



Energy Savings Performance Contracting Guidelines for State Agencies

Part 1 Getting the most from your Performance Contract and Contractor

The Texas law¹, allows state agencies to enter into guaranteed Energy Savings Performance Contracts (ESPCs) to reduce their use of utilities (energy and water). This document is designed to provide guidance to create a successful contract.

¹Texas Government Code, §2166.406.

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Steps to Take

Step 1: Form an Internal Selection Process. Include personnel from purchasing, facilities management, energy, legal, and executive departments. They will help formulate the strategy.

Step 2: Conduct a Preliminary Utility Audit (PUA). (Optional if PUA is not necessary to assist management in moving forward with procurement or if the desire to understand potential is not needed) In most cases, this can be obtained from an Energy Services Company (ESCO) at no cost and with no obligation to the Owner. This tool will identify viable projects and can act as the basis for a Request for Qualifications (RFQ). PUAs can be done on a representative sample of facilities to assist the agency in understanding the savings potential of the agency's facilities. PUAs can also be utilized to better understand the technical capabilities of competing ESCOs. The savings potential can be used as the basis of the minimum level of savings that need to be found in the Utility Assessment Report.

If a preliminary audit is not performed prior to issuing an RFQ, PUAs should be done prior to entering into the agreement for the Utility Assessment Report allowing the ESCO to determine a mutually acceptable minimum level of performance.

Step 3: Issue Request for Qualifications. An RFQ template, as well as a sample RFQ, may be found in Part 3. Although this should be helpful in designing an RFQ, it should be tailored to each user's particular needs. Part 3a contains a successful RFQ that was issued by the Texas Department Health and Human Services.

Step 4: Selection of a Performance Contractor. More than one Energy Services Company (ESCO) may be selected based on qualifications. Short-listing and oral interviews of several firms may be used.

Step 5: Negotiate & Approve the Utility Assessment Report (UAR). Performance contracts have two parts. The first agreement will authorize the selected Energy Service Company (ESCO) to proceed with a detailed, investment grade audit (The UAR). The second part of the agreement (The implementation contract) will set out the general terms and conditions for the ESCO to proceed with the project once the Owner and the ESCO agree upon a scope of work and budget. The UAR and the specific project proposal will become an attachment to the implementation contract, thus providing the details with respect to what is actually installed, project costs, and savings to be expected. Part 2 of these guidelines provides model implementation contract structure and essential elements to look for in an implementation contract as well as a sample UAR.

Note: It is recommended that an Agency not move forward with the UAR unless the ESCO has performed a PUA at some point prior to beginning the UAR.

Step 6: Submissions. Normally an ESCO will provide a detailed audit (or Utility Assessment Report - UAR) and determine if a viable project is possible. If the UAR does not reasonably confirm the savings identified by the PUA that the ESCO was responsible for

performing, the ESCO should not charge for the UAR. If the UAR confirms savings identified by the PUA, but the Owner does not go forward with the construction, the Owner will have to pay the ESCO for the costs of the UAR. If the Owner moves forward with energy and water² efficiency projects, the cost of the UAR should be rolled into the cost of the full project. The UAR should contain a minimum savings amount, requirements relating to time of completion by the ESCO, cost of the UAR, and scenarios requiring or not requiring payment to the ESCO for the UAR.

The ESCO completes the Utility Assessment Report (detailed audit) and submits it to the Owner. In addition the ESCO must submit a Measurement and Verification Plan (M&V), a Sample Periodic Utility Savings Report, and a Proposed Contract. The Owner and the ESCO should review and agree to the contents of all of the above.

Step 7: Third Party Independent Review. Before an agency can formally enter into an ESPC, the UAR and supporting documentation (including the Contract, the Utility Assessment Report, Measurement and Verification Plan, and the Sample Periodic Utility Savings Report) must be reviewed by an independent third party professional engineer licensed in the state of Texas pursuant to the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001.

Step 8: Project Implementation & Execution.

- Execute Contract
- Oversee Construction and Commissioning
- Review Annual Savings Reports
- Make Contractor Payments

Some Things To Keep In Mind

- All energy and water conservation measures must comply with current local, state, and federal construction and environmental codes and regulations.
- The entity with whom the Owner contracts must be experienced in the design, implementation, and installation of energy and water conservation measures.
- By statute, the energy and water conservation measures payback terms may not exceed 20 years from the final date of completion installation. Note that some financing sources have shorter maximum payback terms which may impact the contract.
- The total of all preconstruction, construction and post-construction costs divided by the guaranteed annual savings must be used to determine the project payback.
- Construction period savings, utility rebates, agency capital budget, or owner provided equipment directly used for the project where reasonable, may be allowed to lower the total financed cost of the project.
- The annual contract obligation may not exceed the total guaranteed savings divided by the term of the contract.

- ESPC proposals must contain four principal documents:
 1. The Contract
 2. The Utility Assessment Report,
 3. The Measurement and Verification Plan,
 4. A Sample Periodic Energy and Water Savings Report

Other elements such as bonds and certifications are incorporated within or attached to the four principal documents. The documents should be complete and consistent and prepared according to these requirements.

- If additional assistance is needed or you have questions, please contact the State Energy Conservation Office.
- The Contract must be approved by the State Energy Conservation Office (SECO) prior to execution. SECO also requires each agency to submit the following certification documents in addition to the Contract itself:

- 1) STATE AGENCY APPROVAL CHECKLIST
- 2) STATE AGENCY CHIEF FINANCIAL OFFICER CHECKLIST
- 3) AGENCY GENERAL COUNSEL CONTRACT CHECKLIST
- 4) MEASUREMENT AND VERIFICATION PROVIDER CERTIFICATION
- 5) PERIODIC UTILITY SAVINGS REPORT CERTIFICATION
- 6) THIRD PARTY REVIEWER CERTIFICATION
- 7) CONFLICT OF INTEREST CERTIFICATION FOR THIRD PARTY REVIEWER
- 8) ANALYST CERTIFICATION

These guidelines, certification documents and checklists are available on the SECO website:
www.seco.cpa.state.tx.us/sa_pc.htm