

# Energy Savings Performance Contracting Guidelines for State Agencies



# Part 1: Getting the most from your Performance Contract and Contractor

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The [Texas Government Code, §2166.406](#), 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.

## 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 completed on a representative sample of existing facilities to assist the agency in understanding the savings potential for one or more of the agency's existing facilities. If the Owner is considering constructing a new facility, the PUA for this new facility would be completed using comparative existing facilities with similar floor plans and identical uses.

PUAs also enable the Owner 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 (UAR).

If a preliminary audit is not performed prior to issuing an RFQ, PUAs should be completed 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: Select a Performance Contractor.** More than one ESCO may be selected based on qualifications. Short-listing and oral interviews of several firms may be used.

**Step 5: Negotiate & Approve the UAR.** Performance contracts have two parts. The first part of the agreement authorizes the selected ESCO to proceed with a detailed, investment grade audit. This investment grade audit is called an 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 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 water 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 UAR (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 UAR, 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.**

1. Execute Contract
2. Oversee Construction and Commissioning
3. Review Annual Savings Reports
4. Make Contractor Payments

## 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 and/or the Owner have shorter maximum payback terms which may impact the contract.
- Simple payback calculation must include the total interest costs, upfront costs paid by the Owner, and total measurement and verification fees. An ESPC Project Summary Cost Table can be provided upon request.

- The total of all allowable preconstruction and 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.
- Utility rebates or agency capital budgets may not be used to reduce the payback of an individual energy efficiency measure that does not originally meet individual payback requirements.
- 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 UAR,
  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.

- The Contract must be approved by SECO prior to execution. SECO also requires each agency to complete and submit the following certification documents in addition to the Contract itself:
  1. Measurement and Verification (M&V) Provider Certification Forms
    - a. M&V Plan Provider Certification Form
    - b. Periodic Utility Savings Report Certification Form
    - c. M&V Third Party Reviewer Certification Form
    - d. Conflict Of Interest Certification From Third Party M&V Reviewer
  2. Contract Documents Third Party Review Certification Forms
    - a. UAR Analyst Certification Form
    - b. Third Party Reviewer Certification Form
    - c. Conflict Of Interest For Third Party Reviewer
  3. State Agency Certification Forms
    - a. State Agency Approval Checklist
    - b. State Agency Chief Financial Officer Checklist
    - c. Agency General Counsel Contract Checklist
    - d. Project Cost Summary Table

# Part 2: Contract Structure, Essential Elements, and Certifications

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## Texas Government Code §2166.406 Contract Requirements

**Energy Savings Performance Contract:** A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period.

**Term:** The state agency may enter into an energy savings performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation.

Note: Owner or financing entity may request a reduced loan term. For example, on LoanSTAR funded projects, the loan term will not exceed 10 years unless over half of the project consists of HVAC retrofits. In that case the loan term will not exceed 15 years.

**Contractor Experience:** A state agency may enter into energy savings performance contracts only with a person who is experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

**Self-Funding:** The total savings guaranteed during the Contract term must be equal to or greater than the total project costs during the term.

Note: Each funding institution may have their own set of rules regarding what can be counted as savings for each energy or water consumption measure. For example, LoanSTAR funded projects do not consider operating costs in payback calculations.

**Annual Payment Limitation:** If the term of the contract exceeds one year, the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the state agency in this subsection, divided by the number of years in the contract term.

**Guarantee:** An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the state agency under the contract, including both the construction and repayment phases.

**Payment and Performance Bond:** Before entering into an energy savings performance contract, a state agency shall require the provider of the energy or water conservation measures to file with the agency a payment and performance bond relating to the installation of the measures in accordance with Chapter

2253. The agency may also require a separate bond to cover the value of the guaranteed savings on the contract.

**Code Compliance:** Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations.

**Utility Cost Reduction Measure (UCRM):** a measure to reduce energy or water or operating costs of governmental facilities. The term includes:

1. Insulation of a building structure and systems within the building;
2. Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
3. Automatic energy control systems, including computer software and technical data licenses;
4. Heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
5. Lighting fixtures that increase energy efficiency;
6. Energy recovery systems;
7. Electric systems improvements;
8. Water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
9. Water-conserving landscape irrigation equipment;
10. Landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
  - A. landscape contouring, including the use of berms, swales, and terraces; and
  - B. the use of soil amendments that increase the water-holding capacity of the soil, including compost;
11. Rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
12. Equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
13. Equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
14. Metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
15. Other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

**Utility Assessment Report (UAR):** The UAR must be reviewed by a third party Engineer in accordance with applicable statutory requirements.

**Required Third Party Review of Cost Savings:** Texas Statute requires that the ESPC contract documents including the Contract, UAR (detailed audit), Measurement and Verification Plan, and the Sample

Periodic Utility Savings Report, must be reviewed by an independent third party engineer licensed in Texas.

## **Key Components of an Energy and Water Savings Performance Contract**

### **I. List of Contract Documents**

- 1) UAR
- 2) Measurement and Verification Plan (M&V Plan)
- 3) Utility Assessment Report Agreement (also referred to as an Investment Grade Audit or Detailed Utility Audit)
- 4) Implementation Agreement
- 5) Sample Periodic Savings Report

### **II. Project Description**

This section provides an overview of the project. It should include a brief description of why the state agency is entering into the Contract, a general list of retrofits or improvements being performed under the terms of the Contract, the cost of the Contract, a brief description of services to be provided, a brief description of the financing method used, and a description of the savings that will be used to pay for the project. This section should also describe the guarantee associated with the project and any bonding associated with it.

### **III. Terms and Conditions**

#### **A. Scope of the Project**

This section provides a detailed description of the project, including equipment to be purchased, a list of retrofits, locations of the retrofits, and number of retrofits (i.e., fixture counts, number of pieces of equipment replaced, and size of chillers/boilers, etc.). The resolution of this information is the Owner's decision. It should be no less than the resolution in the energy and water assessment report submitted to the independent third party for review. The intent of this section is to give both parties a clear understanding of the retrofits and services that are included under the Contract. The contract should reference the scope of work contained in the Utility Assessment Report (UAR) dated XX/XX/XXXX. If the UAR changes between the time it is submitted to the owner, the contract should reference the Revised UAR dated XX/XX/XXXX.

#### **B. Performance Bonds for Construction**

This section describes in detail the payment and performance bonds provided with the project as they pertain to construction. This is covered in Chapter 2253 of the Texas Government Code.

