Arkansas Energy Performance Contracting Program

Policies and Procedures

2014

ARKANSAS
Economic Development Commission
ENERGY OFFICE

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Introduction

In 2013, the 89th General Assembly of the State of Arkansas amended the Guaranteed Energy Cost Savings Act, A.C.A. § 19-11-1201, with Act 554. Act 554 requires the Arkansas Economic Development Commission-Energy Office (AEO) to establish rules that set the standards and govern the process in which state agencies engage Energy Service Companies (ESCOs) who pursue guaranteed energy cost savings contracts, also known as energy performance contracts (EPCs*).*

As specified in Act 554, the AEO is responsible for:

- Administration of this subchapter (19-11-1207).
- Certifying companies that meet the required qualifications to provide these services to the State.
- Developing a standard Energy Performance Contract for use by State Agencies when contracting with qualified companies to perform the work and services.
- Determining the standards for the measurement and verification of energy cost savings measures; including the adoption of the IPMVP, as it existed on a certain date.
- The Arkansas Energy Office may establish and collect a reasonable fee to cover the costs of administering this subchapter.

Arkansas Energy Performance Contracting Program

The Arkansas Energy Office (AEO) has developed the **Arkansas Energy Performance Contracting (AEPC) Program** to meet the intent of the law, as amended. The intent of the AEPC program is to provide an effective, efficient, and user-friendly process for Arkansas State Agencies to utilize energy performance contracting as a means to improve the energy and operational efficiency of state owned and operated facilities without the need for upfront capital.

DEFINITIONS

(AEO) **Arkansas Economic Development Commission - Energy Office**	A division of the Arkansas Economic Development Commission and administrator of the Arkansas Energy Performance Contracting Program.
ABA **Arkansas Building Authority**	Arkansas Building Authority (ABA) has the responsibility for the review of design plans, bidding and awarding of capital improvement contracts for state agencies and some higher education institutions, as well as accessibility review of new construction for K-12 schools. ABA is the leasing agency for state agency, boards and commissions and reviews several state agency transfers of properties. ABA owns several facilities located in Pulaski and Sebastian counties.
Office of State Procurement (OSP)	A division of the Arkansas Department of Finance and Administration has the primary responsibility and oversight for the state wide procurement of commodities, technical and professional services for all agencies, boards and commissions and colleges and universities.
Agency	Means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of 19-11-203.
AEPC **Arkansas Energy Performance Contracting Program**	Which includes: Program Rules, Guidelines, Standards, and Standard Documents to be used by State Agencies and Qualified Providers under Act 554 of 2013, The Guaranteed Energy Cost Savings Act, as amended. Agency" includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54.
ECM **Energy Cost Savings Measure**	1. A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that; a) Do not degrade the level of service or working conditions b) Are measurable and verifiable under the International Performance and Verification Protocol, as adopted by the Arkansas Energy Office in the rules required under 19-11-1207; and c) Are measured and verified by an audit performed by a qualified provider. 2. An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivision 1(A)(i)(a) and (b) of 19-11-1202.
RFQ **Request for Qualifications**	The process by which the AEO shall solicit statements of qualifications from firms interested in being pre-qualified and certified by the AEO to provide energy performance contracting services to Arkansas State Agencies.

Qualified Provider (herein referred to as ESCO - Energy Services Company)	As pre-qualified and certified by the AEO; meeting the requirements set forth in Act 554 and the AEPC program guidelines. Defined in Act 554 as: A person or business, including all subcontractors and employees of that person or business and third party financing company that: Is properly licensed in the State of Arkansas; Has been reviewed and certified by the Arkansas Energy Office as a qualified provider (ESCO) under this subchapter; Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures; Has at least 5 years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements; and Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors.
EPC **Energy Performance Contract**	Also known as Guaranteed Energy Cost Savings Contract. A contract for the implementation of one (1) or more energy cost savings measures and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term. Key Provisions EPC for Arkansas State Agencies (Act 554): Before entering into an EPC, the Agency shall require the ESCO to file with the Agency a payment and performance bond, or similar assurance as provided under 19-11-235. A guarantee by the ESCO that the energy cost savings and operational cost savings to be realized over the term of the EPC meet or exceed the costs of the project. A guarantee from the ESCO that if the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measures as required by the EPC, the ESCO shall reimburse the Agency for any shortfall of guaranteed savings over the contract term of the EPC. A statement that the Agency shall maintain and operate the energy cost savings measures as defined in the EPC.
SOQ **Statement of Qualifications**	To be provided by an ESCO in response to the AEO's RFQ for companies interested in pre-qualifying and certification by AEO to provide EPC services for Arkansas State Agencies.
Short-List	The process by which the Agency shall choose no less than three (3) AEO-certified ESCOs for an oral interview for EPC services for the Agency prior to making a formal ESCO selection.

