DEPARTMENT OF STATE

No: 8247

Date: August 28, 2012

Approved Hon. Kenneth D. McClintock
Secretary of State

By: Eduardo Arosemena Muñoz
Assistant Secretary for Services

GOVERNMENT OF PUERTO RICO

PUERTO RICO ENERGY AFFAIRS ADMINISTRATION

Energy Savings Performance Contract Regulation



Commonwealth of Puerto Rico
Puerto Rico Energy Affairs Administration

Energy Savings Performance Contract Regulation of the Puerto Rico Energy Affairs Administration

INDEX

CHAPTER 1: GENERAL PROVISIONS
Section 1.01: Title and Introduction 1
Section 1.02: Legal Basis 1
Section 1.03: Statement of Purpose 1
Section 1.04: Applicability 2
Section 1.05: Definitions 2

CHAPTER 2: ENERGY SAVINGS PERFORMANCE CONTRACTS OVERVIEW
Section 2.01: Overview of Energy Savings Performance Contracts 4
Section 2.02: Energy Service Companies (ESCO) 5
Section 2.03: The Basic ESPC Process 5
Section 2.04: ESPC Advantages 6
Section 2.05: ESPC Financing 6

CHAPTER 3: ESPC PROCESS OVERVIEW
Section 3.01: Assistance for Government Units 7
Section 3.02: Assistance for Non-qualifying Organizations 7
Section 3.03: Project Development Overview 7

CHAPTER 4: ESPC PROJECT DEVELOPMENT
Section 4.01: Understanding ESCO Services 8
Section 4.02: Energy Action Team 8
Section 4.03: Selecting Project Site(s) 8
Section 4.04: PREAA'S Assistance 9
Section 4.05: Memorandum of Understanding for Technical Assistance 9

CHAPTER 5: ENERGY SERVICE COMPANY (ESCO) SELECTION
Section 5.01: ESCO Selection Overview 9
Section 5.02: ESCO Qualifications 10
Section 5.03: ESCO Selection Process 10
Section 5.04: PREAA'S RFP Model 11

CHAPTER 6: INVESTMENT GRADE AUDIT (IGA)
Section 6.01: PREAA'S Model IGA Contract 14
Section 6.02: Investment Grade Audit Overview 14

Section 6.03: Scope of Work 15
Section 6.04: Notice of Acceptance of Investment Grade Audit Report 26
Section 6.05: Preliminary Measuring and Verification (M&V) Plan 26
Section 6.06: Payment for Investment Grade Audit (IGA) 26

CHAPTER 7: CONTRACT WITH ESCO TO IMPLEMENT ESPC PROJECT
Section 7.01: PREAA'S Model Energy Savings Performance Contract (ESPC) 27
Section 7.02: Equipment to be Installed by ESCO 27
Section 7.03: Description of Project Site(s); Pre-existing Equipment Inventory 27
Section 7.04: Energy Savings Guarantee; Payment and Performance Bond 27
Section 7.05: Compensation to ESCO for Annual Services 28
Section 7.06: Baseline Energy Consumption 28
Section 7.07: Savings M&V Plan; Methodology to Adjust Baseline 28
Section 7.08: Construction and Installation 29
Section 7.09: Systems Start-up and Commissioning of Equipment; Operating Parameters of Installed Equipment 29
Section 7.10: Standards of Comfort 29
Section 7.11: ESCO's Maintenance Responsibilities 29
Section 7.12: Government Units Maintenance Responsibilities 30
Section 7.13: Facility Maintenance Checklist 30
Section 7.14: ESCO's Training Responsibilities 30
Section 7.15: Payment Schedule 30
Section 7.16: Alternative Dispute Resolution 30
Section 7.17: Annual Reporting Requirements 30
Section 7.18: Pre-existing Service Contracts 31
Section 7.19: Energy Savings Projections 31
Section 7.20: Facility Changes Checklist 31
Section 7.21: Current and Known Capital Projects at Facility 31
Section 7.22: Supervision by a Puerto Rico Registered P.E. 31

CHAPTER 8: MEASUREMENT AND SAVINGS VERIFICATION
Section 8.01: ECM-specific M&V Plan and Savings Calculation Methods 32
Section 8.02: Proposed Energy and Water Savings Calculations and Methodology 32
Section 8.03: Operations and Maintenance (O&M) Cost Savings 33
Section 8.04: Post-installation M&V Activities 33
Section 8.05: Post-acceptance Performance Period Verification Activities 33

CHAPTER 9: ADDITIONAL PROVISIONS
Section 9.01: Applicability 34
Section 9.02: Overlapping or Contradictory Provisions 34
Section 9.03: Severability 35
Section 9.04: Discrepancy between English and Spanish Versions 35
Section 9.05: Effectiveness 35

CHAPTER ONE: GENERAL PROVISIONS

SECTION 1.01 - TITLE AND INTRODUCTION

This Regulation shall be known as the "Energy Savings Performance Contracting Regulation."

The Puerto Rico Energy Affairs Administration (PREAA) is the lead agency in charge of promoting the concept of Energy Savings Performance Contracting (ESPC) and the agency that spearheaded the enactment of Act No. 19 of January 17, 2012, signed into law on January 17, 2012, (Act 19-2012) also known as the "Energy Savings Performance Contracts Act". Through Act 19-2012, the Government of Puerto Rico adopted ESPC's as an indispensable tool for promoting efficient energy use. Given that ESPC's are a fiscally sound and energy efficient way to lower energy consumption, all components of the Government of Puerto Rico are mandated by Act 19-2102 to promote, implement and execute effective strategies to achieve energy efficiency and conservation in their operations. All Government Units must promote the use of ESPC's as a contractual mechanism to achieve efficiency, conservation, and integration of renewable energy, and must promote mechanisms for provision of capital and public or private funding through the ESPC's.

Act 19-2012 grants PREAA specific powers to coordinate and oversee the implementation, verification and observance of the Act. PREAA is responsible for accrediting the Energy Service Companies (ESCO) and maintaining and updating annually the list of Qualified ESCO's. As part of the implementation of Act 19-2012, PREAA must provide to the Government Units the necessary advice and information needed for the consummation of the ESPC's. PREAA is called to provide guidance so that the Government Units incorporate and improve their energy efficiency, conservation and reduction plans in their daily operations.

SECTION 1.02 - LEGAL BASIS

This Regulation is issued in accordance with and pursuant to the powers conferred to PREAA under Act 19-2012 and Act No. 170 of August 12, 1998, (Act 170-1988) as amended, also known as the Uniform Administrative Procedures Act, and shall have force of law.

SECTION 1.03 – STATEMENT OF PURPOSE

The purpose of this "Energy Savings Performance Contracting Regulation" is to provide Government Units with a standardized process with clear direction and accountability for all participants in the development, implementation, measurement and verification of Energy Savings Performance Contracting projects, by defining roles and responsibilities; formalizing process steps; and providing standard contract documents. Contractual goals include: Reduction of energy use in state and local government buildings; Market transformation to establish performance contracting as a standard and accepted means to implement energy-saving projects; Comprehensive project development in order to achieve energy savings of twenty percent (20%) or more across all buildings; Infrastructure improvements completed through reallocation of utility costs in order to avoid use of scarce capital dollars (capital avoidance); Provide streamlined pre-approved approaches to help decision-makers more effectively follow-through

with performance contracting projects to ensure success. Strict compliance with the parameters set-forth in this Regulation will result in the elimination of risks incidental to Energy Savings Performance Contracting and will protect the Government Unit from any potential contractual default.

SECTION 1.04 – APPLICABILITY

This Regulation shall be applicable to PREAA, all Government Units and all qualified ESCO's. Act 19-2012 authorizes Government Units to use ESPC as a mechanism to implement large capital-investment projects that aim at energy and water conservation, efficiency and renewable energy integration. All Government Units are required to promote, implement, enforce effective strategies to achieve energy conservation and efficiency, and must promote the use of ESPC's. ESPC's must be for existing buildings; no new construction is allowed. This Regulation will not affect previously executed ESPC's between Government Units and a particular ESCO.

SECTION 1.05 - DEFINITIONS

Administration – Puerto Rico Energy Affairs Administration (PREAA).

Allocation of Funds - ESPC's may be extended beyond the fiscal year in which the Energy Savings Performance Contract is awarded, subject to the allocation of funds for expenses incurred in subsequent fiscal years. The allocation of funds is guaranteed for the duration of the contract. The Office of Management and Budget (OMB) and/or the corresponding government agency shall allocate sufficient funds for payment of public utilities of each Government Unit, in such a manner that complies with the purposes and spirit of the Act.

Contract Sum - The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, tax, bonds, and subcontracted services related to an ESPC project.

Contract Administrator - The person designated by the Government Unit to administer an ESPC.

Energy Savings Performance Contract (ESPC) - A contract between a Government Unit and a Qualified Energy Service Company for the evaluation, recommendation, and implementation of one or more conservation and savings measures in energy and water consumption. Energy savings performance contracting is a method of financing a capital improvement project in a Governmental Unit. It is a fiscally sound and energy efficient way to lower energy consumption, and thus, utilities spending, while avoiding the need to incur costs related to purchasing energy efficient equipment and renewable energy power sources. ESPC is a tool for sustainability and asset modernization that establishes a (guaranteed) relationship that is based on mutual accountability. An ESPC constitutes a partnership between a facility owner and an energy service company (ESCO), and is considered a time and cost-effective method for completing comprehensive energy upgrades.

Energy Service Company (ESCO) - Company with experience and technical, management and

financial capabilities needed to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures that will result in energy conservation and efficiency.

Energy Conservation Measure (ECM) - Any improvement, repair or alteration, equipment, fixtures, training program, or strategy of any other kind, to be added or used in a building, facility or on any system that consumes energy, to obtain savings related to energy consumption, by reducing operational costs or increasing operational efficiency during the useful life cycle. All measures must meet or exceed applicable state building codes.

Financing – Act 19-2012 allows the Government Unit to finance the improvements via third party, direct from the ESCO, or other financing mechanism available, in coordination and with the financial advice of the Government Development Bank (GDB).

Government Unit - Any agency, instrumentality, office or department of the Executive Branch, authorities or political subdivisions of the Government of Puerto Rico, or any other defined or identified by the Administration.

Investment Grade Audit (IGA) - A study by the qualified energy services provider selected for a particular energy performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility, operations and maintenance cost savings projected to result from the recommended improvements.

Measurement and Verification (M&V) - Once every three months per contract year, the ESCO shall submit a report of cost savings (corroborate the results of the measures of conservation and energy efficiency), validated by PREAA. ESCO's measurement and verification (M&V) services provide the client agency with assurance that equipment will perform for the life of the agreement.

Operations and Management (O&M) - ESCO must provide adequate justification for O&M cost savings by providing a detailed description of how savings are generated and detail cost savings calculations.

Payment and Performance Bond - As a condition for granting an ESPC and in order to ensure the contractual measures and energy saving representations, the ESCO shall provide evidence of payment and performance bonds, in the amount of the contract value, in favor of the Government Unit which shall guarantee the faithful performance of the ESPC. The bond shall be issued by an insurer authorized by Commissioner of Insurance to do business in Puerto Rico, which has at least a B+ in the publication AM Best.

Procurement Process – The ESCO selection process must be conducted in accordance with the rules laid-out by the Administration in this Regulation.

Project Site(s) - The facilities of the Government Unit in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s).

Public Building - Any structure, building or facility, including its electrical equipment and infrastructure, owned by a Government Unit or operated by it.

Savings in public utility services costs - Any reduction in the cost of public utility services for a prolonged period of time, due to efficiency and conservation measures that have been implemented, or by reason of services rendered by a Qualified Energy Service Company.

Savings in operational and maintenance costs – Measurable reductions in operational and maintenance costs, and in replacement costs, which directly result from the implementation of energy efficiency measures, and conservation of energy and water. These savings will be calculated in comparison with the operational and maintenance costs established as the baseline for calculation.

Savings Guarantee - ESCO must provide a written guarantee that savings will meet or exceed cost of conservation measures implemented, financing costs, and ESCO payments.

Term of the Contract - The Energy Savings Performance Contract may be granted for a term no longer than fifteen (15) years. The term allowed in the contract shall reflect the useful life of the conservation measure.

Water Conservation Measures - Any improvement, modification, equipment, changes in maintenance practices or training programs designed to reduce water consumption or operating costs related to its conservation. Measures should match or exceed compliance with applicable state building codes.

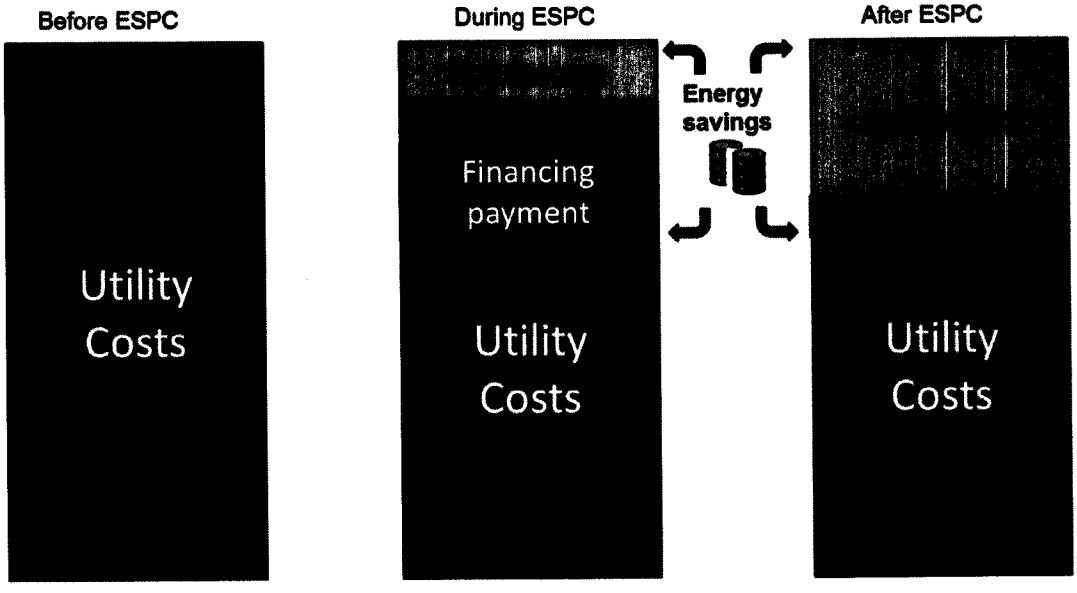
CHAPTER TWO: ENERGY SAVINGS PERFORMANCE CONTRACTS OVERVIEW

SECTION 2.01 - OVERVIEW OF ENERGY SAVINGS PERFORMANCE CONTRACTS

Energy savings performance contracts (ESPC) is a methodology of financing an energy efficiency improvement project out of a public entity's operating budget. It is a fiscally sound method to improve conditions in government facilities through reinvestments at no additional outlay for the government. ESPC is an energy efficient way to lower energy consumption, and thus, utilities spending, while avoiding the need to incur in costs related to purchasing energy efficient equipment and renewable energy power sources. ESPC is a tool for sustainability and asset modernization that establishes a (guaranteed) relationship that is based on mutual accountability. An ESPC constitutes a partnership between a facility owner and an energy service company (ESCO), and is considered a time and cost-effective method for completing comprehensive energy upgrades.

Energy bills are frequently higher than they need to be due to obsolete or aging equipment, inadequate maintenance and poor management. Contracting with an energy service company (ESCO) can effectively redirect those taxpayer funds to improve conditions at not net increase in budget.

The ESCO will recommend cost-effective improvements, work together with the Government unit, and the PREAA, in order to implement the selected recommendations and guarantee that the resulting savings will cover all project costs. Governmental units which have granted Energy Savings Performance Contracts will retain the net savings achieved as a result of such contracts and shall be utilized to fulfill the purposes of Act 19-2012.



SECTION 2.02 - ENERGY SERVICE COMPANIES (ESCO)

An ESCO will develop and install energy and water-saving projects to improve energy and water efficiency, and help reduce costs. An ESCO functions as a project developer for a wide range of tasks. ESCO's differ from other firms that offer energy efficiency improvements by taking on the savings performance risk through performance-based contracting, and facilitating borrowing to pay for the project.

SECTION 2.03 - THE BASIC ESPC PROCESS

An ESPC allows you to finance and install proven energy-efficient technologies and upgrade energy infrastructure at no up-front cost. The Government unit competitively selects an ESCO, with the help of PREAA, that best understands its facilities and operations, to complete an energy audit of the facilities, and propose a project that the financed debt service can be paid for from the utility savings. Once an ESPC is negotiated, the ESCO designs, installs, and commissions energy conservation measures selected by the owner, from the suggested list of energy conservation measures prepared by the ESCO. The ESCO can be contracted to provide maintenance of the system, over-sight, operations training, or a combination to ensure savings persist. Energy savings are measured and verified, and the ESCO guarantees the savings.

SECTION 2.04 - ESPC ADVANTAGES

Among the many advantages of entering into an Energy Savings Performance Contract are:

GUARANTEED PERFORMANCE: ESCO must provide a written guarantee of energy savings from the conservation measures implemented that will create cost avoidance larger than the costs incurred by the government unit. ESCO installs equipment that it guarantees will generate savings for the payback period of the loan.

PARTICIPATION: During contract negotiations with ESCO, owners participate in design, specifications and equipment selection.

RESPONSIBILITY: ESCO is obligated to pay in the event of an energy savings shortfall, and must guarantee the energy savings. If actual savings are lower than guaranteed in any given year, the company reimburses the owner for the shortfall. ESCO will have sixty (60) days to settle the shortfall.

MEASUREMENT & VERIFICATION: ESCO provides a written report detailing actual performance compared to the guarantee every 3 months. Report must be reviewed by an appropriately qualified Puerto Rico 3rd party licensed engineer and the PREAA, within 30 days of receipt. The report is critical as to ensure savings exceed payments.

ACCOUNTABILITY: The ESCO serves as a single point of accountability.

FINANCING: Government Unit are allowed to finance the improvements via third party, direct from the ESCO, or other financing mechanism available, in coordination and with the financial advice of the Government Development Bank (GDB).

COST CERTAINTY: Project financing costs are paid from the utility cost savings, which are guaranteed by the payment and performance bond.

LOWER UTILITY COSTS: Lower energy consumption and peak electricity demand translate to lower utility bills.

PUERTO RICO ECONOMY: As the project is paid for through energy savings that would otherwise purchase foreign oil, public policy established through Act 19-2012 is effectively implemented.

SECTION 2.05 - ESPC FINANCING

A financing mechanism must be identified early in the process, to include borrowing capacity and terms available to support an ESPC project. Some agencies may have limited capacity for funding available to support an ESPC project, while other agencies may have greater funding options. Identifying financing sources from the public and private sector will allow both the Government Unit and the ESCO to develop projects consistent with the Government Unit's business objectives

and available funds. More favorable financing terms enhance the potential scope of work, the contract terms, and can also reduce the overall cost of the project.

The ESPC and financing is structured so that the total savings are enough to cover for each financing payment period, and all the contract sums due under the contract. Therefore, the project can be cash flow positive from the first day, and the totality of the improvements is funded by the savings.

In many cases, ESCO's do not finance projects, however ESCO's guarantee that the projected savings will meet or exceed the finance payment. A number of financing companies are knowledgeable of the ESPC approach and seek out opportunities to provide financing. An ESCO selected for a project can help bring-in a financing partner.

CHAPTER THREE: ESPC PROCESS OVERVIEW

SECTION 3.01 - ASSISTANCE FOR GOVERNMENT UNITS

PREAA will offer direct performance contracting assistance during the planning and pre-selection process, as well as supporting the secondary selection of a Prequalified ESCO. PREAA will also offer assistance with the other stages of the performance contracting process. PREAA will assist the Government Unit, and provide performance contracting resources specific to each Government Unit's needs.

SECTION 3.02 - ASSISTANCE FOR NON-QUALIFYING ORGANIZATIONS

PREAA is an informational resource for all types of organizations that are interested in energy savings performance contracting. PREAA screens and pre-qualifies ESCO's and offers a number of informational resources to assist the Government Units throughout the performance contracting process.

SECTION 3.03 - PROJECT DEVELOPMENT OVERVIEW

Government Units that seek capital and operational improvements for their energy-consuming infrastructure systems in order to contain energy costs and reduce energy consumption must consider entering into an ESPC agreement. The ESCO will identify and evaluate energy and water-saving opportunities, and then recommend and install a package of improvements that will be paid for through savings. The ESCO will guarantee that savings meet or exceed annual payments to cover all project costs over a maximum contract term of 15 years. If savings do not materialize the Government Unit can claim the difference from the ESCO's guarantee.

There are five (5) steps to successfully initiate and complete an energy savings performance contracting project:

(1) Identifying a Project

(2) Selecting an Energy Service Company (ESCO)

(3) Contracting with ESCO to Conduct an Investment Grade Audit (IGA)

(4) Contracting with ESCO to implement ESPC Project

(5) Payments, O&M, and Measurement and Savings Verification.

CHAPTER FOUR: ESPC PROJECT DEVELOPMENT

SECTION 4.01 - UNDERSTANDING ESCO SERVICES

ESCO's offer a wide variety of services including auditing, construction management, project development, engineering design, project management, training for maintenance staff, financing assistance, and long-term maintenance services. ESCO's address a wide range of energy, water and cost-saving measures, as well as opportunities to apply renewable energy technologies and system-wide approaches.

SECTION 4.02 – ENERGY ACTION TEAM

Developing and managing an ESPC will benefit from assembling an "Energy Action Team" with a broad range of expertise including facilities, planning, procurement, budget and finance, maintenance, and legal advice, when available.

To develop an ESPC project a Government Unit must assemble an Energy Action Team within the organization, and work together to explore the possibility of an ESPC project with the assistance of PREAA, and the GDB. The more the facility representatives are involved, the more successful the project will be. The Energy Action Team should represent all sectors of the facilities and decision-making processes. The Government Unit must appoint a project leader to lead the Energy Action team, and be the key point of contact between all the corresponding government agencies and the ESCO. The Energy Action Team chosen will be unique for each Government Unit.

The Government Unit must involve at minimum the facilities director, lead electrical, lead mechanical maintenance, and a representative from management, when available. It is important to ensure senior executive support for the project, so an executive sponsor must be included. Other energy action team members must include an engineering staff representative, a finance or budgeting representative, division or building managers (including the environmental department), the contracts officer (as an introduction to the ESPC contract to come), the janitorial supervisor, an occupant representative, when they are available, a representative of PREAA and the GDB.

SECTION 4.03 – SELECTING PROJECT SITE(S)

The Government Unit must determine if the project site has the potential for an ESPC project with energy and water-saving opportunities of substantial scope which will attract an ESCO. There are a number of technical factors to consider when selecting a suitable project site for an ESPC project. In general, the facility should have high annual energy and water use, coupled with sufficient energy savings opportunities to generate the necessary cash flow to amortize all project cost over the

contract term, fulfill the essential goal of Act 19-2012, and attract ESCOs interest. While every situation is different, the typical factors that make a performance contract project both viable and successful include:

- Desire to improve energy efficiency through comprehensive solutions
- Aging buildings or equipment (lighting, controls, heating and cooling systems)
- Stable facility use and occupancy
- High annual utility costs
- Consistent energy use and occupancy
- Limited capital budget to fund energy improvements up front
- Too many demands on maintenance staff
- Recurring maintenance problems or high maintenance costs
- Comfort complaints

Some ESCOs are willing to implement projects for smaller facilities, not necessarily satisfying all factors, but they make those decisions on a case-by-case basis. In some cases, it makes economic sense to combine several facilities into a single project offering. Multiple building projects with excessive energy and water costs are usually more attractive to ESCOs, and allows the Government Unit to finance and obtain greater improvements through a single procurement process.

SECTION 4.04 – PREAA'S ASSISTANCE

The Government Unit shall receive guidance and support from PREAA throughout the process. PREAA can help the Government Unit to identify if energy savings performance contracting is feasible for the project site. This can include a general introductory discussion on ESPC with respect to a Government Unit's facilities, a review of the facility information, and a potential site visit.

SECTION 4.05 – MEMORANDUM OF UNDERSTANDING FOR TECHNICAL ASSISTANCE

All Government Units interested in procuring energy savings performance contracts are required to execute a Memorandum of Understanding (MOU) with PREAA. This agreement will establish that the Government Unit will receive assistance throughout the performance contracting process from PREAA, and the ESCO selected.

CHAPTER FIVE: ENERGY SERVICE COMPANY (ESCO) SELECTION

SECTION 5.01 – ESCO SELECTION OVERVIEW

The selected ESCO will be the Government Unit's partner for the term of the contract, so it is important to select an ESCO that shares the Government Unit's vision, understands its operations, and is able to meet its needs. PREAA will assist the Government Unit's in the selection process.

SECTION 5.02 – ESCO QUALIFICATIONS

Act 19-2012 requires PREAA to establish and maintain a pre-qualified list of ESCOs capable of providing energy services to Government Units. To qualify, ESCOs respond to a Request for Qualifications (RFQ). PREAA evaluates the companies' qualifications and experience, and certifies those ESCOs which it deems qualified. The process satisfies public works selection requirements and enables public-sector clients to avoid having to conduct duplicative, individual public works selection processes. PREAA issued an RFQ in August 2011 to pre-qualify ESCOs for as-needed Energy Savings Performance Contracting services including preliminary auditing and assessment services for government buildings within the Government of Puerto Rico, and has selected the pre-qualified ESCOs for the first 3 year term.

ESCOs pre-qualified by PREAA through the RFQ are eligible to provide services to Government Units that may choose to participate in the ESPC Program. Government Units cannot engage in ESPC's with ESCO's that have not been qualified by PREAA. The Pre-qualified ESCOs understand the program goals and will conform to applicable laws and the regulations prescribed by PREAA. The primary intent of the selection process is four-fold:

1. To increase the number of successful performance contracts in the Government of Puerto Rico, as a means to implement comprehensive energy-efficiency projects in existing buildings.

2. To provide government units the opportunity to procure services of qualified firms in a timely and cost-effective way.

3. To ensure minimum qualifications of ESCOs to implement successful ESPC Program projects.

4. To offer qualified firms the opportunity of engaging into an ESPC agreement.

Pre-qualified ESCOs will be effective for a three (3) year term subject to annual update of their files in PREAA. Qualified ESCO's will update their files with PREAA within the first thirty (30) days of each government fiscal year. Failure to do so will automatically eliminate the ESCO from the ESPC Program.

SECTION 5.03 – ESCO SELECTION PROCESS

All pre-qualified ESCOs will be provided equal access and fair opportunity to compete for ESPCs in an open and transparent process. A step-by-step description of the ESCO selection process which shall be used to select an ESCO from the pre-qualified pool of ESCOs is included in Section 5.04. This process demonstrates a minimal procurement requirement of reviewing an overview from each ESCO, and allows a selection based on a Notice of Interest (NOI) prior to a Request for Proposal (RFP).

SECTION 5.04 – PREAA'S RFP MODEL

All Government Units are required to use PREAA's model Request for Proposal (RFP), which is included as an Addendum to this Regulation. This form of RFP has been used over many years by the public sector and generally accepted by the industry. The Government Unit will only have to customize it to its particular needs.

1. Define Scope of Project

Government Units shall provide ESCO with a general description of the facilities, sufficient technical details about the facility, and any other relevant information necessary to enable the ESCO to assess and propose opportunities for a succesfull project (a technical facility profile). Rather than pre-determining a detailed scope of work specifying energy and water conservation measures that the ESCO should undertake, the Government Unit shall rely on the ESCO's technical expertise and creativity to help identify and assess energy and water saving opportunities that are most cost-effective and suitable for the ESPC project.

The project can incorporate all agency buildings as one project, or may be executed in "phases" so as to minimize project development time (facility audits, data gathering, etc. by staff members), and move to reducing energy costs more quickly. In all cases, the preferred financing stream (total bond issuance, agency capital dollars, etc.) must be identified early in the process to avoid developing a project scope in excess of available financing.

At a minimum, a brief description of the premises and all major energy-using equipment should be provided. Government Unit shall also describe the facility's energy use, equipment, operating schedules, maintenance problems, and planned equipment replacements or renovation plans. Also, the Government Unit must include the utility bill history for the past three (3) years, if available.

2. Request for Proposal (RFP)

After the Government Unit enters into the Memorandum of Understanding (MOU) with PREAA, it will be ready to initiate a Request for Proposals (RFP). The purpose of an RFP is to determine ESCO's suitability according to the proposed project characteristics. Respondents will be encouraged to focus on their expertise for meeting the business objectives of the project.

PREAA will recommend a minimum of three (3) firms that have experience and expertise suited for the Government Unit's particular project, from the list of ESCO's that respond to the RFP.

Alternatively, the Government Unit may decide to send out a Notice of Interest (NOI) to all pre-qualified ESCO's asking them to respond if they are interested in the project, then send out RFP's to all ESCO's that respond to the Notice of Interest (NOI).

The RFP shall, at minimum, contain the following information:

- General project scope
- The business objectives for the Government Unit

- Complete Facility Profile, that identifies the facilities to be considered, their current energy use, size, and unique conditions
- Contractual terms and conditions that will apply to the project
- A description of the required RFP Response format and content.
- Instructions for submission and a project schedule to identify specific dates for pre-proposal meetings, site visits, evaluation, and selection. The project schedule will help ESCO's understand the facility(s) project schedule and can serve as a guideline for keeping the project on-track
- The evaluation criteria that will be used as the basis for selection
- Government Unit's approval process
- Planned method for financing and paying for the project
- Required corporate and technical project specific qualifications to be submitted by ESCO in their response.
- Requirement that an appropriately qualified Puerto Rico registered Professional Engineer be in responsible charge of the project for the ESCO.

3. RFP Responses Evaluation

The Government Unit shall specify the evaluation criteria to be used for selecting an ESCO's. In general terms, the evaluation criteria are grouped into six major categories:

a) Prior Experience
b) Approach to Project Management
c) Ability to meet the business objectives and timing
d) Technical Capabilities & Expertise
e) Financial Strength or ability to secure financing
f) Proposed mark-ups and costs

Based on the evaluation criteria, RFP responses will be evaluated by an evaluation committee of government personnel with support from technical advisors, and the participation of the energy action team. The composition of the evaluation committee can involve any number of agency personnel, but not limited to:

- Facility/Operating Engineers
- Maintenance Staff
- Energy Manager/Designated Project Manager
- Administrative/Financial Manager
- PREAA Technical Advisor/Consultant

A procurement specialist shall administer the process, but not participate in the evaluation. Evaluation committee members will receive training on the evaluation process. Government Units must rely on PREAA's technical assistance, and any request to solicit additional evaluation information and assistance. All committee members shall execute a Non-Disclosure and Confidentiality Agreement (NDCA) and a Conflict of Interest Certificate.

4. ESCO Selection

The Government Unit shall interview the three highest rated proponents, if deemed appropriate, to better evaluate their approach to the project and their ability to work with the organization. This will allow the Government Unit to review each ESCO's project approach, and it gives the ESCO's an opportunity to respond to questions from the evaluation team. At its sole discretion the Government Unit may elect to re-issue the RFP to a wider selection of ESCOs if it deems that the responses it receives do not meet its business objectives.

The Government Unit, together with the PREAA and the energy action team, will evaluate the ESCO's audit costs, and make recommendations. ESCO's shall be scored according to the Evaluation Criteria established in the RFP, which will include the audit costs presented, and the ESCO deemed most qualified for the applicable project will be selected and invited to proceed with a Preliminary Assessment (PA) at the selected facility.

Participants not selected, shall have the option of requesting a reconsideration of the selection process within ten (10) days of notification. The PREAA shall have fifteen (15) days to respond to the reconsideration request. If PREAA does not respond or the reconsideration request is rejected, the participant not selected may request a judicial review to the Appellate Court of Puerto Rico, in compliance with Act 170-1988 and Act 19-2012.

5. Preliminary Assessment (PA)

After the Government Unit has duly notified the selected ESCO, a preliminary assessment (PA) will be conducted by the ESCO in consultation with the facility staff, owner representative consultant, PREAA's technical advisor, and the energy action team. A preliminary assessment evaluates the facility to determine the likelihood that further investigation and analysis will yield a project of cost-effective energy and water conservation measures. The PA and subsequent proposal will be used by both the ESCO and the Government Unit to ensure that the project meets the objectives, cost effectiveness criteria and addresses the facility's needs.

A proposal for an Investment Grade Audit (IGA) will be developed based upon the PA, which identifies potential cost-effective energy and water conservation measures.

The PA shall provide sufficient information, including the following key elements:

a) A narrative summary of proposed project, including the business objectives.
b) Description of ECMs.
c) ESCO and Government resources and schedule requirements to complete an IGA.
d) Estimates of proposed energy and cost savings.
e) M&V approach (general).
f) Risk, Responsibility and Performance Matrix.

6. PA Evaluation

The Government Unit must take the following steps in preparation for review of the PA:

1. Identify additional personnel needed, beyond the energy action team, prior to receiving the assessment (to include the site technical staff, procurement officer, PREAA's technical advisor, and other personnel as deemed necessary).

2. Consider requesting informal, preliminary information on the PA content for discussions before the written assessment is finalized. If mutually agreeable, this step can improve the suitability of the PA.