#### **C. Guarantee**

This section explains how the guarantee will work, including the following:

- Source of energy and water savings
- Source of operational savings (operational savings are not energy or water savings).
- Conditions for reimbursement from the ESCO in the event of energy and water savings shortfall
- Conditions for reimbursement from the ESCO in the event of operational savings shortfall.

- Predetermined escalation rates shall not be utilized.
- A clear description of how any changes in utility rates are treated with respect to the guarantee.

All guaranteed savings should be consistent with the guaranteed savings presented in the UAR. The UAR should become part of the Contract. The guaranteed savings should be listed in the UAR report.

#### **D. ESCO Compensation**

This section details the total cost of the project and the method of payment. It should include frequency of payments, billing procedure, and costs for any service contracts during the construction phase of the project and after construction is complete.

#### **E. Insurance**

This section details the insurance provided by the ESCO for the project. It is incumbent on the Owner to require the proper amounts of insurance for the specific types of work being performed under the Contract.

#### **F. Owner Obligations**

This section describes any obligations of the Owner in conjunction with the Contract. The listed items are negotiable in most contracts and responsibility for them should depend on the Owner's needs and capabilities. Major obligations that should be addressed include the following:

- Retaining an independent third party engineer licensed in Texas to review the required UAR
- Repair or replacement of any existing equipment not included in the Contract
- Information such as prints, schedules, billings, logs, etc.
- Responsibilities during the ongoing monitoring of the project
- Ongoing maintenance requirements following completion
- Any disposal of materials not covered in the Contract
- Operation of the facility in accord with the Contract

#### **G. ESCO Obligations**

This section describes any obligations of the ESCO in conjunction with implementation of the project according to the project description. Major obligations that should be addressed include the following:

- Accounting Records
- Supervision responsibilities of employees and/or subcontractors
- Procedures for coordinating work
- Warranties
- Taxes
- Compliance with laws, rules, ordinances, regulations, etc.
- Financing (if required)
- Ongoing support
- Financial Guarantee
- Material removal and disposal
- M&V Plan



- Periodic Savings Reports

#### **H. Conditions of Default – Remedy**

- Any actions or conditions that would result in default of the Contract by the Owner
- Any actions or conditions that would result in default of the Contract by the ESCO

#### **I. Dispute Resolution**

- Methods for resolving disputes
- Venue for any dispute resolution
- Involvement of third parties

#### **J. Early Termination**

- Terms and/or conditions for early termination by the Owner
- Financial considerations of early termination such as penalties, payments, etc.

#### **K. Schedules**

##### ***1. Measurement & Verification Plan***

All Measurement & Verification plan should be consistent with the plan presented in the UAR and should address the following:

- Methodology of how energy and water savings are measured
- Methodology of how operational savings are measured
- Methodology of how energy and water savings are valued (use base year rate)
- Methodology of how operational savings are valued (describe origin of information and complete description of savings)

##### ***2. Operational Parameters***

All anticipated and required equipment operational parameters should be described and included in the UAR and in the M&V plan. These parameters include but are not limited to the following:

- Hours of operation
- Temperatures
- Operating Schedules
- Humidity Requirements
- Other identified operational requirements that the ESCO and Owner needs to consider prior to calculating projected savings.

All operational parameters should be listed in the M&V plan with procedures in place to take into account owner required changes to the agreed upon parameters.

All operational parameter information should be consistent with the parameters presented in the UAR. This information should become part of the Contract.

##### ***3. Maintenance Requirements***

- Any required maintenance contracts or services provided by the ESCO

- Required levels of maintenance by Owner

#### ***4. ESCO Supplied Training***

- Specific training supplied as part of the project
- Any additional training required by the Owner

#### ***5. Project Financing (if applicable)***

This section describes any financing relationship between the ESCO and the Owner that is required as part of the Contract.

### **IV. Attachments to the Contract**

- 1) The Utility Assessment Report
- 2) The Measurement and Verification Plan
- 3) The Periodic Savings Report

### **Third Party Independent Review**

State law requires that an independent third party review of the UAR be conducted by a licensed engineer. This review, at a minimum, must be both an assessment of the overall project scope of work and a technical review of the consumption savings methodology, project investment, and economic justification. The review must include reviews of the following documents:

- The Contract (Review from a technical perspective. This is not a legal review)
- The UAR
- The M&V Plan
- Sample Periodic Utility Savings Report

The reviewer must certify that these documents have been reviewed and are complete in identification and development of potential utility costs reduction projects. The third party reviewer must check that the Contract, UAR, and M&V Plan present a cohesive package that fully describes the intended scope of services. The reviewer must also provide a check of the project's technical details, including energy audit procedures, the savings calculation methodology, commitment to comply with state energy and water conservation standards, any stated assumptions in developing the costs and savings, applicability of energy and water utility reduction projects, methodology for development of the utility baseline, and procedure for verifying savings post-installation.

### **Agency Checklists and Certifications**

In order to fulfill the requirements of Texas Government Code §2166.406 (i), the following documents, must be completed by the State Agency. A State Agency may not enter into an Energy Savings Performance Contract unless it has been approved by SECO. The Energy Savings Performance Contract Approval Checklist and Certifications will serve as the vehicle for SECO review and approval.

1. State Agency Approval Checklist
2. State Agency Chief Financial Officer Checklist
3. Agency General Counsel Contract Checklist

#### 4. Project Cost Summary Table

# Part 3: Request for Qualifications (RFQ) Template

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This document is a guide for preparing a solicitation by a Texas State Agency. An RFQ template is provided in this part of the guidelines. Note that if this RFQ is utilized for a Public Institution of Higher Education, Local Government or School District, the references to enabling statute need to be modified accordingly. Also, these entities are not required to have SECO approval of any resulting project unless LoanSTAR funding is utilized.

## REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATE

### OWNER SUPPLIED INFORMATION

#### 1. Purpose of Solicitation

This solicitation is a Request for Qualifications (RFQ). The purpose is to solicit qualifications from Energy Service Companies (ESCOs) that describe their capabilities to identify, design, install, maintain, monitor, and arrange financing of a comprehensive utility conservation program. This program includes the services listed in this request pursuant to the provisions of Texas law. For the purpose of this RFQ, “ESCO” refers to any entity that is qualified to provide a turnkey utility conservation program that includes the services listed in this request and meets the requirements of the Texas Energy Performance Contracting Guidelines. Owner intends to select an ESCO and to award a single or multiple contract(s) to perform cost-effective utility conservation retrofits.

