

Chapter 200-350 WAC

A RULE TO FACILITATE PRIVATE INVESTMENT IN ENERGY CONSERVATION FOR STATE-OWNED FACILITIES

WAC

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WAC 200-350-010 Authority. This rule is promulgated pursuant to RCW 43.19.680(4) and is intended to administratively implement that statute.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-350-010, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 84-24-030 (Order 84-03), § 236-70-010, filed 11/30/84.]

WAC 200-350-020 Purpose. The purpose of this chapter is to establish rules which can be used to facilitate private investment in energy conservation measures and services for state-owned facilities.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-350-020, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 84-24-030 (Order 84-03), § 236-70-020, filed 11/30/84.]

WAC 200-350-030 Scope and coverage of this chapter. The scope of this chapter is to provide guidelines for state agencies acquiring private financing for energy conservation measures and services, and for administration of this rule by the department of general administration. This chapter does not provide authority or guidance for private financing of nonenergy related projects.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-350-030, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 84-24-030 (Order 84-03), § 236-70-030, filed 11/30/84.]

WAC 200-350-040 Definitions. The following words and terms have the following meanings for the purposes of this chapter:

"Base period" means a preceding twelve-month period, or longer, selected as the standard for measurement of energy consumption and energy savings due to implementation of energy conservation measures or services.

"Energy conservation maintenance and operating procedure" means modification or modifications in maintenance and operations of a facility, and any installations within the facility, which are designed to reduce energy consumption in the facility and which require no significant expenditure of funds.

"Energy conservation measure" means an installation or modification of an installation in a facility which is primarily

intended to reduce energy consumption or allow use of an alternative energy source.

"Energy consumption" means the amount of electrical energy and demand, natural gas, oil, propane or other fuel consumed in a facility in any billing period. It also applies to utility services, such as water and sewer, which require energy to be consumed to supply the services to the facility.

"Energy conservation service" means a service which provides preestablished levels of heating, cooling, lighting, and equipment use at reduced energy consumption levels. The services may include, but are not limited to, providing financing, design, installation, repair, maintenance, management, technical advice, and/or training.

"Energy cost savings" means energy savings converted into dollar savings.

"Energy savings" means the amount of energy expressed in standard units (e.g., therms, gallons, kilowatt hours) of energy saved by an energy conservation measure or service.

"Energy service company" means a company that provides energy conservation services.

"Facility" means a building, a group of buildings served by a central energy distribution system, components of a central energy distribution system, related structures and/or energy consuming appurtenances.

"Net benefit" means the energy cost savings less the cost of the energy conservation measure or service provided.

"Private investment or private financing" of energy projects means obtaining project funds by other than capital appropriation or governmental grants, and includes, but is not limited to, the following:

- "Guaranteed savings" means a program in which a company guarantees a user a predetermined reduction in energy costs. The company guarantees that energy costs plus all costs of the energy conservation measures or services provided will be less than the user's normal energy costs.

- "Leasing" means using a piece of property without transferring ownership. Leasing is an alternative to direct ownership of energy saving equipment. This is also known as an operating lease.

- "Municipal or capital leasing" means a tax exempt lease where the cost of equipment is amortized over the lease term. At the end of the lease period ownership passes to the lessee. This is also known as a lease purchase.

- "Shared savings" means a program in which the sole source of payment for energy conservation measures or services provided by a company is a predetermined percentage of the energy cost savings of the user resulting from the energy conservation measure or service.

• "Utility financing" means grants, loans, and resource acquisition payments provided by utilities for energy conservation.

• "Vendor financing" means financing provided by an equipment supplier, equipment manufacturer, company or contractor.

"Request for qualifications" means the document which communicates information to prospective contractors and should include, but not be limited to:

- A description of the problem;
- Expected results from the project;
- Extent and nature of anticipated contract services; and
- Criteria for evaluating statements of qualifications.

"State agency" means all departments, boards, commissions, colleges, community and technical colleges, and universities who own and operate or who have some responsibility for the ownership and operation of state facilities, related structures, and/or appurtenances.

"State-owned facilities" means those facilities which are owned outright by the state, those facilities which are being purchased by the state, and those facilities which the state has provided full or partial construction funding or provides full or partial operations funding.

[Statutory Authority: 2011 c 43, WSR 11-23-093, recodified as § 200-350-040, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 00-08-040, § 236-70-040, filed 3/29/00, effective 4/29/00; WSR 84-24-030 (Order 84-03), § 236-70-040, filed 11/30/84.]

