

**STATE PURCHASING DIVISION  
OF THE  
GENERAL SERVICES DEPARTMENT  
AND  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

**REQUEST FOR PROPOSALS (RFP)**

**Qualified Providers of  
Energy Performance Contracting Services**



**RFP#40-00000-23-00029**

RFP Release Date: November 2, 2023

Proposal Due Date: November 21, 2023

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Energy Services Companies (ESCOs) to be pre-qualified for providing Energy Performance Contracting (EPC) services for New Mexico governmental entities (“Agencies” or “Agency”). This RFP process constitutes pre-qualification for EPC services for New Mexico public facilities. ESCOs selected through separate federal, state, or private procurement processes for EPC services are not pre-qualified.

Qualified Providers will be approved to provide proposals to Agencies that may choose to utilize EPC services for upgrading facilities, fleets, and water infrastructure with Energy and Water Conservation Measures (ECMs and WCMs). Such EPC services are allowed by the Public Facility Energy Efficiency and Water Conservation Act (“EPC Statute”), as amended. The statute citation is New Mexico Statutes Annotated (NMSA) 1978, Chapter 6, Article 23 (6-23).

Eligible Agencies under the EPC Statute are state agencies, K-12 public school districts, higher education governmental entities, municipal and county governments, and other political subdivisions. This Request for Proposals (RFP) is for application to all eligible Agencies under the EPC Statute. EPC enables these Agencies to access financing and accomplish energy projects without using capital budgets; project financing costs are offset by energy cost savings. The Agencies and selected Qualified Providers will follow the EPC statute and program guidelines of EMNRD.

All sizes of firms are encouraged to submit proposals for consideration. The selected ESCOs will commit to the EPC Statute and EMNRD’s program guidelines via subsequent contracts with Agencies for specific projects. The term of the state price agreement will be four years, with continuation subject to annual renewal of each agreement by GSD and annual review by EMNRD of each Qualified Provider’s performance. The resulting Statewide Price Agreement will contain schedules of markups and fees as stated in the Offeror’s RFP response. Compensation to Qualified Providers for specific work projects will be detailed in the resulting contracts with Agencies to implement EPC projects.

## **B. BACKGROUND INFORMATION**

Qualified Providers market their services to potential participants. When a potential project is identified, the Qualified Provider shall work with the Agency to engage EMNRD for project support. The Qualified Provider will be required to develop proposals for potential projects. Agreements established between the Qualified Provider and the Agency, as described in the following, will incorporate current state statutes and directives that directly relate to EPC, including:

- Public Facility Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23] (APPENDIX Q); and

- Energy Efficiency Standards for Public Buildings, [NMSA 1978, 15-3-36] (APPENDIX R).

## **C. SCOPE OF PROCUREMENT**

This procurement provides each of the Agencies with the option to procure services of an ESCO to implement ECMs and WCMs in Agency facilities, which will avoid Agency energy costs. Selected ESCOs that establish Statewide Price Agreements will be deemed Qualified Providers for selection by any of the Agencies. The primary purposes of this Qualified Provider selection process are:

- (1) To ensure the Qualified Provider meets minimum qualifications and can implement successful EPC projects;
- (2) To provide each Agency with the opportunity to procure services of a Qualified Provider in a timely and cost-effective way;
- (3) To increase the number of successful Guaranteed Utility Savings Contracts statewide, as a means to implement comprehensive energy, transportation, and water efficiency projects.

The selection of ESCOs and subsequent contracting with Qualified Providers serves as a major step to enable Agencies to initiate EPC projects that upgrade facilities and generate avoided energy costs. ESCOs will respond to this RFP because of the EPC project opportunities that may follow the qualification process. There are three phases possible in a complete EPC project, after an Agency's selection of a Qualified Provider, as follows:

### **Phase 1: Investment-Grade Energy Audit and Project Proposal**

The selected Qualified Provider and the Agency will execute the Investment-Grade Energy Audit and Project Proposal contract (APPENDIX L). This contract sets specific expectations and provides a detailed process for both the Qualified Provider and the Agency. The contract also defines the deliverables to Agency and establishes the basis for the Guaranteed Utility Savings Contract to follow. The Investment-Grade Energy Audit and Project Proposal will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the proposed financing term. A project proposal will present bundled ECMs and WCMs that can be financed through guaranteed savings.

### **Phase 2: Guaranteed Utility Savings Contract and Implementation**

Upon satisfactory completion of the Investment-Grade Energy Audit and Project Proposal, the Agency will have the option to execute a Guaranteed Utility Savings Contract (APPENDICES N and O) with the Qualified Provider to implement the recommended project. The Guaranteed Utility Savings Contract will define the final agreed upon scope of work and all its associated costs and mutual responsibilities between the Qualified Provider and Agency, as well as improvement measures, the equipment and labor costs associated with them, and all guaranteed energy and maintenance cost savings. The Qualified Provider will be required to provide documentation to financing companies on behalf of Agency using the Financing Bid Package (APPENDIX M). A separate financing agreement will be developed including Qualified Provider payment schedules

and lender financing terms and schedules. Upon execution of the Guaranteed Utility Savings Contract, the Qualified Provider proceeds to final design, construction, and commissioning of the ECMs and WCMs.

### **Phase 3: Performance Period**

The Performance Period of the Guaranteed Utility Savings Contract begins upon construction completion and project acceptance by Agency. The Guaranteed Utility Savings Contract may include a number of services the Qualified Provider will provide until the end of the contract, including, but not limited to, measurement and verification of savings, the savings guarantee, staff training, and contract maintenance services.

It is the intention of this RFP that there will be multiple ESCOs selected to become Qualified Providers. Selection will be based on the quality of proposals as determined by the evaluation committee. The number of EPC projects is not pre-determined and inclusion on a Statewide Price Agreement is not a guarantee of engaging in EPC projects. However, it is also possible that the Qualified Provider may be engaged in developing and implementing more than one project at any point in time. The number of EPC projects moving forward for Agency facilities will depend on the subsequent proposals for potential projects, as requested by the Agencies.

