

DPMC STATUTORY AUTHORITY: DESIGN AND CONSTRUCTION

Prequalification of Construction Professionals/Award of Professional Service Contracts

N.J.S.A. 52:34-9.1. Policy on certain State contracts for professional services

It is the policy of this State that State contracts for architectural, engineering and land surveying services shall be publicly announced prior to being awarded and that contracts for these services shall be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable compensation.

N.J.S.A. 52:34-9.2. Definitions relative to contracting for certain professional services by State agencies

As used in this act:

"Agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality created by a principal department and any independent State authority, commission, instrumentality or agency, which is authorized by law to contract for professional architectural, engineering or land surveying services;

"Compensation" means the basis of payment by an agency for professional architectural, engineering or land surveying services;

"Professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional architectural, engineering, or land surveying services in this State;

"Professional architectural, engineering and land surveying services" means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, professional engineer or professional land surveyor in connection with his professional employment practice.

N.J.S.A. 52:34-9.3. Filing of current statement of qualifications, supporting data with agency; fee

A professional firm which wishes to be considered qualified to provide professional architectural, engineering, or land surveying services to an agency seeking to negotiate a contract or agreement for the performance of such services shall file or shall have filed with the agency a current statement of qualifications and supporting data. Such a statement may be filed at any time during a calendar year, and a \$ 100 fee shall be remitted to the State Treasurer by the professional firm at the time each statement is filed. The content of any such statement shall conform to such regulations with respect thereto as the State Treasurer, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410, shall promulgate. For the purposes of this section and section 5 of this act, no statement which shall have been filed more than two years prior to the publication of an advertisement pursuant to the provisions of section 4 of this act shall be deemed to be a current statement with respect to qualification of the firm which shall have filed the statement to provide professional architectural, engineering, or land surveying services under any contract or agreement of which notice is given through that advertisement.

A statement of qualifications and supporting data filed with an agency under this section shall be a public record for all purposes of P.L. 1963, c. 73.

The fee prescribed hereunder shall not apply to any statements filed before the effective date of P.L. 2003, c. 117.

N.J.S.A. 52:34-9.4. Public advertisement for proposals required

Notwithstanding the provisions of sections 2 through 4 of P.L. 1954, c. 48, a contract or agreement with an agency for the procurement of professional architectural, engineering, or land surveying services shall be publicly advertised prior to the solicitation of proposals or expressions of interest from interested firms. To the extent consistent with the purposes and provisions of this section, the advertisement shall conform to the requirements applicable under subsections (a) and (b) of section 7 of P.L. 1954, c. 48 or may be publicly advertised through electronic means. The advertisement shall include a statement of the criteria by which the agency seeking to procure those professional services shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services; this statement shall either set forth explicitly and in full the terms of those criteria or identify them by reference to the regulation or regulations in which those criteria shall have been promulgated as required by subsection c. of section 5 of this act. In addition, the advertisement shall include notice that professional firms wishing to be considered for selection as a potential provider of such services in connection with a proposed project must have submitted to the agency a current statement of qualifications and supporting data as prescribed in section 3 of this act.

N.J.S.A. 52:34-9.5. Filing of current statement of qualifications, supporting data necessary for awarding of contract, agreement

a. In the procurement of architectural, engineering and land surveying services, no agency shall make, negotiate, or award a contract or agreement for the performance of such services with or to any professional firm which has not filed with the agency a current statement of qualifications and supporting data as prescribed under section 3 of this act.

b. For each proposed project, an agency shall evaluate current statements of qualifications and supporting data on file with the agency. The agency may solicit proposals or expressions of interest unique to the specific project which would in narrative form outline design concepts and proposed methods of approach to the assignment. The agency shall select, in order of preference, based upon the criteria included in the advertisement required by section 4 of this act, at least three professional firms deemed to be the most highly qualified to provide the services required, except that the agency may select fewer professional firms if fewer such firms responded to the solicitation or meet the qualifications required for the project.