Secondary Selection Process	The process by which the Agency shall conduct oral interviews, evaluate, and select an ESCO from the Short-List.
IGA and Project Development Contract	A contract between the selected ESCO and the Agency for the audit, analysis, and development of a package of ECMs for the Agency to consider implementing under an EPC with the ESCO.
IGA **Investment Grade Audit or Energy Audit (also known as an "energy audit")**	The process by which an ESCO evaluates, analyzes, develops and recommends various ECMs for an Agency's facilities. The IGA provides the financial and technical basis for an EPC between the Agency and the ESCO.
M&V **Measurement and Verification**	The methodology and mathematical calculations used to determine pre-ECM/Project baseline energy consumption and post-ECM/Project installation energy consumption of an ECM; partial and/or whole facility energy conservation project.
IPMVP **International Performance Measurement and Verification Protocol**	The Energy Efficiency industry's standard guidelines for the periodic measurement and verification (M&V) of energy savings resulting from the installation of energy conservation measures.
EPC Contract Term	An EPC contract may not exceed 20 years from the completion date of the installed project.
Debt Service	The financing instrument(s), (i.e. bond, lease-purchase, capital lease, state revolving loan fund, or combination thereof, etc.) that is used to finance the costs associated with the development and installation of the energy efficiency project through the use of an EPC. State legislation allows up to a 20 year finance period.
O&M Appropriations	Agency may utilize operations and maintenance appropriations for the payment (debt service) of equipment and energy cost savings measures required by an EPC.

ARKANSAS ENERGY PERFORMANCE CONTRACTING PROGRAM

Program Rules & Guidelines

The AEPC Program includes:

- AEPC Rules
- AEPC Program Documents: This includes, but is not limited to the ESCO RFQ, Invitation to Interview, and standard EPC contracts, etc.
- AEPC List of Pre-Qualified Companies
- AEPC Manual: This document will establish the standards, guidelines and processes for State Agencies and ESCOs to follow. It will make it easy for state agencies and ESCOs to navigate the program.

These documents will be posted on the AEO website. Program materials will be updated periodically, as needed or as required. All forms and documents shall clearly identify the current version.

AEO Oversight & Administration

The AEO will oversee the AEPC Program and its administration. The AEO will ensure a fair and successful program for Arkansas State Agencies and Energy Services Companies.

The AEO's responsibilities include:

- Developing the Rules, Guidelines, Standard Contracts and other Program Documents for the AEPC; updating the program as needed or as required.
- Coordinating with the Arkansas Office of State Procurement, the Arkansas Building Authority and other State Agencies, as required.
- Providing assistance to the Agency and the ESCO throughout the project for education, assistance, and quality control.
- Ensuring adherence to AEPC Program Rules by the Energy Services Companies and State Agencies.

