

## **APPENDIX D: Chapter 4 – Establish a Process**

**Appendix D-1: At-A-Glance – Owner Memorandum of Understanding (MOU)**

**Appendix D-2: At-A-Glance – Request for Proposals (RFP) to Pre-Qualify ESCOs**

**Appendix D-3: At-A-Glance – Final ESCO Selection**

**Appendix D-4: At-A-Glance – ESCO Base Contract (Contract for Pre-Qualified ESCOs)**

**Appendix D-5: At-A-Glance – Investment Grade Audit (IGA) and Project Proposal Contract**

**Appendix D-6: At-A-Glance – Energy Savings Performance Contract**

**Appendix D-7: At-A-Glance – Financing Solicitation Package**

## APPENDIX D-1: At-A-Glance – Owner Memorandum of Understanding (MOU)

An ESPC program that offers technical assistance to owners will develop an Owner Memorandum of Understanding (MOU) to establish roles and responsibilities for the program and owner. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – OWNER MEMORANDUM OF UNDERSTANDING (MOU)</b>
<p><b>Overview</b></p> <p><b>The Big Picture</b> – What does an MOU do?</p> <ul style="list-style-type: none"><li>• Establishes interest and commitment of a facility owner</li><li>• Establishes commitment by the state program to offer services to the facility owner</li><li>• Establishes rules of engagement</li></ul> <p><b>State Role</b> – What does the state do?</p> <ul style="list-style-type: none"><li>• Provides administrative assistance to aid the facility owner through the process by providing and advising on pre-approved contracts and procedures</li><li>• Provides technical assistance to aid the facility owner in developing and following through with a successful performance contracting project</li></ul> <p><b>ESCO Role</b> – What does the ESCO do?</p> <ul style="list-style-type: none"><li>• Conducts an audit and implements a performance contracting project</li><li>• Complies with established processes and legal requirements</li><li>• Passes an annual evaluation process to determine continued eligibility in pool</li><li>• Passes a renewal process (contracts are renewed annually with no certainty of continued pre-qualification over the entire term)</li></ul> <p><b>Facility Owner Role</b> – What does the facility owner do?</p> <ul style="list-style-type: none"><li>• Engages the services of the state program to help ensure success</li><li>• Ensures the program’s standard processes, technical assistance, and documentation will be used</li><li>• Provides metrics on project status and results, such as overall cost, savings in units and dollars, emissions reductions, sum of costs, sum of guaranteed savings, sum of energy cost savings, sum of energy units emissions equivalencies, jobs created, and number of information-sharing activities</li><li>• Markets the state’s program and process</li><li>• Complies with all requirements stated in the model audit and performance contracts, as well as legislative requirements and codes</li></ul>

**AT-A-GLANCE –  
OWNER MEMORANDUM OF UNDERSTANDING (MOU)**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
N/A	Recitals	Establishes that program participants will select an ESCO from the pre-qualified list of ESCOs using the program process.	Note that an MOU is a contract agreement.
<b>CONTRACT</b>			
1	Purpose of Contract	Establishes the role of the program and the agreement for accepting program services.	N/A
2	Term of Contract and Required Approvals	Establishes the effective date and period of the contract.	
3	Consideration	Establishes that the Owner will participate in the program in a good faith effort.	
4	Responsibilities of Owner	Establishes the responsibilities of the owner, including: program participation; the process of selecting an ESCO from the pre-qualified list using the approved process; ensuring appropriate personnel to oversee the project; provide access to buildings; providing facility and utility information; addressing program recommendations; executing the approved contract; making payments to the ESCO per contract terms; making arrangements for project financing; and providing information for measurement and verification (M&V) activities.	Elements could be negotiable if owner does not need all services.
5	Responsibilities of Program	Commits the program to providing services to educate potential participants, provide technical assistance to the Owner to develop the project and procure ESCO services, help develop the procurement and contracting documents, and identify solutions as needed.	Elements could be negotiable if Owner has internal capability and does not need all services.
6	Responsibilities of Contractor	Defines the role of the pre-qualified ESCO participating in the program and stipulates that the contractor will use the approved program documents, comply with requirements, provide the Owner and program with annual reports, etc.	The ESCO requirements are set in the ESCO Base Contract.

## APPENDIX D-2: At-A-Glance – Request for Proposals (RFP) to Pre-Qualify ESCOs

An ESPC program often pre-qualifies a pool of ESCOs to streamline the ESCO selection process for owners. The request for proposals (RFP) to pre-qualify ESCOs solicits ESCO responses that can be evaluated to select well-qualified contractors. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – REQUEST FOR PROPOSALS (RFP) TO PRE-QUALIFY ESCOs</b>	
<b>Overview</b>	
<b>The Big Picture</b> – What does the RFP accomplish?	
<ul style="list-style-type: none"> <li>• It is a means to pre-qualify ESCOs</li> <li>• Establishes minimum standards and requirements for ESCO performance</li> </ul>	
<b>How does the RFP streamline the procurement process for owners?</b>	
<ul style="list-style-type: none"> <li>• Eliminates the need for owners to define ESCO capabilities</li> <li>• Shortens the timeline for project development by eliminating the need for owners to initiate an RFP process</li> </ul>	
<b>How does the RFP set the stage for the program?</b>	
<ul style="list-style-type: none"> <li>• Describes the program’s role</li> <li>• Establishes the program’s authority with respect to ESCOs and owners</li> </ul>	

A number of elements can be considered for inclusion in a “best practices” RFP adopted by a state energy office. These RFP elements are listed below.

<b>AT-A-GLANCE – REQUEST FOR PROPOSALS (RFP) TO PRE-QUALIFY ESCOs</b>			
Section	Title	Description & Key Points	Negotiating Items & Recommendations
1	Overview and Background	Program overview, intent, historical background, role of the state, information on how the ESCO will be selected for a project (two-step procurement process with pre-qualification followed by secondary selection process).	Provide the ESCO with a snapshot of the state’s intention, a broader view of the state’s interests, and how to go beyond pre-qualification to final selection for a project.
2	Proposal submittal and selection process	Administrative requirements and processes for ESCOs (proposal submittal information, selection process with schedule).	Customize with your specific procurement requirements.

