

ENERGY SAVINGS PERFORMANCE CONTRACTING STATUTES

KENTUCKY (as of June 11, 2010)

	Statute	Procurement Method (RFP, RFQ, competitive negotiation)	Competitive Bidding/ Selection Requirements	Term of Contract	Guarantee requirement	Restrictions/ Miscellaneous
State	KRS § 56.770 <i>et seq.</i> See also 200 KAR 5:350 for State ESPC procurement regulations.	RFP. See 200 KAR 5:350.	Competitive negotiation. 200 KAR 5:350. See also Finance and Administration Cabinet regulations. KRS § 56.784. Note that engineers, architects or other persons trained in energy efficiency and retained under a guaranteed energy savings performance contract are not subject to the provisions of Kentucky Model Procurement Code. See KRS § 56.774(2).	The term “ <u>shall not exceed the life of the energy savings generated</u> from implementation of the energy efficiency measures financed by the contract.” KRS § 56.770(6). If the cost of the project has not been included in the agency budget, it must have an aggregate simple pay-back period of <u>5 years or less</u> . KRS § 45.760(7)(a).	If the measured and verified savings are not sufficient to pay the financial obligations under the contract, the contractor is liable for the contract payments. KRS § 56.770(6). See also KRS § 56.774(5).	State agency ESPCs are subject to review by the Office of Financial Management. KRS § 56.784(4) See policies and procedures issued by Department for Facilities Management, Finance and Administration Cabinet. 200 KAR 5:350. http://www.state.ky.us/agencies/finance/manuals/pol&proc/sectfour.htm#Search
Counties	KRS § 45A.345 <i>et seq.</i> For financing, see KRS § 58.600 <i>et seq.</i> For definitions, see KRS § 45A.345.	RFQ or RFP. KRS § 45A.352(5)	The local public agency must select the provider “best qualified to meet its needs.” KRS § 45A.352(6). See also KRS § 45A.352(11).	None specified.	The provider must guarantee that either the energy or operational costs savings plus capital cost avoidance will meet or exceed the costs of the measures within the term of the contract. See KRS § 45A.352(7) Savings must be guaranteed to the extent necessary to pay for the cost of the measures. KRS § 45A.345(27).	The total cost of the contract minus the calculated savings from the proposed measures must be within 15% of the total cost of the contract minus the calculated savings after the final contract has been negotiated. KRS § 45A.352(3)
Municipalities	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.

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Townships/ Villages	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.
School Districts	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties. Subject to review by Commissioner of Education. KRS § 45A-352(10).
State Universities	Same as for state.	Same as for state.	Same as for state.	Same as for state.	Same as for state.	State-supported universities can negotiate ESPCs costing \$400,000 or less independently of the Department for Facilities Management if written permission is granted. University of Kentucky, University of Louisville, and Murray State University may negotiate ESPCs without Department of Facilities Management approval. See ESPC fact sheet at: http://www.energy.ky.gov/NR/ronlyres/8E293F95-42A0-4162-88C7-05D7A0C64C35/0/EnergySavingsPerformanceContractingFactSheet.pdf