Upon submission of the written PA by the ESCO, the Government Unit shall proceed to review it. The Government will respond to the PA in writing within 45 days of receipt.

If the Government Unit determines not to proceed with the ESPC project, then it shall return the PA to the ESCO's, or issue a revised set of requirements. At this moment, Government Unit may withdraw from the process with no contractual obligation with the ESCO's. Any costs incurred up to this point in the process shall be the sole responsibility of the ESCO's. However, no decision to withdraw from the process shall be arbitrary or contradictory to the purpose of Act 19-2012, but based solely on the best interests of the Government Unit and the qualifications of the ESCO.

If the Government Unit accepts the PA and determines to proceed with the ESPC project, then it shall notify the ESCO. _At this point, any deficiencies and/or desired changes found in the PA must be addressed by the ESCO in the Investment Grade Audit (IGA) and in the final proposal.

CHAPTER SIX: INVESTMENT GRADE AUDIT (IGA)

SECTION 6.01 – PREAA'S MODEL IGA CONTRACT

All Government Units are required to use PREAA's Model IGA contract, which is included as an Addendum to this Regulation. This form of contract has been used over many years by the public sector, and is generally accepted by the industry. The Government Unit will only have to customize it to meet its particular needs.

SECTION 6.02 – INVESTMENT GRADE AUDIT OVERVIEW

The selected ESCO will conduct an IGA to identify and evaluate energy, water, and related cost-saving opportunities. This will provide the Government Unit with critical information to later negotiate the performance contract.

The Contract for the IGA (Technical Energy Audit & Project Proposal) is the first of two contracts that will be procured with the selected ESCO. The ESCO will complete an investment grade technical energy audit that will include an analysis of each proposed project with projected energy and cost savings, and itemized project cost.

The ESCO will also propose terms for the energy performance contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis.

The results of the audit will form the basis for a subsequent Energy Savings Performance Contract.

SECTION 6.03 - SCOPE OF WORK

The Government Unit should consider taking full advantage of the ESCO's technical expertise, PREAA's, and the energy action team's input, to help identify and assess the opportunities that are most cost-effective or most valuable for the Government Unit's facilities.

The Government Unit may elect to pre-determine the scope of work for the ESCO, detailing exactly what projects the ESCO should undertake. This approach is not recommended by PREAA.

a. Process

This will be an interactive approach, working with the Government Unit, ESCO's and PREAA following these steps:

1) Preliminary Assessment of Needs and Opportunities

   a) Meet to discuss interests, plans, problems, etc. related to facilities and operation of facilities.

   b) Collect data and background information on buildings, equipment and facilities operation.

   c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.

   d) Meet to explain preliminary findings and establish agreement on measures to analyze.

2) Preliminary Analysis of Measures

   a) Establish base year consumption and reconcile with end-use consumption estimates.

   b) Conduct a preliminary analysis of potential measures.

   c) Meet to present preliminary findings and establish agreement on measures to further analyze.

   d) Establish costs, schedule and government resources required to complete an Investment Grade Audit Report

3) Further Analysis and Audit Report

a) Further analyze measures.

b) Develop a preliminary IGA Report.

c) Meet with the Government Unit to discuss results.

d) Prepare final IGA Report.

4) Energy Savings Performance Contract Proposal.

a) Develop the ESPC proposal.

b) Meet to examine results and negotiate final terms.

b. Scope Requirements

1) **Energy Savings Performance Contract Term.** The Energy Savings Performance Contract Term shall have a term no greater than 15 years, and no greater than the cost-weighted average lifetime of the equipment. ESCO's goal is for a term no greater than the desired financing term years.

2) **Annual Guaranteed Energy and Cost Savings.** A performance guarantee is required for the entire financing term. The guarantee is based on energy savings attributable to all conservation measures, and must create cost avoidance equal or exceed all annual project costs each year during the finance period. Annual project costs include debt service, ESCO fees, PREAA's consulting fees, maintenance services, monitoring services, and other services. The Government Unit and the ESCO shall agree on the forecast unit energy costs to be used for the guarantee.

3) **Monitoring and Verification Reports.** The OMB and/or the corresponding government agency shall reserve 5% of annually guaranteed savings for the Government Unit to pay for PREAA's operational costs, which will include all processes of the energy contracting, and review of the ESCOs monitoring and verification reports, as well as advice the Government Unit of compliance in monitoring and verifying savings, excluding the 3rd Party monitoring and verification of the results.

4) **Excess Savings.** Annual cost savings beyond the guaranteed minimum savings will be retained by the Government Unit, and will not be allocated to shortfalls in other years.

5) **Annual Savings Guarantee.** The annual savings guarantee for all measures must be estimated for each year during the contract period.

6) **Allowable cost and savings factors approved for consideration.** The Government Unit will provide ESCO with sufficient guidance to develop savings estimates.

a) Payment sources that can be incorporated:

1. Energy and water cost savings.

2. Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable).

3. Outside labor cost savings, including maintenance contracts.

4. In-house labor costs.

5. Deferred maintenance cost.

6. Offset of future capital cost.

7. Outside incentive funds (utility incentives, grants, etc.).

8. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.

b) Additional factors related to establishing savings that cover all costs:

1. Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes. NOTE: Federal government guidelines may be applied for utility escalation rates to ensure reasonableness.

2. Interest rates (municipal tax-exempt rates for public institutions).

3. The Government Unit's cash outlay (Institution's sole discretion).

c) Cost and Pricing for IGA Development. The rates will be used in the Investment Grade Audit and subsequent Energy Savings Performance Contract.

c. Data Collection

Collect data and background information from the Government Unit concerning facility operation and energy use for the most recent three years from the effective date of the Contract as follows, and if available:

1) Building square footage.

2) Construction data of buildings and major additions including building envelope.

3) Utility company invoices.

4) Occupancy and usage information.

5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.

6) Description of energy management procedures utilized on the premises.

7) Description of any energy-related improvements made or currently being implemented.

8) Description of any changes in the structure of the facility or energy-using or water-using equipment.

9) Description of future plans regarding building modifications or equipment modifications and replacements.

10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels).

11) Original construction submittals and factory data (specifications, pump curves, etc.), as available.

12) Operating engineer logs, maintenance work orders, etc., as available.

13) Records of maintenance expenditures on energy-using equipment, including service contracts.

14) Prior energy audits or studies, if any.

15) Operating requirements for specialty use facility, for example, required pressurization, humidity, temperature, fresh air injection/outside air turnover, levels of any other contaminants et cet.

The Government Unit will agree to work diligently to furnish the ESCO, upon request, accurate and complete data and information as available. Where information is not available from the Government Unit, ESCO will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies. The Government Unit will make appropriately qualified staff available to witness existing conditions and certify accuracy of data collected. It is important for the ESCO to provide an estimate of the level of resource required for this task in the IGA proposal.

ESCO will agree to work diligently to assess validity of information provided, and to confirm or correct the information as needed.

d. Identify potential measures

1) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:

a) Facility operation, including energy management procedures.

b) Equipment maintenance problems.

c) Comfort problems and requirements.

d) Equipment reliability.

e) Projected equipment needs.

f) Occupancy and use schedules for the facility and specific equipment.

g) Facility improvements – past, planned and desired.

2) Survey major energy-using equipment, including lighting (indoor and outdoor), heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water systems, electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.), renewable energy systems, other energy using systems, water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.).

3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:

a) Comfort and maintenance problems.

b) Energy use, loads, proper sizing, efficiencies and hours of operation.

c) Current operating condition.

d) Remaining useful life

e) Feasibility of system replacement.

f) Hazardous materials and other environmental concerns.

g) Institution's future plans for equipment replacement or building renovations.

h) Facility operation and maintenance procedures that could be affected.

i) Capability to monitor energy performance and verify savings.

The Government Unit will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities.

ESCO will agree to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. Establish base year consumption and reconcile with end use consumption estimates.

1) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, and others, where applicable. Present base year consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. ESCO will account for periods of time when equipment was broken or malfunctioning in calculating the base year.

2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.

4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

f. Develop a preliminary analysis of potential energy and water saving measures.

This list shall be compiled and submitted to the Government Unit within 30 calendar days of the execution of the IGA Contract.

1) List all potential opportunities, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.

2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis

3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

g. Present preliminary findings prior to thorough analysis.

Describe how the projected project economics meet the Institution's terms for completing the IGA and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an Energy Savings Performance Contract. Develop a list of recommended measures for further analysis. The Government Unit shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

h. Analyze savings and costs for each energy and water saving measure.

1) Following the methodology of ASHRAE or other appropriate nationally-recognized authority following the engineering principle(s) identified for each retrofit option.

2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.

3) Use best judgment regarding the employment of instrumentation and recording, so as to achieve an accurate and faithful characterization of energy use.

4) Use markups and fees in all cost estimates.

5) Develop a preliminary measurement and verification plan for each measure.

6) Follow additional guidelines for analysis and reports.

7) Include cost to provide services and complete application for Energy Star Label, LEED-EB certification for Existing Buildings, or other certifications. Also include cost for EPA's Tools for Schools or other such program related to improved air quality.

i. Preliminary Investment Grade Audit Report.

The report provides an engineering and economic basis for negotiating a potential Energy Savings Performance Contract between the Government Unit and the ESCO. The report shall be completed within 60 calendar days of the date of execution of the IGA Contract. The report shall include:

1) Overview

a) Contact information.

b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life.

c) Summary of annual energy and water use by fuel type and costs of existing or base year condition.

d) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.

e) Description of the existing facility, mechanical and electrical systems.

f) Summary description of measures, including estimated costs and savings for each as detailed above.

g) Discussion of measures considered but not investigated in detail.

h) Conclusions and recommendations.

2) Base year energy use

a) Description and itemization of current billing rates, including schedules and riders.

b) Summary of all utility bills for all fuel types and water.

c) Identification and definition of base year consumption and description of how established.

c) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings).

3) Full description of each energy and water saving measure including:

a) Written description

(1) Existing conditions.

(2) Description of equipment to be installed and how it will function.

(3) Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation.

(4) Present the plan for installing or implementing the recommendation.

(5) Demonstration of applicability of the measure for the environment in Puerto Rico.

b) Savings calculations

(1) Base year energy use and cost.

(2) Post-retrofit energy use and cost.

(3) Savings estimates including analysis methodology, supporting calculations and assumptions used.

(4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).

(5) Savings estimates must be limited to savings allowed by the Government Unit.

(6) Percent cost-avoidance projected.

(7) Description and calculations for any proposed rate changes.

(8) Explanation of how savings interactions between retrofit options are accounted for in calculations.

(9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.

(10) If computer simulation is used, short description and key input data shall be provided. If requested by the Government Unit, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment Grade Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts

(11) If manual calculations are employed, formulas, assumptions and key data shall be stated.

(12) Conclusions, observations, caveats.

c) Cost estimate - detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and

implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.

(1) Engineering/design costs.

(2) ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.

(3) Permit costs and applicable taxes.

(4) Construction management fees.

(5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).

(6) All markups and fees stated in the IGA Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.

(7) Conclusions, observations, caveats.

d) Other considerations

(1) Estimate of average useful service life of equipment.

(2) Preliminary commissioning plan.

(3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified.

(4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.

(5) Compatibility with existing systems. Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.

(6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

(7) Certification by a Puerto Rico registered Professional Engineer that commonly accepted principles have been applied to the measurements,

design, and calculations presented in the IGA; and that the estimates appear reasonable.

(8) An estimate of the Government Unit resources, and schedule, required to support implementation, operations and maintenance of the measures.

j. Review Recommendations

Review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected savings meet the Institution's terms for completing the IGA and Performance Contract Proposal. Discuss the willingness and capability of the Government to make capital contributions to improve the economics of the overall project.

k. Revise Audit as directed by the Government Unit

Review the IGA report under the guidance of the energy action team. The energy action team will generate a recommendation report addressed to the ESCO before proceeding with the Energy Savings Performance Contract Proposal.

l. Prepare an Energy Savings Performance Contract Proposal (Term Sheet).

In anticipation of ESCO and the Government unit entering into an Energy Savings Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Investment Grade Audit Report, ESCO shall prepare a proposal for terms to be incorporated in an Energy Savings Performance Contract to include:

1) Project Price is the total amount the Government Unit will pay for the project and ESCO's services. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Investment Grade Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.

2) Include a List of Services that will be provided as related to each cost.

3) Expected term of the Energy Savings Performance Contract.

4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to the Government Unit at this time, and based on a30-day, 60-day and 90-day lock option.

5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the latest version of the International Performance Monitoring and Verification Protocol.

6) Analysis of annual cash flow for the Government during the contract term.

m. Portfolio Manager rating and energy performance target score estimate.

For each eligible building, ESCO shall provide a pre-retrofit Energy Performance Rating using EPA ENERGY STAR's Portfolio Manager, the weather normalized energy intensity in Btu/SF, and an estimated post-retrofit Energy Performance Rating. If the building type is not eligible for rating in Portfolio Manager, then the normalized source Energy Use Intensity will suffice. ESCO shall provide a completed Cash Flow Opportunity Calculator (CFO Calculator) for the project, with variables inserted that represent the most likely options available to the customer. This will enable the ESCO and the Government Unit to have an agreed-upon format for discussing project financing options and the potential costs of project delays. The CFO Calculator will be provided in both hard copy and electronic format, so that the Government Unit, in coordination with GDB can run its own analyses on financing options in the agreed format. ESCO will submit a completed Cash Flow Opportunity spreadsheet using the Cash Flow Opportunity Calculator (CFO Calculator) for the total project which shall include all facilities to be improved.

SECTION 6.04 - NOTICE OF ACCEPTANCE OF INVESTMENT GRADE AUDIT REPORT

If applicable the Government Unit will provide the ESCO with a Notice accepting the IGA Report and Energy Savings Performance Contract Proposal within 30 days of receipt, after discussion and acceptance by PREAA and the Energy Action Team.

SECTION 6.05 - PRELIMINARY MEASURMENT AND VERIFICATION (M&V) PLAN

A measurement and verification plan will be developed as a deliverable in the IGA in coordination with PREAA. The ESCO shall complete a "Risk, Responsibility and Performance Matrix" detailing the ESCOs suggested approach and allocation of responsibility for key items related to M&V, including: (1) Financial Matters (Interest rates; Construction costs; Project Savings Verification Methodology; Energy Related Cost Savings; Delays; Major changes in facility use); (2) Operational Matters (Operating hours; Equipment loads; Weather; User participation); (3) Performance Matters (Equipment performance; Operations; Preventive Maintenance; Equipment Repair and Replacement).

The M&V Plan will be further refined as an essential component of the Energy Savings Performance Contract.

SECTION 6.06 - PAYMENT FOR INVESTMENT GRADE AUDIT (IGA)

The audit cost will be proposed in the ESCOs response to the solicitation. Once the Energy Savings Performance Contract is executed, the cost of the IGA will be rolled into the overall project cost and paid for from the proceeds of the financing. The Investment Grade Audit is a stand-alone contract. The Government Unit will be required to have funds obligated to pay for the cost of the audit in the event the Government Unit elects not to proceed with a performance contract and the IGA demonstrates a project that can meet the business objectives. This is a

temporary obligation as long as a subsequent Energy Savings Performance Contract is executed with the provision to pay for the audit.

CHAPTER SEVEN: CONTRACT WITH ESCO TO IMPLEMENT ESPC PROJECT

SECTION 7.01– PREAA'S MODEL ENERGY SAVINGS PERFORMANCE CONTRACT

The Energy Savings Performance Contract is for design, construction, guaranteed savings, and maintenance of the measures proposed in the Final Proposal. The ESPC will be a road map for implementing and tracking the project over the term of the agreement. It must clearly define roles and responsibilities and explicitly state how savings are determined and how the savings performance guarantee will function. All Government Units are required to use PREAA's Model contract, as a guide, which is included as an Addendum to this Regulation. This form contract has been used over many years by the public sector and accepted by the industry. The Government Unit will only have to customize it, negotiate costs and ensure open-book pricing for good value.

SECTION 7.02 – EQUIPMENT TO BE INSTALLED BY ESCO

The Energy Savings Performance Contract will include a Schedule that will specify all of the newly installed equipment including manufacturer, quantity, location and warranties. This schedule will also describe any modifications that may have been made to existing equipment, if applicable.

SECTION 7.03 – DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY

The Energy Savings Performance Contract will include a Schedule that will contain basic information about the condition of the Project Site(s) at the time of contract execution. Such information will include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract.

SECTION 7.04–ENERGY SAVINGS GUARANTEE; PAYMENT AND PERFORMANCE BOND

The Energy Savings Performance Contract will include a Schedule that will fully describe all provisions and conditions of the energy saving guarantee provided by the ESCO. The guarantee will be defined in units of energy to be saved for the duration of the contract term. Reference to the annual reconciliation of achieved vs. guaranteed savings will be included.

As a condition for granting an ESPC and in order to ensure the contractual measures and energy saving representations, the ESCO shall provide evidence of payment and performance bonds in

favor of the Government Unit and PREAA. The bond shall be issued by an insurer authorized by Commissioner of Insurance to do business in Puerto Rico, which has at least an A- in the publication AM Best.

SECTION 7.05 – COMPENSATION TO ESCO FOR ANNUAL SERVICES

The Energy Savings Performance Contract will include a Schedule that will contain the amount and frequency of any payments that may be made to the ESCO for maintenance, or other services negotiated as part of the contract. It will contain information about how the compensation is calculated (e.g. percentage of savings above the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure will also likely be included to cover ESCO costs for any services provided beyond the scope agreed to at the time of contract execution.

SECTION 7.06 – BASELINE ENERGY CONSUMPTION

The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The Energy Performance Contract will include a Schedule that will detail the methodology and all supporting documentation used to calculate the baseline, including unit consumption and current utility rates for each fuel type. This schedule will also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballasts, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts. Baseline documentation must include evidence of Government Unit witnessing of the baseline conditions. Government Unit names, signatures, time and date on audit sheets, consumption records, photographs are a recommended minimum.

SECTION 7.07 – SAVINGS MEASUREMENT AND VERIFICATION PLAN; METHODOLOGY TO ADJUST BASELINE

The Energy Savings Performance Contract will include a Schedule that will contain a description of the energy savings measurements, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment. This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. will be explicitly described for all equipment installed. Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies used to account for any adjustments to the baseline will be clearly defined in this schedule.

SECTION 7.08 – CONSTRUCTION AND INSTALLATION

The Energy Savings Performance Contract will include a Construction and Installation Schedule that will contain the timetables and milestones for project construction and installation. If required by the Government Unit, documentation of required insurance and subcontractor lists may be included in this schedule or broken out into a separate schedule. The construction/installation phase of the project will be treated in compliance with individual Government Unit requirements and the appropriate governing statutes. This may require evidence to demonstrate appropriate levels of competition in the ESCOs procurement for materials and subcontractors for the project. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

SECTION 7.09 – SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

The Energy Savings Performance Contract will include a Schedule that will specify the performance testing procedures that will be used for start-up, and for the commission of the installed equipment and total system. The schedule will also provide for the Government Unit to be notified of, and present, during all commissioning procedures. This schedule will contain a provision for the documentation of the Government Unit's attendance at the various tests, and their approval that the tests followed the specified procedures, and met or exceeded the expected results.

The operating parameters will contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

SECTION 7.10 – STANDARDS OF COMFORT

The Energy Savings Performance Contract will include a Schedule that will describe the standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facilities.

SECTION 7.11 – ESCO'S MAINTENANCE RESPONSIBILITIES

The Energy Savings Performance Contract may include a Schedule that will provide a complete description of the ESCO's specific operations and maintenance responsibilities along with the time intervals for their performance of the stated operations and maintenance (O&M) activities.

SECTION 7.12 – GOVERNMENT UNIT'S MAINTENANCE RESPONSIBILITIES

The Energy Savings Performance Contract may include a Schedule that will describe the O&M responsibilities that may be assigned to facility staff as agreed to by both parties. This Schedule will contain a description of routine O&M currently being performed on existing energy consuming equipment in the facilities.

SECTION 7.13 – FACILITY MAINTENANCE CHECKLIST

The Energy Savings Performance Contract will include a checklist as a method by which the ESCO may record and track the Government Unit's compliance with any of the maintenance procedures being performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, on a monthly basis.

SECTION 7.14 – ESCO'S TRAINING RESPONSIBILITIES

The Energy Savings Performance Contract will include a Schedule that will describe the ESCO's training program or sessions for facility personnel, including the duration and frequency of the specified training. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades will also be described. Any fees associated with the client's request for training beyond what the ESCO is contractually bound to provide will also be specified.

SECTION 7.15 – PAYMENT SCHEDULE

The Energy Savings Performance Contract will include a detailed Payment Schedule.

SECTION 7.16 – ALTERNATIVE DISPUTE RESOLUTION

The Energy Savings Performance Contract will include a Schedule that will describe methods for resolving disputes or claims relating to construction or the contract, wherein the parties agree to exercise good faith efforts (e.g., mediation, dispute resolution board) and to only use litigation as a last resort. This schedule is included as an alternative to costly binding arbitration and litigation. If no dispute resolution is reached, parties agree to submit to the adjudicative proceedings available at PREAA.

SECTION 7.17 – ANNUAL REPORTING REQUIREMENTS

The Energy Savings Performance Contract will include a Schedule that will summarize the project and contain the energy, water and operational cost savings (in dollars and MMBTUs) for each year. Annually the ESCO is required to submit a summary of performance for the year and reconciliation against the performance guarantee. In addition, annual emission reductions and

ENERGY STAR rating (if applicable) are also located in this schedule. This summary information is useful for tracking and reporting on annual project performance.

SECTION 7.18 – PRE-EXISTING SERVICE CONTRACTS

The Energy Savings Performance Contract may include a Schedule detailing information regarding the scope and cost of pre-existing equipment service contracts; including how and when the existing equipment is being serviced. If the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will be useful in tracking the performance of the ESCO in providing the required services, and documenting any attributable cost savings.

SECTION 7.19 – ENERGY SAVINGS PROJECTIONS

The Energy Savings Performance Contract will include a Schedule containing the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure by measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule will contain projections for each facility, even though they may all be covered under a single guarantee.

SECTION 7.20 – FACILITY CHANGES CHECKLIST

A "Facility Changes Checklist" or other method may be provided by the ESCO for the Government Unit to notify the ESCO of any changes in the facility that could have an impact on energy consumption (e.g. occupancy, new equipment acquisition, hours of use etc.). This checklist is generally submitted on a monthly or quarterly basis.

SECTION 7.21 – CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

The Energy Savings Performance Contract will include a Schedule containing any current or planned capital projects to be implemented in the facility. This information could prove to be very useful in the out-years of the contract in order to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

SECTION 7.22 – SUPERVISION BY A PUERTO RICO REGISTERED P.E.

The Energy Savings Performance Contract will include a requirement that an appropriately qualified Puerto Rico registered Professional Engineer act in responsible charge for the ESCO, to ensure the project is fit for the purpose intended.

CHAPTER EIGHT: MEASUREMENT AND SAVINGS VERIFICATION

SECTION 8.01 - ECM-SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS

Follow-up measurement and verification enables the Government Unit to ensure that it is getting full value from its energy savings performance contract. The success of the measurement and verification effort depends on the level of detail provided in the contract.

At least once every three months per contract year, the ESCO shall submit a report of cost savings (corroborate the results of the measures of conservation and energy efficiency) in coordination with the PREAA. ESCOs measurement and verification (M&V) services provide the Government Unit with assurance that equipment will perform for the life of the agreement. Savings must be verified and documented prior to payment. In order to achieve this, the ESCO shall:

1) Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).

2) Work in conjunction with PREAA to specify the M&V guideline, and the option used from the International Performance Measurement and Verification Protocol (IPMVP).

3) Provide an overview of savings calculation methods for ECM. Provide a general description of analysis methods used for savings calculations.

SECTION 8.02 - PROPOSED ENERGY AND WATER SAVINGS CALCULATIONS AND METHODOLOGY

ESCO must provide a detailed description of measurement analysis methodology used. Including, but not limited to:

1) Detail of any data analysis that was conducted prior to applying savings calculations.

2) Detail of all assumptions and sources of data, including all stipulated values used in calculations.

3) Include equations and technical details of all calculations made.

4) Detail any savings or baseline adjustments that may be required.

5) Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors.

6) Detail proposed savings for this energy conservation measure for post-acceptance performance period.

7) Methods for handling bad, or missing, data.

SECTION 8.03 - OPERATIONS AND MAINTENANCE (O&M) COST SAVINGS

ESCO must provide adequate justification for O&M cost savings, including, but not limited to:

1) Detailed description of how savings are generated and detail cost savings calculations.

2) Provide post-acceptance performance period other cost savings adjustment factors.

3) Provide justification for cost savings.

4) Provide post-acceptance performance period other cost savings adjustment factors.

SECTION 8.04 - POST-INSTALLATION M&V ACTIVITIES

ESCO must describe the intent of post-installation verification activities, including what will be verified, and must, in coordination with PREAA:

1) Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

2) Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.

3) Define requirements for the Government Unit to witness the measurements obtained, if different than the project data requirements.

4) Provide details of post-installation data to be collected, including: Parameters to be monitored; Details of equipment to be monitored (location, type, model, quantity, etc.); Sampling plan, including details of usage groups and sample sizes; Duration, frequency, interval, and seasonal or other requirements of measurements; Monitoring equipment to be used; Installation requirements for monitoring equipment; Calibration requirements/procedures; Expected accuracy of measurements/monitoring equipment; Quality control procedures to be used.

5) Detail data analysis to be performed.

SECTION 8.05 - POST-ACCEPTANCE PERFORMANCE PERIOD VERIFICATION ACTIVITIES

In order to be able to responsibly monitor and verify the energy and water saving measures proposed in the IGA Report, PREAA and Government Unit shall develop an M&V Plan, in coordination with the ESCO, that must:

1) Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

2) Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.

3) Describe the intent of post-acceptance performance period verification activities.

4) Provide detailed schedule of post-acceptance performance period verification activities and inspections.

5) Define requirements for the Government Unit witnessing of measurements if different than whole project data requirements.

6) Provide details of post-acceptance performance period data to be collected, including, but not limited to: Parameters to be monitored; Details of equipment to be monitored (location, type, model, quantity, etc.); Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements; Monitoring equipment to be used; Installation requirements for monitoring equipment; Calibration requirements/procedures; Expected accuracy of measurements/monitoring equipment; Quality control procedures to be used; Form of data to be collected (.xls, .cvs, etc.), among others.

7) Detail data analysis to be performed.

8) Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of the Government and contractor on operations and maintenance items. Define reporting schedule.

CHAPTER NINE - ADDITIONAL PROVISIONS

SECTION 9.01 - APPLICABILITY

The requirements of this Regulation are applicable to all Government Units, PREAA, and all ESCO's that have been Pre-Qualified by PREAA. All ESCO's who have contracted with Government Units prior to the adoption of this Regulation, will be exempt from the provisions of this Regulation.

SECTION 9.02 - OVERLAPPING OR CONTRADICTORY PROVISIONS

In the event that a requirement established by any provision of this Regulation is either more restrictive than a requirement established by any other part of this Regulation or by any other

law, regulation, standard, or limit established by any duly constituted government authority having jurisdiction, the more restrictive requirement shall prevail.

SECTION 9.03 - SEVERABILITY

Should any section, subsection, clause, paragraph or any part of this Regulation be declared unconstitutional, or void, by a court with jurisdiction over them, said decision shall not affect or invalidate the remaining sections, subsection, clauses, paragraphs or parts.

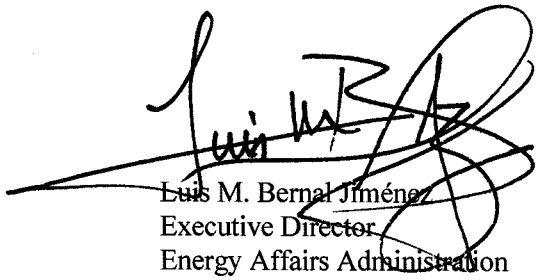
SECTION 9.04 - DISCREPANCY BETWEEN ENGLISH AND SPANISH VERSIONS

In the event of a discrepancy between the English and the Spanish versions of this Regulation, the English version shall prevail.

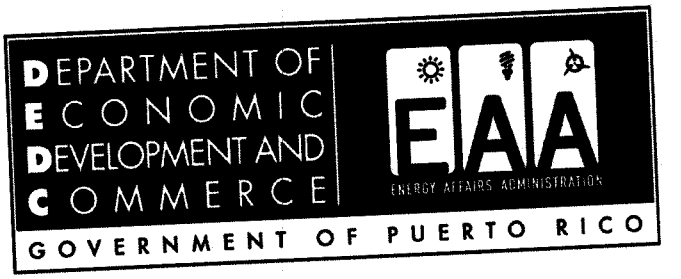
SECTION 9.05 - EFFECTIVENESS

This Regulation shall enter into effect immediately after it has been filed at the Puerto Rico Department of State, in conformity with Article 2.13 of Act 170-1988, as amended.

Approved By:



Luis M. Bernal Jiménez
Executive Director
Energy Affairs Administration

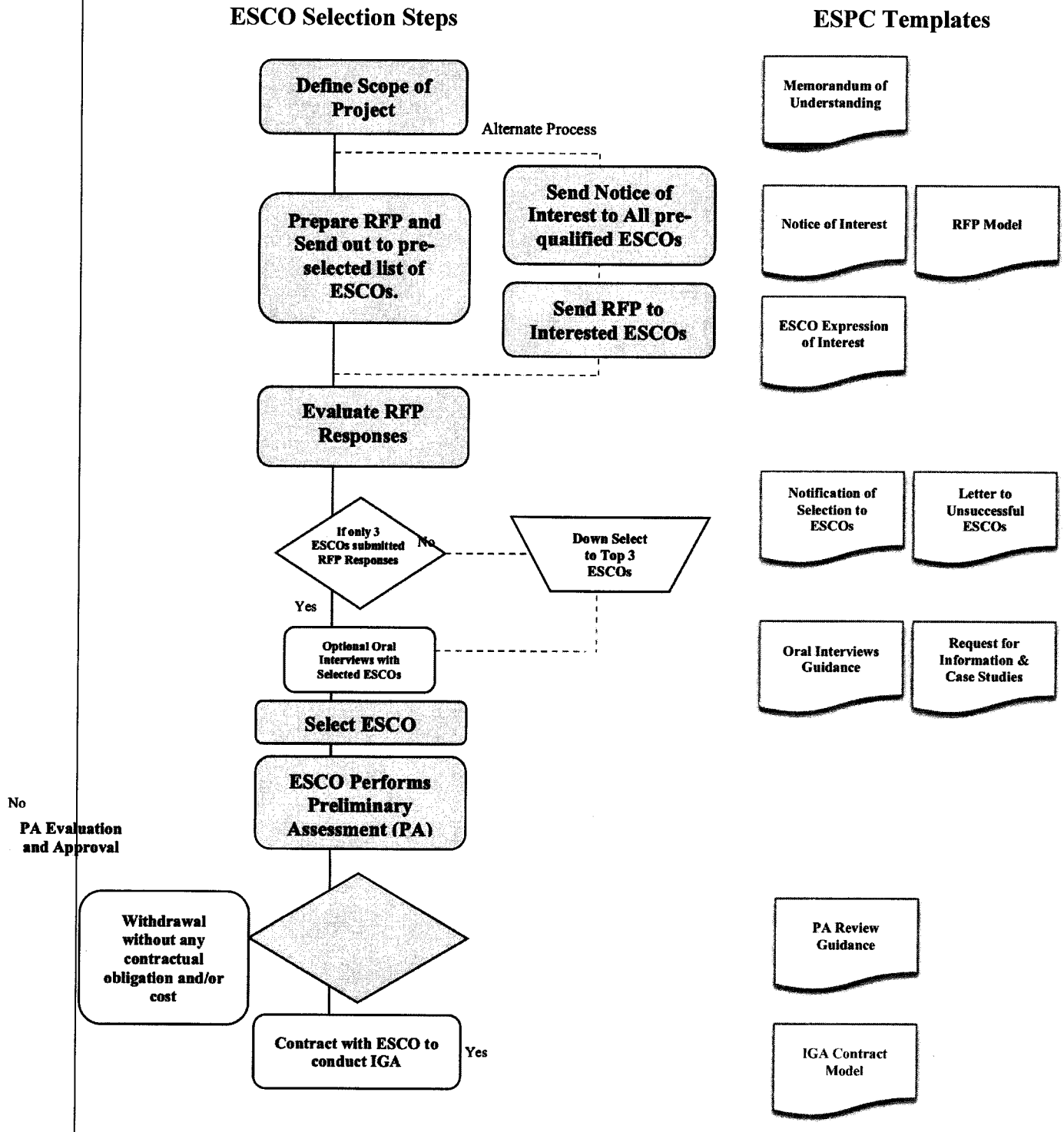


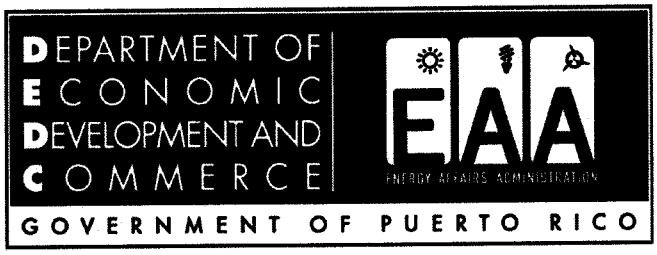
ENERGY SAVINGS PERFORMANCE CONTRACTING REGULATION

ADDENDA

OVERVIEW OF THE ESCO SELECTION PROCESS AND PREAA'S ESPC TEMPLATES

A high-level overview of the steps towards ESCO selection is depicted in the figure below. The corresponding ESPC templates created to assist with each step are indicated on the right-hand side. *Note: this is not a comprehensive view of all award procedures.*





MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this Day, Month, Year, by and between the Government Unit <Name> **and the Puerto Rico Energy Affairs Administration (PREAA).**

RECITALS

Whereas, PREAA has been the lead agency in Puerto Rico in charge of promoting the concept of Energy Savings Performance Contracting and spearheading the enactment of Act 19-2012 (the Act), also known as the "Energy Savings Performance Contracts Act". Act 19-2012 grants PREAA specific powers to coordinate and oversee the implementation, verification and observance of the Act, and to ensure the performance of Energy Saving Performance Contracts (ESPC) together with all public agencies, corporations and departments of the Commonwealth of Puerto Rico;

Whereas, Government Unit <Name> seeks to ensure capital improvements to their energy-consuming infrastructure systems in order to contain its energy costs and reduce energy consumption.