**AT-A-GLANCE –  
REQUEST FOR PROPOSALS (RFP) TO PRE-QUALIFY ESCOs**

3	Scope of Work	Describes the core ESCO services so that potential respondents can assess the ESCO's capabilities.	N/A
<b>Attachments</b>			
A	Base Agreement ESCO Contract	Establishes commitments from ESCOs to abide by state requirements and guidelines. Defines ESCO responsibilities (using model contracts, report data to state, etc.), state responsibilities (market program), and facility owner (select from the pre-qualified list, provide information and access).	Customize the contract.
B	Response to this Request for Proposals	Requirements for ESCO responses including specific qualifications, experience, project history, technical approach, management approach, cost, and pricing.	Include requests for information for any specific capabilities or expertise needed.
C	Final ESCO Selection Process	Establishes means to use the pre-qualified list to select an ESCO for a project. It encourages competition (where pre-qualification is a pass/fail selection).	Ensure this meets procurement requirements. Avoid requesting detailed audits to help make a selection.
D	State statutes on ESPC for state government	Specific legislation and executive orders related to performance contracting in state governments. This background information is critical to assure compliance.	
E	State statutes on ESPC for local government	Specific legislation and executive orders related to performance contracting in local governments. This background information is critical to assure compliance.	
F	Investment Grade Audit and Project Development Contract	Model or pre-approved contract for preliminary review. Respondents are required to comment on the ability to comply with all contract requirements.	Customize with relevant statute or administrative requirements. Get contract pre-approved by the legal department if possible.
G	Energy Savings Performance Contract	Model or pre-approved contract for preliminary review. Respondents are required to comment on the ability to comply with all contract requirements.	Customize with relevant statute or administrative requirements. Get contract pre-approved by the legal department if possible.
H	Financing Bid Package	Included if the owner asks the ESCO to solicit bids from financing companies on the owner's behalf.	If other financing sources are preferred, provide information for the ESCO and eliminate this RFP requirement.
I	Owner's MOU	Define responsibilities of the facility owner (use pre-qualified list, apply secondary selection process, provide facility information and access, etc.).	Customize contract. Get approval from the legal department.

**AT-A-GLANCE –  
REQUEST FOR PROPOSALS (RFP) TO PRE-QUALIFY ESCOs**

RFP Element	Description & Key Points	Negotiating Items & Recommendations
<b>Key Elements</b>		
Pre-agreed markups, margins, and fees	Requests maximum markups, margins, and fees for each type of work based on types of buildings.	This step removes the difficult process for facility owners to evaluate cost proposals. It enables downward negotiation on prices for particular projects.
Measurement & verification (M&V) plan and process	Clearly establishes how M&V will be carried out, with a plan developed as part of the audit contract and a detailed M&V approach laid out for each measure in the performance contract. (This information is included in the audit contract.)	
Self-funded program	If the program plans to be self-funded, give ESCOs advance notice that a small percentage of the cost savings stream may be removed to provide technical services to facility owners in return for a pre-agreed percentage of the guaranteed efficiency savings, once savings are achieved.	Consider a self-funded program. Obtain legal and procurement approval.
<b>Other Elements</b>		
Supplemental Funding Capability	Establishes means to augment performance contract with utility rebates, grants, operating funds, future funds, etc.	Gives ESCO advance notice of funds to expand a project.
Measurement & verification oversight; & Commissioning Oversight	Establishes that a third party M&V commissioning oversight contractor will be hired and paid for through a pre-agreed, set-aside portion of guaranteed efficiency savings.	Give ESCOs advance notice that a small percentage of the savings stream may be removed.
Project management oversight	Establishes that a third party project management contractor will be hired and paid for through a pre-agreed set-aside portion of guaranteed efficiency savings.	Give ESCOs advance notice that a small percentage of the savings stream may be removed
Incorporate Leadership in Energy & Environmental Design (LEED) for Existing Buildings (EB)	Facility owner would use LEED-EB as a project management tool if ESCO sets up the process.	Give ESCOs advance notice and inquire about their experience. Achieve sustained savings and better monitoring and oversight at project level.

## APPENDIX D-3: At-A-Glance – Final ESCO Selection

Owners need a final ESCO selection process to select an ESCO from the ESPC program’s pre-qualified pool of contractors. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – FINAL ESCO SELECTION FROM ESCO POOL OF PRE-QUALIFIED ESCOs</b>
<p><b>Overview</b></p> <p><b>The Big Picture</b> – What happens during the final ESCO selection?</p> <ul style="list-style-type: none"> <li>• An owner competitively selects an ESCO from a pre-qualified list of contractors</li> <li>• The owner focuses on finding an ESCO best suited for the owner’s facilities</li> <li>• ESCOs are under contract with the program to use standard contracts and comply with requirements and guidelines</li> </ul> <p><b>Minimum Selection Criteria</b></p> <ul style="list-style-type: none"> <li>• Eliminate the need for owners to define ESCO capabilities</li> </ul>

<b>AT-A-GLANCE – FINAL ESCO SELECTION FROM ESCO POOL OF PRE-QUALIFIED ESCOs</b>		
<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
Final ESCO Selection Process – Owner Guidelines	Identify at least three ESCOs from the pre-qualified list for further consideration. Request additional submittal information from the three ESCOs, review, and invite the ESCOs to an interview. Select a finalist.	A minimum level of competition is recommended. Avoid an audit competition.
Technical Facility Profile	Provide information to the three ESCOs about the facilities – include a building list with square footage, utility costs from the past three years, future plans, and other information as available.	Provide information as available. If available, it will help the selected ESCO in the later audit stage. If the information is not available, proceed with the selection process.