## **D. PROCUREMENT MANAGER**

General Services Department has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Dennis Romero, Procurement Manager

Telephone: (505) 660-8605

Email: dennis.romero@gsd.nm.gov

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the SPD.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY** **protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals.** Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

## E. PROPOSAL SUBMISSION

*Submissions of all proposals must be accomplished via SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.*

## F. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. “**Award**” means the final execution of the contract document.
3. “**Business Hours**” means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
4. “**Close of Business**” means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
5. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
6. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
7. “**Contractor**” means any business having a contract with a state agency or local public body.
8. “**Contract Manager**” means the individual selected by the State Purchasing Agent to monitor and manage all aspects of the contract resulting from this RFP.
9. “**Desirable**”—The terms “may,” “can,” “should,” “preferably,” or “prefers” to identify a desirable or discretionary item or factor (as opposed to “mandatory”).
10. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
11. “**DFA**” means the Department of Finance and Administration for the State of New Mexico.

12. **“DFA/CRB”** means the Contracts Review Board of the Department of Finance and Administration for the State of New Mexico.
13. **“Direct Cost”** means the bare cost of components or sum of components of an EPC project, before applying any markups, fees, overhead & profit. Does not include audit costs and financing.
14. **“ECMD”** means the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.
15. **“Electronic Submission”** means a successful submittal of Offeror’s proposal in the eProNM system.
16. **“Electronic Version/Copy”** means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the original document contains. The electronic version/copy CANNOT be emailed.
17. **“EMNRD”** means the Energy, Minerals and Natural Resources Department.
18. **“Energy Conservation Measure,”** or ECM, means a training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs. More specifically, ECMs that may be proposed by Qualified Providers are stated in the EPC Statute and include:
  - (a) Insulation of the building structure or systems within the building;
  - (b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
  - (c) Automated or computerized energy control systems;
  - (d) Heating, ventilating or air conditioning system modifications or replacements;
  - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
  - (f) Energy recovery systems;
  - (g) Solar heating and cooling systems or other renewable energy systems;
  - (h) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
  - (i) Energy conservation measures that provide long-term operating cost reductions;
  - (j) Maintenance and operation management systems that provide long-term operating cost reductions;
  - (k) Traffic control systems; or
  - (l) Alternative fuel options or accessories for vehicles.

ECMs may also include “conservation-related cost savings,” which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

19. “**Energy Performance Contracting**” (EPC) means a project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.
20. “**Energy Star Portfolio Manager**” means an interactive resource management tool that enables you to benchmark the energy use of any type of building, all in a secure online environment. Nearly 25% of U.S. commercial building space is already actively benchmarking in Portfolio Manager, making it the industry-leading benchmarking tool.
21. “**ESCO**” means Energy Service Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.
22. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
23. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
24. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
25. “**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
26. “**Guaranteed Utility Savings Contracts,**” means contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.
27. “**Governmental Units**” means agencies, political subdivisions, governmental entities or instrumentalities of the state, including two- and four-year governmental entities of higher education, municipalities, counties or school districts

28. “**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
29. “**Implementation Cost**” means the sum of all Direct Costs and its component markups, exclusive of overhead & profit. Does not include audit costs and financing.
30. “**Investment-Grade Energy Audit**” means a study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.
31. “**IT**” means Information Technology.
32. “**LEED for Existing Buildings**” means Leadership in Energy and Environmental Design which is the world's most widely used green building rating system. LEED certification provides a framework for healthy, highly efficient, and cost-saving green buildings, which offer environmental, social and governance benefits. LEED Operations and Maintenance (O+M): Existing Buildings to certify the operations and maintenance of a building project and create a plan for ensuring high performance over time. The rating system captures both a building's physical systems and the way the building is occupied and operated by its managers.
33. “**Mandatory**” – the terms “must,” “shall,” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
34. “**Milestone**” means a significant event in a project, usually the completion of a major deliverable.
35. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
36. “**Multiple Source Award**” means an award of a contract for one or more items of tangible personal property, services or construction to more than one Offeror.
37. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
38. “**Pre-qualified**” means the status of an ESCO or vendor that has been selected through this RFP process, certified by EMNRD as a Qualified Provider, and has established a Statewide Price Agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.
39. “**Price Agreement**” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

40. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
41. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to procure items of tangible personal property, services or construction from the agreement(s) awarded as a result of this RFP.
42. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
43. **“Project Price”** means the estimated EPC project cost, inclusive of all markups on Direct Costs, overhead & profit, and contingency, but exclusive of fees. Does not include audit costs and financing.
44. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
45. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
46. **“Requirements”** are obligatory and mean the system functions that are related to the organization’s goals and business opportunities. Requirements are defined by the project team and are usually prioritized.
47. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
48. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
49. **“Sealed”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully uploaded into SPD’s eProNM system prior to the submission deadline stated in the RFP.

50. “**Secondary Selection**” means the process of an Agency making a final ESCO selection for an EPC project among multiple Qualified Providers.
51. “**Single Source Award**” means an award of contract for items of tangible personal property, services or construction to only one Offeror.
52. “**SPD**” means State Purchasing Division of the New Mexico State General Services Department.
53. “**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
54. “**State (the State)**” means the State of New Mexico.
55. “**State Agency**” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
56. “**State Purchasing Agent**” means the Director of the Purchasing Division of the General Services Department.
57. “**State Price Agreement,**” means the contract that selected Offerors would execute in order to be deemed a Qualified Provider.
58. “**Statement of Concurrence**” means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
59. “**Unredacted**” means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
60. “**Utility Cost Savings**” means the amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.
61. “**Water Conservation Measure,**” or WCM, means a training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

62. “Written” means typed in standard 8 ½ x 11-inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

### **G. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in this document through your own internet connection. The library contains information listed below:

- (1) RFP, Questions & Answers, RFP Amendments, etc.  
<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>
- (2) *Public Facility Energy Efficiency and Water Conservation Act*, NMSA 1978, § 6-23-1 through 10
- (3) Model RFP for Issuance by Governmental Unit
- (4) Model Investment-Grade Energy Audit and Project Proposal Contract between Governmental Unit and Qualified Provider
- (5) Model Guaranteed Utility Savings Contract between Governmental Unit and Qualified Provider
- (6) Financing Solicitation Package
- (7) Energy Services Company Application
- (8) Questionnaire for ESCO References
- (9) Guidelines for Guaranteed Energy Efficiency Projects
- (10) Cost Response Form: Tables D.1

