

PROCUREMENT SOLICITATION DOCUMENT



The Interlocal Purchasing System (TIPS)

A Cooperative Purchasing Program available for membership by Government and Other Entities in all fifty states.

Lead Agency



Region 8 Education Service Center

4845 US Hwy. 271 North, Pittsburg, Texas 75686 - Toll-free (866) 839-8477

www.tips-usa.com

E-mail: bids@tips-usa.com

NOTICE TO PROPOSERS

**DEADLINE DATE FOR ALL PROPOSALS TO BE RECEIVED ELECTRONICALLY
or otherwise is:**

February 17, 2017 at 3:00 P.M. Local Time

The solicitation documents may be found at <https://tips.ionwave.net>

If a problem is encountered accessing the solicitation, please contact TIPS at the address or phone listed above for help.

This solicitation is a Request for Qualifications (RFQ) method provided in the Texas Government Code §2254.004 and as specified in the Texas Education Code § 44.901 and Texas Local Government Code § 302 for the category:

RFQ 170103 Energy Savings Performance Contracts

Energy Savings Performance Contracts are defined in the section entitled “Specifications” provided herein for both Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901, as applicable.

NOTICE: The use of the terms Solicitation, Bid, Request for Proposals, RFP, Request for Competitive Sealed Proposals, RCSP, or other specific terms may not be accurate in legal terminology and should be construed to mean the method of competitive procurement listed above with the legal citation of the source of the procurement method. Example: “This Solicitation is a Request for Proposals as permitted in the Texas Education Code Section 44.031”.

General Information

FINANCING OF TIPS

TIPS Vendor Paid Fee for RFQ 170103 Energy Savings Performance Contracts

The total cost of the TIPS program, in most cases, is primarily funded through an administration fee paid to TIPS by the awarded contractors. The fee is based on actual vendor project sales. Vendor will pay the fee on the actual invoiced and paid sales to TIPS members. Fees are not assessed to vendors for shipping cost, required bond cost, or any taxes that may be applicable.

TIPS establishes a fee for each solicitation for proposals that is in the best interest of TIPS and its members.

The fee schedule for agreements awarded under solicitation is 1% of the value of the contract paid by TIPS member.

Term of Agreement and Renewals

The initial term of the agreement is one year. Awarded agreements may be renewed on the annual agreement award date for four additional consecutive one year terms if sales have been successfully reported to TIPS and if both parties agree. THIS CLAUSE CONTROLS OVER ANY OTHER TERM IN ANY OTHER PART OF THIS SOLICITATION. TIPS reserved the right to solicit proposals at any time it is in the best interest of TIPS and/or its members.

Vendor Questions

Questions about the specific SOLICITATION shall be submitted to bids@tips-usa.com with the following in the subject line: "SOLICITATION NAME #xxxxxx contractor question". Questions of a ministerial nature will be answered without an addendum, but questions of a substantive nature that are not addressed in the SOLICITATION or deemed relevant to the process by TIPS will be addressed by properly posted addendum. **QUESTIONS WILL BE RECEIVED UNTIL February 2, 2017 AT NOON Local Time.**

Pre-Bid Meeting (Not Mandatory)

Where: Region 8 Education Service Center
4845 U.S. Highway 271 North, Pittsburg, Texas 75686
TIPS Board Room
Date: January 19, 2017 Time: 9:00 AM Local Time
Agenda: TIPS Overview
TIPS eBid System
SOLICITATION Overview
Questions and Answers
Tour of TIPS Facility

ANTICIPATED SCHEDULE OF AWARD OR RELATED EVENT:

Posting Date	January 5, 2017
Proposal available before end of day	January 5, 2017 through February 17, 2017 at 3:00 PM Local Time
Pre-Bid Meeting	January 19, 2017 at 9:00 AM Local Time
Proposal Deadline	February 17, 2017 at 3:00 PM Local Time
Proposal Opening	February 17, 2017 at 3:00 PM Local Time
Proposals Review/Scoring	February 17, 2017 to March 15, 2017
Proposals Award	March 23, 2017
Award Notifications	Begin posting to TIPS Website March 24, 2017
	Contractor may call for results after March 27, 2017
	Award letters will be made available online.
	Non-Award letters will be mailed to contractors with No Awards.