c. An agency which intends or expects to make, negotiate or award a contract or agreement for the procurement of professional architectural, engineering, or land surveying services shall, before publishing an advertisement of notice with respect to any such contract or agreement, have adopted by regulation and have promulgated, in accordance with the "Administrative Procedure Act," P.L. 1968, c. 410, the criteria by which it shall with respect to any such contract or agreement make the selection of qualified firms as prescribed by subsection b. of this section. The provisions of this subsection shall not be construed to require the adoption by an agency of regulations regarding the selection criteria to be applicable with respect to a particular contract if such regulations were previously promulgated and remain in effect with respect to such a contract.

N.J.S.A. 52:34-9.6. Submission of fee proposal

Once the top three or more ranked firms have been identified, each firm, at the request of the agency, shall submit a fee proposal. The firms shall not be told of their ranking position at that time. Using the three fee proposals to provide a general guideline, an agency shall negotiate a contract with the most technically qualified professional firm for architectural, engineering or land surveying services at compensation which the agency determines to be fair and reasonable to the State of New Jersey. In making this determination, the agency shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified at a fee the agency determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The agency shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the agency shall formally terminate negotiations. The agency shall then undertake negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

N.J.S.A. 52:34-9.7. Applicability of act restricted to contracts for services in excess of \$25,000; use of other procurement processes

Notwithstanding the provisions of section 2 of P.L. 1954, c. 48 to the contrary, the provisions of this act shall only apply to contracts for architectural, engineering and land surveying services in excess of \$ 25,000. Nothing in this act shall preclude a State agency from using procurement processes other than those prescribed herein if those processes have been approved by the federal government or other State statute or if an emergency has been declared by the chief executive officer of the agency.

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Classification of Contractors

N.J.S.A. 52:35-1. "Person" , "official" and "officer" defined

As used in this chapter:

"Person" means and includes any individual, copartnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

"Official" and "officer" mean and include any official, officer, board, commission, committee, department or other branch of the state government.

N.J.S.A. 52:35-2. Statement required from prospective bidders; contents; fee

Officials of the State shall require of all persons proposing to submit bids on public work to be furnished for or on behalf of the State or any officer, board, commission, committee, department or other branch of the State government, a statement under oath in response to a questionnaire, standardized for like classes of work, to be submitted to such persons by such State official. The statement shall develop fully the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and also such other pertinent and material facts as may seem desirable. All persons shall remit a \$ 100 fee to the State Treasurer at the time each statement is filed. The fee shall not apply to any statements filed before the effective date of P.L. 2003, c. 117.

N.J.S.A. 52:35-3. Bidders to be classified; notice

The state officials shall classify all such prospective bidders as to the character and amount of public work on which they shall be qualified to submit bids, and bids shall be accepted only from persons qualified in accordance with such classification. The classification shall be made and an immediate notice thereof shall be sent to the prospective bidder or bidders by registered mail within a period of eight days after the date of receipt of the statement in response to the questionnaire.

N.J.S.A. 52:35-4. Hearing before state official on classification of bidders; change of classification

Any person after being notified of his classification by a state official and being dissatisfied therewith or with the classification of other bidders, may request in writing a hearing before such state official, and may present such further evidence with respect to the financial responsibility, organization, plant and equipment, or experience of himself or other bidders as might tend to justify a different classification.

Where request is made for the change of classification of another bidder, the applicant shall notify such bidder by registered mail of the time and place of hearing, and at the hearing shall present to the state official satisfactory evidence to the effect that the notice was served as herein required, before any matters pertaining to a change of classification of such bidder shall be taken up by the state official.

After hearing the additional evidence, the state official may, in his discretion, by appropriate ruling, change or retain the classification of any bidder.

No change in classification to be effective for any public work, the letting of which has been duly advertised, shall be made unless a written request as aforesaid shall have been received at least twenty days preceding the final day for submission of bids.