WAC 200-350-050 Department of general administration responsibilities. The department of general administration shall be responsible for:

(1) Providing technical assistance through inter-agency agreements.

(2) Developing procedures for requesting qualifications of energy service companies consistent with RCW 43.19.-680.

(3) Developing standards for bid documents for private financing.

(4) Developing standards for contract documents for energy conservation measures and services using private financing including the means of establishing the base period consumption, the methodology for computing energy savings and the method of payment.

(5) Soliciting bids or quotations for the lease or purchase of energy conservation measures using private financing for those state agencies included in RCW 43.19.190.

(6) Publishing requirements to procure energy conservation measures or services using energy service companies for those state agencies included in RCW 43.19.450.

(7) Developing procedures for evaluating financing proposals.

(8) Monitoring energy service company agreements, conducting annual reviews and providing technical assistance as needed.

[Statutory Authority: 2011 c 43, WSR 11-23-093, recodified as § 200-350-050, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 00-08-040, § 236-70-050, filed 3/29/00, effective 4/29/00; WSR 84-24-030 (Order 84-03), § 236-70-050, filed 11/30/84.]

WAC 200-350-060 State agency responsibilities.

State agencies seeking private financing of energy conservation measures or services will be responsible for:

(1) Notifying the department of general administration of their intent, and providing justification for project implementation.

(2) Completing all applicable maintenance and operational items as required by RCW 43.19.670. This does not preclude seeking energy conservation services to facilitate implementation of maintenance and operating procedures.

(3) Providing the department of general administration with substantive data, information, calculations, contracts, or other material which are necessary in determining the cost effectiveness of the project and the financial alternatives.

(4) Preparing, or acquiring services for the preparation of, requests for qualifications for energy conservation measures and services using energy service companies.

(5) Providing building space and/or land for installation of energy conservation equipment.

(6) Providing maintenance and monitoring of installed energy conservation equipment unless otherwise specified.

(7) Reporting fuel and utility consumption survey information required by RCW 43.19.670 to the department of general administration.

(8) Providing for staff training on the function, operation and maintenance of energy conservation equipment.

(9) Reporting contract status on an annual basis to the department of general administration.

[Statutory Authority: 2011 c 43, WSR 11-23-093, recodified as § 200-350-060, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 00-08-040, § 236-70-060, filed 3/29/00, effective 4/29/00; WSR 84-24-030 (Order 84-03), § 236-70-060, filed 11/30/84.]

WAC 200-350-070 Procurement of energy conservation measures and services with private financing. (1) In procurement of energy conservation measures and services with private financing the state agency shall comply with:

(a) Public works statutes - Chapter 39.04 RCW;

(b) Purchasing statutes - Chapter 43.19 RCW; or

(c) Personal services statutes - Chapter 39.29 RCW.

(2) Whenever practicable, energy conservation measures or services shall be obtained by means of competitive bids and awarded to the lowest responsible bidder over the intended life of the contract.

(3) Whenever it is determined that energy conservation measures or services should be obtained by means other than by bidding, the state agency shall prepare a request for proposal. Proposals shall be obtained in writing and evaluated in accordance with the evaluation procedure contained in the request for proposal.

[Statutory Authority: 2011 c 43, WSR 11-23-093, recodified as § 200-350-070, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.-680(4). WSR 84-24-030 (Order 84-03), § 236-70-070, filed 11/30/84.]

WAC 200-350-080 Monitoring and reporting requirements. The following procedures are set forth for monitoring energy service company agreements and for reporting contract status to the department of general administration:

(1) The monitoring of installed energy equipment will be the responsibility of the state agency, unless otherwise speci-

fied, and will include reporting contractor response to maintenance and emergency situations to the department of general administration.

(2) The state agency will report facility operating changes, physical changes, equipment changes, equipment modifications or other changes which may affect energy consumption or base period figures to the department of general administration.

(3) The state agency, in cooperation with the department of general administration, will develop a schedule for annual review of energy service company agreements for the purpose of: Evaluating projected "vs" actual energy savings; adjusting base period and energy savings formula; evaluating purchase options; evaluating contractor performance; and negotiating contract disagreements and other contract changes which may provide the state with a greater net benefit.

[Statutory Authority: 2011 c 43, WSR 11-23-093, recodified as § 200-350-080, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19-680(4), WSR 00-08-040, § 236-70-080, filed 3/29/00, effective 4/29/00; WSR 84-24-030 (Order 84-03), § 236-70-080, filed 11/30/84.]