Proposal Submission and Evaluation

Proposers must provide all forms and references required and submit a proposal that describes how the proposer is qualified to provide Energy Savings Performance Contracts to TIPS members in the manner described in the Specifications section below.

Proposals may include all relevant information about the proposer that illustrates the proposer's ability to provide Energy Savings Performance Contract supplies and services, including but not limited to:

- 1. References: please provide references that have entered into an Energy Savings Performance Contract with the proposer. 15 points**
 - i. Ability to successfully complete projects on time and to customer satisfaction.
- 2. Past Experience with TIPS. 10 points**
- 3. Project Management. 10 points**
 - a. Comprehensiveness and rationale of project management plan, based on :
 - i. Approach to project management, including staffing and contractor-oversight
 - ii. Ability to successfully complete projects on time and to customer satisfaction.
 - b. Method employed to establish baseline energy use in individual buildings and facility-wide
 - c. Method of measurement and verification used to demonstrate energy use reduction and cost savings as guaranteed
- 4. Successful experience in the field of Energy Savings Performance Contracts. 40 points**
 - a. Business unit dedicated to providing guaranteed energy savings programs.
 - b. Business unit dedicated to ensuring project performance.
 - c. Affiliation with energy and/or business organizations (including ISO certification and EPA or DOE affiliations.
- 5. Staffing/Personnel. 10 points**
 - a. Quality of personnel assigned to projects and degree of pertinent experience.
- 6. Financial strength. 5 points**
 - a. Financial viability of entity proposed to provide technical and financial guarantees
 - b. Financing capability and lines of credit

- c. Financial Statements (preferably audited)

7. Bonding Capacity. 10 points

- a. Demonstrable ability to bond savings through third party surety.

Proposer may include other relevant information for TIPS to consider.

Proposer must score at least 80 points for award.

Specifications

This purpose of this Request for Qualifications is to identify and award agreements to highly qualified vendors capable of entering into Energy Savings Performance Contracts with TIPS members.

Energy Savings Performance Contracts are governed by two sections of Texas Statutes, Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901, depending on the TIPS member’s type of governmental entity.

The aforementioned statutes specify that Energy Savings Performance Contracts must be procured according to TEXAS GOVERNMENT CODE §2254.004 methods. TEXAS GOVERNMENT CODE §2254.004 title description is listed as “CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR”. This can be misleading because entities may not engage architect and engineer services through a cooperative contract such as this. However, the controlling statues below only specify that the procurement methodology provided in TEXAS GOVERNMENT CODE §2254.004 be used for the procurement of Energy Savings Performance Contracts.

NO PRICING IS SOLICITED OR PERMITTED TO BE PROPOSED FOR THIS RFQ PURSUANT TO TEXAS GOVERNMENT CODE §2254.004. THIS IS A REQUEST FOR QUALIFICATONS ONLY.

NOTE: TIPS members are under no obligation to negotiate exclusively with TIPS awarded providers of Energy Savings Performance Contracts.

TEXAS GOVERNMENT CODE Sec. 2254.004 provides the following methodology. TIPS is identifying highly qualified providers of Energy Savings Performance Contracts for TIPS members to consider, rank and negotiate with according to the rules below.

In procuring an Energy Savings Performance Contract Provider the Tips member may consider any awarded TIPS provider under this RFQ. The TIPS members will then determine from the list of TIPS awarded Energy Savings Performance Contract providers which vendor is the most highly qualified for the Member’s purposes as provided below in section. The TIPS member will

then attempt to negotiate with the most highly qualified provider, as determined by the TIPS Member, a contract at a fair and reasonable price as provided below in section.

If the TIPS member cannot negotiate a satisfactory contract with the most highly rated provider, then the entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

The entity shall continue the process described to select and negotiate with providers until a contract is entered into or the TIPS member determines it no longer desires to enter into a Energy Savings Performance Contract.