#### 2. Owner Background

[Insert OWNER Information]

#### 3. Services Requested

##### *Existing Facilities*

Owner proposes to address all utility and water consumption in some or all of its facilities for this conservation program. Additionally, Owner intends to upgrade outdated and obsolete building equipment and perform utility-related facility improvements through the program.

Owner anticipates a major reduction in annual utility consumption and associated operational costs through the implementation of this utility conservation program. As part of the process, a contract must include provision for monitoring and verification of utility savings and any guaranteed operational savings. If requested, the ESCO shall arrange financing or assist the Owner in procuring the most cost effective funding for the project. The term is not-to-exceed twenty years from the final date of installation.

##### *New Facilities*

Owner proposes to construct a new facility that mirrors an existing facility in both footprint and use. Owner intends to upgrade building equipment currently provided in similar facility. The conservation

program consists of obtaining utility bills for existing building and demonstrating how new facility will save utility and water consumption when compared to existing facility.

Owner anticipates a major reduction in annual utility consumption and associated operational costs through the implementation of this utility conservation program. As part of the process, a contract must include provision for monitoring and verification of utility savings and any guaranteed operational savings. If requested, the ESCO shall arrange financing or assist the Owner in procuring the most cost effective funding for the project. The term is not-to-exceed twenty years from the final date of installation.

#### *Schedule*

Owner intends to structure the program's implementation schedule in a manner to minimize its financed capital needs.

#### *RFQ*

Respondents to this RFQ shall identify their experience and qualifications to perform analysis, design engineering, preparation of engineering plans and specifications, installation, commissioning, monitoring and verification of savings, and management of a major utility conservation project that has involved Utility Cost Reduction Measures (UCRM) which address facility components and applications. Such components and applications shall include: lighting, space heating, ventilation, air-conditioning, building envelope, heat recovery, energy and water management systems, environmental system controls, motors, domestic water heating, fuel switching, air distribution systems, or other energy and water conservation related improvements or equipment including improvements or equipment related to renewable energy. Owner also requires a description of the ESCO's qualifications and experience related to training facility occupants and maintenance workers in energy and water conservation awareness.

#### **4. Buildings/Project Description**

[Insert building, facility and project details.]

#### **5. Procurement Process**

##### **a. Owner Publishes RFQ**

The Request for Qualifications (RFQ) is the first step in a multi-step process aimed at identifying one or more qualified ESCOs. The RFQ or notice of availability of the RFQ must be published in accordance with state law. The RFQ details the requirements for response, deadlines, and directions for submittal in subsequent sections. This process must conform to provisions of Texas Government Code 2254.004.

##### **b. Selection of Qualified Provider or Short-list of Providers**

A committee has been formed to review responses submitted. Based on the selection criteria described in this document, the committee may select a short-list of the most qualified respondents. (Note: The Owner retains the right to select only one respondent at this stage and skip the next two stages to negotiate a contract. The Owner may also determine that no qualified submittals have been received and reject all submittals.)

**c. (Optional) Walk-through Site Visit Led by Owner**

The short-listed respondents may be provided an opportunity to separately walk through one or more facilities with the Owner to develop an understanding of those facilities and the opportunities for improvements in energy and water efficiency equipment or practices. The owner may also choose to have the respondents conduct a Preliminary Utility Audit (PUA) during this step. (Note: Even if the Owner selected a short-list of respondents rather than only one, Owner may choose to skip this stage and enter into an initial utility audit contract with more than one ESCO in order to obtain some experience with each of the respondents considered most qualified.)

**d. Oral Presentation (Optional)**

Oral presentations may be required of each of the interested short-listed respondents covering their general qualifications in the field of performance contracting for utility efficiency improvements. This presentation will include each stage of work required, the firm's initial impression of the Owner's facility status, and a likely conceptual approach to improving the efficiency of the facility.

*(Owners Note: Adding the walk-through step and/or the PUA step will allow the Owner's selection committee to gain an impression of how knowledgeable the respondent's team is regarding a specific project. Oral presentations, however, may be made only with respect to the respondent's qualifications and the Owner's needs as provided in the RFQ. If oral presentations will be required, the Owner may want to include more building information in the RFQ than would otherwise be provided. Suggested information would include a facility list with conditioned square footage, estimated utility consumption and cost, facility occupancy type (office, warehouse, etc.), and address/location.)*

**e. Negotiate Utility Assessment Contract**

The Owner will select one respondent to provide detailed utility audits of one or more facilities (or all facilities).

**f. Prepare UAR for Final Project Proposal**

The Owner and the selected respondent will negotiate a contract in which the Owner assigns a facility for the respondent to audit and agrees to pay a negotiated fee for performance of this work. The selected respondent will agree to perform the UAR (detailed audit) according to the Energy Performance Contracting Guidelines. The UAR must be performed and sealed by a licensed Texas Professional Engineer working for a firm that is registered with the Texas Board of Professional Engineers.

Owner expects the ESCO to perform the UAR on a contingent basis (i.e. not bill for the audit until the UAR is completed and the project is developed) and roll the agreed upon cost of the UAR into the final project cost. The owner reserves the right to pay for the UAR or finance it with the rest of the project. Owner may expect a minimum level of savings to be guaranteed based on preliminary utility audits that the ESCO performed.

**g. Submittal of Final Proposal**

The selected respondent will provide a final proposal for the Owner's utility efficiency improvement project. The final proposal will include the completed UAR, documentation of potential utility and operational savings, and all associated implementation costs. It must also include a Measurement and Verification Plan and a Sample Periodic Savings Report.

**h. Review and Recommendation of Final Proposal**

The Owner's review committee will review the final proposal and either accepts the proposal, accept the proposal with exceptions or modification, or reject the proposal.

**i. Negotiate Master Performance Contract**

After the Final Proposal is accepted, the selected respondent and the Owner will negotiate a master implementation contract. The Contract will include authority to proceed with final design and installation/construction and detail the payment schedule to the ESCO.

