§ 8286. Consensus on factors and data for energy conservation standards

The Secretary of Energy shall assure that within 6 months after June 30, 1980, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Defense, the Administrator of the General Services Administration, and the head of any other agency responsible for developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

1. fuel price projections;
2. discount rates;
3. inflation rates;
4. climatic conditions and zones; and
5. the cost and energy saving characteristics of construction materials.


§ 8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

1. the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;
2. using the consented to factors and data would cause a violation of an express provision of law; or
3. statutory requirements or responsibilities require a modification of the consented to factors and data.


§ 8286b. Omitted

CODIFICATION

Section, Pub. L. 96–294, title V, § 597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of
(E) FUNDING OPTIONS.—In carrying out a contract under this subchapter, a Federal agency may use any combination of—
(1) appropriated funds; and
(2) private financing under an energy savings performance contract.

(F) PROMOTION OF CONTRACTS.—In carrying out this section, a Federal agency shall—
(1) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years; or
(2) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures.

(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING.—
(1) IN GENERAL.—In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 8253(f) of this title shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy savings, and any other evaluation of costs and savings needed to implement the guarantee of savings under this section.

(ii) MODIFICATION OF EXISTING CONTRACTS.—

(b) Implementation

(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 1302(a) of title 41, not later than 180 days after October 24, 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to paragraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—
(A) allow the Secretary to—
(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and
(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;
(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and
(C) allow the head of each agency to—
(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;
(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;
(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and
(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the board of contract appeals of the General Services Administration.

(c) Task or delivery orders

(1) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—
(A) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting from such contractors the submission of expressions of interest in, and contractor qualifications for, performing site surveys or investigations and feasibility designs and studies, and including in the notice summary information concerning energy use for any fa-
cilities that the agency has specific interest in including in such task or delivery order;
(B) reviewing all expressions of interest and qualifications submitted pursuant to the notice under subparagraph (A);
(C) selecting two or more contractors (from among those reviewed under subparagraph (B)) to conduct discussions concerning the contractors’ respective qualifications to implement potential energy conservation measures, including—
(i) requesting references and specific detailed examples with respect to similar efforts and the resulting energy savings of such similar efforts; and
(ii) requesting an explanation of how such similar efforts relate to the scope and content of the task or delivery order concerned;
(D) selecting and authorizing—
(i) more than one contractor (from among those selected under subparagraph (C)) to conduct site surveys, investigations, feasibility designs and studies, or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures; or
(ii) one contractor (from among those selected under subparagraph (C)) to conduct a site survey, investigation, feasibility design and study, or similar assessment for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;
(E) providing a debriefing to any contractor not selected under subparagraph (D);
(F) negotiating a task or delivery order for energy savings performance contracting services with the contractor or contractors selected under subparagraph (D) based on the energy conservation measures identified; and
(G) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

(2) The issuance of a task or delivery order for energy savings performance contracting services pursuant to paragraph (1) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10 and section 4106(d) of title 41.

(3) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to paragraph (1).


REFERENCES IN TEXT

C Ridley V. United States

The following substitutions were made on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted title 41, Public Contracts:


in subsec. (b)(1)(A), “section 1302(a) of title 41” substituted for “section 25(a) of the Office of Federal Procurement Policy Act”.

in subsec. (c)(2), “section 4106(d) of title 41” substituted for “section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d))”.

AMENDMENTS


Subsec. (a)(2)(D)(iii). Pub. L. 110–140, §511(a), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: “30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of $10,000,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and”.


Subsec. (a)(2)(F). (G). Pub. L. 110–140, §513(2), added subpars. (F) and (G).

Subsec. (c). Pub. L. 110–140, §514, struck out subsec. (c). Text read as follows: “The authority to enter into new contracts under this section shall cease to be effective on October 1, 2016.”


1998—Subsec. (c). Pub. L. 105–388 substituted “on October 1, 2003” for “five years after the date procedures and methods are established under subsection (b) of this section”.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out at end “Procedures developed by the board of contract appeals under this paragraph shall be substantially equivalent to procedures established under section 759(f) of title 10.”

Subsec. (c). Pub. L. 104–316 inserted subsec. (c) designation before “the authority to” and struck out par. (2) which required Comptroller General of the United States to report annually for five years on implementation of this section, including an assessment of various energy issues.

1992—Pub. L. 102–486 inserted subsec. (a) designation and heading, designated existing provisions as par. (1), and added par. (2) and subsecs. (b) and (c).

EFFECTIVE DATE OF 2011 AMENDMENT
Effective Date of 2007 Amendment
Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

Effective Date of 1996 Amendment

ARCHITECT OF THE CAPITOL AS AGENCY ELECTING TO DEVELOP LIST OF FIRMS QUALIFIED TO PROVIDE ENERGY SAVING SERVICES AND AS AGENCY HEAD SELECTING FROM LIST

REVIEW
Pub. L. 108–375, div. A, title X, §1090(f), Oct. 28, 2004, 118 Stat. 2068, provided that: "Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority."

EXTENSION OF AUTHORITY
Pub. L. 109–58, div. I, §105(b), Aug. 8, 2005, 119 Stat. 611, provided that: "Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Aug. 8, 2005], shall be considered to have been entered into under that section."

ENERGY EFFICIENCY INCENTIVE
Pub. L. 108–375, div. A, title X, §1090(g), Oct. 28, 2004, 118 Stat. 2068, provided that: "Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Oct. 28, 2004], shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section."

"(a) ENERGY CONSERVATION INCENTIVE.—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

(10) 1996—See amendment of this section made by Pub. L. 104–106, set out as a note above.