The Statutes are included below to specifically describe what types of Energy Savings Performance Contracts are permitted and how they are defined specifically. TIPS has members that are defined in both sections of the law and the definitions for each type are provided in the statutes below. Energy Savings Performance Contracts entered into by the awarded vendors and the TIPS members pursuant to this RFQ, shall comply with the requirements specified in the following statutes depending on the applicable TIPS member entity classifications and which statute would apply to the TIPS member as if they were a Texas entity, if they are located in another state.

Example #1: A public PK-12 school or a community college in Texas or a state other than Texas would follow the Texas Education Code statute in determining what is permissible under the statute.

Example#2: A municipality or county government in Texas or a state other than Texas would follow the Texas Local Government Code statute in determining what is permissible under the statute.

Controlling Codes:

**TEXAS EDUCATION CODE
ENERGY SAVINGS PERFORMANCE CONTRACTS
SUBCHAPTER Z. MISCELLANEOUS PROVISIONS**

Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing school

facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

- (1) insulation of a building structure and systems within the building;
- (2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
- (14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
- (15) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1347, Sec. 5, eff. June 19, 2009.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations.

Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#), Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(f-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the school district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(g) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance contract exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from

the measures, as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(i) Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) Chapter [2269](#), Government Code, does not apply to this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1142, Sec. 1, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 1, 2, 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 5, 121(1), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. [12](#)), Sec. 3.03, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. [300](#)), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(6), eff. September 1, 2013.

LOCAL GOVERNMENT CODE

TITLE 9. PUBLIC BUILDINGS AND GROUNDS

SUBTITLE C. PUBLIC BUILDING PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS FOR LOCAL GOVERNMENTS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that may be based on historical costs, revenues, accuracy, or related components and used for determining:

(A) the costs for energy or water usage by a local government and related net operating costs;

(B) the billable revenues from providing energy, water, or other utilities to users; or

(C) the efficiency or accuracy of metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(A) the installation or implementation of any of the items, equipment, modifications, alterations, improvements, systems, and other measures described by Subdivision (4) that are intended to provide:

(i) estimated energy savings;

(ii) an estimated increase in billable revenues; or

(iii) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, other utility costs, or related net operating costs from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(4) "Energy savings performance contract" means a contract between a local government and a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

(A) insulation of a building structure and systems within the building;

(B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(C) automatic energy control systems, including computer software and technical data licenses;

(D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(E) lighting fixtures that increase energy efficiency;

(F) energy recovery systems;

(G) electric systems improvements;

(H) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(I) water-conserving landscape irrigation equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces;

and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems;

(O) alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;

(P) programs resulting in utility cost savings; or

(Q) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(5) "Guarantee" means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at

least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) "Local government" means a county, municipality, or other political subdivision of this state. The term does not include a school district authorized to enter into an energy savings performance contract under Section [44.901](#), Education Code.

(9) "Meter guarantee" means a guarantee of a stipulated or agreed upon increase in billable revenues to result from the estimated increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in an energy savings performance contract.

(9-a) "Pilot program" means a pilot program operated by the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station, in consultation with the Texas Facilities Commission and the State Energy Conservation Office, that:

(A) establishes and implements energy efficiency improvements to state-owned buildings maintained by the commission;

(B) generates savings in utility costs resulting from the improvements resulting in at least a 30 percent annual return on the costs of the improvements;

(C) provides for the participation of not fewer than two companies selected by the commission; and

(D) provides for any money attributable to utility cost savings resulting from the pilot program to be appropriated only to the commission.

(10) "Provider" means an entity in the business of designing, implementing, and installing of energy or water conservation or usage measures or an affiliate of such an entity.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 78, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 4, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1021 (H.B. [1184](#)), Sec. 1, eff. June 19, 2015.

Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) The governing body of a local government may enter into an energy savings performance contract in accordance with this chapter.

(b) Each energy or water conservation or usage measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section [302.001](#), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 79, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 5, eff. June 16, 2007.