All such requests for change in classification and notice of any action sent by registered mail to the parties directly affected thereby, must be acted upon by the state official concerned at least twelve days prior to the date fixed for the next opening of bids on any contract or contracts for which such persons might be qualified to bid as a result of such reclassification.

N.J.S.A. 52:35-7. Rejection of bid upon subsequent developments affecting bidder's responsibility

Nothing contained in this chapter shall be construed as depriving any state official of the right to reject a bidder at any time prior to the actual award of a contract, where there have been developments subsequent to the qualification and classification of such bidder, which in the opinion of the awarding official would affect the responsibility of the bidder. Before taking final action on any such bid, the state official concerned shall notify the bidder and give him an opportunity to present any additional information which might tend to substantiate the existing classification.

N.J.S.A. 52:35-8. Submission of statement required for bidder

No person shall be qualified to bid on any contract, who shall not have submitted a statement as required by R.S. 52:35-2 within a period of 24 months preceding the date of opening of bids for such contract.

N.J.S.A. 52:35-11. Regulations by state officials; when effective

State officials may establish such reasonable regulations as to them may seem appropriate for controlling the qualifications of prospective bidders. The regulations may fix the qualification requirements for bidders according to available capital and equipment, and with due regard to experience and records of past performance, but the qualification rating of any bidder shall not be influenced by his nationality or place of residence. No regulations of any state official for controlling the qualifications of bidders shall become effective until at least thirty days after the regulations shall have been formally adopted and published in not less than ten newspapers of this state.

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Award of Construction Contracts

N.J.S.A. 52:32-2. Separate plans, specifications for alteration, repair of public buildings

a. When the entire cost of the erection, construction, alteration or repair by the State of any public buildings in this State will exceed \$ 2,000.00, the person preparing the plans and specifications for such work may prepare separate plans and specifications for: (1) the plumbing and gas fitting and all work kindred thereto; (2) the steam and hot water heating and ventilating apparatus, steam power plants and all work kindred thereto; (3) electrical work; (4) structural steel and ornamental iron work; and (5) general construction, which shall include all other work and materials required for the completion of the project.

b. The board, body or person authorized by law to award contracts for such work shall advertise for, in the manner provided by law, and receive (1) separate bids for each of the branches of work specified in subsection a. of this section; or (2) bids for all the work and materials required to complete the project to be included in a single over-all contract, in which case there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials specified in branches (1) through (4) in subsection a. of this section, each of which subcontractors shall be qualified in accordance with chapter 35 of Title 52 of the Revised Statutes; or (3) both.

c. Contracts shall be awarded to the lowest responsible bidder in each branch of work in the case of separate bids and to the single lowest responsible bidder in the case of single bids. In the event that a contract is advertised in accordance with paragraph (3) of subsection b. of this section, the contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each such branch is less than the amount bid by the lowest responsible bidder for all of the work and materials, the board, body or person authorized to award contracts for such work shall award separate contracts for each of such branches to the lowest responsible bidder therefor, but if the sum total of the amount bid by the lowest responsible bidder for each such branch is not less than the amount bid by the lowest responsible bidder for all the work and materials, the board, body or person authorized to award the contract shall award a single over-all contract to the lowest responsible bidder for all of such work and materials.

In every case in which a contract is awarded under paragraph (2) or (3) of subsection b. of this section, all payments required to be made by the board, body or person awarding the contract under such contract for work and materials supplied by a subcontractor may, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor. Payments to a subcontractor for work and materials supplied in connection with the contract shall be made within 10 calendar days of the receipt of payment for that work or the delivery of those materials by the subcontractor in accordance with the provisions of P.L.1991, c.133, and any regulations promulgated thereunder.

