**ESCO Base Contract**

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

This document is part of 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 Savings 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. It should be noted that these instruments do not constitute legal advice or legal opinion but are provided as samples for adaptation to the laws and regulations of the user.

**DESCRIPTION – ESCO Base Contract for As-Needed Energy Savings 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 collection and 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. It includes the option for the program to remove a non-compliant ESCO from the pre-qualified list.

This contract follows a solicitation to pre-qualify ESCOs. (See the parallel contract between the Program and the Owner.)

An ESCO Base Contract is an agreement between the ESPC program and pre-qualified ESCOs. It establishes the rules of engagement for the ESCO’s participation with the ESPC program’s clients. Below is an overview of each element of the document.

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| **AT-A-GLANCE –**  **ESCO BASE CONTRACT (CONTRACT FOR PRE-QUALIFIED ESCOs)** |
| **Overview**  **The Big Picture – What does the ESCO Base Contract do?**   * It is an agreement for each ESCO in the pre-qualified pool * Establishes rules of engagement for the ESCO   **How do pre-qualified ESCOs maintain their status?**   * The term of pre-qualification is five years * Pre-qualified ESCOs undergo an annual evaluation process to determine continued eligibility * Pre-qualified ESCOs apply for renewal annually with no certainty of continued pre-qualification over the entire term   **How do ESCOs participate in the state’s performance contracting program?**   * Ensure the program’s standard processes, technical assistance, and documentation will be used * Provide metrics on project status and results (overall cost, savings in units and dollars, emissions reductions, etc.) * Market the state’s program and process * Comply with all requirements stated in the model audit and performance contracts, as well as legislative requirements and codes.   **How do ESCOs seek selection for a project?**   * Participate in the defined state process requiring competitive selection * Market to facility owners as part of the state’s program   **How does the ESCO Base Contract affect pricing?**   * Maximum markups, margins and fees are stated (reiterated from the RFP response) * “Open book” pricing is required |

| **AT-A-GLANCE –**  **ESCO BASE CONTRACT (CONTRACT FOR PRE-QUALIFIED ESCOs)** | | | |
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| **Section** | **Title** | **Description & Key Points** | **Negotiating Items & Recommendations** |
| N/A | Recitals | Establish rationale for contract, establish contract authority, define procurement process leading up to the contract, etc. |  |
| **CONTRACT** | | | |
| 1 | Entire Agreement | Identifies the other documents that are part of this contract. The RFP to pre-qualify ESCOs and the ESCO’s response to the RFP provide background information that led to this contract. Other documents are required for use in project development – Secondary ESCO Selection Process, Investment Grade Audit Contract, Energy Savings Performance Contract, Financing Bid Package, and any client MOU. |  |
| 2 | Purpose of Contract | Grants ESCO the ability to participate in the program and ensures compliance with the program’s processes, procedures, and documentation. |  |
| 3 | Term of Contract, Renewals, Performance Review, Disqualification | Establishes an effective starting date. Establishes a renewal process with the option to renew each fiscal year. Establishes a maximum contract term of five years (with four potential renewals). Establishes an annual review process regarding compliance with guidelines and requirements. Establishes disqualification in the event the ESCO is found non-compliant. |  |
| 4 | Responsibilities of ESCO | Describes responsibilities related to marketing, preliminary project evaluation, investment grade audit process, energy savings performance contract process, and through the performance period. |  |
| 5 | Responsibilities of the program and client | Describes the program’s commitments on marketing, interaction with the clients, providing facilitation support, and providing technical assistance to clients throughout the process. Describes the client’s responsibility, as established by the program, to select from the pre-qualified ESCOs and commit to developing an oversight team. |  |
| **ATTACHMENTS** | | | |
| 1 | Cost and Pricing | This section repeats the ESCO’s response to the RFP on maximum markups, margins, and fees (or states negotiated rates). These rates will be the maximum rates used on all projects. Clients and ESCOs have the opportunity to negotiate downward. This section also reiterates the “open book” pricing policy, which enables reviewers to confirm that maximum values were applied. | There may be an opportunity to negotiate maximum rates with the ESCO, or the ESCO may want to provide lower rates in order to remain competitive. Check with your procurement office on this protocol. |
| 2 | Annual Renewal Option Letter | This letter sets the stage for approving annual renewals. | Annual renewals are subject to performance. |