**j. Contract Approval and Review**

State law requires that SECO develops guidelines and an approval process and approves the agency ESPC, and that the UAR be reviewed by an independent, licensed third party engineer prior to contract execution. As part of SECO's approval process, a review of the M&V Plan, a Sample Periodic Savings Report, and the Contract by a licensed third party engineer is also required. The contract review by the third party Engineer will ensure that the essential elements of the enabling statute are covered and accounted for in the contract.

**k. Bond Review Board Approval**

Any lease-purchase obligation issued by or on behalf of a state agency that has a stated term of longer than five years or has an initial principal amount of greater than \$250,000 must receive Bond Review Board approval prior to their issuance. Bond Review Board rules for the application and approval process can be found in the Texas Administrative Code Title 34, Part 9, Chapter 181, Subchapter A.

**l. Perform Project**

Once the Contract is approved and executed, and funding has been secured, the ESCO may proceed with the detailed project engineering design and construction/installation.

**6. Evaluation Criteria (The Agency may wish to publish the criteria scoring with this section)**

Qualifications of all business entities that respond to a solicitation, including any subcontractors to be utilized, should be evaluated using selection criteria similar to the following:

**a. Business Qualifications**

- Business unit dedicated to performance contracting.
- Years in business as an ESCO or provider of the services being offered for this program.
- Equipment, services, or utility services manufactured or provided by the business. What percentage of the total business revenues generated by ESCO services?
- ESPC Annual Revenues.
- General project track record.
- Services to be provided under this project.
- Affiliation with all other subcontractors listed in this response.
- Office location from where this project will be managed.
- Proof of current Texas Professional Engineering Registration.
- Local presence in area; current customers in area.
- Specific experience with projects of a comparable nature.

**b. Personnel Qualifications**

Background and professional qualifications of personnel assigned to this project, including subcontract personnel. Provide descriptions of their responsibilities, related experiences, and references. Indicate only staff to be directly involved with the project.

**c. Financial Qualifications**

To ensure the financial viability of the respondent, at a minimum the following will be considered:

- The financial viability of the entity proposed to provide technical and financial guarantees, as well as other entities proposed to participate in project.
- ESCO will provide audited financial statements including income statement, balance sheets, and statements of changes for three (3) most recently completed fiscal years. If audited financial statements are not available, provide evidence of the level of third party review of the financial statements.
- The financing capability of the respondent. The respondent should provide information that documents sources of proposed financing and specific projects that have used proposed financing sources.
- References from subcontractors used on previous jobs to indicate fiscal responsibility.
- The willingness to adhere to the Owner's standard contract terms and conditions.

**d. Project Management Qualifications**

Ability to assign responsibility and coordinate the detailed utility audit project and construction for management of the following project phases:

- Detailed utility audit
- Engineering and design
- Procurement
- Construction
- Commissioning
- Monitoring and verification
- Operations and maintenance, if required

Ability to adhere to project schedules and complete all phases of the performance contracting program process in a timely manner.

**e. Experience**

- Experience with implementing similar utility conservation projects on a performance contracting basis.
- Experience with the full range of responsibilities contemplated for this project (e.g., identification and analysis of UCRMs, design, installation, operation, training, financing, savings verification, etc.)
- Performance on prior projects, including data on projecting, achieving monitoring and documenting (measurement and verification) of utility and operational savings in order to ascertain accuracy of projections.
- References from prior projects of a comparable nature performed on a performance contracting basis.



## Instructions to Respondents

Owner specific information should be provided here, detailing the Owner's requirements for acceptance of responses. Items to be provided may include:

- Requirement of a Letter of Intent and its deadline;
- Whether questions are accepted from intended respondents, up to a specific date, and how the Owner will answer questions from the respondent;
- Owner terms and conditions;
- The number of copies of responses that shall be delivered, page limits and the required format for responses. Faxed copies are not accepted.
- The address and contact person to which contracts should be sent and the required date and time of arrival.
- Owner reserves the right to reject any and all responses resulting from this RFQ. Late responses will not be accepted and will be returned to the submitting company unopened.
- Owner is not liable for any cost incurred by any person or firm responding to this RFQ.
- Owner reserves the right to reject as nonresponsive any responses that do not contain the information requested in this RFQ and in the form outlined in this RFQ. Additionally, Owner reserves the right to reject any responses that are not organized and formatted as described in this RFQ.
- Please direct all questions regarding this RFQ and the program it represents to: [Owner's Representative, Phone Number]

## RESPONDENT'S SUBMITTAL

### PROPOSAL FORMAT

#### 1. Corporate Background and Experience

- Describe your firm's organizational structure, including any limited partnerships and how they are applied to this proposed project.
- How many years has your firm been in business under its present name?
- Indicate all other names by which your firm has been known and length of time known by each name.
- Include the address of your firm's website, if applicable.
- Describe your firm's general approach to energy performance contracting.
- List any equipment manufactured by your company that may be included with this project.
- Describe your willingness to include other manufacturers products
- List past or present litigation in which your company is a defendant pertaining to ESPC projects in Texas.
- List any contracts in Texas in the last ten years that were terminated by the owner prior to completion due to nonperformance.
- List above information related to any previous business names.
- Identify and describe any business associations with equipment manufacturers or suppliers that might be specified for this project.

#### 2. Key Project Personnel

Provide information regarding capabilities and experience of personnel directly assigned to this project that include the following:

- Professional resumes for key personnel and their responsibilities for the duration of the Contract.
- Indicate the education and professional licensing of each person as it relates to this project. Include a list of previous projects, similar in size and complexity, in which each team member has played a significant role.
- Clearly identify who will have primary technical responsibility for utility analysis, engineering and design work, contract negotiations, construction management, training, and performance monitoring.
- Provide an organizational chart that clearly describes your firm's project organization with supervisory reporting for this project.

### **3. Energy Performance Contracting Experience**

- State how many years your firm has been in the energy/water performance contracting business.
- Describe the complete range of utility services and capabilities your firm offers: such as engineering, design, auditing, energy and water equipment selection and installation, operation and maintenance, commissioning, monitoring and verification, and training.
- List all services which your firm performs with your own employees.
- What types of services are usually subcontracted?
- Describe the process of subcontractor selection.

### **4. Project Team Organization (To be included if known at this time)**

- Identify the services, name of the firms involved, and the principal contact for each service subcontracted for this project.
- Provide a project organization chart listing each subcontract team member and their area of responsibility to deliver this project.
- Include a description of projects that the firm and its proposed subcontractors have jointly performed.