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law, before entering into an energy savings performance contract, the governing body of the local government shall require the provider of the energy or water conservation or usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#), Government Code. The governing body may also require a separate bond to cover the value of the guarantee.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 80, 121(23), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 6, eff. June 16, 2007.

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a) An energy savings performance contract may be financed:

- (1) under a lease-purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;
- (2) with the proceeds of bonds; or
- (3) under a contract with the provider of the energy or water conservation or usage measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(a-1) Notwithstanding other law, the governing body of a local government may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the governing body is not required to pay for such costs solely out of the savings realized by the local government under an energy savings performance contract. The governing body may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(b) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee. If the term of the contract exceeds one year, the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy and water savings, the net operating cost savings, and the stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy, divided by the number of years in the contract term.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 1999, 76th Leg., ch. 361, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 81, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 7, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 6, eff. September 1, 2011.

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) An energy savings performance contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before entering into an energy savings performance contract, the governing body must require that the energy savings, increase in billable revenues, or increase in meter accuracy estimated or projected by a provider be reviewed by a licensed professional engineer who:

- (1) has a minimum of three years of experience in energy calculation and review;
- (2) is not an officer or employee of a provider for the contract under review; and
- (3) is not otherwise associated with the contract.

(c) In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 7; Acts 2003, 78th Leg., ch. 1276, Sec. 12.005, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 82, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 8, eff. June 16, 2007.

Sec. 302.006. METER GUARANTEES. (a) This section applies to any energy savings performance contract that:

- (1) provides for any metering or related equipment, system, or process or procedure; and
- (2) includes a meter guarantee by the provider, regardless of whether the meter guarantee is a part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work.

(b) Not later than the fifth anniversary of the effective date of an energy savings performance contract, an engineer shall test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate the actual average accuracy and shall compare the actual average accuracy to the baseline average accuracy of those tested meters.

(c) A meter guarantee applies if the engineer reports to the local government and the provider that the average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of the tested meters as of the testing date.

(d) The amount payable under the meter guarantee must be determined for each year subject to the engineer's report and is equal to the difference between:

- (1) the agreed increase in billable revenues based on the estimated accuracy of all of the meters for each year, according to the energy savings performance contract; and
- (2) the revenues for the same year that would result from applying the engineer's reported actual average accuracy of the tested meters to all of the meters subject to the energy savings performance contract, using the same contract components that were used to calculate the agreed increase in billable revenues for that year, assuming the annual decrease in actual average accuracy of all the meters was a pro rata percentage of the reported total decrease in actual average accuracy.

(e) Notwithstanding Subsection (d), if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, the amount payable under the meter guarantee for any year during the measurement period is reduced or offset by the difference between:

- (1) the sum of the energy savings and the increase in billable revenues resulting from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period; and

(2) the guaranteed amount of the energy savings and the increase in billable revenues from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period.

(f) A test conducted under this section must be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(g) An engineer conducting a test under this section shall:

(1) verify that the tested meters have been properly maintained and are operating properly;
and

(2) comply with Section [302.005\(c\)](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 9, eff. June 16, 2007.

Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter [2269](#), Government Code, does not apply to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.04, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(25), eff. September 1, 2013.

About TIPS

TIPS agreements are available for use by all schools, colleges, universities, cities, counties and other government entities in all fifty states if permitted by the jurisdictions of the governmental entities.

It is the purpose of this SOLICITATION to establish awarded vendor agreements to satisfy the procurement needs of participating member entities in this particular commodity category. These awarded agreements will enable member entities to purchase on an “as needed” basis from competitively awarded agreements with high performance vendors. Proposers are requested to submit a proposal for offering their line of available products that are commonly purchased by government agencies, cities, counties and educational entities.

- Awards will be made to the successful proposer(s) for the products and/or services. (Unless proposer has submitted inappropriate items for the commodity category. Those items will not be awarded. Example: a software company may not propose to perform construction work)
- TIPS reserves the right to award multiple vendors for each solicitation.
- This proposal is requested for the benefit of the current list of members and other new members as they execute TIPS membership Agreements in the future. Member List: <http://www.tips-usa.com/assets/documents/docs/membership.pdf>
- TIPS reserves the right to extend the proposal deadline for any reason.
- TIPS reserves the right to make changes to this Solicitation by way of one or more posted addenda.

