

# **GUARANTEED ENERGY COSTS SAVINGS ACT**



**JASON PAULK  
CHIEF LEGAL COUNSEL  
MAY 2021**

# **WARNING!!!**

This presentation:

-**CANNOT** cover every situation

-Is **NOT** all inclusive of every aspect of the law

-**IS** a general overview

If you have a question...

-Seek Advice from your **Legal Counsel**

-Seek Advice or Opinion from the **Attorney General's Office** or  
the **Alabama Ethics Commission**

-[www.ago.alabama.gov](http://www.ago.alabama.gov)

-[www.ethics.alabama.gov](http://www.ethics.alabama.gov)

-Contact the **Department of Examiners' Legal Counsel**

# CONTACT INFO.

Jason Paulk, Chief Legal Counsel

Department of Examiners of Public Accounts

401 Adams Avenue, Suite 280

Montgomery, Alabama 36104

(334) 242-9200

[jason.paulk@examiners.alabama.gov](mailto:jason.paulk@examiners.alabama.gov)

[www.examiners.alabama.gov](http://www.examiners.alabama.gov)

-Report Fraud, Waste, and Abuse on Hotline: 1-844-56-FRAUD or  
Department's website reporting form

# WHAT IS A “GUARANTEED ENERGY COSTS SAVINGS CONTRACT ?”

- ❑ § 41-16-141(2), *Ala Code* 1975
- ❑ “A contract for the implementation of one or more energy cost savings measures.”

# WHAT IS A “ENERGY COSTS SAVINGS MEASURE ?”

- ❑ § 41-16-141(1), *Ala Code* 1975
- ❑ “A training program or new facility or existing facility alteration designed to reduce energy consumption or operating costs, or water and other natural resources consumption, and may include one or more of the following:
  - ❑ Insulation and reduced air infiltration of the building structure including walls, ceilings, and roofs or systems within the building.

# WHAT IS A “ENERGY COSTS SAVINGS MEASURE ?” CONT...

- Storm windows or doors, caulking or weather-stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.
- Automated or computerized energy control systems, including computer software and technical data licenses.
- Heating, ventilating, or air conditioning system modifications or replacements.

§ 41-16-141(1), *Ala Code* 1975

# WHAT IS A “ENERGY COSTS SAVINGS MEASURE ?” CONT...

- Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made.
- Indoor air quality improvements.
- Energy recovery systems.
- Electric systems improvements.
- Life safety measures that provide long-term operating cost reductions.
- Building operation programs that reduce operating costs.

§ 41-16-141(1), *Ala Code* 1975

# WHAT IS A “ENERGY COSTS SAVINGS MEASURE ?” CONT...

- Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy.
- Water and other natural resources conservation.

§ 41-16-141(1), *Ala Code* 1975



# APPLICABILITY: GOVERNMENTAL UNIT?

❑ SHORT ANSWER: YOU

❑ “Governmental Unit” is defined as a “state government agency, department, institution, college, university, technical school, legislative body, or other establishment or official of the Executive, Judicial, or Legislative Branches of the state authorized by law to enter into contracts, *including all local political subdivisions such as counties, municipalities, or public school districts.*” (emphasis added).

§ 41-16-141(2), *Ala Code* 1975

## **§ 41-16-142. ENERGY COST SAVINGS MEASURES AUTHORIZED**

- A governmental unit may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this article.
- All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations. Notwithstanding anything to the contrary, a guaranteed energy cost savings contract does 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.

# § 41-16-143(A). REQUEST FOR PROPOSALS

- ❑ “Before entering into a guaranteed energy cost savings contract, a governmental unit shall submit a request for proposals.”
  - ❑ “Request for Proposal” is defined as “a negotiated procurement that is announced through a public notice from a governmental unit which will administer the guaranteed energy cost savings contract requesting innovative solutions and proposals for energy conservation measures.” § 41-16-141(6), *Ala Code* 1975.
- ❑ The request for proposal shall include the following:
  - ❑ The name and address of the governmental unit.
  - ❑ The name, address, title, and phone number of a contact person.
  - ❑ The date, time, and place where proposals must be received.
  - ❑ The evaluation criteria for assessing the proposals.
  - ❑ Any other stipulations and clarifications the governmental unit may require. *Id.*

# **§ 41-16-143(B). REQUEST FOR PROPOSALS: NOTICE**

- The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy cost savings contract, of the names of the parties to the proposed contract, and of the purpose of the contract.
- The public notice shall be made at least 10 days prior to the meeting.