### **5. Project Management Plan**

Include a plan describing how your firm will manage subcontractors. Describe the processes that will be used for the assignment of tasks, project scheduling, and budget control, as well as capability to provide all services required for construction and implementation of retrofit projects on a performance contracting basis. Provide specific information on management of the following project phases:

- Detailed utility audit
- Engineering and design
- Procurement
- Construction

- Submittal drawings, equipment manuals, and warranties
- Commissioning
- Monitoring and verification
- Operations and maintenance, if required

Provide a timeline indicating necessary activities with a suggested schedule for implementing the detailed audit and project development plan through the procurement process, as referenced in the Owner Supplied Information.

## **6. Corporate Financial Information**

The ESCO will provide audited financial statements including income statements, balance sheets, and statements of changes for the three (3) most recently completed fiscal years. If audited financial statements are not available, provide evidence of the level of third party review of the financial statements. ESCOs shall also provide documenting source(s) and levels of financing (e.g., a letter from a financial institution describing a relationship with the ESCO).

The ESCO shall provide a letter from its surety company demonstrating the ESCO's capability to provide a payment and performance bond associated with construction projects equal to one hundred percent (100%) of the estimated total implementation cost of this project. This cost includes construction costs and equipment purchased under this solicitation of an estimated [/\$] million project. The letter should also state the bonding capacity of the ESCO.

Provide a copy of an actual bond if available.

## **7. Risk Mitigating Strategies**

Describe any risk minimizing strategies intended to protect the Owner.

## **8. Performance Contracting References**

Discuss your project team's experience with Energy Performance Contracting projects at similar facilities. List references within the past five years indicating experience in conducting comprehensive utility efficiency and guaranteed savings programs of a similar nature to this project (at least two years of guarantee performance must be demonstrated). Include the following specific information for each project:

- Date
- Project title and location
- Name, address, and phone number of Owner's representative
- Trade references from subcontractors
- Nature of your firm's responsibility
- Scope of work including types of utility conservation measures evaluated and installed with type of equipment used
- Total dollar contract amount and term in years
- Type of contract (guaranteed savings, shared savings, direct cost, etc.)

- Source of project funding
- Projected and actual project start and end dates
- Projected annual utility savings (dollars and kWh or BTUs and kW; kgallons)
- Actual and measured annual utility savings (dollars and kWh, kW, Mcf., etc.; kgallons)

## **9. Utility Savings Verification**

Changes to the estimated utility savings can occur as a result of installation of additional mechanical, natural gas, and lighting equipment, expansion of operating schedule, and weather fluctuations. Explain how you will account for this and include an actual Utility Audit Report, Measurement and Verification Plan, and Periodic Utility Savings Report that your firm developed for a facility of similar size and scope.

Describe the methodology for calculating baseline utility consumption for a similar facility. If proprietary software is used, provide a copy of the manual.

Describe how your firm treats actual savings that exceed the guaranteed savings amount.

## **10. Operational Savings Verification**

If operational (non-utility) savings are to be incorporated within the proposed project, address the following questions:

Do you use any of the following types of cost savings to help repay the financing of your project?

- Deferred Maintenance
- Man Power
- Materials
- Administrative Costs
- Scheduled or Unscheduled Equipment Replacement
- Outside Contracts
- Parts
- Equipment Repairs
- Other

Explain how these savings are calculated. Any savings used to calculate the payback must be guaranteed. Explain how you monitor and verify that operational savings have been realized. In the event that operational savings are not realized, what actions would be taken to rectify the shortcomings?

## **11. Financial Guarantees**

Explain in detail how you will guarantee the savings associated with this project. Discuss the following areas in detail:

- Frequency of reconciliation
- Repayment of missed savings
- Treatment of "Operational" (non-utility) savings as they pertain to the guarantee
- Any situations that would void the guarantee

- If measured specific guarantees are or are not used, explain how and to what extent
- If stipulated savings are to be used, explain how and to what extent

## **12. Equipment and Training**

Demonstrate expertise in building operations and maintenance training in terms of successfully completed projects. Specifically discuss the following areas:

- Types of training
- Location of training
- Frequency of training
- Training provided by your personnel
- Training provided by others

## **13. Project Financing and Incentives**

Financing capability will be evaluated. The ESCO will provide information that documents sources of proposed financing and specific projects that have used proposed financing sources.

The ESCO shall also describe in detail how they intend to secure the annual savings project guarantee. Identify alternate financing options or incentives that may be available to the Owner for funding this project. Disclose any relationship, fee, or incentive the ESCO might have or receive related to this financial institution or transaction.

## **14. Contract Terms and Conditions**

While the Owner expects respondents to adhere to their standard contract terms and conditions, identify any contract provisions that the ESCO takes exception to. State any additional terms and conditions that your firm would include, particularly any the ESCO considers nonnegotiable.

## **15. Respondent's Questions**

Please list any questions you have of the Owner that have not been addressed up to this point.

# Part 4: Technical, Cost, and Savings Criteria for the Contractor

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This document provides guidance and requirements for preparing energy and water and financial calculations. The UAR) must be reviewed by an independent third party engineer licensed in Texas before the Contract can be finalized. The Measurement & Verification Plan (M&V Plan) and Sample Periodic Utility Project Savings Report and the Contract must also be reviewed by an independent third party before execution.

Energy Services Company (ESCO) project reports should include an UAR, and may include an M&V Plan and a Sample Periodic Utility Savings Report. Project descriptions and calculations should be presented in the UAR following the prescribed format in this document.

## Utility Assessment Report (UAR)

### Technical Analyst Qualifications and Responsibilities

Reports identifying and analyzing prospective utility cost reduction projects must be clear, concise, objective, and technically sound. The UAR identifies and documents project costs and savings. This report becomes a part of the Contract and must be reviewed by an independent third party engineer licensed in Texas before the Contract can be approved.

The technical analyst who prepares the UAR must:

- have extensive knowledge of energy and water-using systems found in institutional and commercial buildings, a working knowledge of energy efficient retrofits utilizing state-of-the-art technologies, and a specific understanding of building operation and maintenance procedures;
- be experienced in conducting energy and water analyses identifying energy and water efficient retrofit projects in institutional or commercial buildings and in preparing comprehensive reports on the findings;
- be involved in on-site work to gather project data; have a working knowledge of the building(s) and its energy and water-using systems; direct or perform all aspects of the data collection, project selection, analysis, cost estimation; and provide final recommendations for the project; and
- be knowledgeable in M&V techniques and protocols.