Benefits of TIPS

- Provide government entities opportunities for greater efficiency and economy in acquiring goods and services through competitively procured vendor agreements.
- Provide comprehensive purchasing practices according the Laws of the State of Texas and Federal Regulation 2 CFR part 200, when appropriate, and is designed to result in competitive agreements that meet a wide variety of needs.
- Provide competitively priced purchasing options for multiple government entities that yields economic benefits usually unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services by entering into pricing agreements with “high performance” vendors.
- Equalized purchasing power for smaller entities.
- Maintain credibility and confidence in business procedures by maintaining free, full and open competition for purchases and by complying with purchasing laws and ethical business practices.
- Provide document retention for competitive procurement process for all TIPS Awarded Agreements.

Customer Service

- TIPS staff is available to members for assistance in viewing/contacting awarded vendors for categories to make purchases and agreement decisions.
- TIPS provides a way for government entities to avoid the time and expense of seeking competition for purchases on an agency-by-agency basis.
- TIPS enables vendors to become more efficient and competitive by reducing the number of proposals that require responses to be made to individual entities.

Purchasing Procedures

- Agreements are established through free, full and open competition as described by the laws of the State of Texas and are available for piggy-back by other government entities anywhere in the United States, subject to each entities' jurisdictional law and regulation. Purchase orders or equivalent are issued by participating governmental entities directly to the Vendor or vendor assigned dealer. Purchase orders or equivalent are usually sent to the TIPS office where they are reviewed by the TIPS staff and forwarded to the Vendor within one working day. In some instances, the entity may send the purchase orders or equivalent directly to the vendor and report the purchase to TIPS.
- [NOTE: It is always the vendor's responsibility under the TIPS agreement to report all sales under the agreement to TIPS.](#)
- Vendors deliver goods/services directly to the participating member agency and then invoice the participating member agency. The Vendor receives payment directly from the participating member agency.

Notice of Confidentiality of Proposed Information

The proposal submitted and all information therein is available to TIPS members. Also, according to the Texas Public Information Act, any documents or information held by TIPS "may" be public information. In the documents for the proposer to complete is a declaration form entitled "CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552" that must be completed by the proposer that designates specified pages as confidential or waives confidentiality of the entire proposal.

Proposal Instructions

1. Electronically sealed proposals are the preferred and most accurate method and is highly encouraged through our online procurement software, ION Wave.
2. Proposals may be amended at any time prior to the due date and time. ION wave permits you to withdraw and resubmit your proposal.
3. If an addendum is posted, you are required to login to the ION Wave bidding software and address the addendum. No addendum will be issued within five calendar days of the opening unless it is to extend the opening or address a non-substantive issue. Legal

holidays not counted as calendar days are New Year's Day, Martin Luther King Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas.

4. Proposals may be submitted on any or all sections, related to the category, unless stated otherwise. TIPS reserves the right to reject any or all proposals and to accept any proposal(s) deemed advantageous to the TIPS members and to waive any informality in the proposal process.
5. Deviations to any Terms, Conditions and/or Specifications shall be clearly noted in writing by the contractor and shall be included with the proposal.
6. Withdrawal of proposals will not be allowed for a period of 90 days following the opening unless approved by TIPS.
7. Addenda, if required, will be issued by TIPS to all those known to have reviewed the SOLICITATION documents through our electronic bidding software, ION Wave.

PROPOSAL FORMAT - PROPOSERS PAY CLOSE ATTENTION TO DETAILS LISTED.

TIPS reserves the right to waive any informality and/or reject any or all proposals.

All responses should be direct, concise, complete, and unambiguous. With regard to those items that cannot be answered in the affirmative, clearly explain the precise portion to which you disagree and why you disagree. Proposers must propose pricing that is calculable based on the prices presented or discounts proposed as they relate to a published price of the goods or services. Published prices are prices that are provided by a catalog, website, shelf, price list accessible to TIPS and its members at any time during the term of an awarded agreement with the vendor or specifically proposed. Other methods of publishing prices will be considered if proposed but must be calculable.

