# Mississippi Development Authority
# Energy Division
# Policy and Procedures
# Energy Performance Contracting and
# Energy Shared Savings Contracting
# Code Section: 31-7-14

The Mississippi Development Authority (MDA) promulgates the following policy and procedures in accordance with Section 31-7-14 of the Mississippi Code of 1972, as amended, to provide for the approval of "energy performance contracts" and "energy shared savings contracts" between public entities and performance contractors wherein energy savings and related cost savings are guaranteed over a period of time not to exceed 15 years by the performance contractors.

These contracts authorized in Section 31-7-14 (4) (b) differ from "energy services contracts" authorized in Section 31-7-14 (1) (b) that do not require MDA-Energy Division involvement and do not require energy or cost savings to be guaranteed. MDA-Energy Division's role in eligible "energy performance contracts" and "energy shared savings contracts" is to assure that entities can rely upon projected and guaranteed energy savings and related cost savings. Consequently, this policy and procedures for "energy performance contracts" and "energy shared savings contracts" are construed to fit MDA-Energy Division's role. Projects where there are minimal scientifically quantifiable and measurable energy savings, i.e., MDA-Energy Division's expertise is not needed, may be pursued under this Section 31-7-14 (1) (b) as "energy services contracts."

MDA-Energy Division will construe proposed contracts submitted pursuant to 31-7-14(4) so that economic benefits to the entity may be maximized.

1. Any state agency or local governing authority (entity), as defined in Section 31-7-1 subparagraphs (a) and (b) respectively of the Mississippi Code of 1972, as amended, may contract on a shared savings or performance contract basis for:
    - energy efficiency equipment;
    - services relating to the installation, operation or maintenance of equipment;
    - and improvements reasonably required to existing or new equipment and existing or new improvements and facilities.

2. Section 31-7-14 does not prohibit an entity from entering into a companion "energy services contract" at the same time it enters into an "energy performance contract" or "energy shared savings contract." Any such dual purpose contract must clearly state its dual nature under the law and distinguish the guaranteed portion by including a separate scope of work for such contract as a specific addendum.

3. An "energy performance contract" or "energy shared savings contract" means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency. The energy savings plus related cost savings are guaranteed

by the performance contractor and can be used to repay the cost of the project. The guaranteed savings must be more than sufficient to pay the total costs of the project over the guarantee period. The terms of any shared savings or performance contract entered into must contain a guarantee of savings clause from the performance contractor.

4. Energy systems or equipment mean:
    - heating, ventilation, and air conditioning systems,
    - lighting,
    - windows,
    - insulation,
    - energy management controls
    - life safety measures that provide long-term, operating-cost reductions,
    - building operation programs that reduce operating costs,
    - renewable energy systems and equipment,
    - water conservation systems and equipment, including accuracy and measurement of water distribution and/or consumption, and
    - facilities improvements or enhancements directly related to the above.

5. A "shared savings contract" differs from a "performance contract" in that the contractor and the entity each receive a pre-agreed percentage or dollar value of the energy cost savings over the life of the contract, rather than the contractor receiving a fee.

6. Any entity desiring to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment, or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared savings basis or performance-contracting basis, shall issue a Request for Qualifications in the manner prescribed in Section 31-7-14 (1)(b) of the Mississippi Code of 1972, as amended. At its option, the entity may use the Request for Qualifications template located on the MDA website.

7. The entity shall notify the MDA-Energy Division in writing in advance of its determination to issue a Request for Qualifications to develop an Energy Performance Contract or an Energy Shared Savings Contract project.

8. The entity may request, at its discretion, that the MDA-Energy Division review its Request for Qualifications.

9. Any entity intending to contract for a shared savings or performance contract for energy services must advertise once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such entity is located.

10. For "energy performance contracts" and for "energy shared savings contracts," MDA-Energy Division defines "energy savings plus related cost savings" as scientifically quantifiable and measurable savings from energy and/or water usage reductions plus cost savings from related operations and maintenance reductions and other cost-avoidance measures. For building operation programs, related cost savings may also include savings

from the elimination of future expenses and from the avoidance of future replacement expenditures as a result of new equipment installed or services performed.

11. Guaranteed energy savings plus guaranteed related cost savings achieved by the project must be sufficient to cover all project costs, including annual maintenance and monitoring fees, guarantee fees, and contractor fees.

12. The terms of any performance contract for efficiency services and/or equipment entered into under this section may not exceed fifteen (15) years.

13. The simple payback must be less than 15 years or less than the expected useful life of the equipment, whichever is less. The simple payback is defined as the implementation cost of the energy efficiency measure divided by the guaranteed annual energy savings plus related cost savings produced by the energy efficiency measure.

14. All contracts must contain the following annual allocation dependency clause:

    The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirement of the contract by the Legislature or other budgeting authority. If the Legislature or other budgeting authority fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which appropriations were made. The termination shall be without penalty or expense to the entity of any kind whatsoever, except as to the portions of payments for which funds were appropriated.

15. All contracts must contain a provision for termination of the contract.

16. All contracts may contain a provision for termination for convenience by the entity.

17. The MDA-Energy Division shall review each contract pursuant to code 31-7-14 (4) (b) and approve those it determines to be in compliance with the code, this policy, and these guidelines.

18. No Energy Performance Contract or Energy Shared Savings Contract shall be valid until approved by the MDA-Energy Division in writing.

19. The MDA-Energy Division will not approve any Energy Performance Contract or Energy Shared Savings Contract that does not generate quantifiable and measurable energy savings as defined in paragraph 10.

20. Project documentation must be submitted to the MDA- Energy Division for review and comment. The documents to be submitted include the Technical Energy Analysis, the proposed final contract, and the Measurement and Verification (M & V) plan. Annual energy savings reports are also required and must be submitted to the MDA-Energy Division within 60 days of the date such reports are received by the entity.

21. The Technical Energy Analysis must be signed and stamped by a professional engineer registered and licensed to practice in Mississippi.

22. The entity will be provided in writing any questions and comments raised by the MDA-Energy Division during its review process. The entity will be requested to respond to these questions and comments in writing. No contract will be approved until the entity has responded.

23. Upon completion of the contract review process by the MDA-Energy Division, the division shall request final authority to approve or disapprove the contract from the Executive Director of the Mississippi Development Authority or his designated deputy.

24. A compliance letter, signed by the Energy Division Director, will be issued to the entity upon final approval. A denial letter will be issued to the entity upon disapproval.