

# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 466

*An Act to amend and reenact § 45.2-1703 of the Code of Virginia, relating to energy performance-based contracts; roof replacement.*

[S 13]

Approved April 11, 2022

**Be it enacted by the General Assembly of Virginia:**

**1. That § 45.2-1703 of the Code of Virginia is amended and reenacted as follows:**

**§ 45.2-1703. Energy performance-based contract procedures; required contract provisions.**

A. Any contracting entity may enter into an energy performance-based contract with an energy performance contractor to significantly reduce (i) energy costs to a level established by the public body or (ii) operating costs of a facility through one or more energy conservation or operational efficiency measures. For the purposes of this article, energy conservation or operational efficiency measures shall not include roof replacement projects, *except as provided in subdivision B 2.*

B. 1. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2. The evaluation of the request for proposals shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, post-installation project monitoring, and reporting. Notwithstanding any other provision of law, any contracting entity may purchase energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to this article even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

2. A contracting entity may procure a roof replacement as part of a larger energy conservation or operational efficiency measure, including solar, where the replacement is necessary for the installation of such measure. Such contracting entity may also procure a roof replacement pursuant to § 2.2-4302.1 when the original contract for the energy conservation or operational efficiency measure, including solar, does not include a roof replacement and the contracting entity determines that the replacement of more than 20 percent of the roof is necessary for the installation of such measure. Such roof replacements procured separately from a larger energy conservation or operational efficiency measure, including solar, shall also be publicly noticed on the Department of General Services' central electronic procurement website. All roof replacement projects procured separately pursuant to this subdivision shall be designed by a licensed architect or professional engineer.

C. Before entering into a contract for energy conservation measures, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures in an amount the contracting entity finds reasonable and necessary to protect its interests.

D. Prior to the design and installation of any energy conservation measures, the contracting entity shall obtain from the energy performance contractor a report disclosing all costs associated with such energy conservation measures and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting entity may enter into an energy performance-based contract if it finds (i) the amount the entity would spend on the energy conservation measures recommended in the report will not exceed the amount to be saved in energy and operation costs more than 20 years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed and (ii) the energy performance contractor provides a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The contract may provide for payments over a period not to exceed 20 years.

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually for up to 20 years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such contract shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy conservation measures that cannot be totally funded by the energy and operational savings.

F. An energy performance-based contract shall include the following provisions:

1. A guarantee by the energy performance contractor that annual energy and operational cost savings will meet or exceed the amortized cost of energy conservation measures. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy savings or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy and operational savings measures. The qualified provider shall reimburse the contracting entity for any

shortfall of guaranteed energy savings projected in the contract.

2. A requirement that the energy performance contractor to whom the contract is awarded provide a 100 percent performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as outlined in the contract document.

3. A requirement that the energy performance contractor provide to the contracting entity an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall that may occur.

G. The Department shall make a reasonable effort, as long as workload permits, to:

1. Provide general advice, upon request, to local governments considering pursuit of an energy performance-based contract pursuant to this article; and

2. Annually compile a list of performance-based contracts entered into by local governments of which the Department becomes aware.