achieved by the project must be sufficient to cover all project costs, including annual maintenance and monitoring fees, guarantee fees, and contractor fees.
12. The terms of any performance contract for efficiency services and/or equipment entered into under this section may not exceed 20 years.
13. The simple payback cannot exceed 20 years or less than the expected useful life of the equipment, whichever is less. The simple payback is defined as the implementation cost of the energy efficiency measure divided by the guaranteed annual energy savings plus related cost savings produced by the energy efficiency measure.
14. All contracts must contain the following annual allocation dependency clause:

***The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirement of the contract by the Legislature or other budgeting authority. If the Legislature or other budgeting authority 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 appropriations were made. The termination shall be without penalty or expense to the entity of any kind whatsoever, except as to the portions of payments for which funds were appropriated.*

15. All contracts must contain a provision for termination of the contract.
16. All contracts may contain a provision for termination for convenience by the entity.
17. All contracts/TEA's must contain warranty information on the measures proposed to be installed.
18. The MDA-ENRD shall review each contract pursuant to code 31-7-14 (4) (b) and approve those it determines to be in compliance with the code, this policy, and these guidelines.
19. No Energy Saving Performance Contract or Shared Savings Contract shall be valid until approved by the MDA-ENRD in writing.
20. The MDA-ENRD will not approve any Energy Saving Performance Contract or Shared-Savings Contract that does not generate quantifiable and measurable energy savings as defined in paragraph 10.
21. Project documentation must be submitted to the MDA- ENRD for review and comment. The documents to be submitted include the Technical Energy Analysis, the proposed final contract, and the Measurement and Verification (M&V) Plan. Annual Energy Savings Reports are also required and must be submitted to the MDA-ENRD within 60 days of the date such reports are received by the entity.
22. The Technical Energy Analysis must be signed and stamped by a professional engineer registered and licensed to practice in Mississippi.
23. **Third Party Review. The use of a 3<sup>rd</sup> party engineer or engineering firm to specifically review M&V is a requirement for state agencies with Energy Savings Performance Contracts. Third party review is optional for other public entities. The third party reviewer must be chosen by the entity without input from the ESCO. The 3<sup>rd</sup> party reviewer must be neutral and the review of M&V must be paid out of the savings, not paid by the ESCO or the entity.**
24. The entity will be provided in writing any questions and comments raised by the MDA-ENRD during its review process. The entity will be requested to respond to these questions and comments in writing. No contract will be approved until the entity has responded.
25. Upon completion of the contract review process by the MDA-ENRD, the division shall request final authority to approve or disapprove the contract from the Executive Director of the Mississippi Development Authority or his designated deputy.

A compliance letter, signed by the Energy and Natural Resources Division Director, will be issued to the entity upon final approval. A denial letter will be issued to the entity upon disapproval.