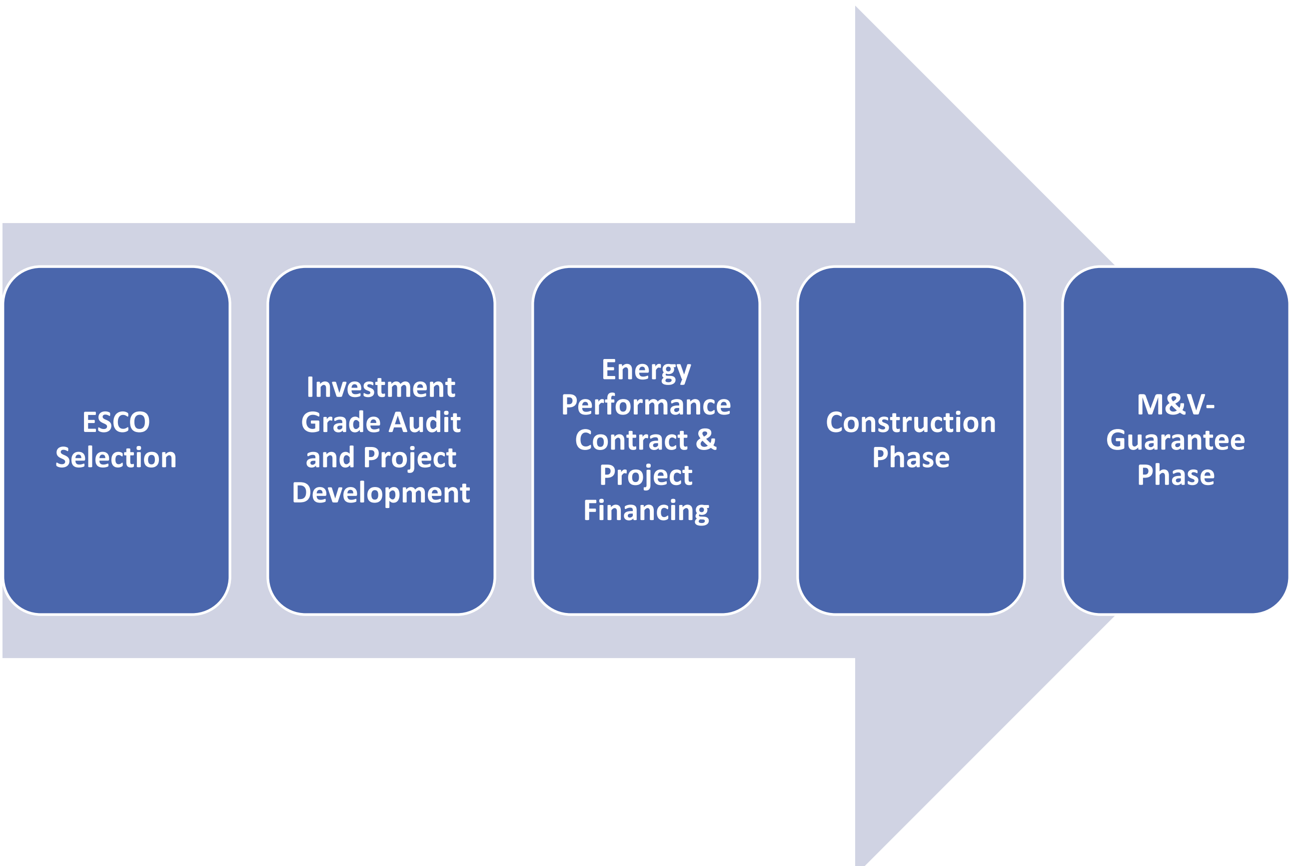
Arkansas Energy Performance Contracting Program Process

AEPC Program Overview – Milestones

AEO has developed the AEPC to provide the framework for Agencies to successfully complete comprehensive upgrades using EPC. The program includes Program Rules and standard documents and maintains a list of Pre-Qualified ESCOs.

Figure 1 presents an overview of the steps in an EPC project, which are described in more detail in the following sections. This occurs after an initial list of approved ESCOs has been determined by AEO.

Figure 1. The Steps in an AEPC Project



AEO - ESCO Qualification & Certification Process

Under Act 554, the AEO is responsible for reviewing and certifying ESCOs to provide EPC services for State Agencies.

The following is an overview of the process that AEO will use for qualifying and selecting a pool of ESCOs to provide these services to State Agencies in the AEPC.   AEO will re-qualify providers at a minimum of every five (5) years from date of the initial RFQ is issued.

Figure 2 – ESCO – Pre-Qualification & Certification Process

Annual ESCO Review Process

AEPC Pre-Qualified ESCOs shall be reviewed annually by the AEO for compliance with the AEPC Program Rules, as well as adherence to ABA's policies and procedures as they relate to State EPC work. Any ESCOs failure to comply with the AEPC Program Rules, including the procedures and use of standard AEPC contract documents, may result in removing the ESCO from the AEPC Pre-Qualified ESCO List.