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

### **A. SEQUENCE OF EVENTS**

The Procurement Manager will make every effort to adhere to the following schedule:

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	SPD	November 2, 2023

2. Acknowledgement of Receipt Form	Potential Offerors	November 8, 2023
3. Pre-Proposal Conference via MS Teams	Agency	3:00PM November 9, 2023
4. Deadline to submit Written Questions	Potential Offerors	3:00PM November 13, 2023
5. Response to Written Questions	Procurement Manager	November 15, 2023
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>November 21, 2023</b>
7.* Proposal Evaluation	Evaluation Committee	November 27-29, 2023
8.* Selection of Finalists	Evaluation Committee	November 26-27, 2023
9 * Oral Presentation(s)	Finalist Offerors	November 28, 2023
10.* Best and Final Offers	Finalist Offerors	December 5, 2023
11.* Finalize Contractual Agreements	Agency/Finalist Offerors	December 5-7, 2023
12.* Contract Awards	Agency/ Finalist Offerors	December 12, 2023
13.* Protest Deadline	SPD	+ 15 days

\* Dates indicated in Events 7 through 13 are estimates only and may be subject to change without necessitating an amendment to the RFP.

## B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

### 1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico General Services Department on November 2, 2023

### 2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the SPD buyer, Tami Concha, Tami.Concha@gsd.nm.gov, to have their organization placed on the Procurement Distribution List. The form must be returned to the SPD Buyer by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

### 3. Pre-Proposal Conference

A non-mandatory pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, beginning at 3:00PM MST/MDT via MS Teams.

[Pre-Proposal Meeting 40-00000-23-00029 Qualified Providers of Energy Performance Contracting Services RFP](#)

**Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager** (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

### 4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00PM MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which forms the basis of the question.

### 5. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

The Questions and Answers will be posted to:

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

### 6. Submission of Proposal

At this time, only **electronic** proposal submission is allowed. **Do not** submit hard copies until further notice.

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON - THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks "OK" after "Review and Submit." Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the eProNM system by the deadline set forth in this RFP. The eProNM system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the eProNM system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the eProNM system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statutes and rules, **NO LATE PROPOSAL CAN BE ACCEPTED.***

**Proposals must be submitted electronically through SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.** Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

## **7. Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

## **8. Selection of Finalists**

The Evaluation Committee will select, and the Procurement Manager will notify finalist Offeror(s) as per the schedule of Section II.A, Sequence of Events, or as soon as possible. The number of finalists to select, including no finalists, is determined at the discretion of the Evaluation Committee and SPA.

## **9. Oral Presentations**

Finalist Offerors, as selected by Section II.B.8 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be

required to make their presentations through electronic means (Microsoft Teams, Zoom, etc). The Agency will provide Finalist Offerors with an agenda and applicable details; including an invitation to the event. Whether or not Oral Presentations will be held is at the sole discretion of the Evaluation Committee.

#### **10. Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

#### **11. Finalize Statewide Price Agreements**

The Statewide Price Agreement will be finalized with the most advantageous Offeror(s) as per schedule Section II, A Sequence of Events, or as soon thereafter as possible. This date is subject to change at the discretion of SPA. In the event that mutually agreeable terms cannot be reached within the time specified, SPA reserves the right to finalize a Statewide Price Agreement with the next most advantageous Offeror without undertaking a new procurement process.

#### **12. Statewide Price Agreement Awards**

After reviewing the Evaluation Committee Report and the signed Statewide Price Agreement, SPA will award the Statewide Price Agreement as per the schedule in Section II, A Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of SPA.

The contract shall be awarded to Offerors whose proposals are most advantageous to the State of New Mexico, GSD, EMNRD, and Agencies, taking into consideration the weighted evaluation factors set forth in this RFP. The award is subject to appropriate approvals of the executive branch agencies of the State of New Mexico.

#### **13. Protest Deadline**

Any protest by an Offeror must be submitted timely and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed at:

Dorothy Mendonca, State Purchasing Agent

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### **2. Incurring Cost**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for setting up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

### **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. Subcontractors/Consent**

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Agency personnel will not merge, collate, or assemble proposal materials.**

### **6. Offeror's Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

## **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

## **8. Disclosure of Proposal Contents**

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7 NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Section III.B.2.a, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

**IMPORTANT:** The price of products offered, or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## **9. No Obligation**

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

## **10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

## **11. Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

## **12. Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

## **14. Basis for Proposal**

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

## **15. Contract Terms and Conditions**

The contract between an Agency using the State Price Agreement and a contractor will follow the format specified by the SPA and contain the terms and conditions set forth in APPENDIX C, State Price Agreement Terms and Conditions. However, the contracting Agency reserves the right to negotiate with an Offeror secured from the State Price Agreement, provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the State Price Agreement.

Should an Offeror object to any of the terms and conditions in APPENDIX C, the Offeror must propose specific alternative language. SPA may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the SPA and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

## **16. Offeror's Terms and Conditions**

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a statewide price agreement contract negotiated with the Agency. See Section II.C.15 for requirements.

## **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP

process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

#### **18. Offeror Qualifications**

The Evaluation Committee may make such investigations necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

#### **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

#### **20. Change in Contractor Representatives**

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

#### **21. Notice of Penalties**

The Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil, and misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

#### **22. Agency Rights**

The Agency, in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

#### **23. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

#### **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency or SPD.

## **25. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

## **26. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

or

<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico&tap=PHX>

## **28. New Mexico Employees Health Coverage**

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offerors must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month

after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

### **29. Campaign Contribution Disclosure Form**

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (APPENDIX B) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed unaltered form will result in Offeror's disqualification.**

### **30. Letter of Transmittal**

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award;
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to submit a signed Letter of Transmittal Form (Appendix E) will result in Offeror's disqualification.**

### **31. Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. Liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of liability, liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payments. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entity.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a

system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the contract involved for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **32. Conflict of Interest; Governmental Conduct Act**

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

### **33. New Mexico/Native American Resident Preferences**

Federal funds will not be used.