**AT-A-GLANCE –  
FINAL ESCO SELECTION FROM ESCO POOL OF PRE-QUALIFIED ESCOs**

**Request Additional Information**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
1.0	Management Approach	Inquire about project management and coordination, similar market sector experience/expertise, and project personnel and staffing.	Request added information specific to your project.
2.0	Costs	Inquire about costing for your project (markups, overhead, and profit margins, fees).	The ESPC program established maximum costs (markups, overhead and profit margins, and fees) for the ESCO. The maximum costs generally apply to average or small/marginal projects and may not relate to your project. This is an opportunity to further negotiate these rates for your project.



## APPENDIX D-4: At-A-Glance – ESCO Base Contract (Contract for Pre-Qualified ESCOs)

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 owners. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – ESCO BASE CONTRACT (CONTRACT FOR PRE-QUALIFIED ESCOs)</b>
<p><b>Overview</b></p> <p><b>The Big Picture – What does the ESCO Base Contract do?</b></p> <ul style="list-style-type: none"><li>• It is an agreement for each ESCO in the pre-qualified pool</li><li>• Establishes rules of engagement for the ESCO</li></ul> <p><b>How do pre-qualified ESCOs maintain their status?</b></p> <ul style="list-style-type: none"><li>• The term of pre-qualification is five years</li><li>• Pre-qualified ESCOs undergo an annual evaluation process to determine continued eligibility</li><li>• Pre-qualified ESCOs apply for renewal annually with no certainty of continued pre-qualification over the entire term</li></ul> <p><b>How do ESCOs participate in the state's performance contracting program?</b></p> <ul style="list-style-type: none"><li>• Ensure the program's standard processes, technical assistance, and documentation will be used</li><li>• Provide metrics on project status and results (overall cost, savings in units and dollars, emissions reductions, etc.)</li><li>• Market the state's program and process</li><li>• Comply with all requirements stated in the model audit and performance contracts, as well as legislative requirements and codes</li></ul> <p><b>How do ESCOs seek selection for a project?</b></p> <ul style="list-style-type: none"><li>• Participate in the defined state process requiring competitive selection</li><li>• Market to facility owners as part of the state's program</li></ul> <p><b>How does the ESCO Base Contract affect pricing?</b></p> <ul style="list-style-type: none"><li>• Maximum markups, margins and fees are stated (reiterated from the RFP response)</li><li>• "Open book" pricing is required</li></ul>

**AT-A-GLANCE –  
ESCO BASE CONTRACT (CONTRACT FOR PRE-QUALIFIED ESCOs)**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
N/A	Recitals	Establish rationale for contract, establish contract authority, define procurement process leading up to the contract, etc.	
<b>CONTRACT</b>			
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 owner 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 owner	Describes the program’s commitments on marketing, interaction with the owners, providing facilitation support, and providing technical assistance to owners throughout the process. Describes the owner’s responsibility, as established by the program, to select from the pre-qualified ESCOs and commit to developing an oversight team.	

**AT-A-GLANCE –  
ESCO BASE CONTRACT (CONTRACT FOR PRE-QUALIFIED ESCOs)**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>ATTACHMENTS</b>			
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. Owners 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.

## APPENDIX D-5: At-A-Glance – Investment Grade Audit (IGA) and Project Proposal Contract

An Investment Grade Audit (IGA) and Project Proposal Contract directs the ESCO to identify, evaluate and present a recommended package of measures with associated efficiency savings and projected costs. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT</b>
<p><b>Overview</b></p> <p><b>The Big Picture</b> – What is an investment grade audit and project proposal contract?</p> <ul style="list-style-type: none"><li>• A stand-alone contract to identify a package of measures that could be implemented through an energy performance contract in which efficiency savings pay for the cost of the entire project</li><li>• Intended as the preliminary step that will be followed by a performance contract with the same provider to implement the projects as further negotiated in the performance contract</li></ul> <p><b>Cost of Audit</b></p> <ul style="list-style-type: none"><li>• The cost of the audit is based on the square footage to be audited as well as the type of facility and the complexity of the energy-using systems</li><li>• Cost of the audit contract can be rolled-into the energy performance contract and paid through the guaranteed efficiency savings just like other measures</li><li>• If the ESCO cannot identify projects that meet the owner’s pre-established financial guidelines, typically, there will be no cost for the audit (need to review negotiated terms)</li></ul> <p><b>Setting the Guidelines</b></p> <ul style="list-style-type: none"><li>• The audit contract further establishes guidelines for the project on what is acceptable to the owner (ideally this should be done during the RFP stage): maximum financing term, eligible revenue streams, guarantee requirements, etc.</li><li>• A baseline of energy use is established as a benchmark for determining savings after the retrofits.</li><li>• Maximum markups and fees to be charged by the ESCO are itemized</li><li>• Measurement and verification standards are presented and a measurement and verification plan is required at this stage as needed. Measurements are best taken at the audit stage</li><li>• A commissioning plan is also laid out</li></ul> <p><b>Identifying Potential Projects</b></p> <ul style="list-style-type: none"><li>• The ESCO will identify potential projects based on opportunities to achieve efficiency and cost savings and meet the owner’s needs</li><li>• An iterative process between the ESCO and the owner is critical to establishing the potential projects</li></ul> <p><b>Scoping Out a Performance Contracting Project</b></p> <ul style="list-style-type: none"><li>• A package of retrofit measures will be presented in terms of projected annual guaranteed efficiency savings that meet or exceed annual financing payments</li></ul>

<b>AT-A-GLANCE – INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT</b>			
<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
N/A	Recitals	Establish rationale for project, establish contract authority, define procurement process leading up to the contract, etc.	N/A
<b>CONTRACT</b>			
1	Contract	ESCO agrees to perform a Technical Energy Audit and to provide a proposal with a package of measures. The contract establishes a timeframe for the ESCO to complete audit, directs owner to assist, and instructs ESCO to diligently assess validity of information.	N/A
<b>2. Compensation to ESCO</b>			
2.a	Basis and Maximum Amount	Establishes maximum audit cost (based on square footage). Owner will only pay for square footage actually audited.	Maximum is typically established in RFP response; cost can be negotiated when scope and facility size differ from initial proposal.
1.3	Payment through Performance Contract	Payment for the audit will be deferred and treated as a cost of the performance contract, provided the performance contract is signed in a timely manner.	Owner can pay for audit upfront if desired, with the benefit of expanding the scope of the performance contracting projects.
1.4	Project with Insufficient Cost Savings	The ESCO commits that there will be no cost to the Owner for the audit in the event that the proposed scope of work does not meet the owner’s pre-established guidelines. (It is the ESCO’s responsibility to recognize if a project can be developed such that eligible efficiency savings pay for the total cost over a maximum financing term.)	
<b>3. Scope of Work – See Exhibit A</b>			
<b>4. Termination</b>			
	Termination for Default/Cause	Termination for default/cause, termination for convenience, termination in the event of non-appropriation of funds.	
<b>5. Insurance</b>			
	Insurance	ESCO liability, property damage and workmen’s compensation insurance, and automobile liability.	

