

SUBCHAPTER 41B – GUARANTEED ENERGY SAVINGS CONTRACTS

SECTION .0100 – GENERAL PROVISIONS

01 NCAC 41B .0101 RESPONSIBILITY

History Note: Authority G.S. 143-64.17A(c1); 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.

01 NCAC 41B .0102 SCOPE

This Subchapter shall apply to State governmental units engaging in guaranteed energy savings contracts.

History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A (c1);
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0103 RULE MAKING AUTHORITY

History Note: Authority G.S. 143-64.17A(c1); 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.

01 NCAC 41B .0104 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) Terms used herein that are defined in G.S. 143-64.17 shall have the same definitions as in G.S. 143-64.17.
- (2) "Agency." A North Carolina State governmental unit that is soliciting, through a Request for Proposals (RFP), to enter into a guaranteed energy savings contract.
- (3) "Annual reconciliation statement." A report disclosing shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during each 12 month term commencing from the time that the energy conservation measures became fully operational.
- (4) "Contract." A guaranteed energy savings contract.
- (5) "Offer." The response to an RFP means the same as "bid" or "proposal."
- (6) "Investment grade audit" or "investment grade analysis." A cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes.
- (7) "Life-cycle cost analysis." A method for estimating the total cost of an energy-using component or building over its useful life, including cost factors such as purchase price, or construction, renovation, or leasing costs, energy use, maintenance, interest, and inflation.
- (8) "Measurement and verification review." An examination of energy measures installed under each contract, using methodology to measure the operation of energy-using systems before and after change, to verify the performance and savings of the installed equipment.
- (9) "Qualified provider." A person, business, or organization experienced in the design, implementation, and installation of energy conservation measures and determined by the administering and contracting agencies to have the capability in all respects to fully perform the contract requirements.

History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A(c1);
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0200 – RESERVED FOR FUTURE CODIFICATION

SECTION .0300 – SOLICITATIONS

01 NCAC 41B .0301 NORTH CAROLINA PRODUCTS

A preference for North Carolina products and services provided by North Carolina residents pursuant to G.S. 143-59 shall apply to Guaranteed Energy Savings Contracts.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0302 SOLICITATION DOCUMENTS

- (a) Agencies shall solicit for guaranteed energy savings contracts through a Request for Proposal (RFP).
- (b) Agencies may use the RFP template available from the State Energy Office at MSC 1340, Raleigh, NC 27699-1340.
- (c) Solicitation documents shall include a Treasurer's estimated cost of financing.
- (d) Solicitation documents may allow for qualified provider or third party financing.
- (e) Solicitation documents may include a copy of the Facilities Condition Assessment Program (FCAP) report covering part or all of the facilities subject to the solicitation.
- (f) Solicitation documents shall state the evaluation criteria specified by G.S. 143-64.17A (b) and (d) as well as those in this Chapter. The documents shall also state the criteria weighting defined by the agency for each particular project. Weighting may change from one RFP to another RFP from an agency based upon the particular needs of that agency.
- (g) Solicitation documents shall stipulate that employee or time savings cannot be included in the offer unless a position is eliminated as a result of contract implementation.
- (h) Solicitation documents shall stipulate that the qualified provider is responsible for all costs incurred in preparing the initial proposal.
- (i) Solicitation documents shall stipulate that the contractor cannot include costs or allowances for contingencies in the contract.
- (j) Solicitation documents may include a three-year history of usage and billing for all utilities for the facilities subject to the proposal.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0303 TREASURER'S COST ESTIMATE OF FINANCING

Agencies shall obtain an estimate of financing cost from the Director of Debt Management, Office of the Treasurer. This estimate shall not be binding upon the State and is subject to change by the Office of the Treasurer. The Office of the Treasurer may reject any potential contract if the actual cost of financing has exceeded the estimated cost of financing when the contract is submitted to the Office of the Treasurer for approval.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0304 GENERAL FUND PREFERENCE

- (a) The agency shall give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources. This preference shall be stipulated in the solicitation documents.

(b) Solicitation documents shall include, when feasible, a breakdown of the source of funds for energy costs and shall direct the vendors to break down savings by source of funds if the aforementioned information is included in the solicitation document.