Associated AEPC Program Documents:

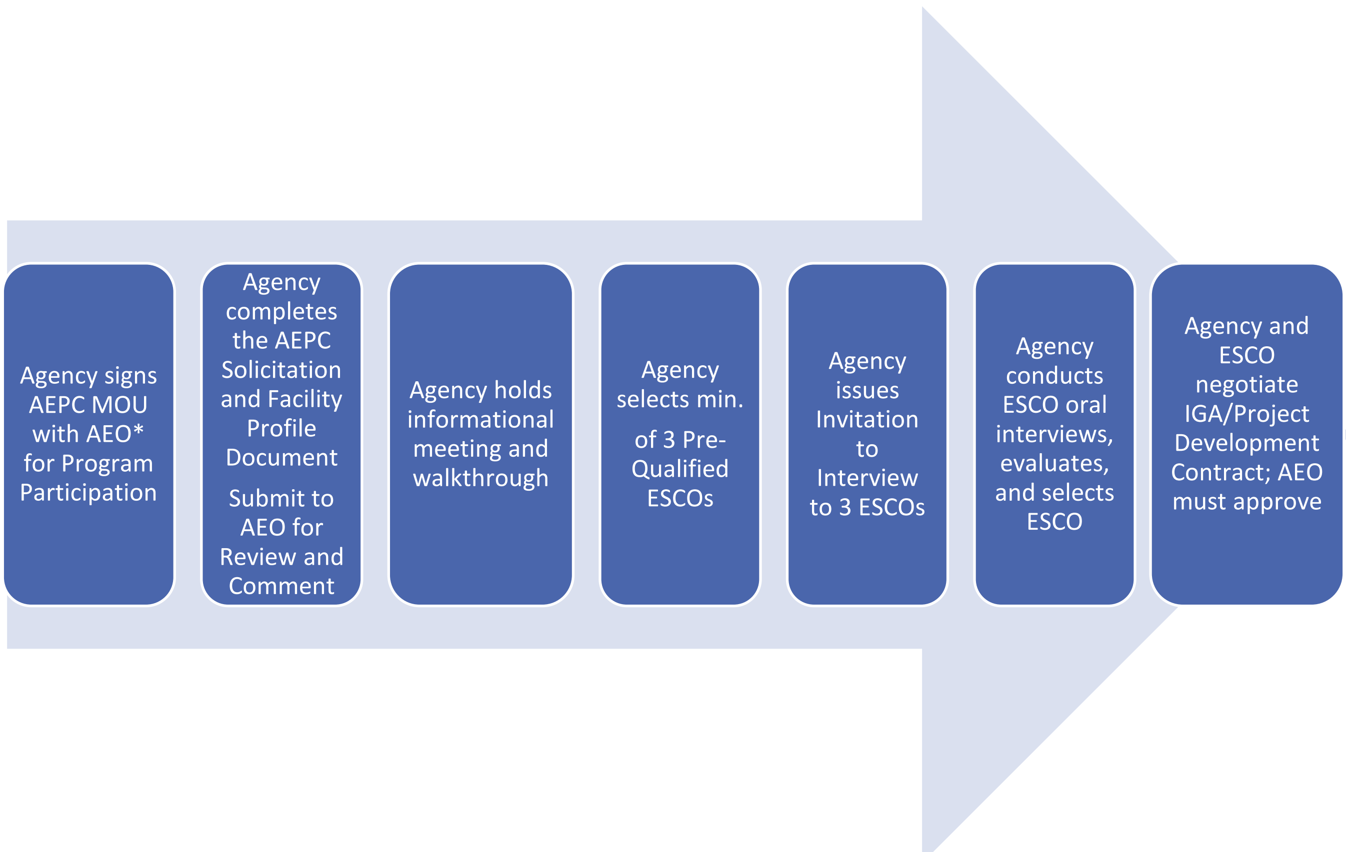
AEO – AEPC Request for Pre-Qualifications (RFQ)
AEPC ESCO Acceptance Letter

Secondary Selection Process: How an Agency Selects a Pre-Qualified ESCO

Solicitation by Agency for an ESCO

The AEO will post the pool of Pre-Qualified ESCOs and their Statements of Qualifications (SOQs) to the AEO website and will be made available to state agencies by other means, if necessary. Before making a final ESCO selection, State Agencies shall review ESCO's qualifications and shortlist a minimum of three (3) Pre-Qualified ESCOs from the AEPC Pre-Qualified ESCO list. The Agency shall interview the Short-Listed ESCOs and make a final ESCO selection.