Felony Conviction Notice (Required in Texas) -Notification of Criminal History “A person or business entity that enters into an agreement with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. A school district may terminate an agreement with a person or business entity if the district determines that the person or business entity failed to give notice as required or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the agreement.” This notice is not required of a publicly held corporation. Texas Education Code § 44.034. See FELONY CONVICTION NOTICE document on the “Attachments” tab. Felony conviction notice document must be uploaded to the “Response Attachments” FELONY CONVICTION NOTICE section.

References

The proposal response should contain a minimum of Three (3) references of customers you have served that would be considered eligible for membership in TIPS (i.e. K-12 School Districts, College/Universities, and/or City/County Government Entities, Water or Fire Districts, etc.). In

addition to the name of the entity, a contact name, email and phone number shall be included. The references document must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” REFERENCES section.

Resellers/Dealers

Vendors with Resellers/Dealers must provide the Resellers/Dealers document from the “Attachments” section, complete and uploaded to the “Response Attachments” RESELLERS/DEALERS section.

Vendor Certifications

Vendor certifications will include applicable D/M/WBE, HUB and manufacturer certifications for sales and service (if applicable). Certificates must be scanned and uploaded to the “Response Attachments” D/M/WBE, HUB and/or ALL OTHER CERTIFICATES section. Whether or not you are a D/M/WBE, HUB or similar business will have no bearing on the evaluation score, but provides our members the information if it is part of their entities’ policies.

There is a form that relates to all vendors that is required by Federal Regulation when federal funds are expended by a member. Vendors should complete all requested forms agreeing to comply with regulations.

Vendor Agreement

Vendor Agreement must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” VENDOR AGREEMENT section.

Agreement Signature Form

Agreement Signature Form must be downloaded from the “Attachments” section, completed, signed, scanned and uploaded to the “Response Attachments” AGREEMENT SIGNATURE FORM section.

Warranty (If applicable)

Warranty documentation must be scanned and uploaded to the “Response Attachments” WARRANTY section.

Protest Procedure

If a contractor/proposer (contractor) desires to protest a process or decision by TIPS, the contractor must follow the following process:

http://www.tips-usa.com/assets/documents/docs/letters/Protest_Procedures_for_Vendor.pdf

Supplementary Catalogs and Information (If applicable)

Supplementary Catalogs and Information documentation must be scanned and uploaded to the “Response Attachments” SUPPLEMENTARY section. You may provide a link to catalogues or pricing that is published for all customers to see when shopping for your goods or services.

Links to catalogue pricing must be kept current during the term of the awarded agreement. It is the intent of TIPS to award a manufacturer's complete line of products, when possible.

LIMITATIONS OF THE SOLICITATION AND THE USE OF AWARDED AGREEMENTS BY MEMBERS
Depending on different entities' and jurisdictions' laws and regulations, members may be prohibited from participating in one or more of the TIPS agreements. TIPS has no control over those legal restrictions and does not warrant that a member entity will be able to utilize a TIPS awarded agreement.

Terms and Conditions

1. **Exclusivity**- Any award under this solicitation is not exclusive and TIPS reserves the right to multi award or not award. TIPS reserves the right to solicit same or similar categories again for additional awards during the life of an existing agreement with one or more awarded vendors of another solicitation, if TIPS decides it is in the best interest of our members.
2. **Confidentiality of Proposal** - If you believe part of your proposal is confidential and not subject to sunshine laws such as the Public Information Act, there is a form to complete to make such a declaration. Read it carefully.
3. **Best and Final Offer** – OMMITTED
4. **Non-Responsive Proposals**: All proposals will be reviewed for responsiveness to the material requirements of the solicitation. A proposal that is not materially responsive shall not be eligible for further consideration for award of the agreement. There may be required specifications for this proposal and desired and other specifications. IF YOUR PROPOSAL FAILS TO MEET ANY OF THE DESIGNATED **REQUIRED** SPECIFICATIONS, YOUR PROPOSAL SHALL BE DEEMED NON-RESPONSIVE AND WILL NOT BE EVALUATED FURTHER OR CONSIDERED FOR AWARD.
5. **Deviations and Exceptions**: Deviations or exceptions stipulated as non-negotiable in the response by the proposer may result in disqualification if they are not acceptable to TIPS.
6. OMMITTED