**AT-A-GLANCE –  
INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>6. Energy Savings Performance Contract</b>			
	Energy Savings Performance Contract	The intent of the audit contract is for the owner and the ESCO to proceed with an Energy Performance Contract. However, the owner has the right to discontinue a performance contract.	It is not advised to follow the audit contract while ESCOs are in competition for the performance contract work. Since the ESCO guarantees the efficiency savings, it is critical for the ESCO to do the audit work that establishes the guaranteed performance.
<b>7. Extent of Agreement</b>			
	Extent of Agreement	Establishes that attachments are an integral part of the contract.	
<b>8. Term</b>			
		Establishes the effective date of contract execution and the timeframe to conduct the audit. The audit contract term ends after signing the Notice of Acceptance.	
<b>9. Order of Precedence</b>			
<b>10. Owner's Special Provisions</b>			
		Owner's boilerplate contract terms.	
<b>Exhibit A – Scope of Work</b>			
a.	Process	Establishes an interactive process between the owner and the ESCO to identify potential measures and a meeting of the minds on what measures the owner wants to implement.	Actively participate in planning and interim meetings throughout the audit process to ensure a meeting of minds on desired measures.
b.	Scope Guidelines and Requirements	Establishes maximum acceptable financing term, confirms that the guarantee is on an annual basis (rather than averaged over the full term), explains that the owner may reserve some guaranteed efficiency savings to cover oversight, and explains that excess efficiency savings in any year will apply only to past years' shortfalls. Identifies eligible revenue streams (energy/water plus option of material/commodity savings such as lamp/ballast replacements, maintenance contracts when eliminated, etc.), escalation	All of these items need to be fully considered by the owner and in collaboration with the ESCO.

**AT-A-GLANCE –  
INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
		rates to apply to future years' savings, and which ESCO markups can be used.	
c.	Data and Background Information from Owner	Lists information that the owner will provide to the ESCO, as available (square footage, utility invoices, occupancy use, drawings, and maintenance information).	
d.	Identify Potential Measures	Describes level of diligence ESCO is to use in collecting background information to make decisions on potential retrofits, including: interviewing the facility manager, surveying major equipment, and developing a preliminary list of potential measures.	
e.	Establish base year consumption	ESCO will examine three years of utility bills to establish a baseline that will be the benchmark for measuring post-retrofit efficiency savings. This step is critical for measuring and verifying the efficiency savings guarantee.	
f.	Develop a preliminary analysis of measures	ESCO will prepare a preliminary recommendation of retrofits with a description of measures and associated efficiency savings.	
g.	Meeting on Preliminary Findings	Discussion for meeting of the minds.	Conduct a rigorous review and communicate any concerns, etc.
h.	Analyze efficiency savings and costs for each measure	ESCO will conduct a thorough analysis of savings for each measure.	
i.	Draft technical energy audit report	Provides an outline for the audit, indicating the level of detailed information to be provided.	
j.	Meeting	ESCO will meet with owner to review recommendations.	
k.	Revise audit	ESCO will revise audit based on owner's comments.	
l.	Prepare an Energy Savings Performance Contract Proposal (Term Sheet)	ESCO will present a package of measures showing the financial terms and guarantee.	

**AT-A-GLANCE –  
INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Exhibit B – Notice of Acceptance of Technical Energy Audit Report</b>			
	Notice of Acceptance of Technical Energy Audit Report	This is a formal notice where the owner accepts the Technical Energy Audit Report.	Details can be further negotiated in development of the Energy Performance Contract.
<b>Exhibit C – Guidelines for Draft Measurement and Verification Plan</b>			
	Monitoring and Verification for Performance Contracts	This is an overview of measurement and verification with some details on how to apply methodologies from the <i>International Performance and Measurement Protocol</i> to particular retrofits.	
<b>Exhibit D – Cost and Pricing</b>			
	Markups	The ESCO will provide markups on equipment and materials, as well as subcontractor labor and materials.	
	Margins	The ESCO will provide the percentage margin (not markup) on overhead and profit.	
	Fees	The ESCO will provide a maximum cost for the audit on a cost per square foot basis, and identify and describe other costs such as design, permits, bonds, project management, commissioning, training, measurement and verification, warranty service, maintenance, etc.	
	Contingency	The ESCO will describe how a contingency budget is determined and how it is used.	



## APPENDIX D-6: At-A-Glance – Energy Savings Performance Contract

The Energy Savings Performance Contract is the implementation contract to install the measures and guarantee the savings. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

### AT-A-GLANCE – ENERGY SAVINGS PERFORMANCE CONTRACT

#### Overview

**The Big Picture** – What is an energy savings performance contract?

- Construction and installation contract to implement the projects identified (and later negotiated) in the investment grade audit report
- Long-term contract to monitor performance and guarantee savings
- Guaranteed efficiency savings are established, typically to meet the annual lease-purchase payments plus any additional annual fees related to the project
- A financing agreement with a financial institution is signed at the same time, unless other funding arrangements are made

**Documentation** – What is included in an energy savings performance contract?

#### Savings Guarantee

- Energy and water efficiency savings guarantees
- Baseline energy consumption
- Efficiency savings measurement and verification plan; methodology to adjust baseline

#### Payments and Schedule

- Final project cost and project cash flow analysis
- Financing agreement and payment schedule
- Compensation to ESCO for annual services