Whereas, Government Unit <Name> recognizes that ESPC's are a fiscally sound and energy efficient way to lower energy consumption, and thus, utilities spending, while avoiding the need to incur costs related to purchasing energy efficient equipment and renewable energy power sources. As such, Government Unit <Name> seeks to enter into an ESPC with a suitable Energy Service Company (ESCO).

Whereas, PREAA was specifically designated by the Act to be the lead agency in charge of selecting suitable companies to act as ESCO's in Puerto Rico.

Whereas, PREAA has the expert knowledge and authority to properly identify and select suitable ESCO's for [redacted] consideration.

Now, Therefore, in consideration of the mutual understandings and agreements set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PREAA will guide Government Unit <Name> through the entire ESCO procurement procedure, including, but not limited to:

   (a) Planning Phase (explore the renewable energy resources, as well as water and energy efficiency opportunities at Government Unit <Name> sites);

   (b) ESCO Pre-selection Processes (pre-award phase: PREAA will participate in walkthroughs or site visits, and provide recommendations);

   (c) ESCO Selection Processes (PREAA will participate in the contractor selection process; evaluate preliminary assessments; and develop selection evaluation factors with the [redacted]);

   (d) Negotiation and Award (PREAA will provide a draft contract that will be changed and negotiated between [redacted] and the ESCO selected);

   (e) Design, Construction and Acceptance (PREAA will assist [redacted] and ESCO's with acquisition plan; investment grade audit and project acceptance);

   (f) Performance Period (PREAA will assist [redacted] with an acceptable measurement and verification program).

2. Based on Government Unit <Name>'s energy and water needs, and the desired conservation methods, PREAA will assist [redacted] with the different ESCO alternatives, and recommend no more than three (3) suitable ESCO's which will be able to meet [redacted] energy and water savings performance contracting needs.

3. Government Unit <Name> will ultimately negotiate and procure an ESPC with the firm that offers the most favorable proposal (technical factors and price).

CONCLUDING STATEMENTS

This MOU is intended to serve as a general basis for commencing negotiations for one or more definitive agreements between Government Unit <Name> and PREAA with respect to the matters referenced herein. This MOU does not contain all of the detailed provisions to be incorporated in any such definitive agreement(s), but does reflect the current mutual intentions of the parties.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives as of the date first above written.

NAME OF GOVERNMENT UNIT

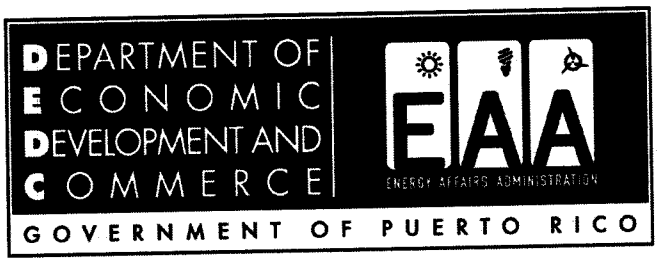
_____

<INSERT NAME>
<POSITION>

PUERTO RICO ENERGY AFFAIRS ADMINISTRATION

_____

<INSERT NAME>
EXECUTIVE DIRECTOR



PRE-QUALIFIED LIST OF ESCOS (IN ALPHABETICAL ORDER)

- ConEdison
- Eaton
- Energy Services Group (ESG)
- Honeywell
- Johnson Controls
- Noresco
- Schneider Electric
- Siemens
- Trane
- UPM Group

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

EAA ENERGY AFFAIRS ADMINISTRATION

GOVERNMENT OF PUERTO RICO

FACILITY PROFILE

Instructions: The energy service companies (ESCOs) will need a description of the facilities in order to decide whether to respond to the RFP. Use any format you wish. Only provide information that is readily available in order to expedite the RFP process. At a minimum, include "Building List" and the minimum recommended portions of the "Energy and Water Consumption and Cost Information" section

The information in this technical facility profile is provided to inform the ESCO about the condition of the facilities. The information was prepared with diligence. The ESCO is responsible for verifying the accuracy, as necessary.

Note: Provide as a separate file to avoid word-processing errors. Include this page as a cover sheet.

I. Building List

- *List of Buildings (include **all** buildings that could be potential candidates either now or in the future; you can always scale-back the project scope during contract negotiations if desired). List only those buildings where you pay the utility bills and have responsibility for upgrades. Include*:
  - Name of building
  - Total square footage of conditioned space.
  - Primary use of building (school, office, etc.)
  - Year constructed
  - Year of any major modifications, additions or renovations (briefly describe)
  - General location of buildings if not all are in one city or one "campus"

II. Energy and Water Cost & Consumption Information

Only provide information that is readily available.

- List the present utility companies that provide electricity, gas, water, etc.
- Is natural gas or propane used? If propane, is natural gas available in the area?

- Provide energy use information as available: At a minimum, include *annual costs* for each of the main buildings (preferably itemized by electricity, natural gas, water, etc.). *If available*, include *monthly* consumption and cost information for electricity (kW, kWh, $), gas (ccf/therms/gal, $), water (gal, $), etc. for the past one-year period for each of the major buildings. If monthly information is not readily available, attach copies of utility rate schedules that apply to the facilities or include a sample utility bill for electricity, gas, etc. for each facility or meter from a winter month and summer month. If under contract for natural gas, provide the fuel purchase agreement and a monthly price history, if available.

III. Past Energy Improvement Efforts

Only provide information that is readily available.

- Describe any major energy-related changes made during the past ten years (boiler/chiller replacements, other heating/cooling modifications, cooling additions, energy management control installation/upgrade, T8/electronic ballast lighting upgrades, ventilation improvements, etc.).
- State if any energy audits were conducted in the past 5 years and if the information is available.

IV. Future Plans

Only provide information that is readily available. If not readily available, the ESCO can work with you to collect needed information during the audit phase.

- Describe any major change planned to occur (additions or renovations; lighting upgrade, major equipment replacement; decommissioning, demolition or sale; significant change in function or hours of operation in the next 10 years; change in function of building such as from classrooms to offices, change in hours of use such as year-round to seasonal operation).
- Describe funding available, planned or anticipated for these improvements.
- Describe any building improvements that you would like to investigate during this project.

V. Energy-Using Systems Description

Only provide information that is readily available. If not available, the ESCO can work with you to collect needed information during the audit phases.

- Heating System: Briefly describe the types of heating systems serving your buildings (boiler, furnace, rooftop unit, etc.). Also describe the distribution system that delivers heated/cooled air to the rooms (forced air, water, etc.) Describe the age and condition.
- Cooling System: Briefly describe the type of cooling system serving your building (chiller, roof-tops, etc.). Describe the age and condition.
- Controls System: If you have a controls system to control space temperatures and heating and cooling equipment, please describe its capability (what is controlled), type (pneumatic compressed air system, direct digital control system), condition, manufacturer name and model, and approximate year installed.

- Lighting System, Interior: Describe extent of replacement of fluorescent systems to T8 lamps and electronic ballasts.
- Water Heating System: Describe your domestic water heating system. Is it part of the space heating system?
- Other Energy-Using Systems (laundry, kitchen, laboratory, solar system, swimming pool, spa, ice rink, etc.)
- List any added water use such as showers, laundry, irrigation, etc.

VI. Operating Information

Only provide information that is readily available. If not available, the ESCO can work with you to collect needed information during the audit phases.

- Describe the typical hours of operation for each facility (weekday, weekend, seasonal). In other words, when are the lights on and when is the heating/cooling system operated?
- Describe the janitorial hours (during occupied hours or after hours?)
- Describe when cooling systems are used and in which buildings

VII. Maintenance Practices

Only provide information that is readily available.

- Describe the general maintenance practices (preventive maintenance plan used, skilled or low-skilled maintenance staff, good or poor funding for maintenance, much or little deferred maintenance, etc.)
- Describe any known maintenance problems and/or needs associated with deferred maintenance. Include comfort problems.

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

EAA ENERGY AFFAIRS ADMINISTRATION

GOVERNMENT OF PUERTO RICO

SAMPLE NOTICE OF INTEREST (NOI)

Instructions: Prepare a letter to be sent to all pre-qualified ESCOs. Recommended content for the development of a Notice of Interest is the following:

***Agency/Department Name**: Indicate the highest-level agency/department name. (e.g., Department of Education, Department of Health, Department of Housing, etc.)*

***Sub-agency/Division**: Indicate the sub-agency, command, division or department. Also indicate region, if appropriate.*

***Location of project site**: Indicate the location(s) of the project site(s) by city. Indicate specific installation or complex name if applicable.*

***Specialization requested**: If it is important that the ESCOs have specific specializations in technology or services (e.g., hydro, solar, wind, building controls, etc.) then indicate the specialization required and/or desired. Also note if experience in specific environments is required or beneficial (e.g., clean room technology, acute healthcare setting, etc.)*

***Broad Definition of Scope**: Broadly define the scope of the project without limiting the range of potential energy saving improvements.*

***ESCO Selection Process**: Describe the selection process, in terms of: 1.) how many ESCOs will be selected for the next round of consideration, 2.) criteria for selecting ESCOs, 3.) approximate timeframe for down selection, and 4 .) information the ESCOs must include in submissions.*

See Notice of Interest Template Below:

Date <Month, Day of Year>

TO: All pre-qualified ESCOs under the Puerto Rico ESPC Program

FROM: agency, subagency, location/site

RE: Notice of Interest for Energy Savings Performance Contracting (ESPC) Project.

Dear Energy Savings Companies,

The agency, subagency, location/site invites Pre-Qualified ESCOs to submit a written response (Expression of Interest) to this Notice to be considered for this potential project. (State a specific number of pages the Letter of Interest should contain).

The primary function of the referenced building(s) being considered is/are Describe primary function(s) of project buildings....

It is important that the interested ESCOs have specific qualifications in (the applicable market/sector). The site/agency will select three ESCOs based on their score/ranking according to the evaluation criteria stated in the Request for Proposal (RFP). The selection process will be based on the ESCO's qualifications, including:

- Performing site surveys, investigations and feasibility designs and studies
- Energy related project history and project references in the ESPC market
- Specific expertise, experience, or specialization that is beneficial to this project
- Creditworthiness, indirect cost structure and profits on similar projects
- Success with socio-economic goals in related projects.

The timeline for this selection process is as follows:

- Closing date for Expression of Interest: INDICATE CLOSING DATE
- Agency's review process: Indicate end date for review process, recommend no more than two weeks
- Unsuccessful Offer debrief opportunity: (IAW FAR – 10 business days)
- Preliminary Assessment completion (if applicable):
- Date for discussions with Successful Offerors: Indicate date for discussions

In response to your Notice of Interest, Energy Service Companies (ESCOs) at the minimum, must include the following:

1) ESPC Project Approach

   INSERT 1–2 PAGE NARRATIVE OF HOW YOUR COMPANY WILL HELP THE PROPOSED PROJECT MEET ITS ENERGY POTENTIAL.

2) Qualifications for Conducting a Preliminary Assessment (PA) subsequently an Investment Grade Audit (IGA)

   INSERT 1–2 PAGE DISCUSSION OF QUALIFICATIONS FOR PERFORMING INVESTMENT-GRADE AUDITS. SUMMARIZE TECHNICAL CAPABILITY FOR PERFORMING SITE SURVEYS, FEASIBILITY DESIGNS, AND STUDIES. CITE REFERENCES USED FOR DATA, ASSUMPTIONS, ETC.

3) Information about Specific ESPC Projects

INSERT EXAMPLES OF COMPANY'S PAST ESPC PROJECTS, INCLUDE ALL PROJECT(S) WITH SAVINGS SHORTFALLS OR OTHER ISSUES; PROJECT(S) IN LITIGATION AND HOW THEY WERE RESOLVED; PROJECT FINANCING SPREAD (PROJECT RATE LESS LIKE TERM TREASURY) ON LAST 3 TRANSACTIONS

4) Response to Specific Requirements in the Notice of Interest

RESPOND TO ADDITIONAL SPECIFIC REQUIREMENTS IN THE NOTICE OF OPPORTUNITY (E.G., SITE-SPECIFIC REQUIREMENTS, SELECTION CRITERIA REQUIRING YOUR RESPONSE). USE THIS SECTION TO BRIEFLY STATE HOW COMPANY HAS OR WILL ADDRESS THE REQUIREMENTS AND/OR QUALIFICATIONS FOR THE SELECTION CRITERIA

5) Company Contacts

NAME OF PRIMARY CONTACT
LOCATION
MAILING ADDRESS
PHONE NUMBER
EMAIL ADDRESS

NAME OF SECONDARY CONTACT
LOCATION
MAILING ADDRESS
PHONE NUMBER
EMAIL ADDRESS

NAME OF PUERTO RICO P.E
LICENSE NO.
LOCATION
MAILING ADDRESS
PHONE NUMBER
EMAIL ADDRESS

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

EAA ENERGY AFFAIRS ADMINISTRATION

GOVERNMENT OF PUERTO RICO

SAMPLE NOTIFICATION OF SELECTION LETTER

Instructions: Use to Notify Selected energy service company (ESCO) and to solicit meeting to plan a Preliminary Assessment at Project Site.

Date <Month, Day of Year>

Insert company name
Address 1
Address 2
City, State Zip Code

RE: Notice of Selection for Energy Service Company (ESCO) Selection – RFP #, dated Month, Day of Year 12, 2012

Congratulations, your company has been selected to conduct a Preliminary Assessment of the Agency name and site location in accordance with the Request for Proposal (RFP) referenced above.

Please plan to attend a meeting between our Acquisition Team and the ESCO Name key personnel including the PREAA Technical Advisor to plan the site Preliminary Assessment. The meeting will be held at Location of meeting at Time and time zone of meeting on <Insert Date>. INSERT SPECIAL INSTRUCTIONS OR ADDITIONAL INFORMATION AS NECESSARY.

If the meeting date and time is not agreeable, please advise Agency Point of Contact. Thank you for the interest and effort in your response to our Notice of Opportunity.

Cordially,

Name, Last Name of Agency Official
Position
Agency Name

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

EAA ENERGY AFFAIRS ADMINISTRATION

GOVERNMENT OF PUERTO RICO

ORAL INTERVIEW GUIDANCE

NOTE:

The following guidance is not intended to replace or circumvent any existing agency-level guidance or regulation; the guidance is intended to enhance the agency's effectiveness when interviewing potential Energy Service Company (ESCOs). Use for selection of two or more ESCOs

INSTRUCTIONS

Preplan your interview(s)

- Be prepared to decide whether to have video conference; webinar, telephonically or face-to-face interview (recommended).
- Meet with the Acquisition Team (including your PREAA's technical advisor) at least one hour prior to the first ESCO interview.
- Prepare questions and discussion issues based on the Team's comments and concerns.

Recommend scheduling a 1 or 1-1/2 hour for each interview.

- Advise the ESCO that they will be allowed up to 1/2 hour for their presentation.
- Schedule up to 1/2 hour for the agency's comments/questions.
- Be consistent and prepare in advance a set of discussion topics for each ESCO interview. The interview should address each contractor's qualifications for implementing potential energy conservation measures.
- Request project references and specific detailed examples regarding similar projects, including the resulting energy savings.
- Request an explanation of how similar projects relate to the scope and content of the task or delivery order concerned; (Copied from the National Defense Authorization Act of 2011).

ORAL INTERVIEW GUIDANCE

SUGGESTED POINTS FOR DISCUSSION:

1. How many energy audits/feasibility studies have been performed by the ESCO?
2. What are the unique aspects of each project?
3. Describe technical similarities between past projects and this project
4. Describe the technical strengths of similar projects performed by the ESCO.
5. Describe the technical weakness of similar projects performed by the ESCO. Describe how the technical problems were addressed and resolved.

SAMPLE

MEMORANDUM FOR: Energy Savings Performance Contracting

Oral discussions with ESCO Name will be conducted on <Insert Date> at Location of meeting.

The Acquisition Team is requested to meet at Location of meeting at 9:30a.m. to review the discussion points prior to the meeting with the ESCO's.

Total meeting time is anticipated to be approximately 1 hour.

The discussion points to date are as follows:

1. How many energy audits/feasibility studies have been performed by the ESCO?
2. What are the unique elements of each project?
3. Describe technical similarities between past projects and this project.
4. Describe the technical strengths of similar projects performed.
5. Describe the technical weakness of similar projects performed by the ESCO. Describe how the technical problems were addressed and resolved by the ESCO.
6. Describe how the technical problems were addressed and resolved.

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

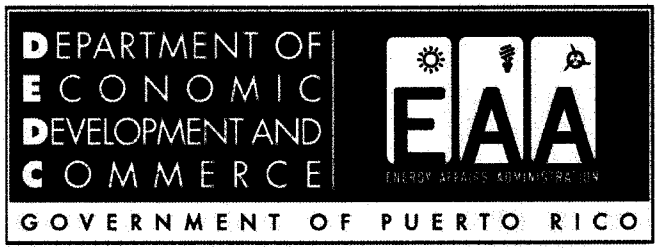
EAA ENERGY AFFAIRS ADMINISTRATION

GOVERNMENT OF PUERTO RICO

PRELIMINARY AUDIT PA EVALUATION GUIDANCE

Some of the key questions to answer during the review and evaluation process are presented below.

- Is the proposed scope sufficiently comprehensive?
- Does it meet the majority of the Governmental Unit's needs?
- Do the ECM descriptions provide enough detail?
- Are projected energy savings reasonable?
- Are the ECMs proposed appropriate?
- Are the estimated annual cost savings reasonable?
- Are the cost savings consistent with the technical approach?
- Are the contract term and the total cost acceptable?
- Are the project development costs reasonable?
- Are the ECM costs reasonable?
- Are the indirect costs and profit reasonable?
- Are the financing costs reasonable?
- Are the performance period services costs reasonable?



MODEL REQUEST FOR PROPOSALS
FOR ENERGY PERFORMANCE CONTRACTING SERVICES

REQUEST FOR PROPOSALS
Energy Performance Contracting Services for
"GOVERNMENT UNIT"

TABLE OF CONTENTS

1. General Overview and Project Goals

2. Project Overview and Background

3. Proposal Submittal and Selection Process

    3.1. Policies
    3.2. Submittal Instructions
    3.3. Submittal Format
    3.4. Submittal Schedule
    3.5. Selection Process

4. Scope of Work

    4.1. Energy Performance Contract Project Phases
    4.2. ESCO Services
    4.3. Building Facilities and Approach

ATTACHMENTS

Attachment A:	Special Contract Terms and Conditions
Attachment B:	Proposed Project Schedule
Attachment C:	ESCO Response
Attachment D:	Evaluation Criteria
Attachment E:	Technical Facility Profile
Attachment F:	Model Technical Energy Audit and Project Proposal Contract
Attachment G:	Model Energy Performance Contract
Attachment H:	Financing Bid Package
Attachment I:	USGBC LEED Existing Buildings Operation & Maintenance Goals
Attachment J:	Technology Transfer Program

1) *General Overview and Project Goals*

The Government Units Buildings, owned by _____ (hereinafter referred to as GOVERNMENT UNIT) seek to maximize energy cost savings and other utility savings and related costs in order to pay for facility modifications through technology upgrades and performance enhancing services. The GOVERNMENT UNIT considers this project as a pilot and its success will set the basis for other Performance Contracts through the GOVERNMENT UNIT Inventory.

Project Goals: Services and capital improvements will be financed through an energy performance contract which has but is not limited to the following goals:

- incurs no initial capital costs
- achieves significant long-term cost savings through reduced energy use and related operating cost savings
- achieves an annual guarantee for cost savings for each year with no carryover for future years
- upgrades old and inefficient systems
- maintains consistent and reasonable levels of occupant comfort according to standard values given
- maintains consistent levels of building functionality and compatibility with existing equipment and controls
- improve utilization of technology to achieve optimum performance and savings
- enhance personnel development and training to manage new equipment and systems
- review opportunities for renewable energy applications or demonstrations
- captures additional benefits that may directly result from energy related services and capital improvements, such as environmental protection, hazardous materials disposal or recycling, improved occupant comfort, reduced maintenance needs, improved indoor air quality, additional building improvements, reduced CO2 emissions, etc.
- minimize financial and technical risk from the Owner
- Reduce water consumption to meet LEED EB Version 3.0 Water Efficiency Pre-requisite 1 as a minimum and Credit 2 as a goal.
- increases or achieves Energy Star Rating by at least a rating of 69 to meet LEED EB Energy & Atmosphere Pre-requisite 2.
- achieves points toward LEED-EB certification
- develops successful long term partnership with ESCO

2) *Project Overview and Background*

The Buildings, owned by the GOVERNMENT UNIT seek proposals from Energy Services Companies (ESCO) to conduct a technical energy audit of facilities and implement an Energy Performance Contract. The ESCO will identify and implement building improvements to reduce energy and related costs in facilities, such that annual cost savings are applied to annual payments for improvements.

The contracting process has four (4) phases:

1) RFP Phase: Through this RFP, an ESCO will be selected based on written proposals, final reference checks and interviews if deemed necessary.

2) Technical Energy Audit, Design and Project Proposal Phase: A contract for the Technical Energy Audit will be developed with the selected ESCO. This investment grade audit will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings and cash-flow over the proposed financing term. A project proposal will present aggregated measures that can be financed through guaranteed savings.

3) Construction/Implementation/Commissioning and Financing Phase: An Energy Performance Contract will be negotiated following the audit. This establishes the project scope and costs, and provides for construction and follow-up services to be provided during the financing term. A separate financing agreement will be developed.

4) Post-Construction Guarantee/Monitoring Phase: After construction, the ESCO will offer a variety of services to ensure savings are met, such as a savings guarantee, staff training, follow-up monitoring provided by an agreed upon third party, and any required specialized contract maintenance services for assuring savings.

3) *Proposal Submittal and Selection Process*

A) POLICIES

It will be GOVERNMENT UNIT's policy not to accept proposals from entities that do not comply with the following:

1. ESCO must be Pre-Qualified by PREAA. ESCO's not complying with this requirement will be disqualified from any consideration in the evaluation process.

2. ESCO's must certify that none of the members of its Board of Directors, executives, authorized representatives, or shareholders have been accused or convicted of crimes against the Government of Puerto Rico or the federal government that involve appropriation of public funds or fraud against public property. ESCO's must certify that there is no criminal or civil procedure or investigation pending for any of the crimes or felonies described in the preceding paragraphs against any of the members of its Board of Directors, executives, authorized representatives, or shareholders. ESCO's must inform GOVERNMENT UNIT of any situation or procedure that may be initiated against any of the parties mentioned above at any moment after signing the contract resulting from this procurement and up until the date of expiration. ESCO's must understand that violation of these certifications may lead to resolution of the agreement resulting from the procurement without prior notice.

3. ESCO's must certify that, at the time of submittal of Proposals they have filed income tax returns in Puerto Rico for the previous five (5) years, and that they have no outstanding tax debt, as applicable. These certifications are essential conditions of this

procurement because they are required by law and by Executive Orders. If any of these certifications are incorrect, the GOVERNMENT UNIT shall have cause for the immediate termination of the Agreement resulting from this RFP, and the ESCO shall have to reimburse any amount of money received under such Agreement. Prior to the execution of any Agreement resulting form the RFP, the selected ESCO shall present the GOVERNMENT UNIT the corresponding certification issued by the Department of Treasury, the Department of Labor and Human Resources, and the Municipal Tax Collection Center, known by its Spanish acronym as CRIM.

4. ESCO shall also be responsible for providing the GOVERNMENT UNIT with the certification required under this section of any professional or technical consultant or organization that the ESCO intends to subcontract.

5. ESCO's must certify that the proposal is not made in the interest of, or behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or a sham; that the ESCO has not directly or indirectly induced or solicited any other ESCO to put in a false or sham proposal; and has not directly or indirectly colluded, conspired, connived, or agreed with any ESCO or anyone else to put I a sham proposal, or that anyone shall refrain from bidding; that the ESCO has not in a matter directly or indirectly, sought by agreement, communication, or conference with anyone, including the GOVERNMENT UNIT personnel or contractors, to fix communication, or conference with anyone, including the GOVERNMENT UNIT personnel or contractors, to fix the proposal price of the ESCO or any other ESCO, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other ESCO, or to preclude the GOVERNMENT UNIT from obtaining the best competitive proposal; that all statements contained in the proposal are true; and, further, that the ESCO has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or date relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

6. ESCO's shall submit certification that, when issuing the proposal, they are in full compliance with Act No. 5 of December 30, 1986, as amended, also known as Organic Act for the Administration of Child Support Enforcement of the Commonwealth of Puerto Rico, as applicable.

(a) ESCO shall submit certification that as employers, under the term of said law, they comply by submitting the New Hire Report, by implementing income withholding order to the employees under the terms required, and inform the termination of employment of the non-custodial parent, and also to withhold from the severance payment that amounts owed in arrears of the support order, if applicable.

(b) ESCO's shall also certify that they care under no penalty proceedings, administrative or judiciary, because of any violation to this law. It is expressly acknowledged that this is an essential condition of the contract resulting from this procurement, and in

case of any incorrect certification, in whole or in part, this will be reasonable cause for the GOVERNMENT UNIT to terminate the contract.

7. ESCO's must certify that they: (a) do not discriminate in any matter against an employee, applicant for employment, subcontractor, or nay person because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) include a provision similar to that contained in subsection (a) above in any subcontract executed in connection with the services to be provided under the contract resulting from this procurement, but excluding subcontracts for standard commercial supplies or raw materials; (c) post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause; and (d) maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(a) ESCO's agree to include a similar provision in every subcontract so that this provision will be binding upon each subcontractor.

(b) ESCO's shall include copy of their nondiscrimination and sexual harassment policies in their proposals.

8. ESCO's must print the document included in Attachment K under corporate letterhead and submit with their proposal, signed by a Senior Executive of the ESCO's entity.

B) SUBMITTAL INSTRUCTIONS

i) All submittals shall become the property of the GOVERNMENT UNIT and will not be returned.

ii) Late submittals shall not be evaluated.

iii) GOVERNMENT UNIT reserves the right to reject any or all proposals on the basis of being unresponsive to these guidelines or for failure to disclose requested information.

iv) GOVERNMENT UNIT shall not be liable for any costs incurred by respondents in the preparation of submittals and proposals nor in costs related to any element of the selection and contract negotiation process.

v) **Communications Regarding This RFP**
Questions and requests for clarification on this Request for Proposals must be submitted *in writing* following the instructions posted in the Notice. No verbal inquiries will be addressed.

Communication with Government officials, the Selection Committee, or others associated with the GOVERNMENT UNIT with regard to this Request for Proposals is strictly prohibited.

The GOVERNMENT UNIT may, in its sole discretion, issue addenda to this RFP containing responses to questions and requests for information, clarifications of the RFP, revisions to the RFP or Closing Date, or any other matters that the GOVERNMENT UNIT deems appropriate

C) SUBMITTAL FORMAT

i) Proposals must be prepared as described in Attachment C; ESCO Response. Proposals prepared in response to RFP must be submitted to the GOVERNMENT UNIT by the time and date specified in the Submittal Schedule. The GOVERNMENT UNIT will review the proposals that are timely received. The evaluation factors that will be used when reviewing proposals are identified in Attachment D; Evaluation Criteria. The GOVERNMENT UNIT board of bids, as well as the PREAA will evaluate all proposals for the Performance Contract. After completing its evaluation (as established in the submittal schedule), the GOVERNMENT UNIT Boards of Bids will forward to the Executive Director of the GOVERNMENT UNIT the written evaluation of the submitted proposals prepared by them and the PREAA.

ii) Submit *Request for Proposal Cover Sheet* and submit five (5) CD or DVD copies (PC platform) of the submittals. Each copy of the CD or DVD shall include only two files, both in the *.pdf format. The **Response (Attachment C)** shall be converted in entirety to a single *.pdf formatted file and submitted on the CD or DVD. Similarly, the requested sample investment grade audit report shall be converted in its entirety to *.pdf format and copied as a single file onto the same CD or DVD. Security protection of the *.pdf file is allowed, but printing shall be enabled.

iii) Deliver proposals by hand to:

GOVERNMENT UNIT'S ADDRESS

If, due to inclement weather, natural disaster, or any other cause, the GOVERNMENT UNIT office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next business day on which the office is open, unless the GOVERNMENT UNIT otherwise notifies ESCOs. The final hour for submission of proposals shall be 5 PM. The GOVERNMENT UNIT will reject unopened, any late proposals.

d) SUBMITTAL SCHEDULE

The following schedule has been established for this Request for Proposals. Note that this schedule may be subject to change.

	TASK	*DATE/TIME*
1.	RFP Published	
2.	RFP Documents Available for Purchase	
3.	Pre-Proposal Conference	
4.	Site Visits	
5.	Prospective Offeror(s)' written inquiries	
6.	Responses to Inquiries	
7.	Proposal Submission	
8.	Proposal Review Period	
9.	Interviews (if required)	
10.	Notice of Intent to Award	
11.	ESCO Contracts	***TBD***

E) SELECTION PROCESS

i) **Pre-Proposal Conference:** A site meeting and tour of the facilities will be held prior to the proposal due date. The purpose of the Pre-proposal Conference will be to review the requirements of this RFP and answer questions from ESCOs in attendance.

DATE:
TIME:

LOCATION:

ii) **Site Visit:** The site visit is mandatory for all qualified ESCOs who will submit a proposal. No follow-up tours, additional access to buildings, or alternative dates

for tours will be allowed unless offered to all respondents. Appointments for the site visit will be scheduled during the pre-proposal conference.

iii) **Completeness:** Each response will be reviewed by the energy action team prior to the selection process for completeness and adherence to format. A response will be considered complete if all requested sections are included in the proper order and properly completed. Incompleteness can cause an ESCO's proposal to be disqualified. The qualified ESCO shall provide a report as part of its proposal which shall be available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs, debt service, and estimates of the amounts by which energy or operating cost will be reduced. The report shall contain a listing of contractors and subcontractors to be used by the qualified ESCO with respect of all energy conservation measures.

iv) **Opening of Proposal:** Proposals are to be opened on _____. All proposals received by the specified time shall be opened by the Secretary of the GOVERNMENT UNIT Board of Bids at a public opening and the following shall be announced:

i. ESCO submittal proposal.

ii. ESCO signature page verification. Unsigned proposals will be rejected.

v) **Submission and Review of Written Proposals.** Proposals must be prepared as described in **Attachment C: ESCO Response**. Proposers within the competitive range will be invited to participate in the discussion of their proposal. The GOVERNMENT UNIT, with the assistance of the energy action team may or may not establish a competitive range. A competitive range will be established only if the number of proposals received is greater than the number of proposals that will permit the efficient competition. The GOVERNMENT UNIT Board of Bids, with the assistance of the energy action team may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition. The competitive range will be based on the ratings of each proposal against all of the evaluation factors set forth in Attachment D. The competitive range will be established with those initially most highly ranked proposals.

vi) **Interviews.** Interviews may be required as a part of the proposal evaluation process. The interview provides the opportunity for the proposer to address questions and to more fully describe how its approach to this Project satisfies the evaluation criteria. ESCO representatives at the interview should include individuals who will be key points of contact and have major responsibilities for contract negotiation, engineering and design, construction management and follow up monitoring. Each interview may be recorded. The purpose of an interview is to clarify specific aspects of the technical proposal and to answer question posed by the Board of Bids, and the energy action team. Scores from

written proposal will only be modified based on discussion not on clarifications of proposals.

vii) **Final Selection.** Final Selection of the ESCO whose proposal is most advantageous to the GOVERNMENT UNIT will be made by the Executive Director/Secretary of the GOVERNMENT UNIT, taking into consideration all of the evaluation factors set forth in RFP, as well as any evaluations or recommendations provided by the "GOVERNMENT UNIT Board of Bids", the energy action team, and PREAA. The evaluation process will objectively grade the response on their merits and responsiveness to the needs of the GOVERNMENT UNIT. The evaluation process may include verification of references, confirmation of financial information, and may also include interviews, site visits, or other information as directed by the GOVERNMENT UNIT. After completing the review of proposals, the Executive Director of the GOVERNMENT UNIT will provide a notice of Intent to Award a performance contract to a specified ESCO or that he has not consented to the award of a performance contract. The GOVERNMENT UNIT reserves the right to reject any and all proposals received. If the GOVERNMENT UNIT decides not to enter into the Technical Energy Audit Agreement with the selected ESCO, the GOVERNMENT UNIT is not obligated to pay any amount to the selected ESCO. Upon approval and acceptance of the investment grade energy audit, the GOVERNMENT UNIT shall not be liable for the payment of any amounts to the selected ESCO until a guaranteed energy savings contract is finalized and fully executed. The results of the audit shall become property of the GOVERNMENT UNIT.

viii) **Protest:** A participant may protest a solicitation for offers for a contract, for the procurement of property or services, an award or proposed award of such a contract, if the protest alleges that the decision was based on improprieties under this RFP in the award of the contract. Participants have the option of protesting to the GOVERNMENT UNIT Board of Reviews and Appeals. A protest will be filed when the protest complaint is received at the GOVERNMENT UNIT Board of Reviews and Appeals and follows the time frame and procedures established in the Bids Regulations Manual [Government Unit's], and Act 170-1988, as amended.