Figure 3 – Overview of Agency's Secondary Selection Process for ESCO Services.



* AEO forwards applicable MOUs to ABA to provide notice to ABA of future plans and specification submittals. Agencies under ABA's capital improvement oversight shall submit all plans and specifications for review.

Associated AEPC Standard Program Documents:

AEPC – Memorandum of Understanding (MOU) - Agency and AEO
AEPC – Facility Profile Document
AEPC – Invitation to Interview - Agency to Short-Listed Pre-Qualified ESCOs

Investment Grade Audit and Project Development Contract (IGA)

The IGA Contract is an agreement between the selected ESCO and the Agency for the evaluation, identification, analysis; and recommendation of energy and operational efficiency measures that the Agency may consider for installation under an EPC with the ESCO. The Agency will consider the technical and the financial aspects of the ECM, and/or a compendium of various ECMs.

Key Elements:

- The Agency and the ESCO must use the most current AEPC IGA and Project Development Contract document.
- The Agency and the ESCO agree on project scope; including buildings to be audited, total square footage, audit fee and timeline.
- The AEPC IGA and Project Development Contract will include negotiated pricing using AEPC's predefined $/sq foot and other relevant project-specific variables. The ESCO and Agency must use the most current AEPC IGA contract.
- The IGA must be submitted to the AEO for review and approval prior to the Agency executing the IGA and Project Development Contract with the ESCO.
- The IGA must be executed by an employee of the Agency with the authority to contractually bind the Agency and by an employee of the ESCO with the authority to contractually bind the ESCO.
- The pre-defined cost of the IGA and Project Development may be incorporated into the final EPC project cost. This cost must be listed as a separate line item in the ESCOs project cost summary. This cost is eligible to be paid through the EPC project financing should the Agency move forward with an EPC Contract with the ESCO.
- If an agency chooses not to execute an EPC, the IGA fee is due and payable to the ESCO within 120 days of delivering the IGA report to the Agency. The ESCO must have met the financial and technical criteria established and detailed in the IGA and Project Development Contract to be paid.

Associated AEPC Program Documents:

AEPC – Investment Grade Audit (IGA) and Project Development Contract

Energy Performance Contract (EPC)

The Energy Performance Contract (EPC) is the contract between the Agency and the ESCO for the implementation of the work related to the ECMs that will be installed at the Agency's facilities. The EPC also details the M&V plan and services, and the ESCO's guarantee of savings. The Agency and the ESCO negotiate final scope and final pricing of the project and services to be included under the EPC.