To ensure adequate consideration and application of §13-1-21 NMSA 1978 (as amended), **Offeror must submit a copy of its valid New Mexico/Native American Resident Preference Certificate or its valid and current New Mexico/Native American Resident Veteran Preference with its proposal.** Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

**In accordance with §13-1-21(H) NMSA 1978, an agency shall not award any combination of New Mexico/Native American Resident Preferences.**

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP. *ELECTRONIC SUBMISSION*

**ONLY ELECTRONIC SUBMISSION VIA SPD'S eProNM SYSTEM IS PERMITTED**  
(<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>)

Any proposal that does not adhere to the requirements of this **Section II.B** and **Section III.C Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

##### 1. Electronic Submission Requirements

- a. **Register in eProNM well in advance of the submission deadline** - In order to submit a response to this RFP, Offeror must be fully registered in the eProNM System. ***It is the Offeror's responsibility to ensure the registration process is completed in enough time to upload its proposal documents by the deadline set forth in this RFP.*** The registration page may be accessed via the following link:  
<https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=StateOfNewMexico>
- b. **Follow all submission instructions** - Proposals must be submitted in the manner outlined in Sections III.B.2 and III.B.3 and organized in accordance with Section III.C. Technical and Cost portions of Offerors proposal must be submitted as **separate uploads**, and must be prominently identified as "Technical Proposal," or "Cost Proposal," on the front page of each upload.
- c. **Complete proposal upload prior to submission deadline** - ***It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the eProNM system by the deadline set forth in this RFP.*** *The eProNM system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the eProNM system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the eProNM system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, NO LATE OFFER CAN BE ACCEPTED.*
- d. **Upload a single technical file and a single Cost file, unless a document exceeds 50MB** - The Offeror need only submit one single electronic copy of each portion of its proposal (one Technical and one Cost), as outlined in Sections III.B.2 and III.B.3. *EXCEPTION: Single electronic files that exceed 50MB may be submitted as multiple*

- uploads, which must be **the least number of uploads necessary to fall under the 50MB limit.**
- e. **DO NOT upload .zip files** - In accordance with the State of New Mexico’s Information Technology (IT) policies and procedures, we are unable to accept .zip files. See Section II.B.1.d, above, requirements for uploading large files.
  - f. **DO NOT password-protect proposal documents** – The SPD eProNM system is secure, and accessible only to SPD personnel, through a password-protected login. Confidential information must adhere to the requirements of Section II.C.8 and must be submitted pursuant to Section II.B.2.a.
  - g. **eProNM Technical Support**
    - i. For assistance with completing the registration process, uploading a proposal, or other technical support issues, call (505) 795-1894 or (505) 795-1076
    - ii. For assistance with eProNM passwords or if the primary contact for your account is no longer employed by your organization call (800) 233-1211
2. **Technical Proposal** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading.** ***EXCEPTION:*** *Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* ***The Technical Proposal SHALL NOT contain any Cost information.***
- a. **Confidential Information:** If Offeror’s proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files:**
    - i. One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.2, above, as an **unredacted** (def. Section I.F.38) version for evaluation purposes; **and**
    - ii. One (1) **redacted** (def. Section I.F.26) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;
3. **Cost Proposal** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single file/document for uploading.** ***EXCEPTION:*** *Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit*

## **B. PROPOSAL CONTENT AND ORGANIZATION**

### **1. Proposal Content and Organization**

All proposals must be submitted as follows:

PDF file(s) typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

#### **File 1 - Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

1. Signed Letter of Transmittal
2. Table of Contents
3. Proposal Summary (Optional)
4. Response to Specifications with the exception of cost
5. Response to State Price Agreement Terms and Conditions
6. Offeror's Additional Terms and Conditions

#### **File 2 - Cost Proposal:**

1. Completed Cost Response Form (APPENDIX D)
2. Completed forms for Markups, Fees, and Total Cost Response
3. Campaign Contribution Form
4. Signed Employee Health Coverage Form
5. Signed Affidavit pursuant to Governmental Conduct Act (If applies)
6. Resident Offeror or Resident Veteran Certificate (If applies-must be submitted in order to obtain the preference points)
7. Conflict of Interest Affidavit (If applicable)
8. Other Supporting Material (Optional)

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 on the cost response form.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other material they believe may improve the quality of their responses. However, these materials should be included in File #2.

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE SUMMARY PROPOSAL.**

## 2. Letter of Transmittal

The Offerors proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX F. The form must be completed and must be signed by the person authorized to obligate the company. The letter of transmittal MUST include:

6. Identify the submitting organization;
7. Identify the name, title, telephone, and e-mail address of the person authorized by the organization to contractually obligate the organization;
8. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
9. Identify the names, titles, telephone, and e-mail addresses of people to be contacted for clarification;
10. Identify if sub-contractors will be used in the performance of the contract award.
11. Describe any relationship with any entity with which it will be used in the performance of this awarded contract.
12. Identify the following with a check mark and signature where required:
  - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
  - b. Acceptance of Section V of this RFP;
  - c. Acknowledge receipt of any and all amendments to this RFP;
  - d. Be signed by the person authorized to contractually obligate the organization.

## IV. SPECIFICATIONS

### A. DETAILED SCOPE OF WORK

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise specified. The narratives, including required supporting materials, will be evaluated and awarded points accordingly.

### B. TECHNICAL SPECIFICATIONS

#### 1. Organizational Experience

This section provides supporting information for Factor “A (1) Organizational Experience” as shown in Table 1., Evaluation Points Summary. Offerors **must** provide the following:

a) **Overview of Approach to Energy Savings Performance Contracting**

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

This overview has multiple purposes. It provides a good introduction to your firm to the Evaluation Committee, it can be used to narrow down which ESCOs to further consider for a specific project.

b) **History and Focus of Company**

i) Evolution of the Firm

Describe how your company evolved, how long it has been in business under its current and any former names, and its corporate structure (corporation, partnership, sole proprietorship, joint venture, etc.) including identification of branch offices. For joint ventures include the structure of the joint venture and historical information on each member.

ii) Years in the Energy Business

State the number of years the company has been involved in energy-efficiency related business.

iii) Years in Energy Savings Performance Contracting

State the number of years the company has offered Energy Savings Performance Contracting services.