4) Scope of Work

A) ENERGY PERFORMANCE CONTRACT PROJECT PHASES

i) Technical Energy Audit and Project Proposal Phase

Technical Energy Audit and Project Proposal Contract.
Following selection, the GOVERNMENT UNIT will issue a Notice of Intent to Award to the successful proposer. Then, following successful completion of the Technical Energy Audit and Finalization of Project scope, an Technical Energy

Audit and Project Proposal Contract will be negotiated to implement the project as presented in Attachment **F: Model Contract for Technical Energy Audit and Project Proposal** (also see **Attachment A: Special Contract Terms and Conditions).**

ii) Design/Construction/Implementation/Commissioning/Financing Phase

Energy Performance Contract. Following successful completion and acceptance of the Technical Energy Audit and Project Proposal Contract, an Energy Performance Contract will be negotiated to implement the projects, as given in **Attachment G: Energy Performance Contract** (also see **Attachment A: Special Contract Terms and Conditions).** Any or all performance contract agreements may be denied.

Financing Agreement. The ESCO will solicit bids from a minimum of three financing companies, prior to negotiation of the energy performance contract, using the bid documents in **Attachment H: Financing Bid Package.** Government Units may use allocated funds, bonds, or any other type of investment or borrowing vehicle created and authorized by the Government Development Bank (GDB) or other private financing institution. The guaranteed ESPC may provide for the financing, including financing through a third party. Both the ESCO, as well as the Government Unit, shall request financial advice from the GDB for each project. GOVERNMENT UNIT will make the final selection on the finance provider.

If GOVERNMENT UNIT decides to proceed after it receives the Technical Audit report, the GOVERNMENT UNIT shall attempt to negotiate an Energy Savings Performance Contract (ESPC) with the selected ESCO that performed the audit. If the GOVERNMENT UNIT decides not to enter into an ESPC with the selected ESCO after the audit has been accepted, the GOVERNMENT UNIT agrees to pay the fee negotiated for the Technical Energy Audit Agreement. Otherwise the GOVERNMENT UNIT is not liable for the payment of any amounts to the selected ESCO until a contract is negotiated.

If an acceptable energy performance contract cannot be reached within 120 days from the date of ESCO selection, negotiations with the second-ranked ESCO may be initiated.

B) ESCO SERVICES

ESCO must have the demonstrated capability in engineering and management to provide a broad range of services. All energy audits, feasibility studies, engineering, design, plans, specifications and any other engineering services shall be prepared, reviewed and approved by Professional Engineers licensed in Puerto Rico, no exceptions shall be made. Services may include but are not limited to the following:

Technical Energy Audit and Project Proposal Phase

- technical energy audit to evaluate costs and savings of a variety of energy and water-saving measures
- project proposal including financial analysis
- benchmarking using Energy Star tools
- monitoring and verification plan
- utility bill data services to capture credits from utility bill errors

Design/Construction/Implementation/Commissioning and Financing Phase

- engineering design
- equipment procurement and purchasing
- construction management
- hazardous waste disposal or recycling
- ability to arrange financing
- commissioning

Guarantee/Monitoring Phase

- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of occupants
- guarantee of performance and cost savings for the entire term of the contract
- monitoring and verification for measurement and reporting of the performance and savings
- provide for independent review of monitoring & verification (guaranteed savings pay for independent Measurement and Verification Firm).
- analysis and application for Energy Star Label and/or LEED-EB (Leadership in Energy and Environmental Design for Existing Buildings, by the US Green Building Council)
- monitoring and reporting of emissions reductions
- maintaining long-term, high-efficiency performance of buildings

ESCO must have the technical capability to address a broad range of systems including, but not limited to:

- Mechanical Systems. Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, distribution systems, etc.

- Plants. Distribution systems, cogeneration systems, etc.

- Lighting systems. Indoor lighting systems, outdoor lighting systems that reduce light pollution, lighting controls, daylighting strategies.

- Building envelope systems. Windows, insulation, weatherization, etc. (It is recognized that window replacements are rarely cost-effective, but could be considered as part of a comprehensive plan.)

- Specialty Systems: laundry equipment, kitchen equipment, renewable energy systems.

- LEED-EB: LEED-EB strategies to improve operations and maintenance practices, which should result in at least a LEED-EB certification rating.

- Water and Sewage Systems. Automatic controls, low-flow faucet aerators, low-flow toilets or dual flush toilets, low flow urinals, cooling tower modifications, pool covers, and irrigation system controls or modifications.

C) BUILDINGS, FACILITIES AND APPROACH

Only the buildings that are listed in **Attachment E: Technical Facility Profile** will be considered at this time for this work.

Work may be conducted in phases where the detailed scope of work can be developed at any time during the term of the performance contract.

The performance contract can be amended at any time during the initial performance contract term to address other buildings or new projects.

GOVERNMENT UNIT reserves the right to reduce the scope of work, to conduct the work in phases or to segment work in facilities based on technological improvements.

The work needs to comply with all design and construction standards and codes required by Federal and State jurisdiction.

The GOVERNMENT UNIT reserves the right of final approval of any selected equipment or modifications proposed. Only prior reviewed and approved equipment and modifications will be permitted. Review and approval shall be conducted by the GOVERNMENT UNIT in a timely manner.

The ESCO should be responsible for quality control during the installation of the improvements and shall have a quality control inspection plan.

The work shall not have adverse effects upon the quality of the human environment, increase water or energy consumption, jeopardize the operation or environmental

conditions of existing systems or areas such as computer centers, or degrade the performance or reliability of existing government equipment.

The ESCO needs to coordinate with GOVERNMENT UNIT as other work will be performed by other contractors such as interior reconfigurations of spaces.

The ESCO shall coordinate in advance with GOVERNMENT UNIT any utility service interruptions for GOVERNMENT UNIT to coordinate with the different tenants.

The ESCO shall submit an as-built (record drawing) of all completed work after installation and GOVERNMENT UNIT acceptance.

Design and Construction Package:

The ESCO shall prepare a design and construction package to the GOVERNMENT UNIT for review and approval prior to starting the installation of the improvements. The package shall be certified by a licensed professional engineer or licensed professional architect, in Puerto Rico to assure compliance with applicable codes. The acceptance of the design and construction package shall not relieve the contractor from meeting facility standards of service and guaranteed cost savings.

The design and construction package due date will be negotiated between the contractor and GOVERNMENT UNIT. Upon approval bonds will be required. The package shall include the manufacturer's data, specifications, construction drawings, planned service interruptions, any required permits and installation schedules. Design documents will require preliminary and final review by the GOVERNMENT UNIT.

Quality Control Inspection:

The ESCO shall be responsible for quality control during installation. The ESCO shall test and inspect all work performed

Commissioning:

The ESCO shall submit in their final proposal their commissioning approach. After the GOVERNMENT UNIT accepts the proposal, the ESCO shall provide the GOVERNMENT UNIT with a commissioning plan that finalizes the commissioning approach and addresses each improvement with specific steps that will be taken during the commissioning process. The ESCO shall submit a Commissioning report documenting how the improvements affected the facility performance requirements.

ATTACHMENT A: SPECIAL CONTRACT TERMS AND CONDITIONS

Contract Documents. The **Model Technical Energy Audit & Project Proposal Contract (Attachment F)** and the **Model Energy Performance Contract (Attachment G)** will be used.

Payment for Audit. As given in the **Model Technical Energy Audit & Project Proposal Contract (Attachment F)**:

Basis and Maximum Amount. Except as provided for in **Subsections 2(b), 2(c), or 2(d)** below, within 120 days after GOVERNMENT UNIT's acceptance of the final **Technical Energy Audit and Project Proposal Contract**, GOVERNMENT UNIT shall pay to ESCO a sum not to exceed _____dollars ($_____.00) based on a maximum of _____gross square feet at $0.____ per square foot per square foot of audited square-footage, as per **Exhibit B: Cost and Pricing**. GOVERNMENT UNIT shall only pay for square-footage actually audited. Areas deemed by ESCO not to be audited will not be charged to GOVERNMENT UNIT.

Payment through Performance Contract. GOVERNMENT UNIT shall have no payment obligations for the audit under this contract provided that ESCO and GOVERNMENT UNIT execute an Energy Performance Contract within 120 days, after issuance of the **Notice of Acceptance (Exhibit B)** of the final **Technical Energy Audit and Project Proposal Contract**, but the fee indicated above shall be incorporated into ESCO's project costs in the Energy Performance Contract and paid through the Energy Performance Contract funding mechanisms.

Project With Insufficient Savings. GOVERNMENT UNIT shall have no payment obligations under this Contract in the event that ESCO's final **Technical Energy Audit and Project Proposal Contract** does not contain a package of energy and water saving measures which, if implemented and as meeting terms of Attachment F **Exhibit A: Scope of Work, (b) Guidelines and Requirements**, will provide the GOVERNMENT UNIT with cash savings sufficient to fund GOVERNMENT UNIT's payments of all costs and fees associated with the Energy Performance Contract, including 1) the fee associated with the Technical Energy Audit, 2) all monthly payments on a lease purchase agreement to finance the measures, 3) any annual fees for monitoring and maintenance incurred by the ESCO, and 4) all fees payable to PREAA for its participation in the energy contracting process, and the M&V. Should the ESCO determine at any time during the Technical Energy Audit that savings cannot be attained to meet these terms, the Technical Energy Audit will be terminated by written notice by the ESCO to GOVERNMENT UNIT. In this event this Contract shall be cancelled and GOVERNMENT UNIT shall have no obligation to pay, in whole or in part, the amount specified in this **Section 2(a)**.

Funding sources to support annual payment. The following payment sources will be considered in the audit:

- Annual energy cost savings; these are to be determined by using ASHRAE Guideline 14 and/or IPMVP Guidelines.
- Annual water and other utility cost savings

- Verifiable material/commodity savings, only in years when savings are achieved, including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc.

- During negotiations, the GOVERNMENT UNIT may consider savings to include Maintenance cost savings such as terminated service contracts on equipment.

Equity cash outlay. At option of the GOVERNMENT UNIT, an equity cash outlay, pending funding approval, may be used to supplement savings

Maintenance and operation cost savings. Savings will be limited to those that can be thoroughly documented and approved. Such savings must only be attributed to the cash flow in years when savings will actually occur.

Contract Term. The contract term is up to 15 years provided the cost-weighted average lifetime of the equipment exceeds the contract term, however a lesser term of 7-10 years is desired. The *ASHRAE Equipment Life Database* will be used in determining the cost-weighted average useful life of the equipment.

Annual Savings Exceed Annual Costs. Annual savings shall exceed annual payments each and every year while the performance guarantee is in effect. This means that excess savings in other years and interim savings during the construction period will not be allocated to meet shortfalls in any year. Annual payments include debt service, ESCO fees, maintenance services, monitoring services, and other services.

Annual Guaranteed Cost Savings. An annual contractual guarantee will be provided for the whole life of the contract. The guarantee must provide for the sum of identified cost savings to equal or exceed the amount of the annual payment, where annual payment equals lease plus monitoring & verification fee plus required service, each and every year while the guarantee is in effect. If the savings is not realized, the ESCO will make the owner whole by paying for any savings shortfall.

Interim Savings during Construction Period. Savings accrued during the construction period will not be allocated to the annual savings of any year. See "Annual Savings Exceed Annual Costs" above.

Excess Savings (beyond the guaranteed amount). Excess savings will be retained by GOVERNMENT UNIT and will not be allocated to shortfalls in savings in other years. See "Annual Savings Exceed Annual Costs" above.

Use of Stated Cost Markups. The individual cost markups disclosed in the proposal will be used in both the Technical Energy Audit and the Energy Performance Contract, provided the size and scope of the project remain similar. Cost markups presented in the proposal can be negotiated downward.

Open Book Pricing. Open book pricing will be required, such that the ESCO will fully disclose all costs, including all costs of sub-contractors and vendors. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. ESCO will provide access to records and preserve them for a period of six (6) years after final payment or the life of the contract whichever is longest. Costs will be evaluated through price analysis to

compare costs with reasonable criteria such as established catalog and market prices or historical prices. Stated cost markups will be clearly applied.

Contingency. Any unused contingency cost will not be retained by the ESCO and will be applied to the project.

Equipment Compatibility or Standardization. All equipment installed that is comparable to similar equipment at the facilities, shall offer compatibility with existing systems, and/or be of the same manufacturer for standardization of equipment institution-wide, unless excepted by GOVERNMENT UNIT.

Annual Appropriations and/or Annual Budget. Annual payment is subject to annual appropriations or approved budget, and the provisions of Act 239-2011.

Inflation and Escalation Rates. Any inflation rates will be pre-approved by GOVERNMENT UNIT.

Energy Escalation Rates. Where the annual lease-purchase payments are set-up to escalate each year in anticipation of annually escalating energy cost savings, a calculator will be used to determine the maximum value as developed by the US Department of Energy for energy saving performance contracts in its Federal Energy Management Program. The tool is on-line at: http://www1.eere.energy.gov/femp/information/download_blcc.html#eerc (EERC). Any other tools used for this calculation, shall obtain advance approval from the GOVERNMENT UNIT.

Monitoring and Verification (M&V) Plan. A monitoring and verification plan will be developed per guidelines in the energy performance contract. The Monitoring and verification plan shall be developed by the ESCO and approved by the GOVERNMENT UNIT. The monitoring and verification plan shall be prepared according to ASHRAE Guideline 14 or the IPMVP Protocol and other industry accepted standards and guidelines. Note that this shall be rigorously reviewed by a third party.

Independent Review of Monitoring & Verification (M&V). The energy performance contract must provide for a portion of the guaranteed savings for GOVERNMENT UNIT to pay PREAA's fees for monitoring & verification review of the ESCO's monitoring & verification plans and reporting. The services to be provided by the PREAA shall consist of the following:

1. Measurement, utilizing utility grade power analyzers and revenue grade ultrasonic BTU measurement systems to check ESCO assumptions and verify the investment grade audit. Special attention shall be paid to lighting, chiller, cooling tower, and pumping costs. M&V consultant will review the ESCO's investment grade audit to analyze process and the logic supporting assumptions. The intent is to develop an accurate base line energy usage profile.

2. The ESCO will implement their energy savings modifications and the M&V consultant shall review the quality of project measurement devices prior to installation by the ESCO and also approve the measurement philosophy and techniques to assure accurate validation.

3. The ESCO will provide a web based internet connected controller for each site with a FTP (File Transfer Protocol) site to allow the independent metering consultant to remotely monitor energy meters and prepare a savings report each month by measuring the energy consumed by the various energy improvements in "real time" and compare to base line energy usage developed in the audit procedure.

ATTACHMENT B: PROPOSED PROJECT SCHEDULE

The following schedule is the proposed schedule, and may change during the project.

ACTIVITY	DATE
RFP Phase	
Issue RFP	Week ___
Proposal Submission	Week ___
ESCO Selection and Award	Week ___
Technical Energy Audit Phase	
Contract Negotiation	Weeks ___
Board approval and signatures to execute contract	Week ___
Audit, Final Report and Presentation	Weeks ___
Energy Performance Contract Phase	
Negotiation and Documentation	Weeks ___
Board approval and signatures to execute contract	Weeks ___
Installation	To be negotiated
Commissioning/Monitoring Phase	
Commissioning	To be negotiated
Monitoring	To be negotiated
Staff Training	To be negotiated
Other	To be negotiated
Proposed Contract Term	To be negotiated

Note: This schedule is subject to change.

ATTACHMENT C: ESCO RESPONSE

- ***Please number and re-state each subheading or question, followed by your response.***
- ***Number all pages.***

COVER SHEET

See cover sheet example at the end of this attachment.

1. ESCO'S GENERAL APPROACH TO PERFORMANCE CONTRACTING

Describe performance contracting from your firm's perspective, describing your phases and your firm's ability to support each of the phases. Provide a stand-alone overview, maximum of 5 pages, using any order or format to present your company as you wish. Include highlights on company background, market sectors served, company strengths and areas of expertise. Also include your general approach to performance contracting: typical phases for a project and ability to support each phase (Project Development, Energy Auditing, Performance/Savings Guarantee, Financing, Construction, Commissioning, Measurement and Verification, Client Staff/Occupant Training, Post-construction Maintenance Support).

The purpose of this overview is to provide a good introduction of your firm to the evaluation committee.

2. PROJECT HISTORY

a. Project List.

List all energy performance contracts that your firm or personnel have managed within the last five years, projects completed in hot/humid climates should be included. Include list as shown below. Truncate the list at one page.

1) PERFORMANCE CONTRACTING PROJECTS

Project Name	City, State	Total Project $	Year completed

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you're including it as a reference for your company and for this project.

2) OTHER PROJECTS (only if deemed relevant to this project)

If desired, also list related projects deemed relevant to this work, particularly those managed in the state.

Project Name	Project Type	City, State	Total Project $	Year constructed

b. Project References

Provide detailed information on ***performance contract-based projects*** you want to showcase that have similarities to work related to this proposal. Similarities could include type/use of building, size of individual buildings, size of total expected project, technical scope of projects, geographic region (work in this state or similar type of metro/rural region). Include the following information on each project, as a minimum *(no preferred format)*:

Project Identification:

Name. Name of state department, university, school district, office building, etc.

Location. city/state

Contact Information. Names and contact information of owner(s)' representatives who can serve as references.

Project Information:

Project Type: performance contract; other

Project Size. Number of buildings, total square footage.

Project Dollar Amount: Total contract amount and the total project capital expenditure amount

Source of Funding: Type of financing used and grants/rebates, etc. Describe your involvement in securing funds.

Project Implementation Dates: Date of audit beginning and acceptance, and construction start and acceptance.

List of Improvements. Type of retrofits and operational improvements related to energy, water and other cost savings.

Project Performance: State amounts of projected annual savings, guaranteed annual savings, and actual annual savings.

Project Personnel. State the name(s) of individuals involved in the project and their role. Note if these personnel are assigned to GOVERNMENT UNIT's project.

Comments. Comment on any special features, services, conditions, creative approaches, special needs of GOVERNMENT UNIT, etc. that may be of interest.

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you're including it as a reference for your company and for this project.

In addition, please list the most recent client projects where the respondent has financially reimbursed an entity for non-performance on energy savings. Please include project information referenced, in 2b, shortfall amount, and financial reimbursement on a yearly basis. Also Provide a list and project summary of **all** entities over the last 10 years of the company that:

Have canceled or non-appropriated a performance contract with the respondent (list reason).

Have past or pending lawsuits or litigation regarding a performance contract with the respondent (list reasons and outcome of the case).

Have past "out of court" settlements regarding a performance contract (list reasons and outcome of the case).

c. Relevant Experience - Overview of Strengths

Briefly summarize your project histories to define your firm's strengths and the relevance of past work to this project (experience similar to this project in terms of size, scope, facility type; experience with types of retrofits applicable to this project; etc.).

3. QUALIFICATIONS OF THE FIRM OR TEAM

a. Background Information on the Firm

1) **Structure and Evolution of Firm.** Type of firm (corporation, partnership, sole proprietorship, joint venture); Name of parent company if applicable (include the name, main office address and parent company's tax identification number). Name of division or branch office if applicable; Name of current firm and number of years operating under this firm name; Former firm names if applicable and corresponding years in operation. Structure of team if this is a joint venture.

2) **Years in Energy Business.** State the number of years your firm has been involved in the energy-efficiency related business.

3) **Years in Performance Contracting.** State the number of years your firm has offered performance contracting services.

4) **Number of Performance Contracting Projects.** State the number of performance contracting projects completed by your firm. Number under $1 million. Number over $1 million.

b. Financial Qualifications & Stability of Firm

1) **Financial Soundness.** Describe the financial soundness and stability of the firm.

2) **Profitability.** Has your firm or parent company been profitable each year for the past three years?

3) **Financial Report.** Submit the most recent annual summary (1-3 pages) of the annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months, along with name, address, and the telephone number of firm(s) that prepared the Financial Statements.

4) **Bonding.** Current bonding capacity; bond rating; confirmation that firm is currently bondable for 100% of a payment bond for construction of this project; 100% of a performance bond for construction of this project; letter from a licensed surety as evidence of ability to bond for each of these categories.

c. Industry Accreditations

State if your firm is accredited by industry organizations, such as the National Association of Energy Service Companies (NAESCO), or pre-qualified for work through the U.S. Department of Energy for federal facilities or the U.S. Department of Defense. Describe the relevance or importance of any accreditations or pre-qualifications with regard to this project.

d. Compliance with Requirements

Affirm your ability to meet requirements: ***"Yes, this firm or team responding to this proposal understands the requirements specified in Attachment A: Special Contract Terms and Conditions, Attachment F: Technical Energy Audit and Project Proposal Contract, and Attachment G: Energy Performance Contract and can abide by them."***

4. PERFORMANCE CONTRACTING CAPABILITY & TECHNICAL APPROACH

a. General Scope of Services

Following is a minimum scope of services acceptable to compete for an energy performance contract. Add a brief comment for each item (25 words or less preferred) to demonstrate your capability for each.

1) Energy systems in buildings, facilities and infrastructure:

Mechanical/Electrical Systems

a) Lighting: indoor and outdoor
b) Ventilation and indoor air quality issues
c) Cooling

d) Control and building automation
e) Central plant
f) Water-consuming

Renewables

g) Daylighting
h) Solar-electric
i) Solar thermal
j) Wind, small-scale or large-scale
k) Distributed generation

Specialty Systems or Specific Building Types

l) Kitchen or laundry
m) Computer centers

Energy Management Services

n) Energy management
o) Utility bill auditing and bill payment (identifying errors and collecting credits)
p) Energy Star Portfolio Manager, benchmarking
q) LEED for Existing Buildings
r) Commissioning/re-commissioning
s) LEED-EB O & M support to help the agency become LEED-EB certified

Other

t) Transportation – fleet fuel management, etc.
u) Exterior areas
v) Other

2) ***Project Development and Implementation:***

a) Energy auditing (identify potential energy-saving measures, determine savings projection based on standard energy engineering principles; estimate project costs; present package of measures with cash flow)
b) System design engineering: mechanical, electrical, etc.
c) Procurement, bidding
d) Construction
e) Commissioning of projects and retro-commissioning of existing buildings
f) Project management
g) Identification of asbestos and other hazardous materials and abatement, recycling or disposal as applicable

3) ***Core Performance Contracting Services:***

   a) Performance guarantee for every year of the financing term
   b) Insurance per contract requirements
   c) Equipment warranties
   d) Ability to facilitate financing including a municipal, tax-exempt lease purchase
   e) Measurement and verification of savings
   f) Training: maintenance staff and occupants

4) ***Support Services:***

   a) Long-term maintenance services on energy systems
   b) Application for an Energy Star Label and LEED-EB O & M certification.
   c) Calculation and reporting of emissions reductions

b. <u>Performance Contracting Technical Approach</u>

1) **Performance Guarantee.** How is a performance guarantee provided (self-guarantee or third party) and describe the value of this approach?

2) **Insurance.** How is insurance provided (self-guarantee or third party) and describe the value of this approach?

3) **Warrantees.** Who provides warrantee service (ESCO or manufacturer)? How is this provided? Describe the value of this approach.

4) **Standards of Comfort.** Describe standards of comfort that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Describe any flexibility. Also describe how those standards will be maintained throughout the contract term.

5) **Baseline Calculation Methodology**. Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance. Include a discussion of how the GOVERNMENT UNIT will be engaged for development of the baseline.

6) **Project Schedule**. Comment on your ability to meet the schedule and the reasonableness of the schedule.

7) **Measurement & Verification (M&V).** Briefly describe your approach to measurement and verification to calculate and confirm post-installation savings. Describe whether and how your firm has used IPMVP or ASHRAE Guideline 14 to guide this process in the past. Identify the IPMVP option that you would follow and explain. The M & V plan shall apply to the projected value of the energy savings, risks between contractor and GOVERNMENT UNIT, performance expectations, etc.

8) **Monitoring.** Describe your firm's capacity to monitor the energy usage (both pre and post retrofit) and verify energy savings, providing information on equipment capabilities and personnel to analyze data.

9) **Adjustment to Baseline Methodology**. Describe the method(s) used to adjust the energy, water and operations baseline due to such factors as weather and facility changes. Describe factors that would necessitate adjustment.

c. Sample Technical Audit

Submit a sample technical audit conducted by your firm for a similar project (as directed in the Proposal Submittal Information).

1) Briefly describe this sample audit. It should be representative of the type of facility and the type of audit that will be conducted.

2) Verify that this audit includes detailed energy and economic calculations.

3) Verify that it was conducted by a current member of the team proposed for this project.

d. Financing Company

ESCO will be required to solicit bids for financing on behalf of GOVERNMENT UNIT. (Since GOVERNMENT UNIT will sign a separate agreement with the financing company, GOVERNMENT UNIT will review bids, select desired firm, and develop the financing agreement, with the expert advice of the GDB.) To solicit bids, ESCO will use the RFP and supplemental information provided in **Appendix H (Financing Bid Package)**.

1) Identify three financing companies, of which the Puerto Rico Government Development Bank (GDB) shall be included, that you recommend as qualified to provide municipal tax-exempt financing for this project.

2) Provide letters of qualifications and references from each firm.

e. Site-Specific Approach

1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) identified for this project.

2) Potential Projects. Based on your preliminary assessment of the information provided, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of this project. Address energy, water and LEED-EB opportunities related to operation and maintenance. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe any special features or services associated with your proposed improvements that would add value to GOVERNMENT UNIT.

Describe your approach to achieve compatibility (such as open systems) and/or standardization of equipment in the facilities to be addressed.

5. MANAGEMENT AND STAFFING FOR THIS PROJECT

This section applies to this project, with an emphasis on local capability/service.

a. Management

1) **Coordination.** Describe your firm's approach to managing this project. Include an organizational chart showing clear lines of communication and responsibility. Describe the transition and responsible parties from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc.

2) **Construction Management.** Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible GOVERNMENT UNIT activities such as: management of additional energy and water projects, monitoring of installation and performance of ESCO projects, integration of other identified capital needs with ESCO projects which may or may not contain energy and water saving opportunities.

3) **In-house Capability vs. Subcontractors.** Generally describe the types of services (both professional and construction services) that you offer in-house and the services you offer through sub-contractors, and describe the strategy behind in-house vs. subcontractor use. (Detailed information on pricing of subcontractors is requested in the Cost Section below.)

4) **Institution Involvement.** Describe how you engage the GOVERNMENT UNIT in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate GOVERNMENT UNIT's needs.

5) **Local Staffing and Support.** Describe extent of local staffing and support for the geographic region. Include basic job descriptions and capabilities of the local staff. Describe the relevance or importance of local presence with regard to this project.

6) **Long-term Servicing.** Describe long-term servicing of equipment and systems. State the location of your nearest servicing office. Briefly describe the maintenance responsibilities of Owner's Facility Operations Staff to satisfy the energy savings guarantee. Describe how your firm would provide appropriate training in operations and maintenance of installed improvements

7) **Local Partner:** Identify opportunities for local companies (see attachment J).

b. Personnel Information.

1) **Qualifications and Experience of Staff Assigned to this Project.** Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended

role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities if relevant, list of projects individual was associated with during the last five years including type of project and project cost and resume. Tasks and phases to address include technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Indicate the percent of time each person is available to work on this project. Indicate their office location (city/state). Include all licenses and accreditations, (including LEED) for staff assigned to this project.

2) **Added Qualifications and Experience.** Describe any added expertise and capability of staff available through the parent company, other subcontracts, etc. to provide back-up strengths in technical analysis, engineering design, architectural design (if applicable), construction management, construction, training and post-contract monitoring, etc.

c. Self-Performed Work or Subcontractors

- State whether work is completed by the ESCO or by a subcontractor for each category of measure (auditing, design, procurement/supply of equipment from vendors and manufacturers, engineering, construction management services, lighting, HVAC, controls, monitoring & verification, etc.),
- Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors.
- Identify any subcontractors already selected.
- Describe the process for engaging GOVERNMENT UNIT in selection of Subcontractors.

d. Equipment / Labor Cost Competition

- Explain whether your company manufactures or maintains contractual agreements to sell or otherwise represent specific brands of facility systems or equipment and your approach to maintaining product independence.
- Indicate how your firm would work with the CCI Purchasing Alliance, which has negotiated product price discounts on a range of technologies from a number of technology vendors.

6. COST AND PRICING

a. Markups

Markups represent a percentage added to the base cost for the project. Markup costs are disclosed to provide a typical project costing approach for a project of similar scope and size. This disclosure will provide the open book pricing structure to be used by the ESCO for this project. The markups will be used in the Technical Energy Audit Contract and Energy Performance Contract. (A substantial change in the scope and size of the project may necessitate renegotiation of the markups.)

Provide your company's proposed maximum allowable markups in the schedule below for each category listed on the schedule. (The use of margins in lieu of markups is not acceptable.) This format is required

and must be completed in its entirety. Use only the categories provided. Ranges for markups are not acceptable.

Clearly indicate (mark by page) if elements of this section are requested to be treated as proprietary (the responsible Purchasing official will make the final decision if this is to be treated as proprietary).

MARK-UPS		
CATEGORY OF ***MARK-UP***	MARK-UP ***APPLICATION***	***% MARK-UP***
Overhead		
Profit		
Labor – Internal		
Equipment Purchased		
Materials Purchased		
Subcontract Labor		
Subcontract Material		

Clearly describe how self-performed work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). If self-performed work will be billed hourly, include markups proposed to be applied to the hourly rate.

If a proposal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format above for each participating company.

b. <u>Fees</u>

Provide your company's proposed maximum allowable fees in the schedule below for each category listed on the schedule. This format is required and must be completed in its entirety. Use only the categories provided. Ranges for fees are not acceptable. If a proposal is from a joint venture partnership, provide proposed maximum allowable fees in the schedule format below for each participating company.

FEES		
CATEGORY OF FEE	HOW DETERMINED ***AND USED***	YEARS APPLIED ***(One-time, Annual, etc.)***
Technical Energy Audit and Project Development	$ _____ per Square Foot	One time
Solicit & Evaluate Project Financing Proposals		
Design	(Example) ___% of _____	
Contingency		
Permits		

Payment and Performance Bonds		
Project Management		
Commissioning		
LEED Design and Construction Review Fees as required by the USGBC to certify the building		
Training		
Monitoring and Verification		
Warranty Service		
Maintenance on Installed Measures		

Provide the proposed maximum fee for Technical Energy Audit and Project Proposal on a cost per square foot basis. The company agrees that the proposed maximum fees shall incorporate its responsibility to adhere to and complete the full scope of work as presented in the Standard Technical Energy Audit and Project Proposal Contract.

For each fee category listed on the schedule describe how that fee is determined, how the fee is charged to the project and when it is applied. For example, fees might be based on a percentage of project cost. Markups on fees are not allowable.

c. Audit Cost

1) **Total Cost.** State the total cost of the technical energy audit. Ensure that your cost is based on the approach and requirements included in **Attachment F: Model Technical Energy Audit and Project Proposal Contract**. For the purpose of this evaluation, assume all facilities listed in **Attachment E: Technical Facility Profile** will be audited.

2) **Unit Cost.** State the cost per square foot of the audit. This cost will be evaluated on the basis of reasonableness, so an unrealistically high or low cost will be devalued in the evaluation process.

3) **Meet Full Scope of Work of Audit Contract.** State your capability to complete the full scope of work as presented in **Attachment F: Model Technical Energy Audit and Project Proposal Contract**, within your proposed cost.

d. Contingency

Describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to the Facility Owner or be applied to additional work scope through a change order approved by the Facility Owner.

State how the contingency will be applied to cover changes in work scope and subcontractor change orders. State the typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects.

Note that all unused contingency funds will revert to Government Unit or be applied to additional work scope through a State approved change order.

e. Equipment/Labor Cost Competition

Describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the Facility Owner.

f. Open Book Pricing

Open book pricing is full disclosure by the ESCO to the Facility Owner of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that all costs, including all costs of subcontractors and vendors, are fully disclosed. Describe your company's approach to open book pricing and its method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

g. Application of Markups and Fees (Hypothetical Example)

Provide a sample of your pricing model using a two-measure performance contracting project. Show the complete detail of what will be provided to the GOVERNMENT UNIT in the actual project using the markups and fees you will commit to in the actual project, as identified above, for all categories, fees and services that will be seen in the actual project.

