
ATTACHMENT A

ESCO BASE CONTRACT FOR AS-NEEDED ENERGY PERFORMANCE CONTRACTING SERVICES



The Energy Services Coalition offers a collection of model procurement and contracting documents that represent Best Practices for state energy offices (SEOs) to launch and administer programs to increase energy efficiency through energy performance contracting. The documents draw from successful programs in various states and are continually updated to incorporate the latest strategies. They can be easily customized to meet the needs of any SEO or similar government department.

DESCRIPTION –ESCO Base Contract for As-Needed Energy Performance Contracting Services:

The contract is between the ESCO and the State Energy Office (or other entity managing a performance contracting program). It establishes requirements for each ESCO that is pre-qualified to provide performance contracting services for the program. Requirements include data reporting, following prescribed guidelines to solicit projects, and adhering to the maximum rates proposed in the initial response and/or as agreed to in this contract. The contract also establishes the State Energy Office (or other government entity) as the program manager with authority to oversee the involvement of ESCOs.

This contract follows a solicitation to pre-qualify ESCOs. (See the parallel contract between the SEO and the facility owner.)

ATTACHMENT A

**ESCO BASE CONTRACT FOR AS-NEEDED ENERGY
PERFORMANCE CONTRACTING SERVICES**

Firm Name _____

Contact Person _____

Full Address _____

Phone; Fax _____

ATTACHMENT 1: Cost and Pricing

ATTACHMENT 2: Contract Renewal Option Letter

ATTACHMENT 3: Project Metrics Report for SEO

CONTRACT ROUTING NO. _____

**BASE AGREEMENT ESCO CONTRACT
FOR AS-NEEDED ENERGY PERFORMANCE
CONTRACTING SERVICES**

NOTE: This agreement will be reviewed by the Office of Attorney General and will be modified as needed to comply with state requirements; however, the general intent will remain the same.

THIS AGREEMENT made this [] day of [] in the year [] between the [] (State Energy Office), hereinafter called SEO, and [] (ESCO), hereinafter called the Contractor.

WHEREAS, SEO, through its Energy Performance Contracting Program (EPCP), used a state-approved RFP process to select ESCOs to provide as-needed energy performance contracting services;

WHEREAS, SEO will maintain a list of pre-qualified ESCOs that are eligible for final selection by the state's state and local governments to provide performance contracting services.

NOW, THEREFORE, it is agreed that:

1. Entire Agreement

The entire contract consists of the Base Agreement ESCo Contract, ESCo Response To Request For Proposals For As-Needed Energy Performance Contracting Services, SEO Secondary ESCo Selection Process, SEO Technical Energy Audit & Project Proposal Contract, SEO Energy Performance Contract, SEO Financing Bid Package, and any SEO Facility Owner's Memorandum Of Understanding issued through this Base Agreement.

2. Purpose of Contract.

The purpose of this Contract is to provide the Contractor the ability to participate in the Energy Performance Contracting Program (EPCP) for development and implementation of Energy Performance Contracting (EPC) projects, to ensure the program's standard processes, procedures, and documentation that will be used and to obligate Contractor to follow and adhere to the guidelines, rules, and provisions of the program.

3. Term of Contract, Renewals, Performance Review, Disqualification.

This Base Agreement shall become effective on the date approval is given and shall terminate on [].

SEO shall have the option to renew this Base Agreement on or before [] of each fiscal year for a maximum of four one-year terms by executing the Option Letter attached

and incorporated as Attachment 2 to this Contract. No contracts will extend beyond

Services for any EPCP participant can extend beyond the life of the Base Agreement with all terms and conditions remaining in effect until the work is complete.

Contractor's performance will be reviewed annually by SEO/EPCP for compliance with guidelines, requirements, process, and documentation. Failure to comply with program guidelines may result in disqualification. Should Contractor be deemed non-compliant during any annual review or during a contract year, at the SEO/EPCP's sole discretion this Contract may be terminated without regard to any time remaining in the term. A terminated firm will remain disqualified for the remainder of the five-year period covered by this contract.