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

Firm Name

Contact Person

Full Address

Phone; Fax

**ATTACHMENT A:** Left Blank

**ATTACHMENT B:** Contract Renewal Option Letter

**ATTACHMENT C:** Left Blank

**ATTACHMENT D:** Cost and Pricing

**ATTACHMENT E:** Owner Memorandum of Understanding

**BASE AGREEMENT ESCO CONTRACT**

**FOR AS-NEEDED ENERGY SAVINGS 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Program or State Energy Office), hereinafter called Program, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (ESCO), hereinafter called the ESCO.

**WHEREAS**, Program, through its Energy Savings Performance Contracting Program (Program), used a solicitation process to select ESCOs to provide as-needed Energy Savings Performance Contracting services;

**WHEREAS**, Program 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:

# Purpose of Contract.

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

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

This Base Agreement shall become effective on the date approval is given and shall terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_.

Program 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 B: Contract Renewal Option** to this Contract. No contracts will extend beyond \_\_\_\_\_\_\_\_\_\_\_\_.

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

ESCO’s performance will be reviewed annually by Program for compliance with guidelines, requirements, process, and documentation. Failure to comply with program guidelines may result in disqualification. Should ESCO be deemed non-compliant during any annual review or during a contract year, at the Program’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.

Dismissal from the program should be based on a definition of substantial non-compliance, should allow for a reasonable (e.g., 30-60 day) notice and cure period, and should establish an appeals process that conforms to applicable state law.

# Consideration.

In consideration for entering into this Contract, ESCO shall be eligible for participation in the Program.

# Responsibilities of ESCO.

The responsibilities of the ESCO shall include, but are not necessarily limited to:

**General**

1. Use the Program’s procurement and contracting practices and documents for all projects

If feasible, the documents should be pre-approved by state or other legal authorities before requiring ESCO signatures.

1. For each project within the market sectors served by the Program, apply the maximum cost and pricing elements that your firm proposed, as given in **Attachment D: Cost and Pricing**.

**Marketing and Preliminary Project Evaluation**

1. Identify and secure on behalf of the Owner all available energy, demand, water and operational savings and renewable energy utility incentives available to each project. In addition, the ESCO shall provide a utility incentive summary to the Program, documenting correspondence with the utility company indicating all incentives that were applied for and secured on behalf of the Owner.
2. Promote the Program when marketing directly to Owners (within market sectors defined by Program)
3. Engage the Program immediately upon identifying a potential ESPC project
4. Perform an initial evaluation of project potential and discuss with the Owner
5. Provide a dedicated webpage for Program participants (e.g., www.ESCOName/ProgramName), where Owners that seek ESCO services can gain access to the full proposal and any updated information. The Program website will provide a link to the ESCO website for this purpose.

**Investment Grade Audit and Project Development**

* + - * 1. Develop an Investment Grade Audit and Project DevelopmentContract with the Owner
        2. Comply with all requirements of the Investment Grade Audit and Project Development Contract (Attachment F to RFP), including but not limited to: conduct an Investment Grade Audit, prepare a detailed technical and financial proposal for the project, help arrange for or procure financing as feasible, and develop a monitoring and verification plan.
        3. Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support
        4. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        5. Address issues, recommendations and requests from Program in support of the Program’s independent technical review and facilitation process

**Energy Savings Performance Contract Project Implementation**

* + - * 1. Develop the Energy Savings Performance Contract with the Owner based upon results of the Investment Grade Audit
        2. Comply with all requirements of the **Energy Savings 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.
        3. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        4. Address issues, recommendations and requests from Program in support of the Program’s independent technical review and facilitation process
        5. Provide Program with an electronic copy of the final contract.
        6. Provide a post-implementation report to Owner and Program