#### Audit and Construction Phase

- Description of project sites
- Equipment to be installed by ESCO
- Construction and installation schedule
- Systems start-up and commissioning; operating parameters of installed equipment
- Standards of comfort
- ESCO's training responsibilities

#### Post-Construction

- ESCO's maintenance responsibilities
- Owner's maintenance responsibilities
- Facility maintenance checklist

#### Administration

- Annual reporting requirements

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

- Annual dispute resolution procedures

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
N/A	Recitals	Establishes rationale for project, establishes contract authority, defines procurement process leading up to the contract, etc.	N/A
<b>DEFINITIONS, SCHEDULES, EXHIBITS &amp; APPENDICES</b>			
1.1	Definitions	Defines key words and phrases	N/A
1.2	Investment Grade Audit & Project Proposal	Establishes approval and acceptance of audit report and requires a Certificate of Acceptance as an attachment.	If list of measures is not finalized, add language to contract.
1.3	Schedules, Exhibits & Appendices	List of schedules, exhibits, and appendices for easy reference.	Add schedules as needed to provide clear documentation for any aspect of the project.
1.4	Other Documents	Includes the original RFP and the selected ESCO's proposal as part of the contract, and calls for the Investment Grade Audit to be included as an exhibit.	For any discrepancy between the audit and this contract and its technical schedules, the contract governs.
<b>PAYMENTS AND SCHEDULES</b>			
<b>Article 2. Purchase and Sale; Commencement Date and Terms; Interim Period</b>			
2.1	Purchase & Sale	The ESCO receives 100% of the contract sum. During the construction (interim) period, the ESCO can draw down payments from the escrow account based on the percentage of work completed and approved.	Require a percentage retained until completion/ approval. Sign Certificate of Acceptance before the sale is 100% transferred.
2.2	Commencement Date	Establishes the beginning date for the guarantee period and any post-installation payments (monitoring, maintenance). Commencement date is dependent on finalization of schedules, inspection, and Certificate of Acceptance. This date may need to be adjusted to accommodate fiscal year appropriations/budgeting.	Set as month after Certificate of Acceptance and all schedules are finalized. Set up financing payments to begin on/after commencement date. Consider fiscal year impacts.
2.3	Term of Contract; Interim Period	Term of Contract is defined in years, beginning on the Commencement Date. Prior to the Term, during the Interim (construction) period, savings begin to accrue and are retained by the owner unless otherwise negotiated.	Consider application of savings achieved during the interim period and the associated measurement protocol.

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Article 3. Savings Guarantee; Annual Reconciliation; Payments to ESCO</b>			
3.1	Energy & Cost Savings Guarantee	Establishes an annual guarantee to cover annual payments (principle and interest, lease payment, and ESCO fees).	Ensure cost guarantee covers annual payments and any monitoring and maintenance fees.
3.2	Annual Review & Reimbursement Reconciliation	Year-end review and reconciliation of actual achieved efficiency savings related to savings guarantee. The ESCO will make up for shortfalls per the guarantee. The ESCO may be reimbursed for excess savings in subsequent years. No excess savings will be credited to future shortfalls.	Ensure that the receipt of make-up funds from the ESCO's guarantee is available in the time period needed.
3.3	ESCO Compensation and Fees	Ensures that the efficiency savings guarantee covers all annual project financing costs and all annual fees.	
3.4	Billing Information Procedure	Establishes frequency of invoices. Establishes time period for each step: <ul style="list-style-type: none"> <li>• Owner provides energy bills to ESCO,</li> <li>• ESCO calculates savings per agreed verification protocol, and</li> <li>• ESCO invoices the owner.</li> </ul>	Determine time for each step and set up a process to provide utility bills and respond in a timely manner.
3.5	Payment	Establishes time to approve invoice and make payment.	Establish a reasonable amount of time to process ESCO invoices.
3.6	Effective Date of Payment Obligation	ESCO fees for monitoring and maintenance are not due until the Certificate of Acceptance is signed.	
3.7	Open Book Pricing	This section establishes that the ESCO will fully disclose all costs, provide access to records for all labor and material costs, and make them available for three years beyond final payment.	
<b>Article 4. Fiscal Funding</b>			
4.1	Non-appropriation of Funds	Describes owner protection in the event of non-appropriation of funds, which would terminate contract with no penalty (for those buildings/projects affected). This is standard for government, and generally accepted by ESCOs who consider it unlikely that utility allocations will be withheld (considered the cost of doing business with the government).	

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
4.2	Non-substitution	In the case of non-appropriation of funds or owner default, this section establishes that the owner cannot secure other funding for one year following contract termination.	
<b>AUDIT AND CONSTRUCTION PHASE</b>			
<b>Article 5. Energy Usage Records and Data</b>			
5.0	Energy Usage Records and Data	Ensures the ESCO has access to data (energy use, facility operations, occupancy, prior audits, etc.) for at least 24 months. This step helps establish an accurate baseline.	Ensure 24 months of data, but 36 months of data is desired. Commit to providing quality data for an accurate baseline.
<b>Article 6. Location and Access</b>			
6.0	Location and Access	Owner is required to provide protected space for installation and operation of equipment. ESCO is granted access for routine and emergency operations.	Identify and secure a space and provide for access.
<b>Article 7. Permits and Approvals; Coordination</b>			
7.1	Permits and Approvals	Requires ESCO to comply with all codes, pay for all permits, and provide permit/license to owner to do the work. Owner agrees to assist.	Identify codes and other requirements. Assist with obtaining permits/approvals.
7.2	Coordination During Installation	Owner and ESCO will coordinate installation to not interfere with owner's business. Where interference is necessary, ESCO must obtain permission.	Identify whether any revenue-producing activity will be impacted and negotiate for collection of damages.
<b>Article 8. Construction Schedule and Equipment Installation; Approval</b>			
8.1	Construction Schedule; Equipment Installation	Refers to the attached Construction and Equipment Installation Schedule that was established with consideration for owners' scheduling needs.	Consider if a separate construction contract is necessary.
8.2	Systems Startup and Equipment Commissioning	Requires ESCO to do performance testing and verification on each element and each system to ensure proper operation, per the attached Commissioning Plan Schedule - prior to Certificate of Acceptance and after notification to owner. ESCO shall correct deficiencies.	Ensure compliance with Commissioning Plan and manufacturer startup information, participate in testing, and identify any post-acceptance testing required.