Include a sample project pro-forma and clearly indicate all fees required for monitoring & verification, project management and all services that may be included in the actual project, including the audit cost. All markups and fees used in this example must be representative of what will be used in the actual project.

Additional markups, fees, or service category costs not shown in this example will NOT be allowed in the final contract.

Incomplete information will be considered an incomplete response and cause the response to be rejected.

a) Provide an example lighting measure that relates to this project in size and scope. Provide all pricing documentation as you will provide it for open book pricing in the final contract. Clearly differentiate the subcontracted portion of the project and break out labor, materials and other categories as you will for open book pricing.

b) Provide same information for an example boiler measure (or other heating/cooling equipment if a boiler replacement is not relevant for this project).

c) Show the two measures above in a complete two-measure performance contracting project. Provide a pro-forma to clearly indicate all costs and fees represented as they will be applied in the final contract. Use the format and structure you will use in the final contract.

2) **Best Value**.

Briefly describe how your approach to performance contracting delivers best value for the investment. This is an opportunity to point out how your company may be able to deliver a more cost-effective overall project due to corporate structure, relationships with vendors, depth of experience and expertise, local relationships and experience, experience in similar types of facilities, knowledge of particular retrofits, etc. Also describe any utility rebates or other financial incentives or grants can potentially provide and/or facilitate.

REQUEST FOR PROPOSALS
For Energy Performance Contracting Services

COVER SHEET

Publish Date: _____, 20__ **RFP:** _____

Return all Proposals to:

Purchasing Agent: **Government Unit**

Per the attached specifications, terms and conditions

E.I.N.: _____ **Payment Terms:**
Delivery Date: _____ **(Minimum of Net 30)** _____

Authorized Signature: _____
Typed/Printed Name: _____
Title: _____

Company Name: _____
Address: _____
City: _____ **State:** _____ **Zip:** _____
Phone Number: _____ **Fax Number:** _____

Contact for Clarifications: _____
Title: _____
Phone Number: _____ **Fax Number:** _____
E-mail Address: _____

IMPORTANT: This form must be on the outside of the Bid Return Envelope

ATTACHMENT D: EVALUATION

WRITTEN PROPOSALS

The Evaluation Team will identify scoring weights for each section with the "Cost and Pricing" section equaling 30% of the total score of the written response to this RFP. The weights of the criteria were determined by the Evaluation Team as indicated in the Evaluation Grid Summary below.

The Evaluation Team recognizes it is premature to place a major emphasis on projected financial benefits prior to the completion of the Technical Energy Audit, because the Audit will define the potential scope and cost benefit.

The criteria listed below will be used to evaluate written proposals. The scoring weight is listed for each criterion. These criteria will be applied and interpreted solely at the discretion of GOVERNMENT UNIT. Proposals should include all the necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of proposals may be requested from the ESCO at the discretion of GOVERNMENT UNIT. The criteria are not rank in order of importance. The sub-criteria are of approximate equal weight.

Evaluation Grid Summary

Description	Scoring Weight
Performance Contracting Approach Overall Approach to Performance Contracting Full Range of Services and Flexibility in Applying those Services Construction Issues - Handling Environmental Liabilities, warranties and equipment service.	10%
Qualifications and Capabilities General Firm Information – Completeness of information submitted related to firm. Scope of Services – Comprehensiveness of management, maintenance and monitoring services offered. Financial Soundness	10%
Site Specific Approach Project Scope – Understanding of conditions, systems and operations. Comprehensiveness and clarity to technical approach to this project based on improvements likely to be included. Relevance and benefits of proposed retrofits for these facilities.	20%
Experience and Expertise Project History - Quality of past projects including scope & savings Personnel information - Engineering, project management & other experience.	20%
Technical Approach Audit – Quality of audit sample Design and Construction – Overall Approach Engineering Analysis - Reasonableness of baseline & savings methodologies	10%

Cost and Pricing Audit Cost - Reasonableness of Technical Energy Audit cost Markup and Other Costs - Reasonableness of markup costs Best value - Value for the investment Open book pricing - Experience & willingness to provide open book pricing	30%

INTERVIEWS

ESCOs in the competitive range may be invited for an oral interview. The proposal scores might be modified based on responses provided in the interview.

SELECTION

The Government Unit along with the energy action team will identify the apparent awardee and then contact references to complete the evaluation.

With quality references, the apparent awardee will be notified of selection; otherwise, the same process will be used with the second-ranked ESCO.

ATTACHMENT E: TECHNICAL FACILITY PROFILE

The information in this technical facility profile is provided to inform the ESCO about the condition of the facilities. The information was prepared with diligence. The ESCO is responsible for verifying the accuracy, as necessary.

Building(s) List

- Total square footage of conditioned space = _____Sq. Ft.
- Use = Government Offices
- Year constructed = _____

Energy and Water Cost & Consumption Information

Energy and water costs are paid by GOVERNMENT UNIT.

- Utility companies that provide electricity, gas, water, etc (as available).
- PREPA (Puerto Rico Electric Power Authority) – Electric Utility Company
- PRASA (Puerto Rico Aqueducts and Sewers Authority) – Water and Sewage
- Energy use information, as available:

Month	Consumption (Electric)	Cost ($)		Consumption (Water)	Cost ($)

Past Energy Improvement Efforts:

- Governmental unit shall detail recent replacements (improvements to the electrical system, Air Handling Units, Central DDC controls, lighting retrofit, etc.).

Future Plans:

- Government unit shall detail future projects and plans for facilities improvements.

Energy-Using Systems Description:

- Heating System: Government unit shall provide detail, if applicable.

- Cooling System: Government unit shall provide a description of the cooling systems in the applicable buildings (i.e., central chilled water system; centrifugal chiller units; cooling towers; air distribution scheme; air handling units; independent DX units; air cooled condensing units, etc.).

- Energy Management Controls System: Government unit shall provide a description the chilled plant control systems (i.e., AHU with variable frequency drives; Direct Digital Control, etc.).

- Lighting System, Interior: Government unit shall provide a description of the interior lighting system (i.e., Incandescent and fluorescent lights; T-12 lamps with magnetic ballasts; T-8 lamps with electronic ballasts; Lighting levels and controls, etc.).

- Lighting System, Exterior: Government unit shall provide a description of the exterior lighting system, if applicable.

- Exterior Water features: Government unit shall provide a description of the exterior water features, if applicable.

- Daylighting: The use of dimming controls for daylighting could be considered, if viable.

- Water Heating System: Government unit shall provide a description of any central water heating system.

- Plug Loads: Government unit shall provide a description of any excessive plug loads and a/c wall pack units.

- Elevators: Government unit shall provide a description of any passenger and freight elevators (rated to ___lbs, ____ft/min and ____hp motor). Energy efficiency of the elevators should be addressed.

Additional Information:

- Building Fenestration: Government unit shall provide a description of windows that are not properly sealed or are un-operable or locked for security reasons.

- Building Structure: Government unit shall provide a description of the building structure (i.e., number of floors; materials (reinforced concrete structures); lateral and vertical load resisting systems, etc.).

- Cisterns – Government unit shall provide a description of any cisterns in the buildings (capacity of ____gallons each with pumps).

- Environmental: Government unit shall provide a description of any sensors installed (i.e., CO2, etc). Air quality issues should be considered.

Operating Information:

Government unit shall detail the use of building air conditioning system (i.e., are there any working controls in place; when is the system is shut down, when is it restarted; what are the regular hours of operation, etc.).

Maintenance Practices:

- Government unit shall detail which maintenance practices (preventive and reactive) are in place (i.e., cleaning and maintenance (i.e., change of oil, filters, etc) of air handling units and other equipment; has a computer program been implemented to track maintenance issues; is historical maintenance information available; are systems are maintained according to current plans that need to be updated and improved; are there any comfort problems (i.e., overcooling, glare from excessive luminaries, etc.); is the maintenance of the major HVAC equipment is under a maintenance contract, etc.).

ATTACHMENT F: Technical Energy Audit & Project Proposal Contract

OVERVIEW:

The Technical Energy Audit & Project Proposal Contract is the first of two contracts with the selected ESCO. The ESCO will complete an investment grade technical energy audit that will include an analysis of each proposed project with projected energy and cost savings and itemized project cost. The ESCO will also propose terms for the performance contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis. The results of the audit will form the basis for a subsequent Energy Performance Contract.

The complete sample contract shall be submitted as a separate electronic file for easier use.

ATTACHMENT G: Model Energy Performance Contract

OVERVIEW:

The Energy Performance Contract is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate the Energy Performance Contract.

The complete sample contract shall be submitted as a separate electronic file for easier use.

ATTACHMENT H: Financing Solicitation Package

The complete package is under a separate electronic file for easier use.

OVERVIEW

The ESCO is expected to conduct a competitive bid process to select a financing firm to the satisfaction of GOVERNMENT UNIT.

Table of Contents

Request for Proposal for Financing

Lease Contract

Financing Proposal Letter

Signature Sheet

Overview of Facility Improvement Projects

ATTACHMENT I: USGBC LEED Existing Buildings Operation & Maintenance Goals

The GOVERNMENT UNIT is interested in achieving a LEED EB Certification from the USGBC (US Green Building Council).

LEED (Leadership in Energy and Environmental Design) can be an effective way of overseeing a performance contracting project.

The LEED EB process can be followed even if the goal is not LEED certification as it brings good documentation and increases the likelihood of obtaining energy savings. The ESCO will be required to follow the LEED EB process as criteria toward a goal of a LEED Certified building and provide the 3rd party LEED consultant for GOVERNMENT UNIT with all the required information. The ESCO should identify which credits can be included in their scope of work.

The minimum number of credits for LEED Certification is 40 points for the LEED Version 3.0. The project should comply with all prerequisites and all applicable environmental laws. The goal for the project is to at least achieve the LEED Certified rating. All the pre-requisites and credits to be attempted have to be met during the performance period. The ESCO shall coordinate with the 3rd party LEED consultant (already provided by GOVERNMENT UNIT) from the start and throughout the performance period.

The project shall place the Government Unit in a position to comply with the following LEED EB prerequisites.

- WE- Pre-requisite 1 - The water usage of the plumbing system shall be 160% or less of the water use that would result if all fixtures meet the 2006 International Building Code (IPC).

- EA- Pre-requisite 1 – Best management practices such as documenting the current sequence of operations of the building, the building operating plan, systems narrative, narrative of preventive maintenance plan for equipment and an energy audit that meets the requirements of ASHRAE level I walk-through assessment.

- EA- Pre-requisite 2- The building will be required to have an Energy Star rating of 69 as a minimum. A higher rating will be desirable to obtain credits. The efficiency measures shall be implemented by the ESCO.

- EA Pre-requisite 3 – Zero use of Chlorofluorocarbon (CFC) in the HVAC systems unless a third party audit shows that the replacement or conversions is not economically feasible or is demonstrated that a phase-out plan for CFC refrigerants is in place. New equipment installed by the ESCO shall comply with use of zero CFC. Existing equipment shall be audited to show that the conversion is not feasible or demonstrate a phase out plan.

- MR – Prerequisite 1 – The ESCO shall provide assistance with the development and implementation of a sustainable purchasing policy.

- MR – Prerequisite 2 – The ESCO shall provide assistance with the solid waste management policy for the building and site addressing the policies of credits 7 (Ongoing Consumables), 8 (Durable Goods) and 9 (Facility Alterations and additions), and recycling of all mercury containing lamps. The ESCO shall assist with these policies.

- IEQ – Prerequisite 1 – Minimum Indoor Air Quality Performance – The building will be required to meet the minimum requirement of Sections 4 through 7 of ASHRAE 62.1-2007, Ventilation for Acceptable Indoor Air Quality. The ESCO shall design and install to meet this requirement.

The project shall comply with the LEED EB credits as required:

Credits are defined in the USGBC LEED Existing Building Operation & Maintenance Reference Guide and compliance for LEED Certification should be in accordance to this document. The ESCO shall identify which credits they can achieve and include in their proposal. The ESCO does not have to limit their scope to the credits indicated in the table below. Some credits allow for higher point value if higher efficiencies are obtained.

LEED EB: O & M Rating System Credits	**ESCO**	**Third Party LEED Consultant**
Sustainable Sites		
Credit 2 -Building Exterior and Hardscape Management Plan (1pt)		Develop plan.
Credit 3- Integrated Pest Management, Erosion Control and Landscape Management Plan (1pt)		Develop plan
Credit 4 - Alternative Commuting Transportation (3 pts)		Develop plan
Credit 5 - Restore Open Habitat	Not Considered	
Credit 6 - Storm water Design Quantity Control (1 pt)	Consider using the existing Cisterns for rainwater harvesting.	
Credit 7.1 Heat Island Effect Non-Roof		
Credit 7.2 Heat Island Effect – Roof (1 pt)	Consider installing roofing material with a SRI of 78 for the roof.	
Credit 8 - Light Pollution Reduction (1 pt)	Audit existing conditions to determine feasibility.	
Water Efficiency		
Credit 1 - Water Performance Measurement (1 pt)	Installation of water meters and sub-meters and record data.	

Credit 2 - Additional Indoor Plumbing Fixture and Fitting Efficiency (1 pt)	Installation of water fixtures such as dual flush toilets (preferred to avoid piping retrofit), low flow urinals and sensor activated faucets to reduce water use by 10% from the baseline (see pre-requisite 1).	

Credit 3 - Water Efficient Landscaping	Consider using rainwater from the roof, plazas, and other paved areas, as well as cooling tower bleed down water and condensation from AC systems. This water will need to be filtered and stored.	
Credit 4 - Cooling Tower Water Management (1pt)	Development and implementation of water management plan that addresses chemical treatment, bleed-off, biological control and staff training.	
Energy and Atmosphere		
Credit 1 - Optimize Energy Efficiency Performance (4 pts)	Achieve an Energy Star Rating of 75 by implementing efficiency measures.	
Credit 2.1 - Commissioning – Investigation & Analysis (2 pts)	Perform commissioning or an ASHRAE Level II Energy Audit.	
Credit 2.2 - Commissioning – Implementation (2pts)	Implement commissioning	
Credit 2.3 – Ongoing Commissioning (2 pts)	Perform ongoing commissioning	
Credit 3.1 - Performance Measurement – Building Automation System (1 pt)	Have in place a computer-based building automation system that monitors and controls mayor building systems, have preventive maintenance program and train personnel.	
Credit 3.2 - Performance Measurement – System Level Metering (2 pt)	Develop breakdown of energy use in the building.	
Credit 4 – Renewable Energy	Not Considered.	
Credit 5 – Enhanced Refrigerant Management (1 pt)	Select refrigerants and HVAC equipment that minimizes or eliminate the emission of compounds that contribute to the ozone depletion and climate change.	
Credit 6 - Emissions Reduction Reporting (1 pt)	Track and record emissions reductions delivered by energy efficient and other building reduction measures and report using Energy Star.	

Materials and Resources		
Credit 1 - Sustainable Purchasing – Ongoing Consumables		Develop plan
Credit 2 - Sustainable Purchasing – Durable Goods		Develop plan
Credit 3- Sustainable Purchasing – Facility alterations & additions (1 pt)	Implement for ESCO operations	Develop plan
Credit 4 - Sustainable Purchasing – Reduced Mercury in Lamps (1 pt)	Implement for ESCO installations	Develop plan
Credit 5 - Sustainable Purchasing – Food		Not Considered
Credit 6 - Solid Waste Management – Waste Stream Audit		Develop plan
Credit 7 - Solid Waste Management – Ongoing Consumables		Develop waste reduction and recycling program
Credit 8 - Solid Waste Management – Durable Goods		Develop plan
Credit 9 - Solid Waste Management – Facility alterations and additions		Develop plan
Indoor Environmental Quality		
Credit 1.1 - Indoor Air Quality BMP -Management Program		Not considered
Credit 1.2 - IAQ Best Management Practices – Outdoor Air Delivery Monitoring (1 pt)	Install permanent, continuous monitoring systems.	
Credit 1.4 - IAQ Best Management Practices – Reduce Particulates in air distribution (1 pt)	Have in place filtration media with a minimum efficiency reporting value (MERV) of 13.	
Credit 1.5 - IAQ Best Management Practices – Facility Alterations and Additions (1 pt)	Not considered	
Credit 2.1 - Occupant Comfort – Occupant Survey (1 pt)	Implement corrective actions to address comfort issues identified through the surveys.	Implement an occupant comfort survey and complaint response system and document results
Credit 2.2 - Controllability of Systems - Lighting	Not considered.	

Attachment I: USGBC LEED Existing Building Operation & Maintenance Goals

Credit 2.3 - Occupant Comfort – Thermal Comfort Monitoring (1 pt)	Have a permanent monitoring system to ensure ongoing building performance to the desired comfort criteria as determined by ASHRAE Standard 55-2004.	
Credit 2.4 - Daylight and views (1 pt)	Demonstrate through computer simulations that at least 50% of all regularly occupied spaces areas achieve daylight illuminance levels as required.	
Credit 3.1 – Green Cleaning – High Performance Cleaning Program		Develop plan
Credit 3.2 - Green Cleaning – Custodial Effectiveness Assessment		Conduct audit.
Credit 3.3 - Green Cleaning – Purchase of Sustainable Building Products and Materials		Implement sustainable purchasing for cleaning materials and products.
Credit 3.4 - Green Cleaning – Sustainable Cleaning Equip.		Implement program.
Credit 3.5 - Green Cleaning – Sustainable Cleaning Equip (1 pt)	Employ permanent entryway systems.	Develop plan.
Credit 3.6 - Green Cleaning – Indoor Integrated Pest Management		Develop plan.

Attachment J: Technology Transfer Program

1.1 TRAINING PROGRAM

GOVERNMENT UNIT's primary goal for all training functions is to increase the capacity of local organizations, worker and professionals to finance, design, build and operate building retrofits and improvements for utility cost reductions, so that subsequent expansions may be designed and built by a larger contingent of local professionals and workers.

The Esco's shall develop an "on the job" training program for trades, occupations and professions deemed under skilled or unavailable in Puerto Rico.

Training programs shall be coordinated with local vocational schools or institutions of higher education.

1.2 TECHNOLOGY TRANSFER PROGRAMS

The ESCO's shall address, as herein indicated, three levels of technology transfer in its Final Proposal:

1.2.1 Participation in student internships for local university students.
1.2.2 Employee mentorships for local entry-level and mid-career employees.
1.2.3 Peer partnerships for local senior management personnel, each as more fully described in Section 1.2.1 through 1.2.2 below.

1.2.1 Student Internship Program

The ESCO's shall stipulate the number of internships that it will be able to provide for students from local universities or technical colleges specializing in architecture, engineering, construction management or related facility retrofit disciplines.

The ESCO's shall provide a description of the proposed internship program.

If appropriate positions are available, the ESCO may offer employment to student interns upon graduation from degree programs.

1.2.2 Employee Mentorship Program

The ESCO's shall provide an employee mentorship program for local entry-level or mid-career employees. Protégés in mentorship program shall have completed the academic training required for their positions; their levels of professional experience may vary. The ESCO's shall provide a description of its proposed employee mentorship program in its Final Proposal and include any costs associated with the mentorship program in its Final Price Proposal.

1.2.3 Technology Transfer Enhancements

In addition to its proposal with respect to the Technology Transfer Programs described in Subsections 1.2.1 through 1.2.3, above, the ESCO's shall prepare, and will be evaluated upon, specific additional measures ("enhancements") for supplementing the Technology Transfer Programs described above. The ESCO's shall include the price for such enhancements in its Final Price Proposal on the Price Form, Options.

Attachment K: Certification

ESCO's must print the certification included below under corporate letterhead and submit with proposal signed by a Senior Executive of the ESCO.

CERTIFICATION

[ESCO], who desires to enter into an agreement with [GOVERNMENT UNIT], certifies that:

1. Under penalty of nullity, no official, employee, or contractor of the [GOVERNMENT UNIT] will derive or obtain any benefit of profit of any kind from the contractual relationship that will result from this procurement. If such benefit exists, the required waiver has been submitted before the proposal.

2. None of the Members of Board of Directors, Executives, Authorized Representatives or Shareholders of our company have been accused and convicted of crimes against the Commonwealth of Puerto Rico or the Federal Government that involve appropriation of public funds or fraud against public property.

3. There is no criminal or civil procedure or investigation pending for any of the crimes or felonies described on the precedent paragraphs against any of the members of its Board of Directors, Executives, Authorized Representative or Shareholders.

4. We will inform the [GOVERNMENT UNIT] of any situation or procedure that may be initiated against any of the parties mentioned above any time after the signing of the Contract resulting from this procurement and up until its date of expiration.

5. Our company: (a) does not discriminate in any manner against an employee, applicant for employment, subcontractor or ay person because of race, color, religion, creed, age, sex. marital status, national origin, ancestry, sexual orientation, or physical of mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) includes a provision similar to that contained in subsection above in any subcontract executed in connection with the services to be provided under the contract resulting form this procurement, but excluding subcontracts for standard commercial supplies or raw materials; (c) posts in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause; and (d) maintains a written sexual harassment policy and informs our employees of the policy.

6. When issuing this proposal, as an employer we are in full compliance with Act Number 5 of December 30, 1986 as amended, also known as Organic Act for the Administration of Child Support Enforcement of the Commonwealth of Puerto Rico.

7. The Proposals have been prepared and developed without collusion with other eligible ESCO's and without effort to preclude the Public Buildings Authority of Puerto Rico from obtaining the bet competitive Proposal.

Attachment K: Certification

8. We are registered to do business in Puerto Rico and have any required business and professional licenses.

9. We understand that violation of these certifications may lead to resolution of the agreement resulting from this procurement without prior notice.

10. No [GOVERNMENT UNIT] official, employee, or contractor involved in this procurement has financial interest in this contract, purchase or commercial transaction and neither has had, directly or indirectly, financial interest in this company for the last four years.

11. No [GOVERNMENT UNIT] official, employee, or contractor solicited or accepted, directly or indirectly, for his/her, some member of its family unit or for any other person, gifts, allowances, favors, services, donations, loans or any other thing of monetary value.

12. No [GOVERNMENT UNIT] official, employee, or contractor associated with this transaction solicited or accepted valuable goods from any person from my entity as payment to complete the duties or responsibilities of his/her job.

13. No [GOVERNMENT UNIT] official, employee, or contractor asked, directly or indirectly, for him/her, or any member of his/her family unit, nor any other person, business or entity, valuable goods, including gifts, loans, pledges, or favors in exchange of acting to favor me or my entity.

14. I have no relationship within the fourth level of consanguinity or second of affinity with any employee that have the power to influence or participate in the organizational decisions of the [GOVERNMENT UNIT].

Company:

_____
Representative Name

_____
Signature

_____
Date



MODEL INVESTMENT GRADE AUDIT CONTRACT

(TECHNICAL ENERGY AUDIT & PROJECT PROPOSAL CONTRACT)

APPEAR

AS PARTY OF THE FIRST PARTY: Government Unit <Name>

AS PARTY OF THE SECOND PARTY: ESCO Name

W I T N E S S E T H

WHEREAS, This Contract was created for use of Government Unit <Name> to obtain a technical energy audit of a facility from a private energy service company (ESCO).

WHEREAS, Authority under Law Government Unit <ACT No. > , as amended, has been granted to the Government Unit <Name> to enter into this contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

WHEREAS, ESCO is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures at facilities similar in size, function and system type to GOVERNMENT UNIT <NAME>'s facilities; and

WHEREAS, ESCO has submitted a Response, in response to Government Unit <Name> Request for Proposals (RFP), pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures at Government Unit <Name> facilities; and

WHEREAS, Government Unit <Name> has selected ESCO to provide the services described herein; and

WHEREAS, Government Unit <Name> desires to enter into a Contract to have ESCO perform a **Technical Energy Audit and Project Proposal** to determine the feasibility of entering into an **Energy Savings Performance Contract** to provide for installation and implementation of energy and water saving measures at Government Unit <Name> facilities.

WHEREAS, if energy and water saving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by Government Unit <Name> , associated with an Energy Savings Performance Contracting project, the parties intend to negotiate an Energy Savings Performance Contract under which the ESCO will design, procure, install, implement, maintain and monitor such energy and water saving measures. However, this intent does not commit Government Unit <Name> to entering into such Energy Savings Performance Contract.

DESCRIPTION –Technical Energy Audit and Project Proposal Contract:

This Contract for Technical Energy Audit & Project Proposal is the first of two contracts with the selected ESCO. The ESCO will complete an investment grade technical energy audit that will include an analysis of each proposed project with projected energy and cost savings and itemized project cost. The ESCO will also propose terms for the Energy Savings Performance Contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis. The results of the audit will form the basis for a subsequent Energy Savings Performance Contract.

TECHNICAL ENERGY AUDIT & PROJECT PROPOSAL CONTRACT

TABLE OF CONTENTS

Articles 1 to 20 of the Government Unit <Name> **Technical Energy Audit and Project Proposal Contract**

Exhibit A: Scope of Work

Exhibit B: Notice of Acceptance of Technical Energy Audit Report

Exhibit C: Guidelines for Draft Monitoring and Verification Plan

Exhibit D: Cost and Pricing

ARTICLE 1– **Contract Documents:** The Contract Document consists of the following component parts:

1. This Agreement, including:

   a. Performance Bond – 100% for the audit and post-audit, if accepted, must be submitted performance bonds for the main project of the RFP.

   b. Payment Bond – 100% for the audit and post-audit, if accepted, must be submitted payment for the main project of the RFP.

   c.Workmen's Compensation Insurance – Statutory

   d. Employer's Liability

   e. General Liability

   f. Automobile Liability

   g. Hold Harmless Clause

   h. "Certificado de Elegibilidad – Registro Unico de Licitadores"

3. RFP Response, dated <Insert Date> and Letter of Award dated <Insert Date>.
4. Technical Specifications
5. Drawings

ARTICLE 2– **Hold Harmless Agreement:** The ESCO Name and its insurer shall save and hold harmless and defend Government Unit <Name> from and against any and all claims, demands and/or suits, whether judicial or extrajudicial to the extent such claims, demands or suits arise out of, or result from the negligent actions or willful misconduct of ESCO <NAME> in its execution of this contract.

ARTICLE 3– **Required Certifications:**

ESCO Name hereby certifies that at the execution of this Agreement, it has filed income tax returns in the Commonwealth of Puerto Rico during the past five (5) years.

ESCO Name also certifies that it to the best of its knowledge it does not have any outstanding debts with the Commonwealth of Puerto Rico to include income taxes, real or chattel property taxes, unemployment insurance premiums, worker's compensation payment and Driver's Social Security, or in case it has debts related to one (or more) of the aforementioned premiums, has an installment plan (s) which is (are) being complied with.

ESCO Name also certifies that it has no alimony obligation, or it has alimony obligation, with which it is complying.

It is expressly acknowledged that these are essential conditions of this Agreement because they are required by law and by Executive Orders. If any of these certifications are incorrect, Government Unit <Name> shall have cause for the immediate termination of the Agreement, and ESCO <Name> shall have to reimburse any amount of money received under this Agreement. Prior to the execution of this Agreement, the ESCO Name shall present to Government Unit <Name> the corresponding certifications issued by the Department of the Treasury, the Department of Labor and Human Resources, and the Municipal Revenues Collection Center, (known by its Spanish acronym, CRIM).

ARTICLE 4 – **Definition Tax Debt:** For purposes of this Agreement, tax debt shall mean any debt that ESCO <NAME> or other parties which Government Unit <Name> authorizes ESCO <NAME> to subcontract may have with the Commonwealth of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license right, tax withholdings for payment of salaries, taxes on the payment of interest dividends, and income to individuals, corporations and nonresident partnerships, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers compensation payments, and Driver's Social Security.

ARTICLE 5 – **Tax Documents**: If the contracted party does not deliver the corresponding documents from the Department of the Treasury (Income Tax), Department of Labor and Human Resources (Unemployment Insurance Temporary Disability, and/or Social Security for drivers), and/or the Municipal Revenues Collection Center ("CRIM") (tax on real property and/or chattels) within the next sixty (60) days from the execution of the present contract, then the same (present contract) shall be terminated without any further need of any kind of notice, without any right to receive any payment that may be due, and that any payment that may be due shall be transferred to the corresponding governmental instrumentality, so that it may make the appropriate credit. If the contracted party owes any money to the Department of the Treasury (Income Tax), Department of Labor and Human Resources (Unemployment Insurance, Temporary Disability and/or Social Security for Drivers), and/or Municipal Revenues Collection Center ("CRIM") tax on real property and/or chattels), it hereby authorize the Authority to retain any amount due, and the same shall be transferred to the corresponding governmental instrumentality, so that it may make the appropriate credit, unless it (the contracted party) has accepted a payment plan, is current, and has submitted authentic evidence to that effect.

ARTICLE 6 - **Withholdings Prescribed by Law**: ESCO <NAME> is an independent contractor. Because of this, Government Unit <Name> is under no obligation to make withholdings in relation to ESCO <NAME> employees. ESCO <NAME> is responsible for complying with the Social Security Laws, Workmen's Compensation Insurance and all other applicable laws or regulations.

ARTICLE 7 – **Tax Retention**: Government Unit <Name> by means of Circular Letter 02-09 of June 28, 2002, has the obligation to withhold seven percent (7%) of payments to ESCO <NAME> for income tax purposes, except that ESCO <NAME> may have submitted GOVERNMENT UNIT <NAME> document a Total or Partial Release of the Original Retention upon payments for Services Rendered by Corporations, issued by Puerto Rico Department of the Treasury, whereof the retention shall be according to those rules. Government Unit <Name> will notify to Puerto Rico Department of the Treasury the sum of money paid to ESCO <NAME> by virtue of this Agreement.

ARTICLE 8 – **Confidentiality Agreement**: ESCO <NAME> acknowledges the proprietary and confidential nature of all internal, non-public, financial, business and information systems relating to Government Unit <Name> and to the Commonwealth of Puerto Rico, its agencies, corporations, municipalities, now or hereafter provided to ESCO <NAME>. ESCO <NAME> agrees to keep confidential all the information obtained in connection with the services being rendered hereunder, provided such information is marked "Confidential" and is not previously known to ESCO <NAME>, is not within the public domain, or is not furnished to ESCO <NAME> by a third party who is under no obligation to keep the information confidential. ESCO <NAME> shall keep confidential all documents; materials, data, and information that Government Unit <Name> furnishes to ESCO <NAME> and shall not divulge, make public or disclose any of said materials without the previous written consent of Government Unit <Name> . ESCO <NAME> may divulge such materials to those officers and employees of ESCO <NAME> who need to know such information to fulfill the purpose of their engagement, provided that such persons shall have been advised of the confidential nature of such information. ESCO <NAME> which are marked "Confidential" shall instruct them and they shall agree to treat such information confidentially. The subsequent use by these employees of general knowledge, skills and experience does not constitute a breach of this Agreement. The receipt of confidential information under this Agreement does not in any way limit or restricts ESCO <NAME> from providing similar of competitive products or services to other customers. The drawings submitted to the ESCO on Addendum 2 of the RFP are confidential and shall be considered marked as "Confidential".

ARTICLE 9 – **Ownership Documents:** The Technical Energy Audit being contracted hereunder shall be the exclusive property of Government Unit <Name> ; provided however that in no event will ESCO <NAME>'S proprietary information, methodologies, tools, reports, report formats, copyrights, patents or trademarks preexisting the project, become the exclusive property of Government Unit <Name> .

ARTICLE 10 – **Subcontracting:** ESCO <NAME> shall not subcontract the services requested hereby, nor can it subcontract experts or other persons to perform any of the activities and tasks or deliverables detailed in the project without the previous written approval of Government Unit <Name> .

ARTICLE 11 – **Termination:** Government Unit <Name> may terminate this Agreement at any moment that ESCO <NAME> incurs a material violation of its contractual obligations. ESCO <NAME> will be responsible for any actual direct damages that its negligent actions may cause. The termination will be effective on the date specified in the notification that Government Unit <Name> sends to THE CONTRACTOR. In such case, Government Unit <Name> will notify ESCO <NAME> thirty (30) calendar days in advance.

ARTICLE 12 – **Relationship between Parties**: ESCO <NAME> is an independent contractor and as such neither its employees nor its subcontractors are agents, employees or representatives of Government Unit <Name> .

ARTICLE 13– **Discrimination**: Both parties agree not to discriminate for reasons of race, color, sex, origin or social condition, age, political or religious belief, handicap, or any other reason during the performance of this Agreement.

ARTICLE 14 – **Claims against the Commonwealth of Puerto Rico**: ESCO <NAME> will be responsible for any claim against the Commonwealth of Puerto Rico, to the extent such claim arises from THE CONTRACTOR'S negligence and in any such claim ESCO <NAME> will satisfy any judgment or administrative determination against Government Unit <Name> . Government Unit <Name> will provide a copy of the claim to ESCO <NAME> and Government Unit <Name> agrees to provide its cooperation.

ARTICLE 15 – **Assignment Rights**: ESCO <NAME> without the prior written consent of GOVERNMENT UNIT <NAME> will not assign the rights under this Agreement.

ARTICLE 16 – **Ultra Vires Clause**: Consonant with the laws and regulations that govern the covenant of services, the parties agree herein that no services will be rendered until all parties duly sign this Agreement. Services rendered in violation of this clause will not be paid, since any person that request and accepts the services from the other party in violation of this condition is doing so without legal authority.