- iv) Number of Energy Savings Performance Contracting Projects  
State the number of EPC projects completed by the company: number under \$1 million in project cost; number over \$1 million.
  
- v) Industry Accreditations  
Provide information on any accreditations by any industry organizations, such as the National Association of Energy Service Companies or Energy Services Coalition. Provide information on any pre-qualifiers for your firm, such as work through other states or the federal government. Briefly describe the relevance or importance of the accreditation or pre-qualification to the work proposed in this RFP for GSD, EMNRD, and other New Mexico Governmental Units.

## 2. Organizational References

This section provides supporting information for Factor “A (2) Organizational References” as shown in Table 1., Evaluation Points Summary.

Offerors should provide a minimum of two (2) references from similar projects performed for private, state, and/or large local government clients within the last three years. Offerors who have had a previous NM State Price Agreement for Energy Savings Performance Contracting shall submit references for all State contracts obtained during the contract period. **Offerors are required to submit APPENDIX G, Questionnaire for ESCO References, to the business references they list. The business references must submit the Reference Form directly to the designee described in Section I, Paragraph D.** It is the Offeror’s responsibility to ensure that the completed forms are received before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received or are not complete may adversely affect the Offeror’s score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted.

## 3. Technical Approach - Mandatory Specification

- i) Investment-Grade Energy Audit  
Provide a sample audit, in electronic format only, which is representative of an EPC project in a government facility. Include as one electronic file on the electronic storage device submitted with the RFP response.

In response to this section, provide a brief description of the audit, detailed energy and economic calculations, and verification that the sample audit was conducted by current members of the company’s team proposed for this work. Provide a description of the process your company uses for a typical audit in the types of facilities that will participate in this program. Note any changes that will be made to comply with requirements for this program.

- ii) Standards of Comfort  
A description of the standards of comfort the company generally uses for light levels, space temperatures, and ventilation rates in the facilities intended for this program and

any flexibility for specific Governmental Unit needs. Note any changes that will be made to comply with requirements of this program.

iii) Baseline Calculation Methodology

Provide a detailed description of the methodology normally used by the company to compute the baseline of energy and water use for a facility. Include a discussion of how a Governmental Unit will be engaged for development of, and agreement on the baseline. Note any changes that will be made to comply with requirements of this program.

iv) Adjustments to Baseline

A discussion of typical factors that can impact the calculated baseline and the company's general approach to adjusting the calculated baseline if one or more of these factors are present. Include how the Institution is involved for agreement on any adjustments. Note any changes that will be made to comply with requirements of this program.

v) ENERGY STAR Portfolio Manager

Describe your approach to using ENERGY STAR Portfolio Manager to rank buildings, assess building opportunities, and aid in measurement and verification. Note the required use as indicated in the Investment-Grade Energy Audit and Project Proposal and Guaranteed Utility Savings Contract.

vi) Measurement and Verification (M&V)

Describe your approach to M&V and your experience with the latest versions of the International Performance Monitoring and Verification Protocol and the Federal Energy Management Program protocols. Note the M&V processes defined in the Investment-Grade Energy Audit and Project Proposal and Guaranteed Utility Savings Contract.

vii) Commissioning

Describe your approach to commissioning. Note the commissioning processes defined in the Investment-Grade Energy Audit and Project Proposal, and Guaranteed Utility Savings Contract.

d) **General Scope of Services**

Provide a brief comment (25 words or less) for each of the items listed to illustrate the company's capability in each area.

i) Energy Systems in Buildings

a. Mechanical/Electrical Systems

- 1) Lighting: indoors and outdoor
- 2) Heating
- 3) Ventilation and indoor air quality issues
- 4) Cooling
- 5) Control and building automation
- 6) Fuel switching
- 7) Central plant
- 8) Water-consuming

- b. Renewables
    - 1) Daylighting
    - 2) Solar-electric
    - 3) Solar thermal
    - 4) Geothermal
    - 5) Wind, small-scale or large-scale
    - 6) Biomass
    - 7) Distributed generation
  - c. Specialty Systems or Specific Building Types
    - 1) Kitchen or laundry
    - 2) Laboratories, clean rooms
    - 3) Healthcare hospitals, nursing homes, clinics
    - 4) Swimming pools and recreational facilities
    - 5) Computer laboratories
  - d. Energy Management Services
    - 1) Energy management
    - 2) Utility bill auditing and bill payment
    - 3) ENERGY STAR Portfolio Manager, benchmarking
    - 4) LEED for Existing Buildings
    - 5) Commissioning/re-commissioning (per the requirements outlined in Energy Savings Performance Contract – Schedules)
  - e. Other
    - 1) Transportation – fleet fuel management, etc.
    - 2) Other
- ii) Project Development and Implementation
- a. Energy auditing (identify potential energy-saving measures, determine savings projection based on standard energy engineering principles; estimate project costs; present package of measures with cash flow)
  - b. System design engineering: mechanical, electrical, etc.
  - c. Procurement, bidding
  - d. Construction
  - e. Commissioning of projects and retro-commissioning of existing buildings (per the requirements outlined in Energy Savings Performance Contract – Schedules)
  - f. Project management
  - g. Identification of asbestos and other hazardous materials and abatement, recycling or disposal as applicable
- iii) Core Performance Contracting Services
- a. Licensed construction contractors located in New Mexico
  - b. Performance guarantee for every year of the financing term
  - c. Insurance per contract requirements
  - d. Equipment warranties
  - e. Ability to support financing including a municipal, tax-exempt lease purchase

- f. Measurement and verification of savings
- g. Training: maintenance staff and occupants

iv) Support Services

- a. Marketing and promotion of state EPC programs
- b. Long-term maintenance services on energy systems
- c. Application for an ENERGY STAR Label and LEED certification.
- d. Calculation and reporting of emissions reductions
- e. Assistance to the Institution with preparing annual reports for the state energy office.

e) **Project History**

i) Market Sector Involvement

Describe your company’s expertise in each of the following market sectors.