### Costs of Utilities

Existing rate schedules applicable to each facility must be used, unless it is known that a significant change in rates will take effect within six months after the date of the UAR. The performance contractors must include a copy of the current or pending rate schedule in an appendix. One should use actual demand, fuel costs, and power factor penalties, where applicable, in savings calculations. A rate

reduction may be considered as a valid energy and water cost savings<sup>1</sup> and allowable if and only if it is directly tied to some component of the project and does not include other nonrelated restrictions. To qualify, a rate reduction must be a direct result of new equipment or some other system modification.

## **Utility Cost Reduction Measure (UCRM) Related Operation and Maintenance Recommendations**

Operation and Maintenance (O&M) cost savings associated with a UCRM may be included as part of a utility retrofit project, provided that these savings indicate a direct reduction within an Owner's maintenance and operating budget (i.e., savings based on reduced labor requirements must show an accompanying reduction in the Owner's labor budget). Any savings used to justify a project under the Texas Government Code must be guaranteed. Factors affecting those savings must be contractually fixed.

A fairly simple two-part test can be applied to determine if O&M savings can be used to offset the costs of a project under the Government Code §2166.406: Can the actual annual savings be verified? If the answer is "yes," the follow-up question is: If the O&M savings do not occur, will the Contractor reimburse the customer for the savings shortfall (considering O&M baseline analysis)? If the answer to *both* questions is "yes," then it is appropriate to use these savings to justify the project. If the answer to *either* question is "no," then the savings are not appropriate.

Note: Not all funding sources will provide funds for O&M savings. For example, the LoanSTAR revolving loan fund provides funding on UCRM direct savings.

## **Utility Cost Reduction Measure Implementation Costs**

A budget for the installation of each UCRM must be included in the UAR. Implementation cost estimates should be as detailed as practical and conform to the documentation outline discussed below. The cost estimate shall be provided for each individual UCRM and must state a total cost which includes equipment, materials, labor, subcontracts, design/engineering, administration/ project management, monitoring and any contingency funds included in the project budget. Known planned repairs or maintenance, other than routine operations and maintenance, must be included in the costs of the Contract, if such interim repairs, rebuilds, or maintenance must be accomplished in order for the UCRM to achieve the savings credited to the Contract.

The implementation costs must also include the removal and proper disposal of materials and equipment to be replaced under this Contract in accordance with the Owner's direction. These materials would include, but not be limited to, items such as lamps, ballasts, switches, controls, heating, ventilating and air-conditioning equipment (HVAC), pumps, fans, blowers, piping, valves, conduit, wiring, and boilers. Asbestos abatement, if necessary, is also included.

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<sup>1</sup> Because the Texas Legislature now requires water conservation, for the purposes of this document, the term "utility" refers to: electricity, gas, thermal or other energy resources, water, and wastewater.

## **Use of Computer Programs for Energy and Water Savings Calculations**

The technical analyst may use a computer program to analyze a UCRM, but the program should not be substituted for the procedure itself. The analyst must be able to submit computer programs utilizing clearly identified energy and water calculation procedures for review. The following energy use simulation programs are suggested by SECO: Carrier E20, Trane Trace, ASEAM, Blast, DOE-2, and Visual DOE.

To summarize, analysts are encouraged to calculate energy and water savings manually, using simplified energy and water calculation methods based upon accepted engineering procedures, such as those recommended by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IES). These basic calculations should be presented in a concise, logical sequence. If the analyst elects to use a computer program or spreadsheet to calculate energy and water savings, simplified energy and water calculation methods must be identified, and the printouts and solutions should be clearly marked and self-explanatory.

## **Compliance with All Relevant Federal, State, and Local Codes and Regulations**

The Contractor must meet all relevant Federal, State, and local codes or regulations in effect at the time of contract execution and shall be held responsible for knowing and meeting such requirements. This will be a contractual requirement.

## **Minimum Equipment Efficiency**

All equipment purchased under an ESPC must meet or exceed all applicable state and local codes, at the time of contract execution, and must meet or exceed the equipment efficiency standards as embodied within the current ASHRAE/IES Standard.

## **Calculation Procedures**

Calculation methodologies are expected to be consistent with ASHRAE standards.

## **Documentation of Project Assumptions**

It is also the responsibility of the analyst to document any and all assumptions made with regard to estimated implementation cost and cost savings. These assumptions must be clearly identified to assist the reviewer in determining the validity of the individual UCRM. For example, if the retrofit work requires disruption to an occupied space, the analyst should state that the cost estimate is based on the work performed after hours or on weekends at a premium rate. If the analyst assumes that the Owner will vacate a given area for the retrofit work to be done, this should be clearly noted. The same is true for assumptions made with regard to equipment run time when calculating potential energy and water savings. All of the assumed run times, setbacks, 24-hour operations, etc. should be summarized under this section, to call attention to the fact that important decisions are based upon the validity of these assumptions.



# Part 5: Measurement and Verification of Savings

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Measurement and Verification (M&V) of savings are central to determining the satisfactory performance of contracts subject to Government Code §2166.406. Normally, the ESCO provides the M&V. Additionally, the State Agency ESPC Guidelines require third party review of the M&V and the sample periodic utility savings reports as a part of the UAR review.

The choice of an M&V provider is an Agency decision and the circumstances and capabilities of the parties involved are widely varied. The M&V plan, its implementation, and the Periodic Utility Savings Reports may be provided by the Owner, the ESCO, a third party contractor or some combination of these as determined by contract agreement. The requirements set forth in this chapter apply regardless of the provider.

## Introduction to Measurement and Verification

SECO requires the use of the International Performance Measurement and Verification Protocol (IPMVP) which was developed as a cooperative effort between industry and the U.S. Department of Energy.

The methodology for calculating savings varies by the type of modifications implemented in the building system. Modifications implemented under these Guidelines should be easily grouped into one of the categories listed in the table below. Each category modification has a specific principle associated with calculating savings that adheres to the current version of the International Performance Measurement and Verification Protocol in effect at the time of the development of the UAR. This IPMVP provides current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects in commercial and industrial facilities. The IPMVP is maintained with the sponsorship of the U.S. Department of Energy by a broad coalition of facility owners/operators, financiers, energy services companies, and other interested parties. The IPMVP outlines a number of methodologies for calculating savings that vary by the type of project installed.