ARTICLE 17 – **Prior Agreements**: This Agreement shall supersede any prior agreement and shall prevail over any related agreement or document, including the corresponding appendices.

ARTICLE 18 – **Amendments**: It is understood that this Agreement, including the corresponding appendices, is the sole agreement between the parties herein with regard to the services covered hereby and may not be changed orally, but may be amended in writing, by mutual agreement of the parties.

ARTICLE 19 – **Laws Governing this Agreement**: This Agreement will be interpreted according to the laws of the Commonwealth of Puerto Rico. Should any clause of this Agreement be declared null or void, the remaining portions of this

Agreement shall continue to be binding on the parties as written. If a conflict exists between the laws, which apply to the interpretation of this Agreement, in the absence of clear preemption by Federal Laws, the Laws of Puerto Rico, shall prevail.

ARTICLE 20 – **Dispute Settlement** – In addition to what is stated in the general conditions for the Settlement of Disputes and Arbitration, Arbitration proceedings shall be conducted in accordance with the law and jurisprudence of Puerto Rico.

ARTICLE 21 – **Professional Requirement and Building Code Compliance** – The Technical Energy Audit shall be reviewed, signed and sealed by a professional mechanical engineer and a professional electrical engineer, both registered in Puerto Rico. The engineer's signature serves as verification of the soundness of the recommended Energy Conservation Measures, and that these Measures meet current codes and energy efficiency requirements.

DESCRIPTION –Technical Energy Audit and Project Proposal Contract:

This Contract for Technical Energy Audit & Project Proposal is the first of two contracts with the selected ESCO. The ESCO will complete an investment grade technical energy audit that will include an analysis of each proposed project with projected energy and cost savings and itemized project cost. The ESCO will also propose terms for the Energy Savings Performance Contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis. The results of the audit will form the basis for a subsequent Energy Savings Performance Contract.

THEREFORE, the parties agree as follows:

1. Technical Energy Audit and Project Proposal Contract

ESCO agrees to perform a Technical Energy Audit in accordance with the Scope of Work described below. ESCO agrees to complete the Technical Energy Audit and tender to Government Unit <Name> a final report within 90 calendar days from the execution of this Contract.

GOVERNMENT UNIT <NAME> agrees to assist the ESCO in performing the **Technical Energy Audit** in accordance with the Scope of Work described below. GOVERNMENT UNIT <NAME> agrees to work diligently to provide full and accurate information. ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. The parties contemplate that this will be an iterative process and that GOVERNMENT UNIT <NAME> will have a reasonable amount of time to review and determine acceptance before issuing the **Notice of Acceptance (Exhibit B)**.

ESCO agrees to offer an **Energy Savings Performance Contract Proposal** with a package of energy and water saving measures and with details as specified in the Scope of Work below.

2. Compensation to ESCO

ESCO shall be compensated as follows:

a. **Basis and Maximum Amount.** Except as provided for in **Subsections 2(b), 2(c), or 2(d)** below, within 120 days after Government Unit <Name> acceptance of the final **Technical Energy Audit and Project Proposal Contract**, GOVERNMENT UNIT <NAME> shall pay to ESCO a sum not to exceed $_____ based on a maximum of _____ gross square feet at $0.___ per square foot of audited square-footage, as per **Exhibit B: Cost and Pricing**. Government Unit <Name> shall only pay for square-footage actually audited. Areas deemed by ESCO not to be audited will not be charged to Government Unit <Name>.

b. **Payment through Performance Contract.** Government Unit <Name> shall have no payment obligations under this contract provided that ESCO and GOVERNMENT UNIT <NAME> execute an Energy Savings Performance Contract within 120 days suggested, allowing sufficient time for contract negotiation, attorney review, and GOVERNMENT UNIT <NAME> processing days, after issuance of the **Notice of Acceptance (Exhibit B)** of the final **Technical Energy Audit and Project Proposal Contract**, but the fee indicated above shall be incorporated into ESCO's project costs in the Energy Savings Performance Contract and paid through the Energy Savings Performance Contract funding mechanisms.

c Project With Insufficient Savings. GOVERNMENT UNIT <NAME> shall have no payment obligations under this Contract in the event that ESCO's final **Technical Energy Audit and Project Proposal Contract** does not contain a package of energy and water saving measures which, if implemented and as meeting terms of **Exhibit A: Scope of Work, (b) Guidelines and Requirements**, will provide Government Unit <Name> with cash savings sufficient to fund GOVERNMENT UNIT <NAME> 's payments of all costs and fees associated with the Energy Savings Performance Contract, including 1) the fee associated with the Technical Energy Audit, 2) all monthly payments on a lease purchase agreement to finance the measures, 3) any annual fees for monitoring and maintenance incurred by the ESCO. Additionally, the project must have a minimum guaranteed energy savings equivalent to a 30% energy reduction from current consumption. Should the ESCO determine at any time during the Technical Energy Audit that savings cannot be attained to meet these terms; the Technical Energy Audit will be terminated by written notice by the ESCO to GOVERNMENT UNIT <NAME>. In this event this Contract shall be cancelled and

GOVERNMENT UNIT <NAME> shall have no obligation to pay, in whole or in part, the amount specified in this **Section 2(a)**.

3. Scope of Work

The Technical Energy Audit and Energy Performance Proposal Contract shall be performed as described in **Exhibit A: Scope of Work**.

4. Termination

This Contract may be terminated at any time as described below by:

a. **Termination for Default/Cause**

1) Default.

If the ESCO refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the Executive Director of Government Unit <Name>, may notify the ESCO in writing of the non-performance, and if not promptly corrected within thirty days, such officer may terminate the contract by written notice.

2) ESCO's Duties

Notwithstanding termination of the contract and subject to any directions from the Executive Director of Government Unit <Name>, the ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of the ESCO in which the purchasing GOVERNMENT UNIT <NAME> has an interest.

3) Compensation

Payment for completed services delivered and accepted by GOVERNMENT UNIT <NAME> shall be at the contract price. Government Unit <Name> may withhold amounts due to the ESCO as the contract administrator reasonably deems to be necessary to protect Government Unit <Name> against loss because of outstanding liens or claims of former lien holders.

4) Excuse for Nonperformance or Delayed Performance

The ESCO shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon

request of the ESCO, the contract administrator shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the ESCO's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of Government Unit <Name>.

5) Erroneous Termination for Default

If after notice of termination of the ESCO's right to proceed under the provisions of this clause, it is determined for any reason that the ESCO was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

b. Termination for Convenience

1) Termination

Government Unit <Name> may, when the interests of Government Unit <Name> so require, terminate this contract in whole or in part, for the convenience of Government Unit <Name>. Government Unit <Name> shall give written notice of the termination to the ESCO specifying the part of the contract terminated and when termination becomes effective. This in no way implies that Government Unit <Name> has breached the contract by exercise of the Termination for Convenience Clause.

2) ESCO's Obligations

The ESCO shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the ESCO will stop work to the extent specified. The ESCO shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The ESCO shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. Government Unit <Name> may direct the ESCO to assign the ESCO's right, title, and interest under terminated orders or subcontracts to the purchasing GOVERNMENT UNIT <NAME>. The ESCO must still complete and deliver to Government Unit <Name> the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

3) Compensation

a) The ESCO shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing

data bearing on such claim. If the ESCO fails to file a termination claim within 90 days from the effective date of termination, Government Unit <Name> may pay the ESCO, if at all, an amount set in accordance with subparagraph C of this Section.

b) Government Unit <Name> and the ESCO may agree to a settlement provided the ESCO has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by Government Unit <Name>, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

c) Absent complete agreement, under subparagraph B of this Section, Government Unit <Name> shall pay the ESCO the following amounts, provided the payments agreed to under subparagraph B shall not duplicate payments under this subparagraph:

(1) Contract prices for supplies or services accepted under the contract;

(2) Costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services.

(3) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the ESCO's obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph B of this Section.

(4) The reasonable settlement costs of the ESCO including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the terminated portion of this contract.

(5) The total sum to be paid the ESCO under this subparagraph C shall not exceed the total contract price plus settlement costs, reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph B, and the contract price of work not terminated.

d) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the State Procurement Code.

c. Available Funds – Contingency – Remedies

Government Unit <Name> is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, ESCO's compensation is contingent upon the continuing availability of GOVERNMENT UNIT <NAME> annual budget funds or agencies appropiations funds. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and Government Unit <Name>'s liability for such payments shall be limited to the amount remaining of such encumbered funds. If GOVERNMENT UNIT <NAME> or state and federal funds are not appropriated, or otherwise become unavailable to fund this Contract, Government Unit <Name> may immediately terminate the Contract in whole or in part without further liability in accordance with the Termination for Convenience subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

d. At any time as described in Section 2.b above.

5. Insurance

Before commencing any Work under this Contract, ESCO shall file with GOVERNMENT UNIT <NAME> certificates of insurance evidencing the coverage's as specified below:

a. It is agreed and understood ESCO shall maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen's compensation and employer's liability insurance pursuant to the State insurance requirements as defined below.

b. The ESCO shall obtain, and maintain at all times during the term of this Agreement, insurance in the following kinds and amounts.

1) Workmen's Accident Compensation Insurance covering all employees at the work site. (State Insurance Fund)

2) General Liability (minimum coverage)

a) Combined single limit of $600,000 written on an occurrence basis.
b) Any aggregate limit will not be less than $1,000,000.
c) The ESCO must purchase additional insurance if claims reduce the annual aggregate below $600,000.

3) Automobile Liability (minimum coverage) in the amount of $600,000 combined single limit

4) Government Unit <Name> shall be named as an additional insured on each commercial general liability policy.

5) The insurance shall include provisions preventing cancellation without 30 calendar days prior written notice, by certified mail to the Principal Representative

6) ESCO shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of the Services contemplated in this Contract, to the extent that any such claim, damage, loss or expense is caused by any negligent act, error or omission of ESCO, any Consultant or associate thereof, or anyone directly or indirectly employed by ESCO. ESCO shall submit a Certificate of Insurance at the signing of this Contract and also any notices of Renewal of said Policy as they occur.

6. Energy Savings Performance Contract

The Parties intend to negotiate an Energy Savings Performance Contract under which the ESCO will design, install and implement energy and water saving measures which the Parties have agreed to, and provide certain maintenance and monitoring services. However, nothing in this Contract should be construed as an obligation on any of the Parties to execute such a contract. The terms and provisions of such an Energy Savings Performance Contract will be set forth in a separate contract.

7. Extent of Agreement

a. This Contract represents the entire and integrated agreement between GOVERNMENT UNIT <NAME> and ESCO and supersedes all prior negotiations, representations or agreement, either written or oral. This Contract may be amended only by written instrument signed by Government Unit <Name>.

b. Government Unit <Name> and ESCO understand and agree the attachment and exhibits hereto are and shall be an integral part of this Contract and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

8. Term

The term of this Contract will become effective upon approval by the Executive Director of Government Unit <Name> and acceptance by the Principal Representative. The term

shall end 120 of days plus 15 days to allow for processing of check after signing of the **Notice of Acceptance (Exhibit B)** of the Final Technical Energy Audit Report by the Principal Representative.

9. Order of Precedence

In the event of conflict or inconsistency between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Contracts: Technical Energy Audit Contract & Energy Savings Performance Contract

    a. Performance Bond
    b. Payment Bond
    c. Workmen's Compensation Insurance
    d. Employer Liability
    e. Comprehensive General and Automobile Liability Insurance
    f. Installation Floater

2. Dated ESCO's Proposal

3. All Addenda issued prior to execution of the Contract

4. Special Provisions

5. Request For Proposal (RFP)

6. General Conditions, if any

7. Technical Specifications

8. The Drawings

10. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, OR CONSEQUENTIAL DAMAGES, ARISING FROM, RELATING TO, OR CONNECTED WITH THE WORK, SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER.

ESCO shall have no responsibility to GOVERNMENT UNIT <NAME> or others for any use of the Technical Energy Audit or any other information provided by ESCO unless it is implemented through a subsequently-executed Energy Savings Performance Contract with ESCO.

IN WITNESS WHEREOF, the parties have caused this Instrument to be executed in original counterpart this _____ of _____ in the year two thousand twelve (2012).

EXHIBIT A

Scope of Work

The audit will consist of the following areas based on a maximum of _____ gross square feet:

a.
b.

a. **Process**

This will be an interactive approach in working with GOVERNMENT UNIT <NAME>, following these steps:

1) Preliminary Assessment of Needs and Opportunities

a) Meet with GOVERNMENT UNIT <NAME> to establish interests, plans, problems, etc. related to facilities and operation of the facilities.
b) Collect data and background information on buildings, equipment and facilities operation
c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures
d) **Meet with GOVERNMENT UNIT <NAME> to present prelminary findings and establish agreement on Energy Conservation Measures to analyze**

2) Preliminary Analysis of Energy Conservation Measures

a) Establish base year consumption and reconcile with end-use consumption estimates
b) Conduct a preliminary analysis of potential measures
c) Meet with GOVERNMENT UNIT <NAME> to present preliminary findings and establish agreement on Energy Conservation Measures to further analyze.

3) Further Analysis and Audit Report

a) Further analyze Energy Conservation Measures
b) Develop a draft Technical Energy Audit Report
c) Meet with GOVERNMENT UNIT <NAME> to present results
d) Prepare final Technical Energy Audit Report

4) Energy Savings Performance Contract Proposal

a) Develop Energy Savings Performance Contract proposal
b) Meet with GOVERNMENT UNIT <NAME> to present results and negotiate final terms

b. **Scope Guidelines and Requirements**

1) Energy Savings Performance Contract Term. The Energy Savings Performance Contract Term shall have a term no greater than 15 years and no greater than the cost-weighted average lifetime of the equipment. GOVERNMENT UNIT <NAME>'s goal is for a term no greater than ___ years.

2) Annual Guaranteed Energy and Cost Savings. The annual guarantee is required for the entire financing term, however GOVERNMENT UNIT <NAME> has the option to terminate the guarantee at any time after the first three years of the contract term provided the annual guaranteed energy and cost savings were achieved each prior year. The guarantee is based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, ESCO fees, maintenance services, monitoring services, and other services.

3) OMB and the GOVERNMENT UNIT <NAME> shall reserve up to 5% of annually guaranteed savings for GOVERNMENT UNIT <NAME> to pay PREAA for the review of the ESCO's monitoring and verification reports and advice GOVERNMENT UNIT <NAME> of compliance in monitoring and verifying savings.

4) Excess Savings. Annual cost savings beyond the guaranteed minimum savings will be retained by GOVERNMENT UNIT <NAME>, and will not be allocated to shortfalls in other years.

5) Annual Savings Estimates: The annual savings estimates for all measures must be estimated for each year during the contract period.

6) Allowable cost and savings factors approved for consideration: GOVERNMENT UNIT <NAME> will provide ESCO with sufficient guidance to develop savings estimates.

a) Payment sources that can be incorporated:

1. Energy and water cost savings
2. Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable)

3. Outside labor cost savings, including maintenance contracts
4. In-house labor costs
5. Deferred maintenance cost
6. Offset of future capital cost
7. Outside incentive funds (utility incentives, grants, etc.)
8. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.

b) Additional factors related to establishing savings that cover all costs:

1. Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes. NOTE: Use federal government guidelines on utility escalation rates to ensure reasonableness.
2. Interest rates (municipal tax-exempt rates for public GOVERNMENT UNIT <NAME>)
3. GOVERNMENT UNIT <NAME> cash outlay (GOVERNMENT UNIT <NAME> sole discretion)

c) The markup costs are presented in **Exhibit D: Cost and Pricing.** These rates will be used in the Technical Energy Audit and subsequent Energy Savings Performance Contract.

c. **Collect data and background information from GOVERNMENT UNIT <NAME>** concerning facility operation and energy use for the most recent three years from the effective date of this Contract as follows:

1) Building square footage.
2) Construction data of buildings and major additions including building envelope
3) Utility company invoices
4) Occupancy and usage information
5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.
6) Description of energy management procedures utilized on the premises
7) Description of any energy-related improvements made or currently being implemented
8) Description of any changes in the structure of the facility or energy-using or water-using equipment
9) Description of future plans regarding building modifications or equipment modifications and replacements

10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
11) Original construction submittals and factory data (specifications, pump curves, etc.), as available
12) Operating engineer logs, maintenance work orders, etc., as available
13) Records of maintenance expenditures on energy-using equipment, including service contracts
14) Prior energy audits or studies, if any

GOVERNMENT UNIT <NAME> agrees to work diligently to furnish ESCO, upon request, accurate and complete data and information as available. Where information is not available from GOVERNMENT UNIT <NAME>, ESCO will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

d. **Identify potential measures**

1) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:

   a) Facility operation, including energy management procedures
   b) Equipment maintenance problems
   c) Comfort problems and requirements
   d) Equipment reliability
   e) Projected equipment needs
   f) Occupancy and use schedules for the facility and specific equipment.
   g) Facility improvements – past, planned and desired

2) Survey major energy-using equipment, including lighting (indoor and outdoor), heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water systems, electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.), renewable energy systems, other energy using systems, water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)

3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:

   a) Comfort and maintenance problems
   b) Energy use, loads, proper sizing, efficiencies and hours of operation
   c) Current operating condition
   d) Remaining useful life
   e) Feasibility of system replacement
   f) Hazardous materials and other environmental concerns
   g) GOVERNMENT UNIT <NAME> future plans for equipment replacement or building renovations
   h) Facility operation and maintenance procedures that could be affected
   i) Capability to monitor energy performance and verify savings

GOVERNMENT UNIT <NAME> will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities.

ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. **Establish base year consumption and reconcile with end use consumption estimates**.

1) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. ESCO will account for periods of time when equipment was broken or malfunctioning in calculating the base year.

2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.

4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

f. **Develop a preliminary analysis of potential energy and water saving measures.**

This list shall be compiled and submitted to GOVERNMENT UNIT <NAME> within 90 calendar days of the execution of this Contract.

1) List all potential opportunities, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.

2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.

3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

g. **Meet with GOVERNMENT UNIT <NAME> to present preliminary findings prior to thorough analysis.** Describe how the projected project economics meet Government Unit <Name> terms for completing the Technical Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an Energy Savings Performance Contract. Develop a list of recommended measures for further analysis. Government Unit <Name> shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

h. **Analyze savings and costs for each energy and water saving measure.**

1) Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.

2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current

conditions at the facility, calculations which account for the interactive effects of the recommended measures.

3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.

4) Use markups and fees stated above in all cost estimates.

5) Develop a preliminary measurement and verification plan for each measure.

6) Follow additional guidelines for analysis and report preparation given below.

7) Include cost to provide services and complete application for Energy Star Label, LEED-EB certification for Existing Buildings, or other certification. Also include cost for EPA's Building Air Quality Action Plan or other such program to improve air quality.

8) Using the EPA's ENERGYSTAR tools and resources for each eligible facility, provide an estimated preretrofit Energy Performance Rating using Portfolio Manager and an estimated post-retrofit Energy Performance Rating using Portfolio Manager. During the EPC, the ESCO will also be required to submit an updated ENERGY STAR rating for each eligible facility upon completion of each guaranteed year.

9) The ESCO should identify their LEED EBOM process and which credits can/will be included in their final scope of work/implementation. Address energy, water and LEED-EB opportunities related to operation and maintenance.

i. **Prepare a draft Technical Energy Audit Report**. The report provides an engineering and economic basis for negotiating a potential Energy Savings Performance Contract between Government Unit <Name> and the ESCO. The report shall be completed within **90** calendar days of the date of execution of this Contract. The report shall include:

1) Overview
   a) Contact information
   b) Summary table of recommended energy and water saving conservation measures for each facility, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life and LEED credits that apply to each conservation measure.
   c) Summary of annual energy and water use by fuel type and costs of existing or base year condition

d) Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost.
e) Description of the existing facility, mechanical and electrical systems
f) Summary description of measures, including estimated costs and savings for each as detailed above
g) Discussion of measures considered but not investigated in detail
h) Conclusions and recommendations

2) Base year energy use
   a) Description and itemization of current billing rates, including schedules and riders.
   b) Summary of all utility bills for all fuel types and water
   c) Identification and definition of base year consumption and description of how established
   d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)

3) Full description of each energy and water saving measure including:

   a) Written description

      (1) Existing conditions
      (2) Description of equipment to be installed and how it will function
      (3) Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
      (4) Present the plan for installing or implementing the recommendation.

   b) Savings calculations

      (1) Base year energy use and cost
      (2) Post-retrofit energy use and cost
      (3) Savings estimates including analysis methodology, supporting calculations and assumptions used. Provide reference to the utility tariffs and commodity price histories used in savings calculations.
      (4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
      (5) Savings estimates must be limited to savings allowed by Government Unit <Name> as described above.
      (6) Percent cost-avoidance projected
      (7) Description and calculations for any proposed rate changes

(8) Explanation of how savings interactions between retrofit options are accounted for in calculations.
(9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment. Describe annual variances in savings from year to year (e.g. lighting, warranties).
(10) If computer simulation is used, include a short description and state key input data. If requested by GOVERNMENT UNIT <NAME>, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Technical Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
(11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
(12) Conclusions, observations, caveats

c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.

(1) Engineering/design costs
(2) ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
(3) Permit costs
(4) Construction management fees
(5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.) Provide emissions reductions data for NOX, CO2 and SO2. Segment emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction data (e.g. electricity/water).
(6) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
(7) Conclusions, observations, caveats
(8) Other cost categories as defined above under "markups" in Section 3b above.

d) Other

(1) Estimate of average useful service life of equipment
(2) Preliminary commissioning plan that addresses each Energy Conservation Measure and that describes the steps that will be taken in the commissioning process.
(3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary M&V plan shall follow the format provided in **Exhibit C: Guidelines for Draft Monitoring and Verification Plan.**
(4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
(5) Compatibility with existing systems. All equipment installed that is comparable to similar equipment at the facilities, shall offer compatibility with existing systems, and/or be of the same manufacturer for standardization of equipment institution-wide, unless excepted by GOVERNMENT UNIT <NAME>. Only controls systems and equipment utilizing BacNet or LonWorks open communications protocols will be allowed. No pneumatic controls system will be allowed; all necessary electrical protection equipment shall be considered and furnished.
(6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

j. **Meet with GOVERNMENT UNIT <NAME>** to:

Review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet Government Unit <Name>'s terms for completing the Technical Energy Audit and Performance Contract Proposal. Discuss the willingness and capability of GOVERNMENT UNIT <NAME> to make capital contributions to the project to improve the economics of the overall project.

k. **Revise Audit as directed by GOVERNMENT UNIT <NAME>**.

l. **Prepare an Energy Savings Performance Contract Proposal (Term Sheet).** In anticipation of ESCO and GOVERNMENT UNIT <NAME> entering into an Energy Savings Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Technical Energy Audit Report, ESCO shall prepare a proposal for terms to be incorporated in an Energy Savings Performance Contract to include:

1) Project Cost is the total amount and the guaranteed maximum price Government Unit <Name> will pay for the project and ESCO's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results); contingency, performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; measurement and verification, performance monitoring fees; training fees; legal services; overhead and profit; other markups, any other related fees (please specify). Provide the ESCO proposed final project cost breakdown as indicated in the following table (Table 1). Fees should include all mark-ups, overhead, and profit. Figures stated as a range will not be accepted. The total value of Hard Costs is defined in accordance with standard AIA definitions that include: Labor Costs, Subcontractor Costs, Cost of Materials and Equipment, Temporary Facilities and Related Items, and Miscellaneous Costs such as Permits, Bonds Taxes, Insurance, Mark-ups, Overhead and Profit, etc.

Table 1: ESCOs PROPOSED FINAL PROJECT COST

Fee Category	Fees Dollar ($) Value	Percentage of Hard Costs
Estimated Value of Hard Costs:		
Project Service Fees		
Investment Grade Energy Audit		
Design Engineering Fees		
Construction Management		
System Commissioning		
Equipment Initial Training Fees		
Project Contingency Costs		
Construction Interest		
DGS Project Management Fee		
Other: Please identify		
Project Service Fees Sub Total		
TOTAL FINANCED PROJECT COSTS:		

PROPOSED ANNUAL SERVICE FEES

First Year Annual Service Fees	Fees[1] Dollar ($) Value	Percentage of Hard Costs
Measurement and Verification		
ENERGY STAR™ Services		
LEED EBOM Services		
Maintenance		
Performance Monitoring		
On-going Training Services		
Verification Reports		
TOTAL FIRST YEAR ANNUAL SERVICES		

2) Include a List of Services that will be provided as related to each cost.
3) Expected term of the Energy Savings Performance Contract.
4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to GOVERNMENT UNIT <NAME> at this time, and based on a 60-day and 90-day lock option.
5) Savings Measurement and calculation formulae; Methodology to adjust baseline. Explanation of how the savings will be calculated and adjusted due to weather (such as cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol.
6) Analysis of annual cash flow for GOVERNMENT UNIT <NAME> during the contract term, include preliminary projected interest rate and capitalized construction interest. Use the ESCO Proposed Final Cash Flow Analysis table 2 below.

Table 2: ESCOs PROPOSED FINAL ANNUAL CASH FLOW ANALYSIS

Yr.	Electric Cost Savings	Fuel Oil Cost Savings	Water Cost Savings	Operational Cost Savings	Other	Total Cost Savings	Guaranteed Cost Savings	Annual Service Fees[3]	Financing Payment	Net Savings
1										
2										
3										
4										
5										
6										
7										

8										
9										
10										
11										
12										
13										
14										
15										

NOTES:
1. Includes: Hard costs and project service fees as defined in ESCO"s PROPOSED PROJECT COST FORM.
2. No payments are made by Agency during the construction period.
3. This figure should equal the value on the ESCOs PROPOSED PROJECT COST FORM. DO NOT include in the Financed Project Costs.

EXHIBIT B
Notice of Acceptance of Technical Energy Audit Report

Notice of Acceptance

Date of Notice _____

Notice is hereby given that *GOVERNMENT UNIT <NAME>* accepts the Technical Energy Audit and Project Development Proposal by ESCO, as contemplated in **Section 2 of the Technical Energy Audit and Project Proposal Contract** dated _____.

GOVERNMENT UNIT <NAME> Name

By _____

Date

When completely executed, this form is to be sent by certified mail to the ESCO by GOVERNMENT UNIT <NAME> Name.

EXHIBIT C
Guidelines for Draft Monitoring and Verification Plan

Measurement & Verification for Performance Contracts

Why Measure and Verify?

Energy Savings Performance Contracts are based on "guaranteed savings." Any authentic guarantee of energy and cost savings includes adequate measurement and verification (M&V) activities.

There are many reasons to use measurement & verification strategies that go far beyond satisfying the law. Properly applied, measurement & verification can:

- Accurately assess energy savings for a project;
- Allocate risks to the appropriate parties;
- Reduce uncertainties to reasonable levels;
- Ensure that Government Unit <Name> achieves utility budget savings;
- Monitor equipment performance;
- Find additional savings;
- Improve operations & maintenance;
- Verify savings guarantee is met;
- Allow for future adjustments, as needed.

Energy Savings Depend on Performance and Usage

There are two fundamental factors that drive energy savings: performance and usage. Performance describes the amount of energy used to accomplish a specific task, and may also be referenced as efficiency or rate of energy use. Usage describes the operating hours, or total time, that a piece of equipment runs.

The energy consumption is generally determined by multiplying performance (or efficiency) by usage (or operating hours). In all cases, both performance and usage factors need to be known to determine energy consumption and savings, as shown in Figure 1.

Savings are determined by comparing the energy use of the pre-retrofit case, called the *baseline*, with the post-retrofit energy use. This means that the performance and usage factors must be known for both the baseline and post-retrofit cases in order to determine energy savings.

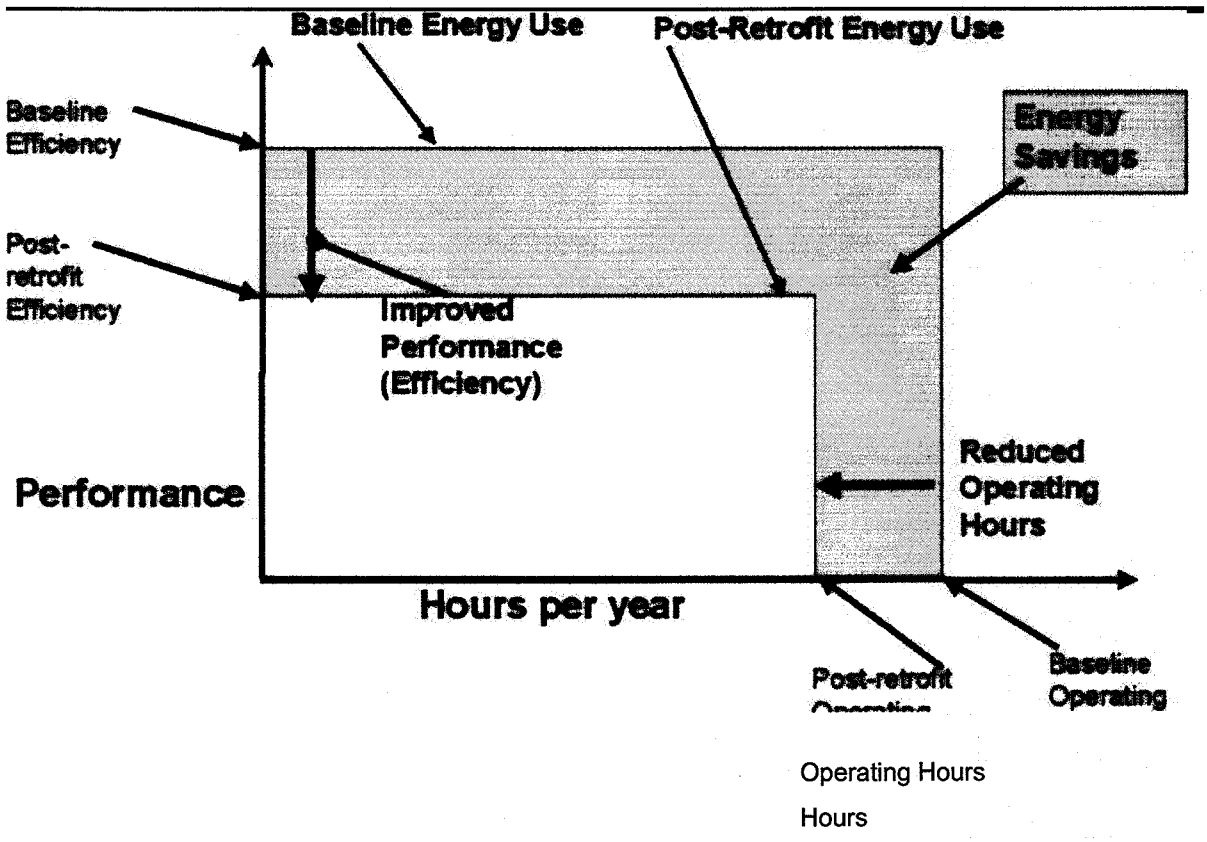


Figure 1: Energy Savings Depend on Performance and Usage

Both performance and usage factors need to be known to determine energy consumption and savings, as shown in Figure 1. Lighting provides a simple example: performance would be the watts required to provide a specific amount of light; usage would be the operating hours per year. Lighting energy used is equal to watts * operating hours.

A chiller is a more complex system: performance is defined as kW/ton, which varies with load; usage is defined by cooling load profile and ton-hours. Chiller energy must be analyzed on an hourly basis because equipment efficiency varies with loading, and is equal to Sum [kW/ton * ton/hours.

Using M&V To Allocate Risk

One of the primary purposes of M&V is to reduce risk to an acceptable level, which is a subjective judgment based on GOVERNMENT UNIT <NAME>'s priorities and preferences. In performance contracts, risks are allocated between the ESCO and the owner. Allocation of risk is accomplished through carefully crafted M&V strategies.

"Risk" in the M&V context refers to the uncertainty that expected savings will be realized. Assumption of risk implies acceptance of the potential monetary consequences. Both ESCOs and agencies are reluctant to assume responsibility for factors they cannot control, and stipulating certain parameters in the M&V plan can assign responsibility to

each party for the parameters they are best able to control. For example, usage factors under GOVERNMENT UNIT <NAME>'s control such as lighting operating hours and thermostat setpoints are typically stipulated. Using stipulations means that the ESCO and Government Unit <Name> agree to use a set value for a parameter throughout the term of the contract, regardless of the actual behavior of that parameter.

If no stipulated values are used and savings are verified based entirely on measurements, then more of the risk resides with the ESCO, who must show that the guaranteed savings are realized, or prove how contributing factors affected the result. Alternatively, Government Unit <Name> assumes the risk for the parameters that are stipulated. In the event that the stipulated values overstate the savings, Government Unit <Name> will not be able to claim the actual shortfall from the ESCO's guarantee. If the actual savings are greater than expected, due to underestimated stipulated values, Government Unit <Name> will benefit from the surplus savings.

Risk related to usage stems from uncertainty in operational factors. For example, savings fluctuate depending on weather, how many hours equipment is used, user intervention, or maintenance practices. Since ESCOs often have no control over such factors, they are usually reluctant to assume usage risk. Government Unit <Name> generally assumes responsibility for usage risk by either allowing baseline adjustments based on measurements, or by agreeing to stipulate equipment operating hours or other usage-related factors.