# **§ 41-16-143(A). REQUEST FOR PROPOSALS: THE REVIEW PROCESS**

- “The governmental unit shall evaluate any proposal from a qualified provider and shall select the qualified provider that best meets the needs of the unit.”
- After reviewing the proposals, the governmental unit may enter into a guaranteed energy cost savings contract with a qualified provider if it finds that the amount it would spend on the energy cost savings measures recommended in the proposal would not exceed the amount of energy or operational cost savings, or both, within the lesser of a 20-year period or the average useful life of the energy cost savings measures from the date installation is complete and has been accepted by the governmental unit, if the recommendations in the proposal are followed.

# **§ 41-16-143(A). REQUEST FOR PROPOSALS: THE ANALYSIS**

- “The governmental unit shall analyze the following:
  - The estimates of all costs of installation, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, and post-installation project monitoring, data collection, and reporting, as well as whether energy consumed or the operating costs, or both, will be reduced.
  - The qualifications of the provider.

## **§ 41-16-143(C). CONTRACT GUARANTEE**

- The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed the costs of the energy cost savings measures within the lesser of 20 years or the average useful life of the energy cost savings measures.
- The qualified provider shall reimburse the governmental unit for any shortfall of guaranteed energy cost savings on an annual basis.
- The guaranteed energy cost savings contract may provide for payments over a period of time, not to exceed the lesser of 20 years or the average useful life of the energy cost savings measures.

## **§ 41-16-143(D). BOND**

- Before entering into a guaranteed energy cost savings contract, the governmental unit may require the qualified provider to file with the governmental unit a payment and performance bond relating to the installation of energy cost savings measures that is in an amount the governmental unit finds reasonable and necessary to protect its interests and that may also cover the value of the guaranteed savings on the contract and is conditioned on the faithful execution of the terms of the contract.**



## **§ 41-16-143(E). INSTALLMENT PAYMENT CONTRACT**

- A governmental unit, or several governmental units together, may enter into an installment payment contract or lease purchase agreement with a qualified provider or a third party financing company designated by the qualified provider, or both, for the purchase and installation of energy cost savings measures with a term not to exceed the lesser of 20 years or the average useful life of the energy cost savings measures from the date the energy cost savings measures have been completed and accepted by the governmental unit.

## **§ 41-16-143(F). DURATION**

- Guaranteed energy cost savings contracts, including installment payment contracts and lease purchase agreements financing the contracts, may extend beyond the fiscal year in which they become effective.**
- The governmental unit may include in its annual budget and appropriations measures for each subsequent fiscal year any amounts payable under guaranteed energy savings contracts, including installment payment contracts and lease purchase agreements financing the contracts, during that fiscal year.**

## **§ 41-16-143(G) & (H). FUNDING**

- A governmental unit may use a combination of funds designated for operating, capital expenditures, or other specially designated funds for any guaranteed energy cost savings contract including purchases using installment payment contracts or lease purchase agreements.
- State aid and other amounts appropriated for distribution to, or reimbursement to, a governmental unit may not be reduced as a result of energy cost savings realized from a guaranteed energy cost savings contract or a lease purchase agreement for the purchase and installation of energy cost savings measures.

# WHAT TO RETAIN?

- The Request for Proposal, RFP notice documents, RFP analysis, and Qualifications of the Provider.
- Copy of the Guaranteed Energy Cost Savings Contract with the Qualified Provider.
- Copy of any payment or performance bond .
- Copy of any installment payment contract or lease purchase agreement with a qualified provider or a third-party financing company.
- Annual assessment of energy cost savings. § 41-16-143(c)
- Any reimbursement documentation related to payments from energy cost savings shortfalls.

# QUESTIONS???

