

June 8, 2009

CHIEF FINANCIAL OFFICER MEMORANDUM NO. 04 (2008-2009)

**SUBJECT: GUARANTEED ENERGY, WATER AND WASTEWATER
PERFORMANCE SAVINGS CONTRACTS**

Chapter 2008-27, section 99, Laws of Florida, amended section 489.145, Florida Statutes (F.S.), to include water and wastewater as conservation measures for guaranteed energy performance savings contracting. Guaranteed energy, water and wastewater performance savings contracts shall be referred to as conservation measures contracts in this memorandum. An agency entering into a conservation measures contract shall submit the contract and related documents to the Chief Financial Officer (CFO) for review and approval prior to execution of such contract, pursuant to section 489.145(6), F.S.

A. Submission requirements

Please submit two copies of the following documents:

1. A cover letter signed by the agency head or an authorized designee stating the contract and all related documents have been reviewed and approved. At a minimum, the letter must indicate review and approval by the agency's chief fiscal officer, budget officer and the General Counsel.
2. The contract and *all schedules and appendices required by the most recent model contract* located on the Department of Financial Services' (DFS) website: http://www.myfloridacfo.com/aadir/statewide_financial_reporting/financing.htm. Include Financing and Escrow Agreement (Schedule L) if third party financing will be used. All blanks must be completed.
3. An Investment Grade Energy Audit (IGEA) that has been reviewed and approved by the Department of Management Services (DMS) and includes a certification from DMS that the cost savings are appropriate and sufficient for the term of the contract, pursuant to section 489.145(6), F.S.
4. A completed Agency Checklist for Conservation Measures Contracts located on the DFS website: http://www.myfloridacfo.com/aadir/statewide_financial_reporting/financing.htm. This checklist must be signed by the agency head or an authorized designee.
5. Written justification for changes from the model contract other than corrections, typos, reference additions and completion of blanks. The model contract should not be modified unless proper justification is provided.

The required documents must not be dated to expire less than 15 business days after submission to the CFO to allow time for execution of contract documents. The required documents must be submitted to:

Department of Financial Services
Bureau of Accounting
Attention: Mike Rutherford
200 East Gaines Street
Tallahassee, Florida 32399-0354

B. Third Party Financing

Agencies using a separate contract for third party financing provided by section 489.145(4)(f), F.S., must obtain at least three comparable offers for financing and follow the procedures required by section 287.055(4), F.S. These offers must be submitted in the form of Appendix C of the most recent model contract.

C. Execution of Contract

Once a contract is approved by the CFO, no changes should be made to the contract without prior approval by the CFO. An electronic copy of the executed contract along with all required schedules, exhibits and appendices must be e-mailed to financing@myfloridacfo.com.

D. Measurement and Verification

Section 489.145(4)(i), F.S., requires the agency that has entered into a conservation measures contract to provide DMS and DFS a measurement and verification report annually to validate that savings have occurred. If this report reveals a shortfall in guaranteed cost savings, the agency must take appropriate action as stipulated in the *Annual Reconciliation* section of the contract.

E. MyFloridaMarketPlace Fees

Agencies must comply with section 489.145(4)(d), F.S., when selecting a conservation measures contractor or financial institution. Rule 60A-1.032(1)(b), Florida Administrative Code, exempts all conservation measures contracts and financing agreements from paying MyFloridaMarketPlace transaction fees.

F. Additional Information

Payments are not allowed in advance of installation of a conservation measure (e.g., an equipment group) as required by section 489.145(5)(b), F.S. Contracts with multiple conservation measures may have multiple payment schedules only if determined to be prudent and for the benefit of the state. The state agency has the fiduciary obligation to handle the funds prudently. Financing agreements may not contain a prepayment penalty.

Please contact Mike Rutherford at (850) 413-5594 or financing@myfloridacfo.com if you have any questions regarding this memorandum.