7. **Estimated Quantities:** Because TIPS cannot accurately anticipate which members will utilize the awarded agreements due to the thousands of members and the different government entity types, TIPS makes no guarantee or commitment of any kind concerning quantities or usage of agreements resulting from this solicitation. This information, if provided, is provided solely as an aid to vendors in preparing proposals only. The successful Vendor(s) discount and pricing schedule shall apply regardless of the total cumulative volume of business under the agreement.
8. **Conditions of Agreement** - The terms and conditions of this solicitation shall control in the order that best serves the TIPS members' needs and deciding the controlling order is at the sole discretion of TIPS. The terms and conditions of this solicitation shall be incorporated by reference in a resulting agreement unless expressly agreed otherwise by the parties in writing.
9. **Name brands** – If name brands are required to be priced but other products of equal or similar type and quality may also be represented in the pricing and will be considered. TIPS want pricing either in a fixed price or a discount off published price or both if applicable to your proposal. A published price is defined as catalog, website, shelf or other production of pricing for goods or services offered by the proposer.
10. **Evaluation** – OMMITTED
11. **LIMITATION OF LIABILITY – Waiver:** BY SUBMITTING A PROPOSAL, OFFERER EXPRESSLY AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST BOTH THE INTERLOCAL PURCHASING SYSTEM REGION 8 EDUCATION SERVICE CENTER, ITS DIRECTORS, OFFICERS, ITS TRUSTEES, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION, RECOMMENDATION OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROPOSAL PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF AN AGREEMENT, IF ANY. NEITHER REGION 8 ESC NOR TIPS SHALL BE RESPONSIBLE OR LIABLE FOR ANY COSTS INCURRED BY PROPOSERS OR THE SELECTED CONTRACTOR IN CONNECTION WITH RESPONDING TO THE SOLICITATION, PREPARING FOR ORAL PRESENTATIONS, PREPARING AND SUBMITTING A PROPOSAL, ENTERING OR NEGOTIATING THE TERMS OF AN AGREEMENT, OR ANY OTHER EXPENSES INCURRED BY A PROPOSER. THE PROPOSER OR SELECTED CONTRACTOR IS WHOLLY RESPONSIBLE FOR ANY SUCH COSTS AND EXPENSES AND SHALL NOT BE REIMBURSED IN ANY MANNER BY REGION 8 ESC OR TIPS.

12. RESERVATION OF RIGHTS - TIPS expressly reserves the right to:
- a) Reject or cancel any or all proposals;
 - b) Waive any defect, irregularity or informality in any proposal or SOLICITATION procedure provided the waiver is equally applied to all Offerors and an Offeror is not prejudiced by the waiver as compared to other Offerors;
 - c) Waive as an informality, minor deviations from specifications for goods or services at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is not impaired;
 - d) Reissue a SOLICITATION;
 - e) Consider and accept an alternate proposal as provided herein when most advantageous to TIPS and its members;
 - f) TIPS has the right to terminate the agreement for cause or no cause for convenience with a thirty-day written notice, unless otherwise agreed in writing in an executed agreement between the parties;
 - g) This is not an exclusive award and no guaranteed volumes of purchases are guaranteed. TIPS and its members reserves the right to procure any items or services by other means at the sole discretion of TIPS or its members.

Addendum #3 to Request for Qualifications (RFQ) 170103 Energy Savings Performance Contracts

On page 6 of the RFQ document, section entitled "Controlling Codes" failed to include two applicable sections of codes that also apply for selected Texas Governmental entities. This addendum adds the missing codes. They are TEXAS GOVERNMENT CODE Sec. 2166.406 AND ENERGY SAVINGS PERFORMANCE CONTRACTS and TEXAS EDUCATION CODE Sec. 51.927. ENERGY SAVINGS PERFORMANCE CONTRACTS.