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Article 9. Equipment Warranties</b>			
	Equipment Warranties	Requires new equipment with minimum one-year warranties on parts and performance; requires only new warranty replacement equipment, and requires function for one year. Establishes the ESCO's responsibility to ensure warranties are met and relieves ESCO of maintenance responsibility after the warranty period.	Handle maintenance after the warranty or first-year period.
<b>Article 10. Standards of Comfort</b>			
	Standards of Comfort	ESCO is required to meet standards of comfort identified in the attached schedule for the contract term. Standards are negotiated to reflect realistic ranges of heating, cooling, water temperatures, lighting levels, etc.	Establish comfort ranges; ensure full documentation in schedule.
<b>Article 11. Environmental Requirements</b>			
11.1	Excluded Material and Activities	The ESCO is not responsible for identifying, handling, or working on any hazardous materials it may encounter. The ESCO will cease work and notify the owner if hazardous material is found. The owner will be responsible for any corrective action it deems necessary. This discovery is not grounds for default. The ESCO is responsible for any hazardous materials related to equipment it brings to the site.	Provide any studies or inspections related to hazardous waste that could aid decision-making early on.
11.2	Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps	The ESCO is required to have an agreement with an approved ballast disposal firm and approved lamp recycling firm to properly handle, transport, and recycle/incinerate these products. The owner must sign a manifest of ownership.	Aid in site handling as instructed, and agree to signing manifest of ownership.
<b>Article 12. Training by ESCO</b>			
	Training by ESCO	The ESCO generally trains facility personnel prior to the Certificate of Acceptance and may continue training thereafter, particularly when equipment is altered. Training hours and schedule should be documented in the attached schedule and charges for unscheduled training should be noted.	Assess training needs.

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>POST-CONSTRUCTION PHASE</b>			
<b>Article 13. Equipment Service</b>			
13.1	Actions by ESCO	Maintenance and service responsibilities of both the ESCO and owner are specified in the attached schedule. When the owner is responsible for causing additional maintenance or repair to the equipment, the ESCO will charge the owner accordingly.	Conduct maintenance as agreed in the schedule.
13.2	Malfunctions and Emergencies	The owner is required to notify the ESCO of any situation that could impact the performance of the equipment. If the owner fails to communicate an occurrence to the ESCO, it will be treated as a Material Change and the baseline will be adjusted.	Exercise due diligence.
13.3	Actions by Owner	The owner may not make any changes to the operation and maintenance of equipment without prior written approval of the ESCO, unless in an emergency or if the owner obtains written exemptions. The owner will follow emergency instructions.	Maintain the site in good repair and protect portions of the site that affect the operation and maintenance of equipment.
<b>Article 14. Modification, Upgrade or Alteration of Equipment</b>			
14.1	Modification of Equipment	The owner will not alter equipment without consent of the ESCO if it will change or impair functions.	
14.2	Upgrade or Alteration of Equipment	Describes the terms and conditions under which ESCO may make changes to equipment, operating procedures, or energy-saving actions. The owner needs to approve ESCO changes. The ESCO has the right to make changes to achieve guaranteed efficiency savings, and the owner shall not unreasonably withhold approval. Any replaced equipment must be new and achieve the same or greater efficiency savings. For computer software, licensing provisions apply.	
<b>Article 15. Material Changes</b>			
15.1	Material Change Defined	Any condition other than weather that affects building energy use by more than two to five percent (negotiated), such as hours of operation, occupancy, use, etc.	Negotiate percent change when Material Change applies.

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
15.2	Reported Material Changes; Notice by Owner	Requires owner to notify ESCO of any planned changes that would impact consumption by more than two to five percent.	
15.3	Other Adjustments	If all building conditions and operations stay the same, energy use will not vary more than above negotiated percentage. If the energy use varies above the negotiated percentage, the ESCO will report findings and work with the owner on any needed adjustments to the baseline. Any disputes will be resolved per attached schedule.	
<b>Article 16. Performance by ESCO</b>			
16.1	Corrective Action; Accuracy of the Services	Directs the ESCO to protect the site and repair any damages to the original condition, and to absorb the costs. The ESCO remains responsible for professional and technical accuracy of all services performed.	Review ESCO's work and direct ESCO to take needed actions.
16.2	Annual Reporting Requirements; Annual ENERGY STAR Rating	At the end of each annual guarantee period, the ESCO will submit a report per the attached schedule. The ESCO will also provide a 1 – 100 ENERGY STAR score for each facility.	Establish desired reporting criteria.
<b>Article 17. Ownership of Certain Proprietary Rights; Existing Equipment</b>			
17.1	Ownership of Certain Proprietary Property Rights	Addresses ESCO's property rights over software (energy management controls system), granting the owner license to use and operate the system without violating the ESCO's proprietary rights.	
17.2	Ownership of Existing Equipment	The owner retains ownership of all existing equipment and the ESCO will notify the owner of any equipment to be replaced. The ESCO is responsible for all equipment/material disposal (except hazardous materials). The owner will designate a storage site.	
<b>Article 18. Property/Casualty/Insurance; Indemnification</b>			
18		Owner's requirements for insurance and indemnification. Example language is provided for insurance, damages to equipment or property, indemnification, and liabilities.	Provide standard requirements for insurance and indemnification.
<b>Article 19. Conditions Beyond Control of the Parties</b>			
19	Conditions Beyond Control of the Parties	Owner's standard contract language.	