3. **Consideration.** In consideration for entering into this Contract, Contractor shall be eligible for participation in the SEO/EPCP.
4. **Responsibilities of Contractor.** The responsibilities of the Contractor shall include, but are not necessarily limited to:

Marketing and Preliminary Project Evaluation

- a) ESCO shall identify and secure on behalf of the Facility Owner all available energy/demand/water saving and renewable energy utility incentives available to each project. In addition, the ESCO shall provide a utility incentive/rebate summary to the SEO, in a format to be determined, documenting correspondence with the utility company indicating all incentives that were applied for and secured on behalf of the Facility Owner including: emails, letters, rebate applications, etc.
- b) Promote the SEO/EPCP when marketing directly to Facility Owners (within market sectors defined by SEO/EPCP)
- c) Engage the SEO/EPCP immediately upon identifying a potential energy performance contract project
- d) Perform an initial evaluation of project potential and discuss with the Facility Owner
- e) Provide a dedicated webpage for SEO/EPCP participants (e.g., www.ESCONAME/STATENAME-SEO), where Facility Owners that seek ESCO services can gain access to the full proposal and any updated information. The SEO/EPCP website will provide a link to the ESCO website for this purpose.

Technical Energy Audit and Project Development

- a) Develop a SEO/EPCP Technical Energy Audit and Project Development Contract with the Facility Owner
- b) Comply with all requirements of the Technical Energy Audit and Project Development Contract (Attachment F to RFP), including but not limited to: conduct an Technical Energy audit, prepare a detailed technical and financial

proposal for the project, help arrange for or procure financing, and develop a monitoring and verification plan.

- c) Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support
- d) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- e) Address issues, recommendations and requests from SEO/EPCP in support of the SEO/EPCP independent technical review and facilitation process

Energy Performance Contract Project Implementation

- f) Develop a SEO/EPCP Energy Performance Contract with the Facility Owner based upon results of the Technical Energy Audit
- g) Comply with all requirements of the SEO/EPCP **Energy Performance Contract (Attachment G to RFP)**, including but not limited to: design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures and monitoring and verification services.
- h) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- i) Address issues, recommendations and requests from SEO/EPCP in support of the SEO/EPCP independent technical review and facilitation process
- j) Provide SEO/EPCP with an electronic copy of the final contract.
- k) Provide a post-implementation report to Facility Owner and SEO/EPCP

Performance Period:

- l) Comply with all requirements of the SEO/EPCP Energy Performance Contract, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- m) Provide the Facility Owner and SEO/EPCP with annual reports on project cost, status, savings achieved, and square footage impacted by the project as given in Attachment 3.
- n) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- o) Address issues, recommendations and requests from SEO/EPCP in support of the SEO/EPCP independent technical review and facilitation process

5. **Responsibilities of SEO/EPCP and Participating Facility Owners.** The responsibilities for SEO/EPCP include, but are not necessarily limited to:

From SEO/EPCP:

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- a) Actively promote the program and educate potential participants about the benefits and implementation of energy performance contracts.
 - b) Work with Facility Owners to become program participants and to commit to a Facility Owner Agreement
 - c) Help Facility Owner procure services of an ESCO from the pre-qualified list.
 - d) Provide information on the website for currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO's website for more detailed information.
 - e) Help Facility Owner develop and initiate a performance contracting project.
 - f) Facilitate the performance contracting process, to help ensure commitments are met by both the Facility Owner and the ESCO
 - g) Provide technical guidance to the Facility Owner, attending on-site meetings between the Facility Owner and ESCO as needed
 - h) Help develop the SEO/EPCP Standard Technical Energy Audit and Energy Performance Contracts for each project
 - i) Review audits, proposals, calculations, contracts, and measurement and verification reports
 - j) Monitor project implementation
 - k) Identify solutions to mediate any conflicts between Facility Owner and ESCO

From the Facility Owner:

- l) Agree to program participation by executing a Facility Owner Memorandum of Understanding and engage the SEO/EPCP for assistance in project development
- m) Select an ESCO from the current pre-qualified list, using a secondary selection process
- n) Assign members to the facility project team including operations, maintenance, financial and upper management personnel
- o) Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
- p) Provide access and escort to buildings
- q) Provide information as needed for the feasibility study, the Technical Energy Audit, and other project development activities
- r) Work with ESCO to develop/refine project parameters
- s) Review/approve ESCO proposals, designs, and reports
- t) Ensure recommendations of the SEO/EPCP during reviews are addressed
- u) Execute SEO/EPCP approved contracts with the ESCO
- v) Make payments for ESCO services per contract terms
- w) Make arrangements for project financing
- x) Provide project management
- y) Provide information as needed for measurement and verification activities