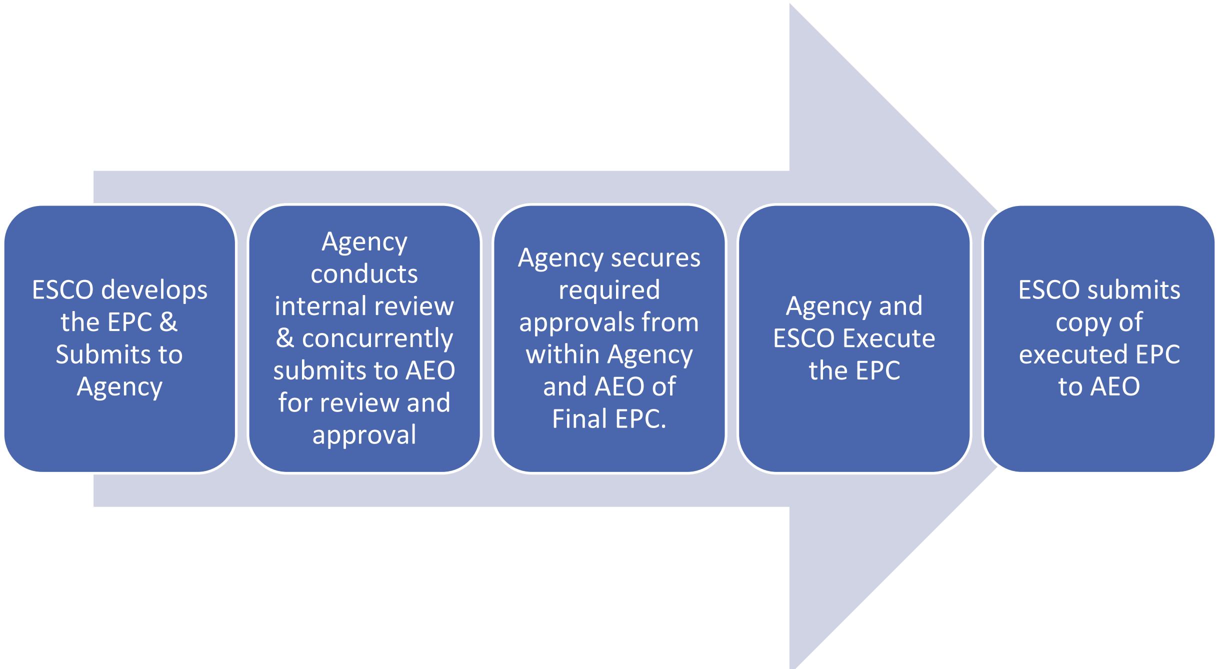
Key Elements of the standard AEPC Energy Performance Contract

The ESCO and the Agency must use the most current AEPC Energy Performance Contract when developing an EPC. The standard AEPC Contract includes, but is not limited to, detailed provisions of the following:

- The names and addresses of the parties to the EPC (Agency and ESCO).
- Clearly defined, in detail, the final energy conservation measures that will be installed in the Agency's facilities.
- The contract price.
- The amount of guaranteed savings (in dollars) over the total term.
- The total term of the contract (stated in years or months).
- Baseline calculations of the ECMs, including all relevant variables used in the baseline calculations.
- Detailed Measurement and Verification Plan adhering to the IPMVP guidelines; the frequency and method the ESCO shall use for reporting the savings to the Agency.
- The responsibilities of the Agency and the ESCO under the EPC.
- The annual price to be paid to the ESCO for the Measurement and Verification of the ECMs each year over the contract term.
- Payment terms for the construction period, M&V services, and any other project support services provided to the Agency by the ESCO under the EPC.
- As Exhibits: The final IGA Report; the IGA and Project Development Contract.
- Standard terms and conditions.
- The EPC must be executed by an employee of the ESCO with the authority to contractually bind the ESCO; the EPC must be executed by an employee of the Agency with the authority to contractually bind the Agency.
- Per Act 554, the AEO may collect a reasonable fee for administration of the AEPC Program. This amount will be paid directly by the ESCO. This pre-determined cost will be determined by AEO and outlined in appropriate documents such as the RFQ and Program Manual. This fee is a cost to the project and is eligible to be financed as part of the total project costs. The ESCO will provide the fee to the AEO within 30 days of receipt of the ESCO's initial or mobilization fee from the Agency.

Figure 4, below, illustrates the steps associated with the required activities to develop, review, and approve the EPC between the Agency and the ESCO.

Figure 4 - EPC Contract – Review and Approvals



ACT 554 – Required provision of the Energy Performance Contract:

- A statement that the Agency shall maintain and operate the energy cost savings measures as defined in the EPC (guaranteed cost savings contract).
- Energy and operational cost savings to be realized over the term of the contract meet or exceed the costs of the energy cost savings measures.
- If annual energy or operational cost savings fail to meet or exceed the annual costs of the EPC, the ESCO shall reimburse the Agency for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.
- The maximum term of an EPC is 20 years after the implementation of the energy cost savings measures.
- A performance and payment bond, or similar assurance (under 19-11-235) must be provided by the ESCO prior to an Agency entering into an EPC with an ESCO.
- AEO may collect a reasonable fee for services provided.