## Measurement and Verification Services Agreement

The agreement between the Agency and provider of Measurement and Verification (M&V) services must contain a detailed scope of work and deliverables that clearly define the outputs and service levels expected for services provided after the installation of equipment. This should include detailed descriptions of individual services and costs associated with each service. Individual services may include, but are not limited to:

- Metering of equipment and systems
- Tracking performance of equipment and systems
- Reporting savings from equipment and system improvements
- Training for the Agency operations and maintenance staff
- Technical support and warranty for installed equipment

- Commissioning and maintenance of equipment and systems

The term of the M&V services agreement should only be for the length of time necessary for actual savings to be adequately established, predictable and agreed to by both the Agency and service provider as determined under the terms of the agreement and consistent with the statutory requirements. It may be appropriate as well to include a provision that allows the Agency to terminate or change the frequency of individual service elements if savings can be established, predictable and agreed to by both the parties prior to the stated termination date of the agreement. Agencies should carefully consider the cost of M&V services, as these costs can diminish or counterbalance realized savings.

## Standard Calculation Methodologies

The standard calculation methodology used to calculate Utility Cost Reduction Measures (UCRM) consumption savings are as follows:

- **IPMVP Option A – Partially Measured Retrofit Isolation.** Savings are determined by calculating the energy use of the system(s) to which an UCRM was applied, separate from the energy use of the rest of the facility. Measured parameters may be continuously measured or periodically measured for short periods. Option A is most useful for constant load retrofits where the operating hours can be determined. The models will use data from a variety of sources including, but not limited to, field measurements, manufacturer’s data, and/or reasonable engineering estimates.
- **IPMVP Option B – Retrofit Isolation.** Savings are determined by measurement of the energy use of the isolated system to which a UCRM was applied; separate from the energy use of the rest of the facility. Option B is most useful in retrofits which can be isolated from the rest of the system and have sufficient savings to justify the cost of monitoring. Monitoring can range from periodic spot measurements to continuous measurements.
- **IPMVP Option C – Whole Building.** Savings are determined by measuring energy use at the whole building or facility level. Short-term or continuous measurements are taken throughout the post-retrofit period. Option C is most useful where several retrofits are implemented and are difficult to isolate into separately measurable quantities.

## Selection of Standard Calculation Methodologies

The list below gives several calculation methodologies that may be used to calculate savings in connection with a UCRM. The project category types correspond to the typical types of energy efficiency retrofit modifications.

### **Type 1: Simple Efficiency Improvement – Constant Operating Hours**

For retrofits resulting in fixed demand reduction in equipment that is always operating, i.e., exit signs or operating at a known schedule. Option A

### **Type 2: Simple Efficiency Improvement – Variable Operating Hours**

For modifications resulting in fixed demand reductions from new equipment or equipment upgrades (i.e., lighting upgrades). Option A

**Type 3: Simple Operational Modification**

For modifications resulting in reduced operating hours (i.e., on/off controls). Option A or Option B.

**Type 4: Variable Operational Modification**

For modifications resulting in reduced mechanical cooling when outdoor air economizers are being used and where savings are weather dependent. Option B or Option C.

**Type 5: Variable Efficiency Improvement**

For modifications that create savings from efficiency improvements in equipment that operate with variable output (i.e., air conditioning equipment and cooling towers). Option B or Option C.

**Type 6: Modulating Efficiency Improvement**

For modifications that create savings from installation of variable frequency drives that allow variable output for fixed consumption equipment. Option B or Option C.

**Type 7: System Modifications**

For modifications that affect the way entire subsystems are operated, performance improvements, and operational modifications are deployed (i.e., chiller or boiler plants, or compressed air systems). Option B or Option C.

**Type 8: Whole Building**

Where numerous modifications and operational changes are implemented, are difficult to isolate, or may not be significant enough to justify independent savings calculations. Also, the expected savings need to be large enough to be reasonably detected by monitoring the whole building consumption. Option C.

These methodologies can generally be applied to measure savings resulting from performance improvements, operational modifications, or equipment upgrades. Where specific site conditions make a listed methodology impractical, a case specific methodology conforming to IPMVP principles should be applied.

## **Qualifications and Responsibilities of the M&V Analyst and M&V Reviewer**

The M&V Plan and the Periodic Utility Savings Reports produced using the data derived from it is how the agency determines how well the project is performing with respect to the guaranteed performance of contracts subject to Government Code §2166.406. The M&V Plan becomes part of the Contract and must be reviewed by an independent third party licensed engineer.

The analyst who develops or reviews the M&V Plan must meet the following criteria:

- Have a working knowledge of utility-using systems typical of those found in institutional and commercial buildings, have a working knowledge of energy and water efficient retrofits utilizing state-of-the-art technologies, and have a specific understanding of the subject building's operation and maintenance procedures;
- Be experienced in conducting utility monitoring, identifying and measuring elements of utility consumption in institutional or commercial buildings, preparing comprehensive savings reports,

have experience in on-site work to gather project data, and direct or perform all aspects of the data collection, data selection, data analysis, cost estimation, and provide final recommendations for the project.

It is the responsibility of the analyst to expedite the preparation of the report and to respond in a timely manner to any comments, questions, or necessary revisions resulting from the technical review.

## **M&V Plans: Purpose and Minimum Content**

Any performance contract submitted must first and foremost provide substantial proof that the UCRM in fact will perform as stated in the project proposal and provide savings greater than or equal to those estimated. It is the overriding purpose of the M&V Plan to describe a method for achieving that proof.

M&V plans should contain, at a minimum, the following information:

- Name and qualifications of the M&V firm and individual technical analyst that will perform the M&V
- A list of what will be measured
- Time interval(s) to be used for the measurements
- The total cost of the M&V Plan over the term of the contract
- Instruments that will be used for measurement and method of installation
- How the instruments will be calibrated and the frequency of calibration
- What baseline and post-retrofit analysis will be performed on the data that are collected
- A sample calculation of the savings analysis including format (ASCII flat file recommended)
- A table that shows M&V approach to measure each UCRM or O&M measure
- A Sample Periodic Utility Savings Report including examples of all required documents and showing all data elements, calculations and representative results
- Certification of review by a licensed engineer

## **Measurement and Verification Plan Review**

The M&V Plan must be submitted along with the UAR, sample Periodic Utility Savings Report, and the proposed contract for an independent review by a licensed engineer.