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in original and three counterparts on
The _____ day of _____, 20

By _____

(Corporate Seal)

ATTEST

Secretary

THE ESCO

Signature

By _____
Name (print) Title

Address

City, State, Zip

Social Security Number or Federal ID Number

SIGNATURES:

If the ESCO is doing business as a Corporation, the Agreement shall be signed by an officer i.e., President or Vice-President. The signature of the officer signing shall be attested to by the Secretary and properly sealed if corporate seal is available. If the ESCO is a sole proprietorship or a partnership, the Agreement shall so indicate and be properly signed.

ATTACHMENT 1

Cost and Pricing

DESCRIPTION: This states the agreed/negotiated markups and fees for the particular ESCO. This information was provided in the ESCO's response to the pre-qualification solicitation (or as negotiated by SEO).

1. Costs, Markups, and Fees

Cost, markups, and fees shall not exceed the maximums established in the table below. Cost for performing the Technical Energy Audit and maximum project markups and fees for pre-defined categories shall be per the following schedules. Markups on fees are not allowable under the EPCP.

MARK-UPS		
<i>CATEGORY OF MARK-UP</i>	<i>MARK-UP APPLICATION</i>	<i>MAXIMUM % MARK-UP</i>
Overhead		
Profit		
Labor – Internal		
Equipment Purchased		
Materials Purchased		
Subcontract Labor		
Subcontract Material		

FEES		
<i>CATEGORY OF FEE</i>	<i>MAXIMUM FEE AMOUNT</i>	<i>YEARS APPLIED (One-time, Annual, etc.)</i>
Technical Energy Audit and Project Development	___ per Square Foot	
Solicit & Evaluate Project Financing Proposals		
Design	(Example) ___ % of _____	
Project Management		
Contingency		
Permits		
Performance Bond		
Commissioning		
Initial Training on Installed Measures		
Additional Training		
Monitoring and Verification		
Warranty Service		
Maintenance on Installed Measures		

Facility owners may choose to accept audit costs, markups, and fees proposed by Contractor for individual projects without further negotiation, provided they do not exceed the maximums established in the tables above, or directly negotiate with Contractor for reductions as dictated by individual facility or project requirements. Contractor may also propose lower audit costs, markups, and fees depending upon individual project considerations or their own internal business approach.

2. Open Book Pricing

Open book pricing is full disclosure by the Contractor 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 the Contractor will fully disclose all costs, including all costs of subcontractors and vendors. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable and that markups are being properly applied.

ATTACHMENT 2

ANNUAL RENEWAL OPTION LETTER

**BASE AGREEMENT ESCO CONTRACT FOR
AS-NEEDED ENERGY PERFORMANCE CONTRACTING
SERVICES**

SUBJECT: Option To Renew As-Needed Base Agreement

In accordance with the Base Agreement with the effective date [REDACTED] between the State Energy Office (SEO), and [REDACTED] (ESCO) for as-needed energy performance contracting services, SEO hereby exercises the option for an additional term of one year, **contract routing number** _____, incorporating by reference all the terms and conditions set forth in the As-Needed Base Agreement ESCO Contract.

Enclosed is one copy of your firm's submitted renewal information.

Your firm will be listed as eligible for selection for as-needed energy performance contracting services through SEO/EPCP.

APPROVALS:

State Energy Office Name
Director Name

Name

Date

ATTACHMENT 3

PROJECT METRICS REPORT FOR SEO

A Project Metrics Report shall be submitted to SEO as data are available and at the end of each year of this contract. Submission of this report is a minimum requirement for contract renewal. Submission will be completed electronically on a website developed by SEO. SEO will supply an electronic spreadsheet that shall be completed to the extent possible for each project and submitted electronically to SEO. This information is critical to SEO's ability to monitor projects and to calculate CO₂ reductions state-wide that result from program successes.

Other information may be identified and required by the SEO in order to meet the requirements of State agencies, Executive Orders, legislation, and other initiatives.