Associated AEPC Documents:

AEPC - Energy Performance Contract (EPC) – Standard Document for use by Arkansas State Agencies.

Project Financing

Financing for the Energy Performance Contracting project – both type and the company -- are to be evaluated and selected during the Investment Grade Audit and Project Development Phase. The ESCO, Agency and Finance company work in concert to ensure that the annual savings derived from the project will be sufficient to cover the annual debt service.

An Energy Performance Contract between Agency and an ESCO primarily consists of two parts:

- Project Development and Installation – Construction Phase
  Measurement & Verification – Guarantee Phase

The project costs of the construction phase contract services are generally financed through a 3rd party financial institution. The support services provided after the construction phase for the Measurement and Verification and the Guarantee of project savings by the ESCO to the Agency are an annual service cost, and are not financed.

Act 554 – Required provision for the financing of an EPC:

- Debt service on equipment or measures required by a guaranteed energy cost savings contract executed under the Guaranteed Energy Cost Savings Act.
- Energy and cost savings achieved by the installed energy project cover all project costs, including financing.
- Third-Party financing companies must be properly licensed in the State of Arkansas.
- Agency may utilize maintenance and operations appropriations for the payment of equipment and energy cost savings measures required by a guaranteed energy cost savings contract.

The process to approve the project financing will be concurrent with the approval process for the EPC (Figure 4).

Project Installation

Project Installation is the period that begins after the Energy Performance Contract is executed. It includes mobilization, final engineering, and design of the ECMs including final energy modeling, equipment specifications and procurement, and subcontractor qualification and procurement; installation of the equipment, performance of services for a complete installation of the ECMs included in the scope of work to be performed under the Energy Performance Contract.

Pre-Installation Requirements

- ESCO obtains approval from ABA for final design of ECMs, if required.
- ESCO obtains Notice to Proceed from Agency , if required.
- ESCO provides Performance and Payment Bond, as per state procurement law.
- ESCO provides Certificate of Insurance to Agency, at levels and amounts required by the Agency.

Post-Installation Requirements

Agency requests post-construction review from AEO~~.~~

***Note:** Agency must have AEO = review and approval prior to accepting project completion from the ESCO.

Agency Signs Certificate of Completion (COC)

Note: Specific individual ECMs and or Single Facilities may be completed, reviewed, and accepted as partial project completion during the total project installation term.

- Copies of COCs must be submitted by Agency to AEO.
- Applications for payment may be made according to the terms in the ECP between the Agency and the ESCO.
- Upon substantial completion, Agency and ESCO develop the project punch-list. ESCO will be paid EPC contract retainage upon punch list completion and 100% acceptance by the Agency.
- ESCO submits project construction close out documents to the Agency; Agency submits a copy to AEO.
- ESCO may report installation period savings during year one of the M&V phase, or in conjunction with the M&V report ending for year one. In either case, this must be determined during EPC contract development, agreed upon by the Agency, and included in the EPC between the ESCO and the Agency.

Associated AEPC Documents

AEPC - EPC executed between the Agency and the ESCO

Measurement and Verification

Measurement and verification is the periodic monitoring and measurement of the project performance. The M&V plan is project/ECM specific and will follow the guidelines of the International Performance Measurement and Verification Protocol (IPMVP). The IPMVP is continuously evolving. The M&V plan shall follow the guidelines of the most current version of the IPMVP in place at the time of the execution of an Investment Grade Audit contract. The AEO will establish a standard M&V reporting format to ensure appropriate M&V information is provided.

Key Elements of the M&V Plan for the EPC:

- A detailed M&V Plan, including the IPMVP option or options used
- The baseline calculations and relevant variables used in the baseline calculations and the method for adjusting the baseline are to be included in the EPC
- The M&V plan will clearly establish the responsibilities of the ESCO, including, but not limited to: frequency and method of reporting, and annual savings reconciliation.
- The M&V Plan will define the responsibilities of the ESCO and the Agency during the M&V-Guarantee Phase.
- ESCOs will provide required periodic M&V reports following recommended reporting guidelines.

Associated AEPC Documents

AEPC – EPC – Executed between the Agency and the ESCO
Periodic M&V Reports following recommended reporting guidelines.