- State agencies
- School districts – small (1-5 schools) or rural over 2 hours from major metropolitan area
- School districts – large
- Higher education facilities – universities and major colleges
- Higher education facilities – community colleges and small/rural colleges
- Cities/Counties – large
- Cities/Counties – small
- Other government entities – recreation centers, library districts, etc.
- Multifamily buildings – high-rise or large buildings
- Multifamily buildings – smaller scale multi-plex buildings
- Multifamily buildings – mix of building types
- Community-wide efforts – multiple entities in partnership, or another example
- Specific building types – recreation centers, correctional facilities, hospitals, laboratories, etc.

ii) Project List

List all EPC projects developed and implemented by your firm within the past three years, in a table as shown below. Include projects that have been subject to early termination for any reason by either party, or that are now in litigation. Only include projects where work was directly conducted by your company. If it is relevant to list projects performed under contract to another firm, clearly identify the firm with overall responsibility for that project and the project’s relevance to this RFP response.

<b>Project Name</b>	<b>Facility Type</b>	<b>City &amp; State</b>	<b>Project Size (Dollars)</b>	<b>Project Size (Square Feet)</b>	<b>Year Completed</b>

### **3. Technical Oral Presentation**

This section provides supporting information for Factor “A (3) Oral Presentations” as shown in Table 1., Evaluation Points Summary.

If selected as a finalist, Offerors **must** agree to provide the Evaluation Committee with the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of GSD or EMNRD. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

**A statement of concurrence must be submitted in the Offeror’s proposal.**

## **C. BUSINESS SPECIFICATIONS**

### **1. Management and Administrative Proficiency**

This section provides supporting information for Factor “B (1) Management and Administrative Proficiency” as shown in Table 1., Evaluation Points Summary.

#### **a) Project Management and Coordination**

- i) Project Organization—Show a typical/generic organization chart for implementing and managing a project.
- ii) Local Staffing and Support—List the office location (city and state) for personnel proposed for projects. Describe the extent of local staffing and support for each phase of a typical project.
- iii) Approach to Subcontracting—Describe the types of services (both professional and construction services) that your company offers in-house and the services typically offered through subcontractors.

#### **b) Personnel and Staffing**

- i) Complete the form, Energy Services Company Application (see APPENDIX J), to show your personnel pool of individuals who will potentially be assigned responsibility for each task and phase of a project. Also include any added expertise and capability of staff available through other branch offices or subcontracts that can provide back-up strength.
- ii) The Offeror must demonstrate that it has a minimum of three years’ experience in performing energy performance contracting projects that reduce energy consumption or costs. The Offeror must include in the identified pool of individuals an energy auditor, designer, or contractor with a minimum of three years of experience in performing investment-grade energy audits for energy performance contracting that reduce energy consumption or costs.
- iii) The Offeror must identify a Professional Engineer licensed in New Mexico who will certify a statement that they have knowledge of building energy systems design and

that the energy cost savings stated in the investment-grade energy audit are accurately estimated and reasonable.

**c) Compliance with State Requirements and EMNRD Guidelines**

State your firm’s commitment to adhere to the following agreements:

- i) State Price Agreement—following requirements of the GSD State Purchasing Agent and the State Price Agreement Terms and Conditions (Appendix C);
- ii) Investment-Grade Energy Audit and Project Proposal Contract—using the EMNRD Model Investment-Grade Energy Audit and Project Proposal Contract (APPENDIX L), customizing only the project specifics presented in the schedules.
- iii) RFP for Financing—using the RFP to solicit bids for financing as provided in the Model Financing Bid Package (APPENDIX M).
- iv) Guaranteed Utility Savings Contract—using the EMNRD Model Guaranteed Utility Savings Contract (APPENDIX N) and its attachments (APPENDIX O), customizing only the project specifics.

EMNRD may revise the above model agreements during the term of the State Price Agreement as a part of the EPC Accelerator, a DOE Better Buildings Challenge program. These revisions are recommended periodically through a public-private partnership process, led by DOE in collaboration with State Energy Offices and private industry. Revisions are also developed through ongoing EMNRD programmatic review of the model agreements and negotiation of agreements for specific Agency projects. Qualified Providers are requested to adhere to revised model agreements in support of the public-private partnership for EPC.

**2. Cost**

This section provides supporting information for Factor “B (2) Cost” as shown in Table 1., Evaluation Points Summary.

**a) Audit Costs**

The State of New Mexico intends to establish standard audit costs for all projects based on GSD purchasing zones found in Figure D.1. These standard costs are shown in Table D.2. Pricing.

**b) Open Book Pricing**

Open book pricing is full disclosure by the contractor to the Facility Owner of all costs and materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that all costs, including all costs of subcontractors and Offerors, are fully disclosed.

**c) Third Party Review**

A fee of one percent of the total project cost will be included in the final project cost to fund an independent third-party review of the overall project. This review will include the audit, construction, and commissioning phases.

Offerors **must** agree to all sections of the Factor “B (2) Cost” to pass.

#### **4. Performance Bond**

This section provides supporting information for Factor “B (3) Performance Bond” as shown in Table 1., Evaluation Points Summary. The Performance Bond pertains to construction, wage rates, and materials payments for implementation of ECMs and WCMs.

Provide the following information:

- a) Current bond rating;
- b) Current bonding capacity;
- c) Amount or percentage of bonding capacity currently obligated;
- d) Current bond rate;
- e) Confirmation that the company is bondable for 100% of a payment bond on a project;
- f) Confirmation that the company is bondable for 100% of a performance bond on a project;
- g) Letter from a licensed surety as evidence of ability to bond for payment and performance.

Offeror(s) must have the ability secure a Performance Bond in favor of the Agency to insure the contractor’s performance under the contract. Each engagement will be different, but the option must be available to the Agencies at contract time. **A statement of concurrence must be submitted in the Offerors proposal.**

#### **5. Performance Guarantee**

This section provides supporting information for Factor “B (4) Performance Guarantee” as shown in Table 1., Evaluation Points Summary. The Performance Guarantee pertains to a financial instrument in an amount equal to the annual guaranteed utility savings given by the Qualified Provider. The instrument shall be satisfactory to the Agency and its approving authority. The instrument may be in the form of a performance bond, cash bond, letter of credit issued by a bank, or surety (including insurance).