N.J.S.A. 52:32-2.2. Historic buildings designated for purposes of special public contracts

a. The Legislature further finds that there are projects for the construction, renovation or restoration of public buildings that must employ construction management personnel, engineers, architects and contractors whose skills and expertise will identify, display and protect the historical, architectural, cultural and artistic significance of those public buildings; and that buildings of this nature have the highest priority in being constructed, renovated and restored in the most timely manner and with the highest managerial, professional and technical expertise when they house the seat of the State Government and are to provide for its continuous operation and when these buildings are some of the most architecturally or historically significant of the State's structures. The Legislature declares that the State House, the State House Annex and ancillary structures, the War Memorial, the Old Barracks, the Kelsey Building and the townhouses adjacent to the Kelsey Building are the buildings or constitute the project which are subject to the provisions of subsection b. of this section.

b. Notwithstanding the provisions of R.S. 52:32-2 and section 11 of P.L.1981, c.120 to the contrary, in the case of the erection, construction, alteration or repair of the State House, State House Annex and ancillary structures, the War Memorial, the Old Barracks, the Kelsey Building and the townhouses adjacent to the Kelsey Building, as public buildings or a project of the New Jersey Building Authority, if the board, body or person authorized by law to award contracts for the work on the public building, or the authority for the work on the project, finds that such a building or project:

(1) requires a unique application of specialized planning, management and operational strategies, skills and techniques;

(2) requires that construction management personnel, engineers, architects and contractors whose skills and expertise will best identify, display and protect the historical, architectural, cultural and artistic significance of the building or project be employed for its planning, design and construction, renovation or restoration; and

(3) must be completed in the most efficient and timely manner, then the board, body or person authorized by law to award the contracts, or the authority, may (a) by advertising and receiving bids in the form of a single contract, multiple branch contracts, or both, award the contract to the lowest responsible bidder or bidders, as determined by the board, body, person, or authority; or (b) in order to further the purposes of this section, by inviting bids for the single contract, multiple branch contracts, or both, from among a list of qualified bidders, in a manner that will promote full and free competition whenever practicable, award the contract or contracts to that responsible bidder from among the invited bidders whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered.

N.J.S.A. 52:32-2.3. Correctional facilities

a. The Legislature further finds that the "Correctional Facilities Construction Bond Act of 1987" provides for projects for the construction of correctional facilities that are required because of a critical public need or legal constraint, with respect to which there are similar needs to employ construction management personnel, engineers, architects and contractors of special skills and expertise; and that these projects will provide for buildings for the immediate housing or care of their residents or inmates.

b. Notwithstanding the provisions of R.S. 52:32-2 and section 11 of P.L. 1981, c. 120 to the contrary, in the case of the erection or construction of a public building or project of the New Jersey Building Authority, if the board, body or person authorized by law to award contracts for the work on the public building, or the authority for the work on the project, finds that such building or project:

(1) requires a unique application of specialized planning, management and operational strategies, skills and techniques; and

(2) requires that construction management personnel, engineers, architects and contractors whose skills and expertise will ensure the completion of the building or project in the most efficient and timely manner be employed for its planning, design and construction; then the board, body or person authorized by law to award the contracts, or the authority, may, by advertising and receiving bids in the form of a single contract, multiple branch contracts, or both, award the contract to the lowest responsible bidder or bidders, as determined by the board, body, person, or authority. There shall be set forth in the bid the name or names of, and evidence of performance security from, all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with Title 52 of the Revised Statutes.

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Energy Savings Improvement Projects

N.J.S.A. 52:34-25 Implementation of energy savings improvement program by State contracting agency; definitions

a. (1) A State contracting agency, as defined in this section, may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a contracting agency may enter into an energy savings services contract with an energy services company to implement the program or the contracting agency may authorize separate contracts to implement the program. The provisions of Title 52 of the Revised Statutes shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A State contracting agency facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or (ii) an analysis within an approved proposal, or the State contracting agency, at the time of the award of the proposal, demonstrates that there is an economic advantage to the State contracting agency implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A State contracting agency may determine to enter into an energy savings services contract through public advertising for bids and the receipt of bids therefor.