Performance risk is the uncertainty associated with characterizing of a specified level of equipment performance. The ESCO is ultimately responsible for selection, application, design, installation, and performance of the equipment and typically assumes responsibility for achieving savings related to equipment performance. To validate performance, the ESCO must demonstrate that the equipment is operating as intended and has the potential to deliver the guaranteed savings.

Using stipulations in savings estimates can be a practical, cost-effective way to minimize M&V costs and allocate risks. Stipulations used appropriately do not jeopardize the savings guarantee, Government Unit <Name>'s ability to pay for the project, or the value of the project to the government. However, stipulations shift risk to Government Unit <Name>, and Government Unit <Name> should thoroughly understand the potential consequences before accepting them. Risk is minimized through carefully crafted M&V requirements including diligent estimation of the stipulated values.

Primary Steps To Verify Savings

Regardless of the M&V strategy used, similar steps are taken to verify the potential for the installed energy conservation measures (ECMs) to generate savings. Verifying the potential to generate savings can also be stated as confirming that:

Step 1: The baseline conditions were accurately defined,

Step 2: A suitable project specific M&V plan was developed,

Step 3: Proper equipment/systems were installed and are performing to specification, and

Step 4: The equipment/systems continue to have the potential to generate the predicted savings.

These 4 steps are discussed in detail below.

Step 1: Define The Baseline

Typically the ESCO defines the baseline as part of a Technical Energy Audit. Baseline physical conditions (such as equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, and so on) are typically determined through surveys, inspections, spot measurements, and short-term metering activities. Baseline conditions are established for the purpose of calculating savings by comparing the baseline energy use to the post-installation energy use. Baseline data are used to account for any changes that may occur during the performance period, which may require baseline energy use adjustments. It is Government Unit <Name>'s responsibility to ensure the baseline has been properly defined.

In almost all cases after the measure has been installed, one cannot go back and re-evaluate the baseline. It no longer exists! Therefore, it is very important to properly define and document the baseline conditions. Deciding what needs to be monitored, and for how long, depends on factors such as the complexity of the measure and the stability of the baseline, including the variability of equipment loads and operating hours, and the number of variables that affect the load.

Step 2: Develop Project Specific Measurement & Verification Plan

The project specific M&V plan is developed during contract negotiations. The M&V plan is the single most important item in an energy savings "guarantee."

The project specific M&V plan includes project-wide items as well as details for each ECM, including:

- Details of baseline conditions and data collected
- Documentation of all assumptions and sources of data
- What will be verified
- Who will conduct the M&V activities
- Schedule for all M&V activities
- Discussion on risk and savings uncertainty
- Details of engineering analysis performed
- Detail baseline energy and water rates.
- Provide performance period adjustment factors for energy, water, and O&M rates, if used[3].
- How energy and cost savings will be calculated
- Detail any operations & maintenance (O&M) cost savings claimed
- Define O&M reporting responsibilities

- Define content and format of all M&V reports (Post-Installation Commissioning and M&V, Annual or periodic)
- How & why the baseline may be adjusted
- Define preventive maintenance responsibilities

[3] Use NIST data to determine maximum allowable utility escalation factor. See Energy Escalation Rate Calculator (EERC 1.0-04) at http://www.eere.energy.gov /femp/information/download_blcc.cfm.

Although the M&V plan is usually developed during contract negotiations, it is important that Government Unit <Name>, PREAA and the ESCO agree upon general M&V approaches to be used prior to starting the Technical Energy Audit. The M&V method(s) chosen can have a dramatic effect on how the baseline is defined, determining what activities are conducted during the audit.

It is strongly recommended that the format of M&V plan included in the Technical Energy Audit follows the Annual Report Outline[4] developed by FEMP.

Step 3: Post-Installation Verification

Post-installation verification is conducted by the ESCO, Government Unit <Name>, and PREAA to ensure that proper equipment/systems were installed, are operating correctly, and have the potential to generate the predicted savings. The verification is accomplished through commissioning and M&V activities.

Commissioning of installed equipment and systems will be required. Commissioning ensures that systems are designed, installed, functionally tested in all modes of operation, and capable of being operated and maintained in conformity with the design intent regardless of energy impact. Commissioning will be completed by the ESCO and witnessed by Government Unit <Name>. However, it may be contracted out to a third party.

After system start-up and commissioning activities are completed, the acceptance testing (M&V) activities specified in the contract are implemented. Verification methods may include surveys, inspections, spot measurements, and short-term metering.

The results of the commissioning and M&V activities are usually presented in reports delivered by the ESCO prior to final project acceptance, as discussed below.

Post-Installation and Commissioning Reports

The results of the installation verification activities are presented in a Post-Installation Report delivered by the ESCO to Government Unit <Name> prior to final project acceptance. This report also documents any changes in the contracted project scope and energy savings based on the actual installed conditions. The commissioning report details the commissioning activities conducted to assure equipment was properly installed and is

operating to specification.

For projects using any stipulated values[5] to calculate energy savings, the post-installation verification is the most important M&V step since any measurements to substantiate the savings guarantee are made only once. Thereafter, inspections may be conducted to verify that the 'potential to perform' exists. (FALTA INFORMACION)

[4] FEMP M&V Outlines are available through http://www.eere.energy.gov/femp/financing/superespcs_mvresources.cfm.

[5] Using stipulations means that the ESCO, GOVERNMENT UNIT <NAME>, and PREAA agree to use a set value for a parameter throughout the term of the contract, regardless of the actual behavior of that parameter.

The Post-Installation Report includes:

- Project description
- Installation verification – list of installed equipment
- Details of any changes between Contract and as-built conditions, including energy impacts
- Documentation of all post-install verification activities and performance measurements conducted
- Performance verification – how performance criteria were met
- Expected savings for the first year

The Commissioning Report includes:

- Commissioning results and documentation

It is strongly recommended that the format of the Post-Installation Report follows the Post-Installation Report Outline[6] developed by FEMP.

Step 4: Periodic Performance Period Verification

For at least the first two or three years[7] after installation, the ESCO is required to submit an annual report documenting the savings actually achieved. Inspections should confirm that the installed equipment/systems have been properly maintained, continue to operate correctly, and continue to have the potential to generate the predicted savings. In many cases, equipment performance measurements should be used to substantiate savings.

Sometimes, more frequent verification activities can be appropriate. This ensures that the M&V monitoring and reporting systems are working properly, it allows fine-tuning of measures throughout the year based on operational feedback, and it avoids surprises at the end of the year.

At GOVERNMENT UNIT <NAME> option, the savings guarantee can be extended beyond the legislatively required 2 to 3 years. For more complex projects, ongoing M&V activities can help ensure the persistence of savings.

At the end of each performance year (as specified in the contract), the ESCO submits an Annual Performance Report to demonstrate that the savings have occurred. Typically, only overall savings guarantee has to be met on a cumulative basis for all ECMs. It is appropriate, however, to itemize the 'actual' savings for each ECM.

The Annual Performance Reports should include:

- Results/documentation of performance measurements and inspections
- Realized savings for the year (energy, energy costs, O&M costs, other)
- Comparison of actual savings to the guaranteed amounts
- Details of all analysis and savings calculations, including commodity rates used and any baseline adjustments performed

[6] FEMP M&V Outlines are available through http://www.eere.energy.gov/femp/financing/superespsmvresources.cfm.

- Summary of operations and maintenance activities conducted
- Details of any performance or O&M issues that require attention

It is strongly recommended that the format of Annual Report follows the Annual Report Outline[8] developed by FEM.

M&V Protocols and Methods

Measuring and verifying savings from performance contracting projects requires special project planning and engineering activities. M&V continues to evolve with the performance contracting industry, although common practices exist. These practices are documented in several guidelines including the *International Performance Measurement & Verification Protocol* (IPMVP, 2001), FEMP *M&V Guidelines: Measurement and Verification for Federal Energy Projects,* and ASHRAE *Guideline 14: Measurement of Energy and Demand Savings*.

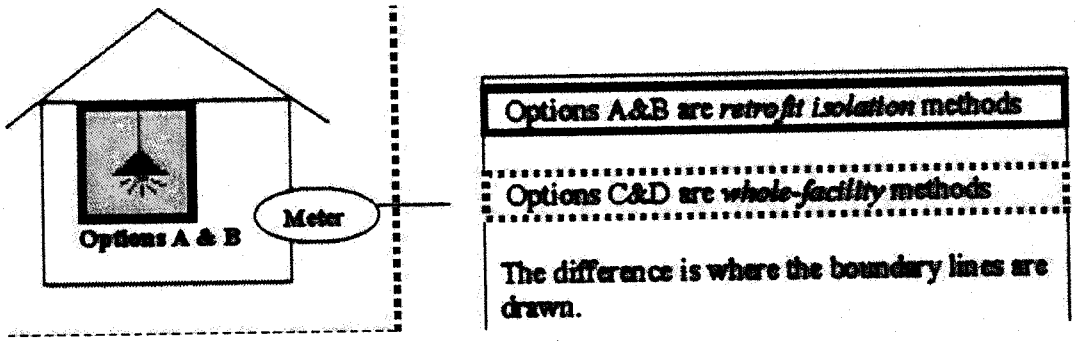
Many industry professionals consider the *International Performance Measurement & Verification Protocol* (IPMVP) the standard protocol for conducting M&V on energy saving projects. IPMVP is available through http://ipmvp.org/.

IPMVP groups M&V methodologies into four categories: Options A, B, C, and D. The options are generic M&V approaches for energy and water saving projects. Having four options provides a range of approaches to determine energy savings depending on the characteristics of the ECMs being implemented, and balancing the accuracy in energy savings estimates with the cost of conducting M&V activities.

M&V approaches are divided into two general types: retrofit isolation and whole facility. Retrofit isolation methods look only at the affected equipment or system independent of the rest of the facility; whole facility methods consider only the total energy use while ignoring specific equipment performance. Options A and B are retrofit isolation methods;

Option C is a whole facility method. Option D can be used as either, but is usually applied as a whole facility method. The differences in these approaches are shown in

Figure 2.



Options C & D
Figure 2: Retrofit Isolation vs. Whole-Facility M&V Methods

The four generic M&V options are described in more detail below. Each option has advantages and disadvantages based on site-specific factors and the needs and expectations of Government Unit <Name>. While each option defines a savings determination approach, all savings are estimates since savings cannot be directly measured. Generally, the accuracy of savings estimates improves as more measurements are used in defining the baseline and monitoring the post-installation conditions. The improved accuracy in savings estimates must be weighed against higher M&V costs.

Option A – Partially Measured Retrofit Isolation

Option A is a retrofit isolation approach designed for projects in which the potential to generate savings must be verified, but the actual savings can be determined from short-term data collection, engineering calculations, and stipulated factors. Post-installation energy use, equipment performance, and usage are NOT measured throughout the term of the contract. Post-installation and baseline energy use is estimated using an engineering analysis of information that does not involve long-term measurements.

The intent of Option A is to verify performance through pre- and post-retrofit measurements. Usage factors can be measured or stipulated based upon engineering estimates, operating schedules, operator logs, typical weather data, or other documented information source. Post-retrofit measurements are made only once. Thereafter, inspections verify that the 'potential to perform' exists. So long as the 'potential to perform' is verified, the savings are as originally claimed and do not vary over the contract term.

Option A methods are appropriate for less complex measures whose performance and operational characteristics are well understood and are unlikely to change. An Option A approach can also be suitable when the value of the measure's cost savings are low.

Examples of projects where Option A may be appropriate include one-for-one lighting replacement measures, high efficiency motors with constant loads, or measures with small percentage of overall cost savings.

Additional information on the proper application of Option A methods are discussed in *Detailed Guidelines for FEMP M&V Option A* available through http://ateam.lbl.gov/mv/docs/OptionADetailedGuidelines.pdf.

Option B – Retrofit Isolation

Option B is a retrofit isolation or system level approach, and requires continuous measurement to provide long-term verification of the savings. This method is intended for retrofits with performance factors and operational factors that can be measured at the component or system level and where long-term performance needs to be verified. Option B is similar to Option A but uses periodic or continuous metering. Short-term periodic measurements can be used when variations in the measured factor are small. Continuous monitoring information can be used to improve or optimize the operation of the equipment over time, thereby improving the performance of the retrofit.

The intent of Option B is to verify performance periodically or continuously with long-term measurements. Usage factors may be stipulated as in Option A or measured continuously.

Option B methods are appropriate for complex systems whose load or operating conditions are not well known or are highly dependent on external factors. Examples of projects where Option B may be appropriate include variable frequency drive installations, modifications to control systems, chiller system upgrades, or measures with high percentage of overall cost savings.

Option C – Whole Facility Energy Use

Option C is a whole-building verification method. Savings are based on actual energy consumption as measured by the utility meter(s) and/or regression modeling. Estimated savings will vary over the contract term.

Option C verification methods determine savings by studying overall energy use in a facility. The evaluation of whole-building or facility-level metered data is completed using techniques ranging from simple billing comparison to multivariate regression analysis. Regression analysis can be used to account for weather and other factors to adjust the baseline and determine savings.

Option C is an appropriate and cost-effective method ONLY if facility operation is stable and savings are expected to exceed 20% of total energy consumption. However, Option C cannot verify the performance of individual measures but can verify the total performance of all measures including interactions

Option C methods are appropriate for projects whose measures have a high degree of

interaction that would be difficult to predict, when overall energy savings are very large, or when dedicated utility meters are available for retrofitted equipment or systems.

Option D – Calibrated Simulation

Option D is primarily a whole-building method but can be used at the component level. Savings are based on the results of a calibrated computer simulation model. Estimated savings may vary over the contract term if real weather data is used.
Option D uses a calibrated computer simulation model of component or whole-building energy consumption to determine energy savings. Linking simulation inputs to baseline and post-installation conditions completes the calibration, and may involve metering performance and operating factors before and after the retrofit. Specialized software packages, such as DOE-2, are used in Option D and the development of accurate building models requires substantial time and expertise.

Option D methods are appropriate for complex projects where complex system interactions need to be tracked. Due to the expense of properly conducting Option D, suitable projects should have substantial cost savings or major building renovations such as window replacements and building insulation.

Recommended Measure Specific M&V Methods

Recommended M&V approaches are provided in this section for some of the most common measures, including: lighting upgrades, variable speed drives, constant speed motors, water measures, controls measures, boiler replacements, and chiller replacements.

Lighting Upgrades

Option A

Measure operating hours for duration of 2 – 3 weeks during audit phase, during non-holiday timeframe.

Use sampling plan with 80 / 20 confidence / precision (11 samples per group). If hours of operation are well documented and stable, then conservative stipulated hours are acceptable if backed up with some monitoring during the audit.

Fixture powers based on standard tables (utility or EPRI lighting tables) only if inventory of equipment is very accurate (including lamp & ballast types); Measure power of unknown or unusual fixture types.

Use diversity factor to determine demand reduction (% lights on during utility peak) Heating penalty, cooling bonus are allowable where appropriate. Provide detailed calculation methodologies.

Variable Speed Drives

Option B

Baseline operating hours should be measured. Baseline power should be measured; spot measurements acceptable for constant loads.

Post-retrofit operating hours and power (or speed) should be continuously measured (by EMCS), since demand savings are not guaranteed with VSDs (100% speed = 100% load).

Adjust the baseline for actual use conditions if needed.

Constant Speed Motors

Option A

Baseline operating hours should be measured. If hours of operation predictable (i.e. 24 hrs/day), stipulate post-retrofit operating hours. If hours of operation are variable or change, measure post-retrofit motor runtime.

Measure baseline and post-retrofit motor powers (depends on load factor, which vary); spot measurements okay for constant loads.

Water Measures

Option C

If metering exists and usage is being affected by more than 20% then use Option C.

Establish statistically significant relationship between use and dependent factors (weather, occupancy and/or other use factors) using regression analysis during audit (R2 >0.8).

Adjust baseline using post-retrofit conditions or normalize post-retrofit data to typical year data.

Option A

Use if Option C is not applicable.

Assume consumption (i.e. flushes/day) and ensure water consumption model accounts for no more than 75% of the water bill (result is conservative load assumptions). If irrigation exists then use winter only data to extrapolate to all months. Measure pre and post-retrofit fixture flow on a sampling basis (80% / 20%).

Controls Measures

Option B Baseline conditions should be verified through short-term measurements (i.e. document operating hours; demonstrate no economizer or reset).

Energy Management Control System (EMCS) should be used to collect all relevant post retrofit load data (i.e. operating hours, actual cooling delivered by economizer, the hours of temperature reset). Use data in engineering calculations to determine savings.

Monthly monitoring of data collection recommended.

Chiller Replacement

Option B

Range of baseline efficiencies should be determined through measurements (kW/ton). If baseline efficiency is stipulated, the original (un-degradated) equipment efficiency should be used.

Use measured data to develop regression for weather vs. load. Post-retrofit: continuously measure load and energy use. Apply baseline efficiency to measured load data to determine savings. Adjust baseline using actual weather or normalize post-retrofit data to typical year weather data.

EXHIBIT D
Cost and Pricing

2.0 COST AND PRICING

Responses to this section only will remain proprietary.

Maximum rates were established for your company in your initial response and later negotiations in contracting with the SEO/EPCP. Propose rates for this specific project that are equal to or less than your company's stated maximum rates, in recognition that rates can vary with the project size, scope and location of the specific project. All other guidelines presented in the initial RFP for presenting markups and fees shall apply.

2.1 Markups

Markups shall be calculated as a percentage added to the base cost for the project. The use of margins in lieu of markups is not acceptable. Use only the categories shown. Ranges for markups are not acceptable.

MARK-UPS		
CATEGORY OF MARK-UP	***MARK-UP APPLICATION***	***% MARK-UP***
Overhead	Applied to all our direct costs of delivering goods & services to each customer. Cost categories are as outlined below.	[redacted]
Profit	Profit Applied to all our direct costs of delivering goods & services to each customer + overhead. Cost categories are as outlined below.	[redacted]
Labor – Internal	Labor – Internal Overhead + profit are applied at the rates listed to ESCO's direct labor costs, including salary and benefits.	[redacted]
Equipment Purchased	Equipment Purchased Overhead + profit are applied at the rates listed to ESCO's direct invoice cost, including shipping and handling to job site.	[redacted]
Materials Purchased	Materials Purchased Overhead + profit are applied at the rates listed to ESCO's direct invoice cost, including shipping and handling to job site.	[redacted]

Subcontract Labor	Overhead + profit are applied at the rates listed to ESCO's direct invoice cost, including subcontractor's overhead.	[redacted]
Subcontract Material	Overhead + profit are applied at the rates listed to our direct invoice cost, including subcontractor's overhead & profit.	[redacted]

2.2 Fees

Use only the categories shown. Ranges for fees are not acceptable.

FEES		
CATEGORY OF FEE	***HOW DETERMINED AND USED***	***YEARS APPLIED (One-time, Annual, etc.)***
Technical Energy Audit and Project Development	[redacted]	One time
Solicit & Evaluate Project Financing Proposals	[redacted]	
Design	[redacted]	One Time
Contingency	[redacted]	One Time
Permits		One Time
Payment and Performance Bond	[redacted]	One Time
Project Management	[redacted]	One Time
Commissioning	[redacted]	One Time
LEED Design and Construction Review Fee as required by the USGBC	[redacted]	One Time

to certify the building		
Training	[redacted]	May be one time or ongoing at Government Unit <Name> 's discretion.
Monitoring and Verification		Ongoing for every year of the guarantee
Warranty Service	[redacted]	One Time
Maintenance on Installed Measures		Ongoing, if selected by GOVERNMENT UNIT <NAME> .



Model Energy Savings Performance Contract

DESCRIPTION –Energy Performance Contract

This Energy Performance Contract is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate this Energy Performance Contract.

MODEL ENERGY SAVINGS PERFORMANCE CONTRACT

APPEAR

AS PARTY OF THE FIRST PART: hereinafter referred to as GOVERNMENT UNIT <NAME>

AS PARTY OF THE SECOND PART: ESCO <NAME>.

RECITALS

WHEREAS, GOVERNMENT UNIT <NAME> owns and operates _____, and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Site; and

WHEREAS, GOVERNMENT UNIT <NAME> has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as herein after defined); and

WHEREAS, ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of GOVERNMENT UNIT <NAME>; and

WHEREAS, ESCO was selected after a determination that its proposal was the most advantageous to GOVERNMENT UNIT <NAME> pursuant to a Request for Proposal and contract for the Technical Energy Audit and Project Development Proposal (as hereinafter defined); and

WHEREAS, ESCO has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in **Schedule B (Description of Project Site(s))**, which was delivered to GOVERNMENT UNIT <NAME> as a Technical Energy Audit Report which GOVERNMENT UNIT <NAME> has approved and is attached as Appendix C; and

WHEREAS, GOVERNMENT UNIT <NAME> desires to retain ESCO to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, GOVERNMENT UNIT <NAME> is authorized under _____as amended, to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, GOVERNMENT UNIT <NAME> and ESCO hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance: The certificate substantially in the form provided in **Appendix A.**

Contract: This Energy Performance Contract and all Schedules and Exhibits attached hereto.

Contract Sum: The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project.

Contract Administrator: The person designated by the Executive Director of the GOVERNMENT UNIT <NAME> to administer the contract.

Energy and Water Cost Savings: The savings as provided in **Schedule C (Energy and Cost Savings Guarantee).**

Energy and Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in **Schedule D (Compensation to ESCO for Annual Service)** and in accordance with the Savings Calculation Formula as set forth in **Schedule F (Savings Measurement and Verification Plan; Methodology to Adjust Baseline).**

Equipment: The goods enumerated on **Schedule A (Equipment to be Installed by ESCO)** that is now or hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

Event of Default: Those events described in **Section 19 (Events of Default)** hereof.

Interim Period: The period from contract execution until the Commencement Date.

Commencement Date: The date described in **Section 3.2 (Commencement Date).**

Project Site(s): The facilities of the GOVERNMENT UNIT <NAME> in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s)

Technical Energy Audit: A study by the qualified energy services provider selected for a particular energy performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements.

Work: Collectively, the Equipment, professional services and project construction to be provided by ESCO as described in Schedule A.

Section 1.2. Technical Energy Audit Report and Project Development Proposal.

ESCO has prepared the complete Technical Energy Audit Report of the Project Site(s) set forth in Appendix C ***(Technical Energy Audit)*** *and* dated _____which has been approved and accepted by GOVERNMENT UNIT <NAME> as set forth in Exhibit III (i) (***Certificate of Acceptance—Technical Energy Audit Report)***. The audit includes all energy conservation measures agreed upon by the parties.

Section 1.3. Schedules, Exhibits and Appendices

This Contract incorporates and makes a part hereof certain Schedules and Exhibits listed below. Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit and the provisions of this Contract.

Schedules

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of Project Site(s)
Schedule C	Energy and Water Cost Savings Guarantee
Schedule D	Compensation to ESCO for Annual Services
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement and Verification Plan; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	GOVERNMENT UNIT <NAME>'s Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	Payment Schedule
Schedule O	Alternative Dispute Resolution Procedures
Schedule P	RESERVED
Schedule Q	Software License Agreement
Schedule R	Annual Reporting Requirements

Exhibits

Exhibit I	Performance Bond
Exhibit II	Labor and Material Payment Bond
Exhibit III (i)	Certificate of Acceptance—Technical Energy Audit Report
Exhibit III (ii)	Certificate of Acceptance—Installed Equipment
Exhibit IV	Equipment Warranties

Appendices

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Technical Energy Audit Report

Section 1.3. Other Documents

This Contract incorporates herein and makes a part hereof the entire RFP and ESCO Proposal for this Project labeled Appendix A and B respectively. Acceptance by the GOVERNMENT UNIT <NAME> of the Technical Energy Audit Report is reflected in Exhibit III (i). Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Appendix A, Appendix B or the Technical Energy Audit Report and the provisions of this Contract.

ARTICLE 2. ENERGY USAGE RECORDS AND DATA

GOVERNMENT UNIT <NAME> has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to ESCO or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance and operations for the Project Site(s).

ARTICLE 3. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 3.1. Purchase and Sale

GOVERNMENT UNIT <NAME> agrees to lease Equipment and/or purchase equipment through a third party financier as provided for in a separate lease document. ESCO agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, as specified in **Schedule A, (Equipment to be Installed by ESCO), Schedule F (Savings Measurement and Verification Plan), Schedule J (ESCO's Maintenance Responsibilities) and Schedule M (ESCO's Training Responsibilities).**

The agreed Contract Sum for the Work is a Fixed Price of $_____. Payment terms are described in **Schedule N (Payment Schedule)**.

ESCO will provide the Work and all related services identified in **Schedule A (Equipment to be Installed by ESCO)** and the services detailed in **Schedule J (ESCO's Maintenance Responsibilities)** and **Schedule D (Compensation to ESCO for Annual Services)**. ESCO shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

GOVERNMENT UNIT <NAME> shall pay ESCO the Contract Sum in accordance with **Schedule N (Payment Schedule)**. Payments will be made on a progress basis in accordance with **Schedule N,** for Work completed and authorized by GOVERNMENT UNIT <NAME> during the Interim Period. Retainer of [redacted] will be withheld from each payment until the construction installation is completed as set forth in **Section 3.2 (Commencement Date)**.

Section 3.2. Commencement Date

The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by GOVERNMENT UNIT <NAME> and ESCO shall have delivered a Notice to GOVERNMENT UNIT <NAME> that it has installed and commenced operating all of the Equipment specified in **Schedule A (Equipment to be Installed by ESCO)** and in accordance with the provisions of **ARTICLE 6 (Construction Schedule and Equipment Installation; Approval), Schedule G (Construction and Installation Schedule)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment);** and GOVERNMENT UNIT <NAME> has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment).** No payment for the ESCO's on-going services (e.g. measurement and verification, project monitoring, maintenance, training etc.) will be made prior to the Commencement Date.

Notwithstanding anything to the contrary in this **Article 3** and **Article 4 (Purchase and Sale; Commencement Date and Terms; Interim Period),** the Commencement Date shall not occur and the GOVERNMENT UNIT <NAME> shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by ESCO in accordance with the terms and conditions of this Contract. GOVERNMENT UNIT <NAME> shall have [redacted] days after notification by the ESCO to inspect and accept the Equipment. GOVERNMENT UNIT <NAME> reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainer, until after the punch list is completed and ESCO has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the GOVERNMENT UNIT <NAME>.

Compensation payments due to ESCO for on-going services and maintenance under this Contract as set forth in **Schedule D (Compensation to ESCO for Annual Services)** shall begin no earlier than the Commencement Date as defined herein.

Section 3.3. Term of Contract; Interim Period

The term of this Contract shall be [redacted] years measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited toward ESCO's guarantee obligation.

ARTICLE 4. SAVINGS GUARANTEE; ANNUAL RECONCILLIATION; PAYMENTS TO ESCO

Section 4.1. Energy and Cost Savings Guarantee

ESCO has formulated and, subject to the adjustments provided for in **ARTICLE 17 (Material Changes),** has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in **Schedule F (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in **Schedule C (Energy and Cost Savings Guarantee)** and has been structured by the ESCO to be sufficient to cover any and all annual payments required to be made by the GOVERNMENT UNIT <NAME> as set forth in **Schedule D (Compensation to ESCO for Annual Services)** and **Schedule N (Financing Agreement and Payment Schedule).**

Section 4.2. Annual Review and Reimbursement/Reconciliation

Energy-related cost savings shall be measured and/or calculated as specified in **Schedule F (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and a report provided within [redacted] of the end of the year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in **Schedule C (Energy and Cost Savings Guarantee),** ESCO shall pay the GOVERNMENT UNIT <NAME>, and PREAA an amount equal to the deficiency.

The ESCO shall remit such payments to the GOVERNMENT UNIT <NAME> within [redacted] of written notice by the GOVERNMENT UNIT <NAME> of its acceptance of the report. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost

Savings Guarantee as set forth in **Schedule C (Energy and Cost Savings Guarantee)** and are in addition to those monies due the ESCO for compensation for services as set forth in **Schedule D (Compensation to ESCO for Annual Services)**, such excess savings shall first be applied to reimburse ESCO for any payment ESCO made to GOVERNMENT UNIT <NAME> to meet ESCO's guarantee for previous years in which the energy savings fell short of ESCO's Energy and Cost Savings Guarantee under the terms as set forth in Schedule C **(Energy and Cost Savings Guarantee)**. In no event shall credit for excess savings be used to satisfy saving guarantees in future years of the Contract

Section 4.3. ESCO Compensation and Fees

ESCO has structured the Energy and Cost Savings Guarantee referred to in Section 4.1 above, to be sufficient to include any and all annual payments required to be made by the GOVERNMENT UNIT <NAME> in connection with financing/purchasing the Equipment to be installed by ESCO under this Contract. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by GOVERNMENT UNIT <NAME> to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedules D (Compensation to ESCO)** and **J (ESCO's Maintenance Responsibilities)**.

Section 4.4. Billing Information Procedure

(i) Payments due to ESCO for on-going services and Measurement and Verification shall be made in accordance with the terms in **Schedule D (Compensation to ESCO for Annual Services)**

Section 4.5. Payment

GOVERNMENT UNIT <NAME> shall pay ESCO within [redacted] of receipt of ESCO's invoice.

Section 4.6. Effective Date of Payment Obligation

Notwithstanding the above provisions in Section 4, GOVERNMENT UNIT <NAME> shall not be required to begin any payments to the financing company under this Contract unless and until all equipment installation is completed by ESCO in accordance with the provisions of **Section 6 (Construction and Equipment Installation; Approval)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment),** and accepted by GOVERNMENT UNIT <NAME> as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**, and unless and until said equipment is fully and properly functioning. ESCO shall not be responsible for any penalties or interest payments related to the financing and ESCO shall be a party to the financing agreement.

ARTICLE 5. FISCAL FUNDING

Section 5.1. Non-appropriation of Funds

In the event that the GOVERNMENT UNIT <NAME>'s have no funds or insufficient funds or other funds appropriated and/or budgeted to other agencies or to the GOVERNMENT UNIT <NAME> are otherwise unavailable, by any means whatsoever, in any fiscal period for which payments are due to the ESCO under this Contract, then the GOVERNMENT UNIT <NAME> will, in not less than [redacted] prior to end to such applicable fiscal period, in writing, notify the ESCO of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations or budget were made without penalty or expenses to the GOVERNMENT UNIT <NAME> of any kind whatsoever, except as to the portions of payments herein agreed upon for which GOVERNMENT UNIT <NAME> and/or other funds shall have been appropriated and budgeted or are otherwise available.

Section 5.2. Non-substitution

In the event of a termination of this contract due to the non-appropriation of funds and/or non-existence of funds to be budgeted, or in the event this Contract is terminated by ESCO due to a default by the GOVERNMENT UNIT <NAME>, the GOVERNMENT UNIT <NAME> agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by ESCO under the terms of this Contract for a period of [redacted] following such default by GOVERNMENT UNIT <NAME>, or termination of this Contract due to non-appropriations.

ARTICLE 6. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 6.1. Construction Schedule; Equipment Installation

Construction and equipment installation shall proceed in accordance with the construction schedule approved by GOVERNMENT UNIT <NAME> and attached as **Schedule G (Construction and Equipment Installation Schedule)**.

Section 6.2. Systems Startup and Equipment Commissioning

The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the GOVERNMENT UNIT <NAME> as specified in **Exhibit III (i) (Certificate of Acceptance)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the GOVERNMENT UNIT <NAME> of the scheduled test(s) and the GOVERNMENT UNIT <NAME> and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting

and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule H**. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to GOVERNMENT UNIT <NAME> acceptance ESCO shall also provide GOVERNMENT UNIT <NAME> with equipment cut sheets as evidence that the Equipment installed is the Equipment specified in **Schedule A (Equipment to be Installed by ESCO)**.

ARTICLE 7. EQUIPMENT WARRANTIES

ESCO warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of [redacted] from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the GOVERNMENT UNIT <NAME> can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Substantial Completion" form fully executed.

After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule J (ESCO's Maintenance Responsibilities)**.

ESCO further agrees to assign to GOVERNMENT UNIT <NAME> all available manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit IV (Equipment Warranties)**; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. ESCO shall, during the warranty period, notify the GOVERNMENT UNIT <NAME> whenever defects in Equipment parts or performance occurs which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the GOVERNMENT UNIT <NAME> or the Project Site(s), due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the GOVERNMENT UNIT <NAME>. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

The warranties set forth herein are exclusive and ESCO'S sole liability hereunder shall be to repair promptly or replace defective equipment or materials. **ESCO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND MATERIALS PROVIDED HEREUNDER.**

ARTICLE 8. TRAINING BY ESCO

The ESCO shall conduct the training program described in **Schedule M (ESCO's Training Responsibilities)** hereto. The training specified in **Schedule M (ESCO's Training Responsibilities)** must be completed prior to acceptance of the Equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at GOVERNMENT UNIT <NAME>'s expense and shall have no effect on prior acceptance of Equipment installation.

ARTICLE 9. PERMITS AND APPROVALS; COORDINATION

Section 9.1. Permits and Approvals

GOVERNMENT UNIT <NAME> shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall GOVERNMENT UNIT <NAME>, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by ESCO shall at all times conform to all federal, state and local code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the GOVERNMENT UNIT <NAME> before the ESCO commences the portion of the work requiring such permit or license.