(c) The Council of State may give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0305 PROHIBITION ON FEDERAL FUNDS

The agency shall not solicit proposals for projects that include payment from federal funds unless the agency has obtained, and includes in both the solicitation and contract, documentation from the Federal Government or the Office of State Controller stating that the use of federal funds for payment of the contract is authorized.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0306 ADVERTISEMENT REQUIREMENTS

In addition to advertising requirements stated in G.S. 143-64.17A(a), agencies shall send a copy to the State Energy Office at MSC 1340, Raleigh, NC 27699 and shall include in the notification instructions on how to obtain the complete solicitation.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0307 CONFERENCES/SITE VISITS

Agencies may conduct vendor conferences and site visits before the Request for Proposals closing date.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0400 - PRECERTIFICATION OF PROVIDERS

01 NCAC 41B .0401 INFORMATION REQUIRED FOR PRECERTIFICATION

Organizations may establish capability to provide services under performance contracts with state agencies by providing the following information to the State Energy Office:

- (1) past experience with energy performance contracting with a minimum of three years operation and completed installation of a minimum of three projects;
- (2) performance contracting experience and resumes of individuals expected to work on North Carolina projects including a minimum of one professional engineer licensed in North Carolina;
- (3) summary information, with client contact information, on all performance contracting projects in North Carolina during the previous five years listing only completed projects with at least one year in repayment;

- (4) summary information, with client contact information, on all performance contracts with any state government agencies in the United States with a maximum of five projects for each of the previous five years;
- (5) summary information, with client contact information, on any performance contracting projects which resulted in the company paying energy costs to clients;
- (6) summary of the history and operation of the business and organization, including volume, bonding capacity and type of clients; and
- (7) financial statements of the performance contracting organization and (if applicable) parent company for the previous two years.

*History Note: Authority G.S. 143-64.17F;
 Temporary Adoption Eff. August 1, 2003;
 Temporary Adoption Expires April 27, 2004;
 Eff. August 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0402 PRECERTIFICATION EVALUATION

Organizations shall present information required for precertification to the State Energy Office with a request for consideration for inclusion as a precertified entity. The State Energy Office shall offer a precertification period for providers at three-year intervals.

*History Note: Authority G.S. 143-64.17F;
 Temporary Adoption Eff. August 1, 2003;
 Temporary Adoption Expires April 27, 2004;
 Eff. August 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0403 CONTESTING PRECERTIFICATION

(a) If the State Energy Office denies an organization's request for precertification, a written appeal from the organization may be provided by the organization within 60 days after date of notification of the denial. A letter appealing the decision may be filed with:

Director, State Energy Office
 North Carolina Department of Administration
 1830A Tillery Place MSC 1340
 Raleigh, North Carolina 27699-1340

(b) In the event that an organization wishes to contest the case further, contested case hearings are available as provided in G.S. 150B, and petitions for contested case hearings shall be filed in accordance with the provisions of that Chapter.

*History Note: Authority G.S. 143-64.17F;
 Temporary Adoption Eff. August 1, 2003;
 Temporary Adoption Expired April 27, 2004;
 Eff. July 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0404 PUBLISHED LIST OF PRECERTIFIED ENTITIES

Organizations precertified by the State Energy Office to provide services under performance contracts may be included on a list available on the Website of the State Energy Office at <http://www.energync.net>.

*History Note: Authority G.S. 143-64.17F;
 Temporary Adoption Eff. August 1, 2003;
 Temporary Adoption Expired April 27, 2004;
 Eff. July 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0405 PRECERTIFIED ENTITY RESTRICTION

Only precertified organizations may enter into a performance contract with a state governmental agency.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0500 - EVALUATION, SELECTION, AND AWARD

01 NCAC 41B .0501 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of agency personnel. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0502 EXTENSION OF ACCEPTANCE TIME

Companies may be requested to extend the time offered for the acceptance of offers.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0503 ERROR/CLARIFICATION

When an offer contains an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the request for response document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0504 BASIS FOR REJECTION

In soliciting offers, any and all offers received may be rejected. Bases for rejection shall include, but are not limited to, the offer being deemed unsatisfactory as to the quantity, quality, delivery, price or service offered; the offer not complying with conditions in the RFP or with the intent of the proposed contract; lack of competitiveness by reason of collusion; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; or any determination that rejection would be to the best interest of the state.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;

Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0505 PUBLIC RECORD

Action in rejecting offers shall be made a matter of record.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0506 RECIPROCAL PREFERENCE

(a) 01 NCAC 05B .1522(a), (b), (c), (d), and (g) shall apply to this Subchapter.