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Article 20. Events of Default</b>			
20.1	Events of Default by Owner	Addresses failure to pay the ESCO, owner’s material failure to comply with contract, and false or misleading representation.	
20.2	Events of Default by ESCO	Addresses standards of comfort, if not corrected, false or misleading representation or warranty, failure to install equipment or comply with contract, lien upon the equipment by any subcontractor of ESCO, ESCO bankruptcy, and failure to pay owner.	
<b>Article 21. Remedies Upon Default</b>			
21.1	Remedies Upon Default by Owner		
21.2	Remedies Upon Default by ESCO		
<b>Article 22. Assignment</b>			
22.1	Assignment by ESCO	ESCO must not transfer the contract to another ESCO without the owner’s approval. Any ESCO assigned to the contract must fully comply with all terms and conditions. Both the ESCO and assignee remain contractually liable for fulfilling the ESCO’s obligations.	
22.2	Assignment by Owner	The owner is allowed to transfer or assign the contract to a new building owner, and remains responsible to the ESCO for the owner’s obligations per the contract.	
<b>Article 23. Representations and Warranties</b>			
23	Representations and Warranties	Provides the owner’s boilerplate provisions. Each party has the requisite authority and ability to enter into this contract.	



**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Article 24. Additional Representations of the Parties</b>			
24	Additional Representations of the Parties	Addresses areas specific to the performance contract. The owner certifies it will provide energy-related data and declares no leases or service contracts related to equipment or servicing of pre-existing equipment. The ESCO certifies its licenses, insurances, bonds, and financial ability to complete project and meet performance expectations. The ESCO also confirms that all equipment will meet functional design tests and that the ESCO will provide all related documentation.	
<b>Article 25. Miscellaneous Documentation Provisions</b>			
25.1	Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds	Refers to bonds presented in attached exhibits.	
25.2	Further Documents	Both parties will provide documents necessary to affect contract provisions.	
25.3	Owner's Responsibilities	Both the ESCO and the owner are protected through a method for the ESCO to supervise the owner's compliance with routine and preventive maintenance activities performed by the owner. A checklist will be developed for newly installed and pre-existing equipment.	
25.4	Waiver of Liens	The ESCO will provide a Waiver of Liens from each vendor, including the material manufacturer and laborer in supply, as well as installation and servicing of each piece of equipment.	
<b>Article 26. Conflicts of Interest</b>			
26	Conflicts of Interest	Confirms that neither party – employee nor agent – has a conflict of interest.	
<b>Article 27. Complete Contract</b>			
27	Complete Contract	The executed contract with its attachments is complete and may not be amended except by written contract.	

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>Article 28. Applicable Law</b>			
28	Applicable Law	Laws of the state and jurisdiction apply.	
<b>Article 29. Interpretation of Contract</b>			
29	Interpretation of Contract	The owner has authority to determine questions of fact in relation to interpretation of the contract, subject to dispute resolution procedures in the attached schedule.	
<b>Article 30. Notice</b>			
30	Notice		
<b>SCHEDULES</b>			
<b>Savings Guarantee</b>			
A	Savings Guarantee	Fully describes guarantee – units of energy to be saved for the contract term and annual reconciliation of achieved vs. guaranteed efficiency savings.	
B	Baseline Energy Consumption; Methodology to Adjust Baseline	Stipulates the yardstick by which all efficiency savings will be measured. This section includes methodology and supporting documentation to calculate the baseline, including unit consumption and current utility rates for each fuel type, and other savings (material cost savings from lamps, ballasts, filters, savings from eliminating outside maintenance contracts, etc.).	
C	Savings Measurement and Verification Plan; Post-Retrofit MYV Plan; Annual M&V Reporting Requirements	Describes energy savings measurement, monitoring, and calculation procedures to verify and compute efficiency savings. Includes method to compare the level of energy that would have been consumed without the project (baseline) against the amount of energy that was actually consumed during the period. Methods include engineered calculations, metering, equipment run-times, and pre- and post-installation measurements described explicitly for all equipment installed. Provides summary of project with energy, water, and operational efficiency savings (\$ and units) for the year. Includes emissions reductions, ENERGY STAR 1 – 100 score, etc. Template provided.	

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
<b>Payments and Schedule</b>			
H	Final Project Cost & Project Cash Flow Analysis	Spreadsheet depiction of expected financial performance of the project through the entire contract term. Clearly identifies all financial components of the project – interest rates, fuel prices, escalation rates, guaranteed efficiency savings and associated costs, ESCO compensation, cash-flow projections, and projected Net Present Value of any cumulative positive cash flow benefits to owner. Cost savings projections are clearly delineated by utility/ fuel type and identify ongoing annual service fees. Project cost breakdowns identify all costs (labor, subcontractor, materials and equipment, permits, insurance, markups, overhead and profit, etc.).	
I	Financing Agreement and Payment Schedule	Copy of the project financing agreement or terms and conditions of the financing vehicle used, including amortization and payment schedules and the progress payment disbursement schedule to pay the ESCO during the interim (construction) period for the portion of work completed.	
J	Compensation to ESCO for Annual Services	Amount and frequency of any payments to the ESCO for maintenance, monitoring, or other services negotiated. Includes how compensation is calculated, how annual inflation is handled, hourly fees, etc.	
K	Rebates, Incentives and Grants	Identifies amounts of other funding sources that contribute to project cost.	
<b>Design and Construction Phase</b>			
Q	Description of Project Site(s)	Basic information on condition of site at the time of contract execution, including facility square footage, building construction, use, occupancy, hours of operation, special conditions, etc. Identifies what equipment was in place and how it was configured. This step is important to establishing an accurate baseline and future efficiency savings measurements.	
R	Equipment to be Installed by ESCO	Identifies newly installed equipment including manufacturer, quantity, location and warranties, and describes any modifications made to existing equipment.	