Offeror(s) must have the ability to secure a Performance Guarantee instrument in favor of the Agency to insure the contractor’s performance under a guaranteed utility savings contract. Each engagement will be different, but the option must be available to the Agencies at contract time. **A statement of concurrence must be submitted in the Offerors proposal that includes a commitment to meet the requirements of NMSA 1978, 6-23-4, *Guaranteed utility savings contract; performance guarantee required.***

#### **6. Letter of Transmittal Form**

This section provides supporting information for Factor “B (5) Letter of Transmittal” as shown in Table 1., Evaluation Points Summary.

The Offeror’s proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX F. The form **must** be completed and must be signed by the person authorized to obligate the company.

#### **7. Campaign Contribution Disclosure Form**

This section provides supporting information for Factor “B (6) Campaign Contribution Disclosure Form” as shown in Table 1., Evaluation Points Summary.

The Offeror **must** complete unaltered Campaign Contribution Disclosure Form and submit a signed copy of their proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B).

**8. Employee Health Coverage Form**

This section provides supporting information for Factor “B (7) Employee Health Coverage Form” as shown in Table 1., Evaluation Points Summary.

The Offeror **must** agree with the terms as indicated in APPENDIX E. The unaltered form **must** be completed and must be signed by the person authorized to obligate the company.

**9. New Mexico/Native American Resident Preferences**

To ensure application of § 13-1-21 NMSA 1978 (as amended), an Offeror **MUST** submit a copy, in this section, of its valid New Mexico/Native Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference Certificate, as issued by the New Mexico Taxation and Revenue Department.

This section provides supporting information for Factor “B (9) Resident Business/Veterans Preference” as shown in Table 1., Evaluation Points Summary.

To be awarded the points Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference the attached certification Form APPENDIX H must accompany any RFP and any business wishing to receive the preference must complete and sign the form.

**V. EVALUATION**

**A. EVALUATION POINT SUMMARY**

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Table 1: Evaluation Point Summary

Factors	Points Available
A Technical Specifications	
A (1) Organizational Experience	200

<b>Factors</b>	<b>Points Available</b>
A (2) Organizational References	200
A (3) Project Performance	200
A (4) Oral Presentations - Optional	100
<b>B Business Specifications</b>	
B (1) Management and Administrative Proficiency	200
B (2) Cost	100
B (3) Performance Bond	Pass/Fail
B (4) Performance Guarantee	Pass/Fail
B (5) Letter of Transmittal	Pass/Fail
B (6) Campaign Contribution Disclosure Form	Pass/Fail
B (7) Employee Health Coverage Form	Pass/Fail
<b>TOTAL</b>	<b>1,000 points</b>
B (8) Resident Business/Veterans/Native American Preference	0, 50, 100

## **B. EVALUATION FACTORS**

See Table 1, above, for points available for the following described evaluation factors.

### **1. A (1) Organizational Experience**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the engagements cited and the perceived validity of the response. Examples of experience that the Evaluation Committee will look for in an Offeror's proposal are as follows:

- Offeror's Team is well-balanced in technical, management, and administrative skills and is capable of implementing large projects.
- Team staffing is practical and efficient. Highlighted personnel will be actually working on the projects.
- Experienced in working with Governmental Units, state energy programs, ENERGY STAR, and LEED certification.
- Experienced with EPA Portfolio Manager and EPA Target Finder.
- Experienced with long-term guaranteed utility savings contracts and financing.
- Experienced with energy audits, producing energy audit reports, monitoring, and training.
- Has expertise in energy efficiency, renewable energy, transportation, or water conservation. A licensed New Mexico Professional Engineer is on the Project Team.
- Energy audits are comprehensive in evaluation of measures, including those requested by the Governmental Unit.
- Energy audit reports are approved by Professional Engineers or energy audit professionals.

- Construction is performed by licensed New Mexico contractors.
- Projects will be designed and implemented to meet New Mexico IECC-based codes, ASHRAE/IESNA/ANSI standards, and
- Will achieve ENERGY STAR performance rating and Governmental Unit-adopted performance standards, as applicable.
- Is knowledgeable on equipment life cycle and the most recent commercialized technology advances.
- Technical information can be communicated to a variety of audiences.

**2. A (2) Organizational References**

Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked for references concerning the quality of the Offeror’s services, the timeliness of services, responsiveness to problems and complaints and the level of satisfaction with the Offerors overall performance. The Evaluation Committee will also be looking for evidence of the following in references’ responses:

- Offeror has a practical approach that Governmental Units can understand.
- The guaranteed utility savings can be easily explained to administrators.
- Governmental Units will be pleased with their upgraded facilities, will be avoiding energy costs, and can communicate the results to others.
- Offeror is flexible to deliver on unique project goals the Governmental Unit may have.g., improved comfort, critical equipment replacement, minimal disruption, reduced maintenance.

**3. A (3) Project Performance**

Points will be awarded based on an evaluation of the overall sustained performance of the three projects presented. The evaluation committee will be looking for the following associated with each project:

- Contract Terms
- Project Personnel
- Project Schedule
- List of Improvements
- Project Performance over the first five (5) years
- Measurement and Verification
- Performance Guarantee

**4. A (4) Oral Presentation (at the option of the Evaluation Committee)**

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. (If no Oral Presentations are required, Offerors will receive the total points.)

**1. B (1) Management and Administrative Proficiency**

Points will be awarded based on:

- Excellent record of performance on contracts with Governmental Units with respect to control of costs, quality of work, and ability to meet schedules.
- Timely turnaround on energy audit reports, energy performance contracting proposals, project agreements, and project status updates.
- Single point of contact with knowledgeable Team member and executive management contacts made available.
- Long-distance communication tools are applied when practical.
- Financial information can be communicated to a variety of audiences.

**2. B (2) Cost**

Points will be awarded with the responsiveness of cost data provided and, if in the evaluation committee's opinion, the pricing is reasonable and within market ranges.

**7. B (3) Performance Bond**

Pass/Fail only. No points assigned.

**8. B (4) Performance Guarantee**

Pass/Fail only. No points assigned.

**9. B (5) Letter of Transmittal**

Pass/Fail only. No points assigned.

**10. B (6) Campaign Contribution Disclosure Form**

Pass/Fail only. No points assigned.