The additional controlling Texas statutes are below and are incorporated in this RFQ verbatim per below.

TEXAS GOVERNMENT CODE Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation of:

- (1) insulation of a building structure and systems within the building;
- (2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) Notwithstanding any other provision of this chapter, a state agency, without the consent of the commission, may enter into an energy savings performance contract in accordance with this section.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control to be returned to the potable water supply.

(d) A state agency may enter into energy savings performance contracts only with a person who is experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, a state agency shall require the provider of the energy or water conservation measures to file with the agency a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#). The agency may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) The state agency may enter into an energy savings performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation.

(f-1) Notwithstanding other law, the state agency may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the state agency is not required to pay for such costs solely out of the savings realized by the state agency under an energy savings performance contract. The state agency may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(g) An energy savings performance contract with respect to buildings or facilities may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter [1232](#);

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(h) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the state agency under the contract. If the term of the contract exceeds one year, the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the state agency

in this subsection, divided by the number of years in the contract term.

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#). Notice of the request for qualifications shall be given in the manner provided by Section [2156.002](#). The State Energy Conservation Office shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines adopted under this subsection must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. An energy savings performance contract may not be entered into unless the contract has been approved by the State Energy Conservation Office. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) The legislature shall base an agency's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the agency's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance contract is in effect, the agency's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

(k) Chapter [2269](#) does not apply to this section.

(l) The guidelines adopted under Subsection (i) must require the State Energy Conservation Office to:

(1) review any reports submitted to the office that measure and verify cost savings to a state agency under an energy savings performance contract; and

(2) based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the state agency and the Legislative Budget Board until the state agency determines that the analysis is no longer required to accurately measure cost savings.

Added by Acts 1997, 75th Leg., ch. 1142, Sec. 3, eff. June 19, 1997.
Amended by Acts 1999, 76th Leg., ch. 361, Sec. 3, eff. Sept. 1, 1999;
Acts 2001, 77th Leg., ch. 573, Sec. 9, 13, eff. Sept. 1, 2001; Acts
2001, 77th Leg., ch. 1319, Sec. 3, eff. Sept. 1, 2001; Acts 2003,
78th Leg., ch. 1310, Sec. 58, 121(14), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 3, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.03, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(10), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 537 (S.B. [533](#)), Sec. 2, eff. June 14, 2013.

TEXAS EDUCATION CODE Sec. 51.927. ENERGY SAVINGS PERFORMANCE

CONTRACTS. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing institutional facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(1) insulation of a building structure and systems within a building;

(2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
- (14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
- (15) other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with this section.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or

equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with entities that are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond in accordance with Chapter [2253](#), Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) The board may enter into an energy savings performance contract for a period of more than one year only if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation. If the term of the contract exceeds one year, the institution's contractual obligation in any year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the board in this subsection, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service.

(g) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter [1232](#), Government Code;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(g-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the institution of higher education under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(h) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the institution of higher education under the contract.

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be given in the manner provided by Section [2156.002](#), Government Code. The Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office with regard to energy and water conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the State Energy Conservation Office.

Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) The legislature shall base an institution's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the institution's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance contract is in effect, the institution's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

(k) Chapter [2269](#), Government Code, does not apply to this section.

(l) The guidelines established under Subsection (i) must require the Texas Higher Education Coordinating Board to:

(1) review any reports submitted to the board that measure and verify cost savings to an institution of higher education under an energy savings performance contract; and

(2) based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the governing board of the institution of higher education and the Legislative Budget Board until the governing board of the institution of higher education determines that the analysis is no longer required to accurately measure cost savings.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 8, Sec. 3.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(92), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 773, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1142, Sec. 2, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 627, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 4.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 361, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1450, Sec. 1, eff. Sept. 1, 1999; ; Acts 2001, 77th Leg., ch. 573, Sec. 3, 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 6, 121(2), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 2, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(7), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 537 (S.B. [533](#)), Sec. 1, eff. June 14, 2013.