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

Section	Title	Description & Key Points	Negotiating Items & Recommendations
S	Construction and Installation Schedule	Timetables and milestones for project contraction and installation. Also includes documentation of required insurance, subcontractor lists, etc.	
T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment	Specifies performance testing procedures for start-up and commissioning installed equipment and the total system, including temperature setbacks, equipment runtimes, load controlling specifications, etc. Also provides documentation for the owner’s attendance at testing and approval.	
U	Standards of Comfort	Dictates standards of comfort to be maintained for heating, cooling, lighting, domestic water, humidity, and any special conductions.	
V	ESCO’s Training Responsibilities	Describes the ESCO’s training program with session title, hours, and schedule for facility staff. Includes any ongoing training, commitments for new staff, software upgrades, and associated training fees for training beyond contract commitments.	
<b>Post-Construction</b>			
BB	ESCO’s Maintenance Responsibilities	ESCO’s specific operations and maintenance responsibilities, including time intervals for conducting stated activities.	
CC	Owner’s Maintenance Responsibilities	Owner’s operation and maintenance responsibilities.	
DD	Facility Maintenance Checklist	Checklist for the owner to report its compliance on maintenance procedures to ESCO. Includes a simple list of tasks and a schedule.	
<b>Administration</b>			
JJ	Annual Dispute Resolution Procedures	Describes methods to resolve disputes or claims related to the contract or construction, including good faith efforts and alternatives to costly litigation.	
<b>Optional Schedules</b>			
	Pre-Existing Service Contracts	Information about pre-existing service contracts – scope, cost, and schedule. When the ESCO is credited with maintenance cost savings for taking over existing service contracts, this section helps to track the ESCO’s performance.	Consider including in a schedule above.

**AT-A-GLANCE –  
ENERGY SAVINGS PERFORMANCE CONTRACT**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
	Energy Savings Projections	Projected efficiency savings in units for each year of the contract, for each measure in each facility.	Consider including in a schedule above.
	Facility Changes Checklist	Provides means for the owner to notify the ESCO of any facility changes that could impact energy use.	Consider including in a schedule above.
	Current and Known Capital Projects at Facility	Describes current or planned capital projects to be implemented in the facility.	Consider including in a schedule above.
<b>EXHIBITS</b>			
I	Performance Bond/ Construction Bond		
II	Labor and Material Payment Bond		
III (i)	Certificate of Acceptance – Investment Grade Audit Report		
III (ii)	Certificate of Acceptance – Installed Equipment		
IV	Equipment Warranties		
<b>APPENDICES</b>			
A	RFP for ESCO Solicitation		
B	ESCO Proposal (Pre-Qualification Phase and Final Selection Phase)		
C	Investment Grade Audit and Project Development Contract		
D	Investment Grade Audit Report		

## APPENDIX D-7: At-A-Glance – Financing Solicitation Package

The Financing Solicitation Package can be used to solicit competitive financing when in-house sources of funding are not available. The model document is posted at the U.S. DOE Solution Center ([http://www1.eere.energy.gov/wip/solutioncenter/performance\\_contracting.html](http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html)). Below is an overview of each element of the document.

<b>AT-A-GLANCE – FINANCING SOLICITATION PACKAGE</b>	
<b>Overview</b>	
<b>The Big Picture</b> – What does the financing solicitation package achieve?	
<ul style="list-style-type: none"> <li>• Enacts a competitive solicitation process to procure financing for the performance contracting project</li> <li>• Simplifies the state’s role by requiring the ESCO to conduct a competitive procurement on the state’s behalf, where the state makes the final selection</li> </ul>	
<b>Benefits of this Approach</b>	
<ul style="list-style-type: none"> <li>• Gain the ESCO’s input on recommended best financing proposal</li> <li>• Ensure the procurement process does not delay signing of the performance contract</li> <li>• Provides the ESCO with immediate input on available interest rates that will impact the cash flow of the project</li> </ul>	
<b>Lease-Purchase Agreement</b>	
<ul style="list-style-type: none"> <li>• A municipal tax-exempt lease-purchase agreement is the standard financing mechanism</li> <li>• No standardized agreement is available</li> <li>• It is expected that the responding firm will have an agreement that has already been used in the state, providing a working template</li> </ul>	

<b>AT-A-GLANCE – FINANCING SOLICITATION PACKAGE</b>			
Section	Title	Description & Key Points	Negotiating Items & Recommendations
<b>RFP for ESCOs to Solicit Competitive Financing on Behalf of an owner</b>			
	Introduction	Basic solicitation of information	N/A
	Notice of Invitation	Identifies the scope for funding or financing. Identifies response requirements of a proposal letter, model lease contract, schedule of payments and amortization schedule, and escrow information.	The intent is for the ESCO to prepare the RFP and solicit responses on behalf of the owner.

**AT-A-GLANCE –  
FINANCING SOLICITATION PACKAGE**

<b>Section</b>	<b>Title</b>	<b>Description &amp; Key Points</b>	<b>Negotiating Items &amp; Recommendations</b>
	Proposal Information - Specific Terms	Defines the basic parameters for the financing organizations to prepare their bid responses. Defines lessee, lessor, nature of the model lease contract, security required, desired terms of interest rate, pre-payment requirements, assignment rights, the need to specify all costs, requirements of the ESCO, and requirements of the lender.	State whether owner's funds will be used as a down payment.
	Proposal Information – Conditions to Proposal	This section defines the conditions: the cost of developing the proposal is the respondent's responsibility, there are no oral or implied contracts, the owner has the right to accept or reject the proposal, the lessor is required to enter into a tax-exempt lease purchase agreement with the owner if selected, and any amendments that become part of the contract, and standard contract requirements.	
	Financing Proposal Letter	A prepared letter is provided for respondents to submit that includes the submittal requirements of lender information, financing structure (structure, security, proceeds, term, payments, prepayment, interest rate, closing costs, escrow account terms, model lease contract, payment and performance bond requirements (if any), credit approval, and closing date. The letter provides the opportunity for respondents to submit other information as well.	The intent is for the ESCO to review the responses and present all responses to the owner with the ESCO's recommendations and comments on the most advantageous proposal.
	Signature Sheet	The ESCO will submit this sheet along with the proposal letter.	
	Overview of Facility Improvement Projects	This section is prepared by the selected ESCO to describe the purpose of financing, including total installed cost, financed capital (including capitalized interest for the construction period), financing term, frequency of payments (minimum of quarterly), description of projects, and anticipated draw schedule.	
	Model Lease-Purchase Agreement		If a model lease-purchase agreement is available that meets the requirements of the owner or state legislation, include it as a reference.