(2) The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

"(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

"(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2655 of title 10, United States Code), that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized."

"(c) DETERMINATION OF AMOUNT OF SAVINGS.—Not more than 90 days after the end of each of the first five years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract."

§8287a. Payment of costs
Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses (and related operation and maintenance expenses).


AMENDMENTS
2004—Pub. L. 108–375 inserted "water, or wastewater treatment" after "payment of energy".

§8287b. Reports
Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260 of this title a description of the progress made by each Federal agency in—

(1) including the authority provided by this subchapter in its contracting practices; and

(2) achieving energy savings under contracts entered into under this subchapter.


REFERENCES IN TEXT
Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§8251 et seq.) of subchapter III of this chapter by Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3183.

§8287c. Definitions
For purposes of this subchapter, the following definitions apply:

1 See References in Text note below.
The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

The term “energy savings” means—

(A) a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; and

(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

(B) the increased efficient use of existing water sources in either interior or exterior applications; and

(C) if otherwise authorized by Federal or State law (including regulations), the sale or transfer of electrical or thermal energy generated on-site from renewable energy sources or cogeneration, but in excess of Federal needs, to utilities or non-Federal energy users; and

(D) the increased efficient use of existing water sources in either interior or exterior applications.

(3) The terms “energy savings contract” and “energy savings performance contract” mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).''

(Par. (4). Pub. L. 108–375, §1090(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).”

(Par. 3). Pub. L. 108–375, §1090(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).”

(Par. 2). Pub. L. 108–375, §1090(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).”

(Par. 1). Pub. L. 108–375, §1090(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘Federal agency’ means an agency defined in section 551(1) of title 5.”

 Effective Date of 2007 Amendment

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

References to 1996 Amendments

§8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations

The Secretary in fiscal year 1999 and thereafter, shall continue the process begun in fiscal year 1998 of accepting funds from other Federal agencies in return for assisting agencies in achieving energy efficiency in Federal facilities and operations by the use of privately financed, energy savings performance contracts and other private financing mechanisms. The funds may be provided after agencies begin to realize energy cost savings; may be retained by the Secretary until expended; and may be used only for...
the purpose of assisting Federal agencies in achieving greater efficiency, water conservation and use of renewable energy by means of privately financed mechanisms, including energy savings performance contracts and utility incentive programs. These recovered funds will continue to be used to administer even greater energy efficiency, water conservation and use of renewable energy by means of privately financed mechanisms such as utility efficiency service contracts and energy savings performance contracts. The recoverable funds will be used for all necessary program expenses, including contractor support and resources needed, to achieve overall Federal energy management program objectives for greater energy savings. Any such privately financed contracts shall meet the provisions of the Energy Policy Act of 1992, Public Law 102–486 regarding energy savings performance contracts and utility incentive programs.


REFERENCES IN TEXT

CODIFICATION
Section was enacted as part of Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and as part of the National Energy Conservation Policy Act which comprises this chapter.

SIMILAR PROVISIONS
Similar provisions were contained in the following prior appropriation act:

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE

SUBCHAPTER I—GENERAL PROVISIONS
Sec.
8301. Findings; statement of purposes.
8302. Definitions.
8303. Territorial application.

SUBCHAPTER II—NEW FACILITIES

PART A—PROHIBITIONS
8311. Coal capability of new electric powerplants; certification of compliance.
8312. Repealed.

PART B—EXEMPTIONS
8321. Temporary exemptions.
8322. Permanent exemptions.
8323. General requirements for exemptions.
8324. Terms and conditions; compliance plans.

SUBCHAPTER III—EXISTING FACILITIES

PART A—PROHIBITIONS
8331. Existing electric powerplants.
8332. Repealed.
8333. Rules relating to case-by-case and category prohibitions.

PART B—EXEMPTIONS
8341. Temporary exemptions.

8351. Permanent exemptions.
8353. General requirements for exemptions.
8354. Terms and conditions; compliance plans.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES
8371, 8372. Repealed.
8373. Conservation in Federal facilities, contracts, and financial assistance programs.
8374. Emergency authorities.
8375. Repealed.

SUBCHAPTER V—SYSTEM COMPLIANCE OPTION
8391. Repealed.

SUBCHAPTER VI—FINANCIAL ASSISTANCE
8401. Assistance to areas impacted by increased coal or uranium production.
8401a. “Local government” defined.
8402. Loans to assist powerplant acquisitions of air pollution control equipment.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT
PART A—PROCEDURES
8421. Information.
8422. Compliance report.

PART C—ENFORCEMENT
8431. Notice of violation; other general provisions.
8432. Repealed.
8433. Civil penalties.
8434. Injunctions and other equitable relief.
8435. Citizens suits.

PART D—PRESERVATION OF CONTRACTUAL RIGHTS
8441. Preservation of contractual interest.

PART E—STUDIES
8451. National coal policy study.
8452. Repealed.
8453. Impact on employees.
8454. Study of compliance problem of small electric utility systems.
8455. Repealed.
8456. Socioeconomic impacts of increased coal production and other energy development.
8457. Use of petroleum and natural gas in combustors.

PART F—APPROPRIATIONS AUTHORIZATION
8461. Authorization of appropriations.

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW
8471. Effect on environmental requirements.
8472. Effect of orders under section 792 of title 15.
8473. Environmental impact statements under section 4332 of this title.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS
8481, 8482. Repealed.
8483. Submission of reports.
8484. Electric utility conservation plan.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Findings; statement of purposes

(a) Findings
The Congress finds that—
(1) the protection of public health and welfare, the preservation of national security, and