(b) If the use of the reciprocal preference changes which bidder is the low bidder, the agency may waive the use of the reciprocal preference, after consultation with the Council of State, and after taking into consideration such factors as, competition, price, product origination, and available resources.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0507 PROPOSAL EVALUATION

(a) Evaluation criteria shall include those specified by G.S. 143-64.17A(b) and (d).

(b) Evaluation criteria for the proposal shall also include the following:

- (1) Life cycle cost analysis as defined in G.S. 143-64.15.
- (2) Certification by a registered engineer that the measurement and verification protocol presented in the proposal is capable of measuring actual or projected savings.
- (3) A process of annual third party measurement and verification of savings in accordance with the pre-defined and certified protocol found in 01 NCAC 41B .0510. The cost of this process shall be included in the total cost of the contract.
- (4) The total cost based on Office of Treasurer cost of financing estimate and cost based on Qualified Provider or third party financing in the response.

History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0508 PRE-AWARD REPORTS

Before the award of a guaranteed energy savings contract, the qualified provider shall provide a report, as part of its proposal, which shall be available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy or operating costs will be reduced.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0509 TABULATIONS AND ABSTRACTS

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.*

01 NCAC 41B .0510 MEASUREMENT AND VERIFICATION

Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Energy Savings Performance Contracting," the "International Performance Measurement and Verification Protocol," or "ASHRAE 14-2002." If due to existing data limitations or the nonconformance of specific project characteristics, none of the measurement and verification methodologies listed above is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three and mutually agreeable with the agency.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0511 CONTRACT EXECUTION

Contract execution by the successful companies shall occur upon contract award and before the agency sends the documents to the Office of State Budget and Management. Contracts shall stipulate that the execution is contingent upon approval and financing. Upon execution, the agency shall forward the documents to the Capital Improvement Section of the Office of State Budget and Management with a copy to the Director of the State Energy Office.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0600 – RESERVED FOR FUTURE CODIFICATION

SECTION .0700 – APPROVAL

01 NCAC 41B .0701 OFFICE OF STATE BUDGET AND MANAGEMENT CERTIFICATION

The Office of State Budget and Management (OSBM) shall certify, within 10 business days of receipt, expected availability of resources and set up appropriate reserve accounts or other accounting procedures to transfer funds from the agency to the Office of the Treasurer for payment. Upon certification, the OSBM shall forward the documentation to the Office of the Treasurer's Director of Debt Management.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0702 OFFICE OF THE TREASURER APPROVAL

The Office of the Treasurer shall, within 10 business days of receipt, review the documentation and select the desired financing option. Upon review and selection, the Treasurer shall forward the documentation to the Secretary of the Department of Administration.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;*

Eff. July 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0800 – RESERVED FOR FUTURE CODIFICATION

SECTION .0900 - POST-APPROVAL PROCEDURES

01 NCAC 41B .0901 ANNUAL REPORTS AND INSPECTIONS

(a) The State Energy Office may inspect any and all documentation and facilities it deems appropriate at the agency to determine the effectiveness of the guaranteed energy savings contract and to provide information to the Council of State and the General Assembly on the effectiveness of the contract.

(b) Agencies failing to provide documentation to the State Energy Office as requested, shall be reported to the Council of State and shall be prohibited from engaging in further energy savings contracts until the deficient documentation is provided to the State Energy Office.

(c) Requested information, by definition, includes timely submission of the "Annual Report of Savings Report" available from the State Energy Office at 1340 MSC, Raleigh, NC 27699-1340.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;*

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.