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of electrical work shall use only electrical contractors licensed by the State, pursuant to P.L.1962, c.162, to perform electrical work under an energy savings improvement program. Electrical work shall include, but not be limited to, the wiring of temperature and energy management controls, the installation of control systems, and the retrofitting of any lighting equipment.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified

pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to subparagraph (b) of this paragraph. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan, the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) Notwithstanding any other law or regulation to the contrary, an energy services company shall select, in accordance with the procedures and requirements set forth pursuant to the public bidding process of the State contracting agency, only those subcontractors that have been pre-qualified by the Division of Property Management and Construction as eligible to submit bids. In pre-qualifying subcontractors for eligibility, the division shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an energy savings improvement program. The pre-qualification pools shall include subcontractors having the following qualifications:

- (i) the financial means and ability to complete the required work;
- (ii) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and
- (iii) a record of experience conducting similar work in a timely fashion.

Each subcontractor chosen by the energy services company shall certify that all employees have completed a registered apprenticeship program that provided each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, registered by the Office of Apprenticeship of the United States Department of Labor and meeting the standards established by the office, or registered by a State apprenticeship agency recognized by the office. The energy services company shall then select from the eligible pools of prequalified subcontractors. All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150. All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238. Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a State contracting agency may designate or appoint an employee of the State contracting agency with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the State contracting agency.

(4) A subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

c. In addition to existing authorization of a State agency to enter into lease-purchase agreements or to issue obligations to finance the costs of an energy savings improvement program, a contracting agency is hereby authorized to finance the costs of an energy savings improvement program by entering into a lease purchase agreement. Any financing mechanism shall be administered in a manner consistent with this subsection insofar as it does not conflict with the provisions of other law that applies to the contracting agency.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a State contracting agency and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting agency or the client agency responsible for the facility when all lease payments have been made. Notwithstanding the

provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23, or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Maturity schedules of lease-purchase agreements shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the contracting agency or by a qualified independent third party retained by the contracting agency for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a contracting agency shall develop an energy savings plan that consists of one or more energy conservation measures. The plan shall:

(a) contain the results of an energy audit;

(b) describe the energy conservation measures that will comprise the program;

(c) estimate greenhouse gas reductions resulting from those energy savings;

(d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;

(e) include an assessment of risks involved in the successful implementation of the plan;

(f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;

(g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;

(h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and

(i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee. All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the contracting agency shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the contracting agency maintains its own website, it shall also post the plan on that site. The Board of Public Utilities may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the State contracting agency who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23, or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the State contracting agency then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a State contracting agency that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the State contracting agency.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the contracting agency the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by the contracting agency, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the contracting agency for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a State contracting agency to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c.23, on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects,

and for up to 20 years for a combined heat and power facility after construction completion. If a State contracting agency shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a State contracting agency to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150;

"State contracting agency" or "contracting agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality created by a principal department; and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The State Treasurer and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The State Treasurer and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410, as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 to the contrary, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410

N.J.S.A. 52:34-25.1. State contracting agency, competitive selection process

a. Notwithstanding the provisions to the contrary of R.S.52:32-2 or any other law, or any rule or regulation adopted pursuant thereto, where a State contracting agency implements an energy savings improvement program pursuant to section 9 of P.L.2009, c.4, the State contracting agency, prior to entering into an energy savings services contract, shall use a competitive selection process that ensures that the award is made to the responsible bidder whose proposal is determined to be the most advantageous to the State.

b. Nothing in this section shall preclude a State contracting agency from using procurement processes other than those prescribed herein and in section 9 of P.L.2009, c.4, if those processes have been approved by the federal government under section 801 of the "National Energy Conservation Policy Act".

c. The Division of Property Management and Construction in the Department of the Treasury shall not charge any fee for the review or approval of an energy savings improvement program implemented by a State contracting agency pursuant to section 9 of P.L.2009, c.4 (C).