Section 9.2. Coordination During Installation

The GOVERNMENT UNIT <NAME> and ESCO shall coordinate the activities of ESCO's equipment installers with those of the GOVERNMENT UNIT <NAME>, its employees, and agents, as well as those agencies occupying spaces at [redacted]. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the GOVERNMENT UNIT <NAME> or with those agencies occupying spaces in [redacted] without prior written approval of the GOVERNMENT UNIT <NAME> and GOVERNMENT UNIT <NAME>'s client agencies.

ARTICLE 10. PERFORMANCE BY ESCO

Section 10.1. Corrective Action; Accuracy of the Services

ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule I (Standards of Comfort)** and the construction schedule specified in **Schedule G (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The GOVERNMENT UNIT <NAME> reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of an independent architect or engineer hired by the GOVERNMENT UNIT <NAME>, or the PREAA, the structural integrity of the Project Site(s) or its operating system is or will be harmed. In the event Customer's independent architect or engineer determines that the structural integrity of Customer's property or systems has been or will be harmed by ESCO, then all costs, including such reasonable architect or engineer fees, associated with such corrective action to damage caused by ESCO's breach of its obligations under this Contract shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 10.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

At the end of each year during the guarantee period as specified in **Schedule C (Energy and Water Cost Savings Guarantee)** and no later than [redacted] thereafter, the ESCO shall complete and submit the data required in **Schedule R (Annual Reporting Requirements)**. The ESCO shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period if applicable.

ARTICLE 11: ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

GOVERNMENT UNIT <NAME> recognizes that in connection with the installation and/or service or maintenance of Equipment at GOVERNMENT UNIT <NAME>'s Project Site(s), ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below ((i) through (iv) are collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". GOVERNMENT UNIT <NAME> agrees that if performance of work involves any Excluded Materials and Activities, GOVERNMENT UNIT <NAME> will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event ESCO discovers Hazardous or Excluded Materials,

ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the affected area of the site, and notify the GOVERNMENT UNIT <NAME>. The GOVERNMENT UNIT <NAME> shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work in the affected area of the Project Site(s) except as authorized by the GOVERNMENT UNIT <NAME> in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the GOVERNMENT UNIT <NAME> shall not constitute a default by the GOVERNMENT UNIT <NAME>. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

ESCO is not responsible for determining whether the Work or the temperature, humidity and ventilation settings used by GOVERNMENT UNIT <NAME>, are appropriate for GOVERNMENT UNIT <NAME> and the Project Site with respect to avoiding or minimizing the potential for accumulation, concentration, growth or dispersion of Hazardous Materials.

GOVERNMENT UNIT <NAME> has not retained ESCO to discover, inspect, investigate, identify, prevent or remediate Hazardous Materials or conditions caused by Hazardous Materials.

ESCO SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS OR COSTS THAT RESULT FROM THE EXISTENCE OF HAZARDOUS MATERIALS AT GOVERNMENT UNIT <NAME>'S PREMISES.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this **Section 11.1** that it may bring to the Project Site(s).

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

ESCO will enter into an agreement with an approved PCB ballast disposal ESCO who will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from GOVERNMENT UNIT <NAME>'s PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to GOVERNMENT UNIT <NAME>. ESCO's responsibility shall be for the proper and legal management of any of GOVERNMENT UNIT <NAME>'s PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal ESCO's vehicle for transportation.

ESCO will enter into an agreement with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

GOVERNMENT UNIT <NAME> agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

ARTICLE 12. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 12.1. Ownership of Certain Proprietary Property Rights

GOVERNMENT UNIT <NAME> shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the GOVERNMENT UNIT <NAME> a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the GOVERNMENT UNIT <NAME> to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. ESCO shall not be liable for providing new versions of software or other enhancements if or unless ESCO determines that such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions. GOVERNMENT UNIT <NAME> shall execute a software license in the form of the Software License Agreement attached hereto as Schedule Q. Failure of GOVERNMENT UNIT <NAME> to execute such Software License Agreement shall excuse ESCO from any delivery requirements pursuant to this Agreement and shall be considered a material breach by GOVERNMENT UNIT <NAME>.

Section 12.2. Ownership of Existing Equipment

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the GOVERNMENT UNIT <NAME> even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the GOVERNMENT UNIT <NAME> in writing of all equipment and materials to be replaced at the Project Site(s) and the GOVERNMENT UNIT <NAME> shall [redacted] designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the GOVERNMENT UNIT <NAME> shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials designated by the GOVERNMENT UNIT <NAME> as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

ARTICLE 13. LOCATION AND ACCESS

ESCO acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. GOVERNMENT UNIT <NAME> shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. GOVERNMENT UNIT <NAME> shall provide access to the Project Site(s) for ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the GOVERNMENT UNIT <NAME>. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The ESCO's access to Project Site(s) to make

emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the GOVERNMENT UNIT <NAME>. ESCO shall immediately notify the GOVERNMENT UNIT <NAME> when emergency action is taken and follow up with written notice [redacted] specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

ARTICLE 14. EQUIPMENT SERVICE

Section 14.1. Actions by ESCO

ESCO shall provide all services, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to **Schedule J (ESCO's Maintenance Responsibilities).** GOVERNMENT UNIT <NAME> shall incur no cost for Equipment service, repairs, and adjustments to be performed by ESCO in accordance with Schedule J, except as set forth in **Schedule D (Compensation to ESCO for Annual Services)**, provided, however, that when the need for maintenance or repairs arises due to the negligence or willful misconduct of the GOVERNMENT UNIT <NAME> or any employee or other agent of GOVERNMENT UNIT <NAME> or any third party, ESCO may charge GOVERNMENT UNIT <NAME> for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds. GOVERNMENT UNIT <NAME> shall be responsible for and shall bear all costs associated with service, repairs and adjustments to the Equipment which are not included in the scope of services to be provided by ESCO under Schedule J.

Section 14.2. Malfunctions and Emergencies

GOVERNMENT UNIT <NAME> shall use its best efforts to notify the ESCO or its designated subcontractors [redacted] after the GOVERNMENT UNIT <NAME>'s actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

Where GOVERNMENT UNIT <NAME> exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify a such conditions as having a material impact upon the guaranteed energy savings. GOVERNMENT UNIT <NAME> shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. For emergency services provided under Schedule J, ESCO shall respond or cause its designee(s) shall respond [redacted] and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by GOVERNMENT UNIT <NAME> shall be followed within three business days by written notice to ESCO from GOVERNMENT UNIT <NAME>. If GOVERNMENT UNIT <NAME> unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge GOVERNMENT UNIT <NAME> for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 14.3. Actions by GOVERNMENT UNIT <NAME>

GOVERNMENT UNIT <NAME> shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in **Schedule K (GOVERNMENT UNIT <NAME>'s Maintenance Responsibilities)**. Notwithstanding the foregoing, GOVERNMENT UNIT <NAME> may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, GOVERNMENT UNIT <NAME> shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. GOVERNMENT UNIT <NAME> agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 15. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 15.1. Modification of Equipment

During the Term of this Contract, GOVERNMENT UNIT <NAME> will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

Section 15.2. Upgrade or Alteration of Equipment

ESCO shall at all times have the right, subject to GOVERNMENT UNIT <NAME>'s prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the GOVERNMENT UNIT <NAME> for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The ESCO shall have the right to update any and all software to be used in

connection with the Equipment in accordance with the provisions of **Section 12.1 (Ownership of Certain Proprietary Rights)** and **Schedule J (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule A (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Section 6 (Construction Schedule and Equipment Installation; Approval)**.

ARTICLE 16. STANDARDS OF COMFORT

ESCO will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in **Schedule I (Standards of Comfort)**. During the term of this Contract, ESCO and GOVERNMENT UNIT <NAME> will maintain, according to **Schedule J (ESCO's Maintenance Responsibilities)** and **Schedule K (GOVERNMENT UNIT <NAME>'s Maintenance Responsibilities),** and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule I**.

ARTICLE 17. MATERIAL CHANGES

Section 17.1. Material Change Defined

A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule E (Baseline Energy Consumption)** and **Schedule F (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** by [redacted] of the Guaranteed Energy Savings per utility meter or submeter after adjustments for climatic variations. Actions by the GOVERNMENT UNIT <NAME> which may result in a Material Change include but are not limited to the following:

(i) manner of use of the Project Site(s) by the GOVERNMENT UNIT <NAME>; or
(ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
(iii) Permanent changes in the comfort and service parameters set forth in **Schedule I (Standards of Comfort)**; or
(iv) occupancy of the Project Site(s); or
(v) structure of the Project Site(s); or
(vi) types and quantities of equipment used at the Project Site(s) or
(vii) modification, renovation or construction at the Project Site(s); or
(viii) the GOVERNMENT UNIT <NAME>'s failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K (GOVERNMENT UNIT <NAME>'s Maintenance Responsibilities)**; or
(ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,

(x) casualty or condemnation of the Project Site(s) or Equipment, or
(xi) changes in utility provider or utility rate classification, or
(xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
(xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

Section 17.2. Reported Material Changes; Notice by GOVERNMENT UNIT <NAME>

The GOVERNMENT UNIT <NAME> shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) [redacted] before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the GOVERNMENT UNIT <NAME> [redacted] after having actual knowledge that the event constituting the Material Change occurred or was discovered by the GOVERNMENT UNIT <NAME> to have occurred.

Section 17.3. Other Adjustments

As agreed in Section 17.1 GOVERNMENT UNIT <NAME> will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. In the absence of any Material Changes in the Premises or in their operations, energy consumption and demand should not change from year to year. Therefore, if energy consumption and demand per utility meter or submeter for any month increases by [redacted] of the Guaranteed Savings per meter or more from the energy consumption and demand for the same month of the *preceding* contract year after adjustment for changes to climactic conditions, then such increase shall be deemed to have resulted from a Material Change, except where such increase is due to equipment malfunction, faulty repair or other acts of negligence by ESCO. At GOVERNMENT UNIT <NAME>'s option and additional expense, the ESCO will work with GOVERNMENT UNIT <NAME> to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, ESCO shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule F (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and **Schedule E (Baseline Energy Consumption)**. Any disputes between the GOVERNMENT UNIT <NAME> and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of Schedule O ***(Alternative Dispute Resolution Procedures)*** hereto.

ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Section 18.1. At all times during the term of this Contract, ESCO shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (ESCO) working to fulfill this Contract, and (2) Casualty and Liability Insurance

on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than [redacted] for injury to or death of one person in a single occurrence and [redacted] for injury to or death of more than one person in a single occurrence and [redacted] for a single occurrence of property damage. Such policies shall name the GOVERNMENT UNIT <NAME> as an additional insured.

Prior to commencement of work under this Contract, ESCO will be required to provide GOVERNMENT UNIT <NAME> with current certificates of insurance specified above. These certificates shall contain a provision that coverage's afforded under the policies will not be canceled or reduced below the limits of coverage stated herein until [redacted] prior written notice has been given to GOVERNMENT UNIT <NAME>.

Section 18.2. ESCO shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury to the extent such damage or injury occurs as a result of ESCO's negligent performance under this Contract.

Section 18.3. ESCO shall save and hold harmless GOVERNMENT UNIT <NAME> and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature to the extent such claims, demands, actions or liability are caused by the negligence of ESCO, its agents or employees under this Contract.

Section 18.4. Notwithstanding anything to the contrary in this Contract, neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

Section 18.5 Risk of loss for all equipment and materials provided by ESCO hereunder shall transfer to GOVERNMENT UNIT <NAME> upon installation at GOVERNMENT UNIT <NAME>'s premises.

ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon [redacted] to the performing party, in which event neither party shall have any further liability to the other, except that GOVERNMENT UNIT <NAME> shall pay ESCO for work performed prior to termination.

ARTICLE 20. EVENTS OF DEFAULT

Section 20.1. Events of Default by GOVERNMENT UNIT <NAME>

Each of the following events or conditions shall constitute an "Event of Default" by GOVERNMENT UNIT <NAME>:

(i) any failure by GOVERNMENT UNIT <NAME> to pay ESCO any sum due for a service and maintenance period of [redacted] after written notification by ESCO that GOVERNMENT UNIT <NAME> is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or

(ii) any other material failure by GOVERNMENT UNIT <NAME> to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure [redacted] after notice to GOVERNMENT UNIT <NAME> demanding that such failures to perform be cured or if such cure cannot be effected in [redacted], GOVERNMENT UNIT <NAME> shall be deemed to have cured default upon the commencement of a cure within [redacted] and diligent subsequent completion thereof;

(iii) any representation or warranty furnished by GOVERNMENT UNIT <NAME> in this Contract which was false or misleading in any material respect when made.

Section 20.2. Events of Default by ESCO

Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

(iv) the standards of comfort and service set forth in **Schedule I (Standards of Comfort)** are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within [redacted] after written notice by GOVERNMENT UNIT <NAME> to ESCO demanding that such failure be cured, shall be deemed cured for purposed of this Contract, or if such cure cannot be effected in [redacted], ESCO shall be deemed to have cured default upon the commencement of a cure within [redacted] and diligent subsequent completion thereof.

(v) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;

(vi) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in **Schedule A (Equipment to be Installed by ESCO)** and **Schedule G (Construction and Installation Schedule),** taking into account any extensions of time allowed by the terms of this Contract;

(vii) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule I (Standards of Comfort)** are maintained, any material failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within [redacted] after written notice by the GOVERNMENT UNIT <NAME> to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;

(viii) any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of ESCO which is not released or addressed by a bond provided by ESCO within [redacted] of written notice to ESCO;

(ix) the filling of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within [redacted] of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.

(x) Material failure by the ESCO to pay any amount due the GOVERNMENT UNIT <NAME> or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in Schedule C **(Energy and Cost Savings Guarantee)** provided that such failure continues for [redacted] after notice to ESCO demanding that such failures to perform be cured or if such cure cannot be effected in such [redacted], ESCO shall be deemed to have cured default upon the commencement of a cure within such [redacted] and diligent subsequent completion thereof.

ARTICLE 21. REMEDIES UPON DEFAULT

Section 21.1. Remedies upon Default by GOVERNMENT UNIT <NAME>

If an Event of Default by GOVERNMENT UNIT <NAME> occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one of the following remedies:

(i) exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by GOVERNMENT UNIT <NAME>, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy including attorney's fees;

Section 21.2. Remedies Upon Default by ESCO

In the Event of Default by ESCO, GOVERNMENT UNIT <NAME> shall have the choice of either one of the following remedies in law or equity:

(i) exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees;

ARTICLE 22. ASSIGNMENT

The ESCO acknowledges that the GOVERNMENT UNIT <NAME> is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the GOVERNMENT UNIT <NAME>.

Section 22.1. Assignment by ESCO

The ESCO may, with prior written approval of the GOVERNMENT UNIT <NAME>, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall fully comply with the terms of this Contract. ESCO shall provide GOVERNMENT UNIT <NAME> with a list of subcontractors ESCO intends to use. Within

five days of receipt of the list of subcontractors, GOVERNMENT UNIT <NAME> shall advise ESCO in writing of any reasonable objections or concerns GOVERNMENT UNIT <NAME> has regarding the subcontractors selected by ESCO. In the event GOVERNMENT UNIT <NAME> notifies ESCO of objections or concerns regarding subcontractor selections, ESCO will work to resolve the issue in a way acceptable to both Parties, either by contracting with an alternative subcontractor, if practical, or by otherwise addressing the GOVERNMENT UNIT <NAME>'s concerns. Notwithstanding the provisions of this paragraph, the ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the GOVERNMENT UNIT <NAME> for all of its obligations under this Contract.

Section 22.2. Assignment by GOVERNMENT UNIT <NAME>

GOVERNMENT UNIT <NAME> may, with prior written approval of the ESCO, which consent shall not be unreasonably withheld, transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The GOVERNMENT UNIT <NAME> shall remain jointly and severally liable with its assignees or transferees to the ESCO for all of its obligations under this Contract.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

(i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES

Section 24.1

GOVERNMENT UNIT <NAME> hereby warrants, represents and promises that:

(i) it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). GOVERNMENT UNIT <NAME> shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter [redacted] after execution thereof.

Section 24.2

ESCO hereby warrants, represents and promises that:

(i) before commencing performance of this Contract:

(a) it shall have become licensed or otherwise permitted to do business in Puerto Rico

(b) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;

(ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(iii) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;

(iv) The Equipment will meet or exceed the provisions set forth in **Section 6.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**.

(v) The Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

(v) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS

Section 25.1. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds

Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond, if applicable).**

Section 25.2. Further Documents

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 25.3 GOVERNMENT UNIT <NAME>'s Responsibilities

(a) Methods of Operation by GOVERNMENT UNIT <NAME>

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by GOVERNMENT UNIT <NAME> on a regular and continuous basis.

(b) GOVERNMENT UNIT <NAME> Maintenance Responsibilities

GOVERNMENT UNIT <NAME> agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule K (GOVERNMENT UNIT <NAME> Maintenance Responsibilities)**, to be attached hereto and made a part hereof upon GOVERNMENT UNIT <NAME>'s signature on the Contract. [Schedule K will be a part of the contract so it will already have been reviewed and approved by GOVERNMENT UNIT <NAME>]

(c) Inspection of Project Site(s)

GOVERNMENT UNIT <NAME> agrees that ESCO shall have the right, with prior notice, to inspect Project Site(s) to determine if GOVERNMENT UNIT <NAME> is complying, and shall have complied with its obligations as set forth in **Section 25.3(b).** For the purpose of determining GOVERNMENT UNIT <NAME>'s said compliance, the checklist to be set forth at **Schedule L (Facility Maintenance Checklist)** as completed and recorded by ESCO during its inspections, shall be used to measure and record GOVERNMENT UNIT <NAME>'s said compliance. GOVERNMENT UNIT <NAME> shall make the Project Site(s) available to ESCO for and during each inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. GOVERNMENT UNIT <NAME> may complete its own checklist at the same time. ESCO agrees to not interfere with the GOVERNMENT UNIT <NAME>'s operations during any inspection.

Section 25.4. Waiver Of Liens

ESCO will obtain and furnish to GOVERNMENT UNIT <NAME> a final Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

ARTICLE 26: CONFLICTS OF INTEREST

Section 26.1 Conflicts of Interest

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

ARTICLE 27. COMPLETE CONTRACT

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written amendment signed by the parties.

ARTICLE 28. APPLICABLE LAW

This Agreement will be interpreted according to the laws of the Commonwealth of Puerto Rico. Should any clause of this Agreement be declared null or void, the remaining portions of this Agreement shall continue to be binding on the parties as written. If a conflict exists between the laws, which apply to the interpretation of this Agreement, in the absence of clear preemption by Federal Laws, the Laws of Puerto Rico, shall prevail.

ARTICLE 29. INTERPRETATION OF CONTRACT

The GOVERNMENT UNIT <NAME> shall have the authority to determine questions of fact that arise in relation to the interpretation of this Contract and the ESCO'S performance hereunder. However, such determinations are subject to the revision of the Courts of the Commonwealth of Puerto Rico. Unless the Parties agree otherwise, or the Work cannot be

continued without a resolution of the question of fact, such determinations and any legal procedures shall not be cause for delay of the Work. The ESCO shall proceed diligently with the performance of this Contract and in accordance with the GOVERNMENT UNIT <NAME>'s decision whether or not the ESCO or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the ESCO.

ARTICLE 30 – Ultra Vires Clause:

Consonant with the laws and regulations that govern the covenant of services, the parties agree herein that no services will be rendered until all parties duly sign this Agreement. Services rendered in violation of this clause will not be paid, since any person that request and accepts the services from the other party in violation of this condition is doing so without legal authority. Notwithstanding anything to the contrary herein, GOVERNMENT UNIT <NAME> acknowledges that ESCO has performed services including, but not limited to, solution development, design and engineering work in conjunction with performance of the Technical Energy Audit and GOVERNMENT UNIT <NAME> recognizes that ESCO shall be paid for such services under this Contract.

ARTICLE 31 – Relationship Between Parties: THE CONTRACTOR is an independent contractor and as such neither its employees or its subcontractors are agents, employees or representatives of THE GOVERNMENT UNIT <NAME>.

ARTICLE 32. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO:

[redacted]

TO GOVERNMENT UNIT <NAME>:
GOVERNMENT UNIT <NAME> [redacted]
[redacted] GOVERNMENT UNIT <NAME> [redacted]

ARTICLE 32- Performance Bond and Labor and Material Payment Bond

Unless otherwise specified in the Contract Documents, the ESCO shall furnish a Performance Bond in an amount equal to [redacted] of the Contract Sum as security for the faithful performance of this contract and also labor and Material Payment Bond in an amount not less than [redacted] of the Contract Sum as a security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Labor and Material Payment Bond shall be

delivered to the GOVERNMENT UNIT <NAME> no later than the date of execution of the Contract.

ARTICLE 33- Royalties and Patents

The ESCO shall pay all royalties and license fees. The ESCO shall defend or, at its option, settle all suits or claims that may be instituted against GOVERNMENT UNIT <NAME> for alleged infringement of any United States patents related to the hardware manufactured and provided by ESCO, provided that: 1. Such alleged infringement consists only in the use of such hardware by itself as installed by ESCO and not as part of, or in combination with, any other devices, parts or software not provided by ESCO hereunder; 2. GOVERNMENT UNIT <NAME> gives ESCO immediate notice in writing of any such suit and permits ESCO, through counsel of its choice, to answer the charge of infringement and defend such suit; and 3. GOVERNMENT UNIT <NAME> gives ESCO all needed information, assistance and authority, at ESCO's expense, to enable ESCO to defend such suit. If such a suit has occurred, or in ESCO's opinion is likely to occur, ESCO may, at its election and expense: obtain for GOVERNMENT UNIT <NAME> the right to continue using such equipment; or replace, correct or modify it so that it is not infringing; or remove such equipment and grant GOVERNMENT UNIT <NAME> a credit therefore. In the case of a final award of damages in any such suit, ESCO will pay such award. ESCO shall not, however, be responsible for any settlement made without its written consent.

ARTICLE 34-Hold Harmless Agreement

The ESCO and its insurer shall save, defend and hold harmless the GOVERNMENT UNIT <NAME> from and against any and all claims, demands and/ or suits, to the extent such claims, demands and/or suits are caused by the negligence or willful misconduct of ESCO.

ARTICLE 35 – <u>Required Certifications:</u>

THE ESCO hereby certifies that at the execution of this Agreement, it has filed income tax returns in the Commonwealth of Puerto Rico during the past five (5) years.

The ESCO also certifies that it does not have any undisputed outstanding debts with the Commonwealth of Puerto Rico to include income taxes, real or chattel property taxes, unemployment insurance premiums, worker's compensation payment and Driver's Social Security, or in case it has debts related to one (or more) of the aforementioned premiums, has an installment plan (s) which is (are) being complied with.

The ESCO also certifies that it has no alimony obligation, or it has alimony obligation, with which it is complying. A corporation might not have to comply with this requirement.

It is expressly acknowledged that these are essential conditions of this Contract because they are required by law and by Executive Orders. If any of these certifications are incorrect, the GOVERNMENT UNIT <NAME> shall have cause for the immediate termination of the Agreement, and the ESCO shall have to reimburse any amount of money received under this Contract. Prior to the execution of this Contract, the ESCO shall present to THE

GOVERNMENT UNIT <NAME> the corresponding certifications issued by the Department of the Treasury, the Department of Labor and Human Resources, and the Municipal Revenues Collection Center, (known by its Spanish acronyms, CRIM).

ARTICLE 36 – Definition Tax Debt:

For purposes of this Contract, tax debt shall mean any debt that the ESCO or other parties which THE GOVERNMENT UNIT <NAME> authorizes the ESCO to subcontract may have with the Commonwealth of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license right, tax withholdings for payment of salaries, taxes on the payment of interest dividends, and income to individuals, corporations and nonresident partnerships, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers compensation payments, and Driver's Social Security.

ARTICLE 37 – Tax Documents:

If the contracted party does not deliver the corresponding documents from the Department of the Treasury (Income Tax), Department of Labor and Human Resources (Unemployment Insurance Temporary Disability, and/or Social Security for drivers), and/or the Municipal Revenues Collection Center ("CRIM") (tax on real property and/or chattels) within the next sixty (60) days from the execution of the present contract, then the same (present contract) shall be terminated without any further need of any kind of notice, without any right to receive any payment that may be due, and that any payment that may be due shall be transferred to the corresponding governmental instrumentality, so that it may make the appropriate credit. If the contracted party owes any money to the Department of the Treasury (Income Tax), Department of Labor and Human Resources (Unemployment Insurance, Temporary Disability and/or Social Security for Drivers), and/or Municipal Revenues Collection Center ("CRIM") tax on real property and/or chattels), it hereby authorize the Authority to retain any amount due, and the same shall be transfered to the corresponding governmental instrumentality, so that it may make the appropriate credit, unless it (the contracted party) has disputed the amount of the tax or has accepted a payment plan, is current, and has submitted authentic evidence to that effect.

ARTICLE 38 - Withholdings Prescribed by Law:

THE ESCO is an independent contractor. Because of this, THE GOVERNMENT UNIT <NAME> is under no obligation to make withholdings in relation to ESCO's employees. THE CONTRACTOR is responsible for complying with the Social Security Laws, Workmen's Compensation Insurance and all other applicable laws or regulations.

ARTICLE 39 – Tax Retention:

Regarding Circular Letter 02-09 of June 28, 2002, Contractor has submitted to THE GOVERNMENT UNIT <NAME> document SC-2756 (Total Release of the Original Retention upon payments for Services Rendered by Corporations) issued by Puerto Rico Department of the Treasury so additional retention is not necessary. THE GOVERNMENT UNIT <NAME> will

notify to Puerto Rico Department of the Treasury the sum of money paid to the ESCO by virtue of this Contract.

ARTICLE 40 – Relationship between Parties:

The ESCO is an independent contractor and as such neither its employees nor its subcontractors are agents, employees or representatives of the GOVERNMENT UNIT <NAME>.

ARTICLE 41 – Discrimination:

Both parties agree not to discriminate for reasons of race, color, sex, origin or social condition, age, political or religious belief, handicap, or any other reason during the performance of this Contract.

ARTICLE 42 – Prior Agreements:

This Contract shall supersede any prior agreement and shall prevail over any related agreement or document, including the corresponding appendices.

ARTICLE 43 – Amendments:

It is understood that this Contract, including the corresponding appendices, is the sole agreement between the parties herein with regard to the services covered hereby and may not be changed orally, but may be amended in writing, by mutual agreement of the parties.

ARTICLE 44 - Claims for Concealed or Unknown Conditions

If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Installation Schedule shall be made by a Change Order. If agreement cannot be reached by the Parties, the party seeking an adjustment in the Price or Installation Schedule may assert a claim for the adjustment.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized representatives on the date first above written.

(Corporate Seal)

ATTEST:

(GOVERNMENT UNIT <NAME>)

_____ By_____

(ESCO)

_____ By: _____

CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

SCHEDULE A. EQUIPMENT TO BE INSTALLED BY ESCO

Schedule A: This schedule should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). This schedule should also describe any modifications that may have been made to existing equipment, if applicable.

SCHEDULE B. DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY

This schedule contains basic information about the condition of the Project Site(s) at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract.

SCHEDULE C. ENERGY SAVING GUARANTEE

This schedule should fully describe all provisions and conditions of the energy saving guarantee provided by the ESCO. The guarantee should be defined in units of energy to be saved for the duration of the contract term. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation See Section 4.2).

SCHEDULE D. COMPENSATION TO ESCO FOR ANNUAL SERVICES

This should contain the amount and frequency of any payments that may be made to the ESCO for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure will also likely be included to cover ESCO costs for any services provided beyond the scope agreed to at the time of contract execution.

SCHEDULE E. BASELINE ENERGY CONSUMPTION

The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline should be located in this schedule including unit consumption and current utility rates for each fuel type. This schedule may also include baseline documentation regarding

other cost savings such as material savings (e.g. bulbs, ballasts, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts.

SCHEDULE F. SAVINGS MEASUREMENT AND VERIFICATION PLAN; METHODOLOGY TO ADJUST BASELINE

This schedule contains a description of the energy savings measurement, monitoring, and calculation procedures used to verify and compute the savings performance of the installed equipment will be contained in this schedule. This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. should be explicitly described for all equipment installed.

Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies y used to account for any adjustments to the baseline needs to be clearly defined in this schedule.

SCHEDULE G. CONSTRUCTION AND INSTALLATION SCHEDULE

The timetables and milestones for project construction and installation should be contained in this schedule. If so desired, documentation of required insurance, subcontractor lists and any MBE/WBE required subcontracts may be included in this schedule or broken out into a separate schedule. NOTE: It is important that the construction/installation phase of the project be treated in compliance with individual GOVERNMENT UNIT <NAME> requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

SCHEDULE H. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

This section should specify the performance testing procedures that will be used start-up and commission the installed equipment and total system. The schedule should also provide for the GOVERNMENT UNIT <NAME> to be notified of and present during all commissioning procedures. This schedule should contain a provision for the documentation of the client's attendance at the various tests and their approval that the tests followed the specified procedures and met or exceed the expected results.

The operating parameters should contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

SCHEDULE I. STANDARDS OF COMFORT

The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility should be explicitly described in this schedule.

SCHEDULE J. ESCO'S MAINTENANCE RESPONSIBILITIES

A complete description of the ESCO's specific operations and maintenance responsibilities should be included in this schedule along with the time intervals for their performance of the stated O&M activities.

SCHEDULE K. GOVERNMENT UNIT <NAME>'S MAINTENANCE RESPONSIBILITIES

This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.

SCHEDULE L. FACILITY MAINTENANCE CHECKLIST

This checklist is a method by which the ESCO may record and track the GOVERNMENT UNIT <NAME>'s compliance with any of the maintenance procedures being performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and GOVERNMENT UNIT <NAME> to verify that the required maintenance activities are being performed at the scheduled intervals).

SCHEDULE M. ESCO'S TRAINING RESPONSIBILITIES

The description of the ESCO's training program or sessions for facility personnel should be contained in this schedule. As well, the duration and frequency of the specified training should also be included. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades should also be described. Any fees associated with the client's request for training beyond what the ESCO is contractually bound to provide should also be specified.

SCHEDULE N. PAYMENT SCHEDULE

SCHEDULE O. ALTERNATIVE DISPUTE RESOLUTION

This schedule describes methods for resolving disputes or claims relating to construction or the contract, wherein the parties agree to exercise good faith efforts (e.g., mediation, dispute resolution board) and to only use litigation as a last resort. This schedule is included as an alternative to costly binding arbitration and litigation.

SCHEDULE P. RESERVED

SCHEDULE R. ANNUAL REPORTING REQUIREMENTS

This schedule summarizes the project and contains the energy, water and operational cost savings (in dollars and MMBTUs) for the annual reporting period. In addition, annual emission reductions and ENERGY STAR rating (if applicable) are also located in this schedule. This summary information is useful for tracking and reporting on annual project performance. (See attached Schedule R)

EXHIBITS

EXHIBIT I	PERFORMANCE BOND/CONSTRUCTION BOND
EXHIBIT II	LABOR AND MATERIAL PAYMENT BOND ***if required***
EXHIBIT II (i)	CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT
EXHIBIT II (ii)	CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT
EXHIBIT III	EQUIPMENT WARRANTIES

APPENDICES

APPENDIX A	RFP FOR ESCO SOLICITATION
APPENDIX B	ESCO PROPOSAL
APPENDIX C	TECHNICAL ENERGY AUDIT REPORT

NOTE: THESE SCHEDULES CAN BE INCLUDED AS OPTIONAL AND INCLUDED OR COMBINED WITH OTHERS OR MAY BE CONTAINED IN THE AUDIT REPORT AS DESIRED.

PRE-EXISTING SERVICE CONTRACTS

Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the client and ESCO information about how and when the existing equipment is being serviced. As well, if the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will useful in tracking the performance of the ESCO in providing the required services and documenting any attributable cost savings.

ENERGY SAVINGS PROJECTIONS

This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure by measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

FACILITY CHANGES CHECKLIST

A "Facility Changes Checklist" or other method may be provided by the ESCO for the GOVERNMENT UNIT <NAME> to notify the ESCO of any changes in the facility that could have an impact on energy consumption (e.g. occupancy, new equipment acquisition, hours of use etc.). This checklist is generally submitted on a monthly basis or quarterly basis.

CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

Schedule R- Annual Reporting Requirements

GOVERNMENT UNIT <NAME> Name/GOVERNMENT UNIT <NAME> Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
ESCO Name/ESCO Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/Contract Start Date/Contract End Date	
Current Repayment Year	
Reporting Timeframe	
Installed Project Cost (no financing costs)	
Total Contract Value of Guaranteed Savings	
Annual Value of Guaranteed Savings	
Measured Energy Savings	
Operational Savings	
Avoided Capital Cost (if applicable)	
Annual Dollar Value of Achieved Savings	
Total Annual Achieved Energy Savings (MMBTU)	
Electric	
Natural Gas	
Oil	
Coal	
Steam	
Other	
Annual Water Savings (kgal)	
Annual Avoided NOx Emissions (Tons)	
Annual Avoided SOx Emissions (Tons)	
Annual Avoided CO2 Emissions (Tons)	
ENERGY STAR Rating (if applicable)	