

Chapter 39.35A RCW
PERFORMANCE-BASED CONTRACTS FOR WATER CONSERVATION, SOLID WASTE
REDUCTION, AND ENERGY EQUIPMENT

Sections

- 39.35A.010 Findings.
- 39.35A.020 Definitions.
- 39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services.
- 39.35A.040 Application of other procurement requirements.
- 39.35A.050 Energy service contractor registry—Identification of performance-based contracting services.
- 39.35A.060 Conservation—Distributed energy resources.

RCW 39.35A.010 Findings. The legislature finds that:

- (1) Conserving energy and water in publicly owned buildings will have a beneficial effect on our overall supply of energy and water;
- (2) Conserving energy and water in publicly owned buildings can result in cost savings for taxpayers; and
- (3) Performance-based energy contracts are a means by which municipalities can achieve energy and water conservation without capital outlay.

Therefore, the legislature declares that it is the policy that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. [2007 c 39 s 1; 1985 c 169 s 1.]

RCW 39.35A.020 Definitions. (Effective until June 30, 2033.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1)(a) "Conservation" includes reduced:
 - (i) Energy consumption;
 - (ii) Energy demand;
 - (iii) Energy cost; or
 - (iv) Greenhouse gas emissions.
- (b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.
- (ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

- (a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

- (3) "Energy management system" has the definition provided in RCW 39.35.030.

(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. Payment obligations may include regular service payments made by a municipality to any persons or entities that own energy equipment and services under a performance-based contract. [2023 c 309 s 2; 2022 c 128 s 2; 2007 c 39 s 2; 2001 c 214 s 18; 1985 c 169 s 2.]

Expiration date—2023 c 309 ss 2-5: "Sections 2 through 5 of this act expire June 30, 2033. Contracts entered into under the authority granted by this act may remain in effect following expiration of this act." [2023 c 309 s 6.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 39.35A.020 Definitions. (Effective June 30, 2033.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

(b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or

energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(3) "Energy management system" has the definition provided in RCW 39.35.030.

(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. [2022 c 128 s 2; 2007 c 39 s 2; 2001 c 214 s 18; 1985 c 169 s 2.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services. (1) Each municipality shall publish in advance its requirements to procure water conservation services, solid waste reduction services, or energy equipment and services under a performance-based contract. The announcement shall state concisely the scope and nature of the equipment and services for which a performance-based contract is required, and shall encourage firms to submit proposals to meet these requirements.

(2) The municipality may negotiate a fair and reasonable performance-based contract with the firm that is identified, based on the criteria that is established by the municipality, to be the firm that submits the best proposal.

(3) If the municipality is unable to negotiate a satisfactory contract with the firm that submits the best proposal, negotiations with that firm shall be formally terminated and the municipality may select another firm in accordance with this section and continue negotiation until a performance-based contract is reached or the selection process is terminated. [2007 c 39 s 3; 1985 c 169 s 3.]

RCW 39.35A.040 Application of other procurement requirements. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under this

chapter, no otherwise applicable statutory procurement requirement applies. [1985 c 169 s 4.]

**RCW 39.35A.050 Energy service contractor registry—
Identification of performance-based contracting services.** The state department of enterprise services shall maintain a registry of energy service contractors and provide assistance to municipalities in identifying available performance-based contracting services. [2015 c 225 s 46; 2001 c 214 s 19.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 39.35A.060 Conservation—Distributed energy resources. For purposes of this chapter:

(1) Conservation may be achieved through the deployment of distributed energy resources; and

(2) Distributed energy resources include, but are not limited to, energy efficiency projects that are not cogeneration projects, energy storage, demand response, electric vehicle charging infrastructure, and grid-interactive efficient buildings. [2022 c 128 s 5.]