## **Periodic Utility Savings Report**

The Periodic Utility Savings Report will be reviewed by the Agency and /or third party reviewer based on the following criteria:

- Are the savings greater than or equal to those estimated or guaranteed in the UAR and the Contract? (If the estimated and guaranteed savings are not the same, both numbers must be shown throughout the documents.) Do they meet the requirements of Government Code §2166.406?
- Does the report contain the minimum required elements as listed in this document?
- Does the report present the data elements, calculations, and results as set forth in the M&V Plan?
- Do the parties (i.e., Owner, ESCO Contractor, or third party contractor) have any disputes or concerns regarding the report?

If it is determined that an independent third party review of the utility project savings report is needed, the contractually designated third party reviewer should respond to the review request within fifteen working days of its receipt. If the answers to the above questions are satisfactory to the contractually designated third party reviewer and the Owner, the report will be filed for future reference. If the answers are not satisfactory, closer review of the project will begin and the costs of that review along with the contractual remedies will be assigned to the party deemed responsible for the discrepancy, as determined by the third party reviewer and specified in the Contract.

### **Certifications**

The following certifications address:

- 1) The preparation of the M&V Plan;
- 2) The Periodic Utility Savings Report, which is provided by the ESCO/Contractor;
- 3) The third party review of the Utility Savings Report;
- 4) Conflict of interest issues by third party providers.

Third party providers shall sign the M&V services certification for reviewing M&V reports.

# Part 6: Funding of Performance Contracts

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Various sources of funding are available to state agencies for performance contracts. One of the most commonly used is the Master Lease Purchase Program (MLPP) administered by the Texas Public Finance Authority. Another source is the LoanSTAR fund administered by SECO. The following document provides summary information on these commonly-used financing programs along with website references.

## Master Lease Purchase Program Overview

The [Master Lease Purchase Program \(MLPP\)](#) is a lease revenue financing program established in 1992, primarily to finance capital equipment acquisitions by state agencies. Under the program, the TPFA borrows money to pay for an agency's equipment or other project by issuing tax-exempt revenue commercial paper notes. The agency and the TPFA enter into a lease pursuant to which TPFA takes title to the equipment or other project and leases it to the agency that is required to make lease payments to TPFA. TPFA uses the lease payments to repay the principal and interest on the commercial paper notes. When the lease is fully paid, the agency receives title to the equipment or other financed project. An agency may pay off its lease at any time without penalty.

### Who may use MLPP?

MLPP is available to any state agency. A "State Agency" is any board, commission, department, office, agency, institution of higher education, or other governmental entity in the executive, judicial, or legislative branch of state government. (See, Texas Gov't Code, § 1232.003.)

### What may be financed?

MLPP may be used to finance a state agency's acquisition of equipment that costs at least \$10,000 and has a useful life of at least three years. Individual items may be bundled and financed in one purchase as long as the value of the individual item is at least \$100. In other words, an acquisition of equipment may be financed if the total amount of the one contract or purchase order is for at least \$10,000. (Since this is the acquisition of "equipment" as a general rule, the contract will be in the form of a standard purchase order and the amount of that one purchase order has to be \$10,000 or more.)

"Equipment" means any "fixed asset, other than land or a building, used by a state agency to conduct state business,"... including computer equipment. Computer equipment includes any automated information technology system and computer software.

Other projects, such as real estate or construction, may be financed through MLPP if the specific project has been authorized by the Legislature and approved for MLPP financing by the TPFA Board.

### Bond Review Board Approval

A lease for an amount of \$250,000 or more or for a term of 5 years or more requires Bond Review Board ("BRB") approval. The agency is responsible for submitting its own application and obtaining approval of the BRB. However, as the BRB's current application form requires the attachment of an amortization schedule prepared by TPFA, the agency should notify TPFA MLPP Program Administrator of its intent to seek BRB approval as soon as practicable.

## **LoanSTAR Program Overview**

The Texas LoanSTAR (Saving Taxes and Resources) Program is state-administered revolving loan program that is legislatively mandated to be funded at a minimum of \$95 million at all times. The program's revolving loan mechanism allows borrowers to repay loans through the stream-of-cost savings generated by the funded projects.

Projects for existing facilities funded through the LoanSTAR Program include, but are not limited to, energy efficient lighting systems; high efficiency heating, ventilating, and air conditioning systems; computerized energy management control systems; boiler efficiency improvements; energy recovery systems; and building shell improvements.

The LoanSTAR Program will also fund the construction of a new facility provided that the new facility mirrors, in footprint and use. For details on the inclusion of a new facility within an energy efficiency project, contact the LoanSTAR Program Manager.

The LoanSTAR Program will also fund facilities' equipment commissioning projects. The commissioning process involves identifying opportunities for improving systems operations and how these systems can be optimized.

Interest rates for the LoanSTAR Program are based on several factors, which include money market rates and LoanSTAR administrative cost. Rates are evaluated and set with each Notice of Loan Fund Availability/Request for Application (NOLFA/RFA).

The maximum loan amount for each application is published with each NOLFA/RFA. Applicants are allowed to apply for more than one loan.

The Texas LoanSTAR Program is a viable option for financing performance contract projects for all public entities.

At a minimum, the following information must be submitted for review in order to be eligible to receive LoanSTAR funding:

1. Contract between Borrower and ESCO
2. Utility Assessment Report prepared in accordance with ESPC Guidelines, Part 5
3. Measurement and Verification Plan prepared in accordance with ESPC Guidelines, Part 6
4. Sample Periodic Utility Savings Report
5. Third party independent review certifications

At the present time, LoanSTAR for ESPC funded projects must meet the following criteria:

1. Simple payback for projects in aggregate may not exceed ten years unless the project contains HVAC efficiency measures that total more than 50 percent of the total loan value. IN that case, the simple payback for projects in aggregate may not exceed fifteen years.
2. Simple payback calculation must include the total interest costs, upfront costs paid by the Owner, and total measurement and verification fees. An ESPC Project Summary Cost Table can be provided upon request.
3. Simple payback for any project may not exceed the expected life of the project.
4. The simple payback for any utility cost reduction measure (UCRM) may not exceed the expected life of the UCRM. A borrower may buy down a UCRM so that it meets the simple payback criterion, if the buy down does not exceed 50 percent of the UCRM.