**Performance Period:**

* + - * 1. Comply with all requirements of the Energy Savings 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.
        2. Provide the Owner and Program with annual reports on project cost, status, savings achieved, and square footage impacted by the project.
        3. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        4. Address issues, recommendations and requests from Program in support of the Program’s independent technical review and facilitation process

**Data Collection and Reporting – Using eProject Builder (ePB)**

ESCO shall collect and report project data, on behalf of Owner and with approval by Owner, as identified in **Energy Savings Performance Contract** - **Schedule D: Data Collection and Reporting – Using eProject Builder** and as amended on the LBNL website (<http://eprojectbuilder.lbl.gov>) and at the specified times.

eProject Builder ("ePB") is a web-based tool managed on behalf of the Department of Energy by The University of California/Lawrence Berkeley National Laboratory (LBNL). ePB enables ESCO and their contracting agencies or other entities to:

(1) upload and track project-level information;

(2) generate basic project reporting materials (e.g. task order schedules) that may be mandated by local, state, and/or federal agency requirements; and

(3) benchmark proposed Energy Savings Performance Contract (ESPC) projects against historical project data.

Based on information provided by the ESCO, the parties agree that the data required to be delivered to LBNL under this clause has commercial value whose disclosure would cause competitive harm to the commercial value or use of the data. LBNL intends to withhold such data from disclosure under 10 C.F.R. 1004.3(e)(2). The use of this data is governed by the provisions of this contract. Unless compelled by a court of competent jurisdiction, there may be no release of this data to the public without the written consent of the Recipient and DOE. Aggregate data that does not identify project-specific metric information may be released as set forth in the contract. Other information required to be delivered under this contract, but not covered under this Commercially Valuable ESPC Project Data clause, shall be delivered in accordance with this contract.

# Responsibilities of Program and Participating Owners.

The responsibilities for Program include, but are not necessarily limited to:

**From Program:**

1. Actively promote the program and educate potential participants about the benefits and implementation of ESPC.
2. Work with Owners to become program participants and to commit to an Owner Agreement
3. Help Owner procure services of an ESCO from the pre-qualified list.
4. 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.
5. Help Owner develop and initiate a performance contracting project.
6. Facilitate the performance contracting process, to help ensure commitments are met by both the Owner and the ESCO
7. Provide technical guidance to the Owner, attending on-site meetings between the Owner and ESCO as needed
8. Help develop the Investment Grade Audit and Energy Savings Performance Contracts for each project
9. Review audits, proposals, calculations, contracts, and measurement and verification reports
10. Monitor project implementation
11. Identify solutions to mediate any conflicts between Owner and ESCO

**From the Owner:**

1. Agree to program participation by executing a Owner Memorandum of Understanding and engage the Program for assistance in project development
2. Select an ESCO from the current pre-qualified list, using a secondary selection process
3. Assign members to the facility project team including operations, maintenance, financial and upper management personnel
4. Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
5. Provide access and escort to buildings
6. Provide information as needed for the feasibility study, the Investment Grade Audit, and other project development activities
7. Work with ESCO to develop/refine project parameters
8. Review/approve ESCO proposals, designs, and reports
9. Ensure recommendations of the Program during reviews are addressed
10. Execute Program-approved contracts with the ESCO
11. Make payments for ESCO services per contract terms
12. Make arrangements for project financing
13. Provide project management
14. Provide information as needed for measurement and verification activities

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| **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in original and three counterparts on | | | | | | | | |
| The |  | day of |  | | | , | 20 |
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| By |  | | | |
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| --- | --- | --- | --- |
| (Corporate Seal) |  |  | |
|  |  | **THE ESCO** | |
| **ATTEST** |  |  | |
|  |  |  | |
| Secretary |  | Signature | |
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|  |  | By |  |
|  |  | Name (print) Title | |
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|  |  | City, State, Zip | |
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|  |  |  | |
|  |  | Social Security Number or Federal ID Number | |
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**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.