



# reporter

ONLINE EXTRA

## ***Energy Legislation Provides New Opportunities for HVAC and Other Trade Contractors***

*Following are details of the very important success on public contracting issues that the MCA of New Jersey achieved late last year.*

On January 21, [Governor Corzine](#) signed legislation amending New Jersey's public contracting statutes to implement Energy Savings Improvement Projects (ESIP). These contracts are for the installation or addition of energy conservation measures in public buildings and facilities—such as more energy-efficient HVAC systems, water-conserving plumbing fixtures, cogeneration and others. It is anticipated that this legislation will be producing greater public sector work opportunities for HVAC, plumbing and other contractors.

The Mechanical Contractors Association of New Jersey (MCANJ) was intimately and actively involved with this legislation, which had been pending in many forms over the last 15 years. MCANJ worked diligently consulting with the administration and sponsoring legislators in the drafting and passing of the legislation. Additionally, the endeavor was strengthened by having the support of the New Jersey State Pipe Trades and the New Jersey State Building Trades. This combined effort helped to ensure that the existing New Jersey public bid laws would be preserved, thus ensuring that HVAC contractors would be afforded the same opportunities to bid and contract for this new work.

The MCANJ, including its President William Albanese, Executive Director Alan P. O'Shea, Lobbyist Stephen Reid and Attorney Edward Frisch, were specifically invited by Governor Corzine's special counsel and staff to attend the public bill signing. In addition, the New Jersey State Pipe Trades was represented by its President, Thomas Manning.

This new legislation applies to virtually all New Jersey public entities, including public school districts, the [State of New Jersey Schools Development Authority](#); municipal, county, and state government; public colleges and universities; and the various public authorities and agencies. It allows a public entity to contract with an "energy savings company" (or ESCO) for energy conservation improvements, with the expectation that the improvements will pay for themselves from the future energy cost savings. The legislation now provides a financing alternative to the public bodies that in the past had to obtain voter approval of bond issues for major capital expenditures.

Generally, the improvement work itself still must be publicly bid and then contracted or subcontracted for like other public construction work. Those in the major specialty trades—

such as HVAC and plumbing—must be [Division of Property Management and Construction](#) (DPMC) classified and rated, and most other public contracting requirements will still apply.

One twist is with the ESCO's role, which can be either as a consultant to the public entity owner, a project CM, or the general contractor. The format for bidding and contracting for the trade work then will depend on the ESCO's role in the particular project.

With an exception, the ESCO cannot do the major specialty trade work itself or through its own subsidiary or affiliated companies. The statute provides that even when the ESCO is the general contractor, "The hiring of [the major trades] subcontractors...shall be performed pursuant to the public bidding requirements of [the public entity]." New Jersey contractors that see this or other public contracting requirements being disregarded on one of these projects are encouraged to contact the [MCANJ](#).

The one exception where a "manufacturing" ESCO can do major trades work is in supplying direct digital controls (DDCs) which it manufactures and which it supplies as part of a guaranteed contract with the public entity. In that situation, the ESCO's own DDCs can be sole-source specified. If so, however, the bid specifications must set forth an allowance price for the DDCs for all of the HVAC bidders to use.

As noted, this sole-sourcing of the ESCO's own DDCs is only allowed as part of a guaranteed contract (where the ESCO guarantees the future energy cost savings). In a non-guaranteed contract, even the DDCs must be competitively sourced. Also, the statute requires all DDCs to be an open protocol format and to meet ASHRAE's interoperability guidelines.

Post-installation, the public bidding and contracting requirements also will apply to contracts for system maintenance. The long term maintenance will be important to achieving the energy cost savings and the public entity must have an "energy savings plan" which in part describes the maintenance requirements and how they will be met.

Also, the public entity must post its energy savings plan on its website (if it has one), as well as submit it to the [State of New Jersey Board of Public Utilities](#), for posting on the Board of Public Utilities' website. These web posts will provide information about upcoming contracting opportunities.

Another item of note is that an energy savings contract can also include "energy-related capital improvements that do not reduce energy usage"—for instance, adding air conditioning. They cannot be financed in the same new ways as the energy savings measures, so it remains to be seen how popular their addition will be.

One word of caution is that the statute requires third party verification at the time when equipment is placed in service or commissioned, to ensure that the projected energy savings will occur. That could add to the contractor's testing/commissioning, punch list and/or owner training costs. More generally, the contractor should be careful not to inadvertently take on the ESCO's obligation for the fixture energy cost savings, such as by any "flow down" of the ESCO's own contract responsibilities for them.

Finally, the statute authorizes certain state agencies or officials to adopt guidelines, directives, and administrative rules and regulations to implement the statute. When they are issued, they should provide some further guidance.

Various other agencies have begun implementing qualifications which are additionally needed for this program. There are various pre-qualified disciplines now being added by the New Jersey Division of Property Management and Construction (DPMC) for energy auditing, building commissioning, and renewable energy consulting. Also, the State of New Jersey Board of Public Utilities is now working on protocols to identify energy savings.

MCANJ is excited by the opportunities for added public sector contracting work to come under this new statute.

For additional information, or to voice your concerns, please contact [Alan P. O'Shea](#) at the MCANJ.

To learn more about the activities of MCAA's Government Affairs/PAC Committee, please contact [John McNerney](#).