**11. B (7) Employee Health Coverage Form**

Pass/Fail only. No points assigned.

**12. B (8) Resident Business or Resident Veterans or Native American Preference**

**1. C.7. New Mexico/Veteran/Native American Resident Preferences**

Percentages will be determined based upon the point-based system outlined in § 13-1-21 NMSA 1978 (as amended).

**A. New Mexico Resident Business Preference / Native American Resident Preference**

If an Offeror has provided a copy of its New Mexico Resident Preference Certificate or Native American Resident Preference Certificate, the points awarded will be calculated as 8% of the total points available in this RFP.

**B. New Mexico/Native American Resident Veteran Preference**

If an Offeror has provided a copy of its New Mexico Resident Veteran Preference Certificate or Native American Resident Veteran Preference Certificate the points awarded will be calculated as 10% of the total points available in this RFP.

**13. Conflict of Interest; Governmental Conduct Act Affidavit (APPENDIX I).**

Optional, only if applicable. No Points Assigned.

**C. EVALUATION PROCESS**

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## **APPENDIX A**

### **ACKNOWLEDGEMENT OF RECEIPT FORM**

# APPENDIX A

## REQUEST FOR PROPOSAL

Qualified Providers of Energy Performance Contracting Services  
RFP#40-00000-23-00029

### ACKNOWLEDGEMENT OF RECEIPT FORM

This optional Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

**Submit Acknowledgement of Receipt Form to:**

To: Tami Concha

E-mail: [Tami.Concha@gsd.nm.gov](mailto:Tami.Concha@gsd.nm.gov)

Subject Line: Qualified Providers of Energy Performance Contracting Services,  
RFP#40-00000-23-00029

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.* NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official, shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**Name(s) of Applicable Public Official(s) if any: Governor Michelle Lujan Grisham or Lieutenant Governor Howie Morales**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s)

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(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

**APPENDIX C**  
**DRAFT CONTRACT**

**The Agreement included in this Appendix C represents the price agreement the Agency intends to use to make awards. The State of New Mexico and the Agency reserve the right to modify the Agreement prior to, or during, the award process, as necessary.**

**STATEWIDE PRICE AGREEMENT**

**RFP#40-00000-23-00029**

**STATE OF NEW MEXICO**

**FOR**

**Qualified Providers of Energy Performance Contracting Services, ESCO**

THIS AGREEMENT is made and entered into by and between the **General Services Department** and the **State of New Mexico**, herein after referred to as the "Agency", and **Selected ESCO Contractor** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

**1. DEFINITIONS**

**“Agencies”** or **“Agency”** means eligible governmental entities under the Public Facilities Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23], which are state government, local governments, public schools, higher educational institutions, and other instrumentalities of state government.

**“Agreement Administrator”** shall mean the State Purchasing Division (SPD) of the General Service Department.

**“Close of Business”** means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the given date.

**“Contract”** means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITB) or Request for Proposals (RFP).

**“Deliverable”** means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

**“ECMD”** means the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.

**“EMNRD”** means the Energy, Minerals and Natural Resources Department.

**“Energy Conservation Measure,”** or **“ECM”**, means a training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs. More specifically, ECMs that may be proposed by Qualified Providers are stated in the EPC Statute and include:

- (m) Insulation of the building structure or systems within the building;
- (n) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
- (o) Automated or computerized energy control systems;
- (p) Heating, ventilating or air conditioning system modifications or replacements;

- (q) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
- (r) Energy recovery systems;
- (s) Solar heating and cooling systems or other renewable energy systems;
- (t) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (u) Energy conservation measures that provide long-term operating cost reductions;
- (v) Maintenance and operation management systems that provide long-term operating cost reductions;
- (w) Traffic control systems; or
- (x) Alternative fuel options or accessories for vehicles.

ECMs may also include “conservation-related cost savings,” which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

**“Energy Performance Contracting” or “EPC”** means a project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.

**“ESCO”** means Energy Service Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.

**“Guaranteed Utility Savings Contracts,”** means contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.

**“Investment-Grade Energy Audit”** means a study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.

**“Local Public Body”** means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

**“New Mexico State Purchasing Agent” or “NMSPA”** means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

**“Pre-qualified”** means the status of an ESCO or vendor that has been selected through an RFP process, certified by EMNRD as a Qualified Provider, and has established a statewide price agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.

**“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**“Procuring Agency”** means any state agency or local public body that chooses to procure products or services under this agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this agreement.

**“Products and Services Schedule”** refers to the complete list of products and services offered under this agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

**“Qualified Provider”** means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets EMNRD’s experience qualifications for energy conservation measures or the Office of the State Engineer for water conservation measures.

**“State (the State)”** means the State of New Mexico.

**“Statewide Price Agreement”** means the contract that selected Offerors would execute in order to be deemed a Qualified Provider.

**“State Purchasing Agent,”** or SPA, means the purchasing agent for the State of New Mexico or a designated representative.

**“Third-Party Fee”** means a one (1) percent fee on the pre-gross receipts tax total of the project cost.

**“Utility Cost Savings”** means the amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

**“Water Conservation Measure,”** or **“WCM”**, means a training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

**“You”** and **“your”** refers to **Selected ESCO Contractor**. **“We,”** **“us”** or **“our”** refers to the State of New Mexico, agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

## 2. SCOPE OF WORK

Pre-qualified Energy Services Companies (ESCOs) will provide Energy Performance Contracting (EPC) services for New Mexico governmental entities (“Agencies” or “Agency”). ESCOs selected through the Request for Proposals (RFP) process and those who also enter into statewide price agreements, will each be deemed Qualified Providers by the Energy Conservation and Management Division (ECMD) of the Energy, Minerals and Natural Resources Department (EMNRD). ESCOs selected through separate federal, state, or private procurement processes for EPC services are not pre-qualified.

Qualified Providers are approved to provide proposals to Agencies that may choose to utilize EPC services for upgrading facilities, fleets, and water infrastructure with energy and water conservation measures (ECMs and WCMs). Such EPC services are allowed by the Public Facility Energy Efficiency and Water Conservation Act (**APPENDIX Q**) (“EPC Statute”), as amended. The statute citation is New Mexico Statutes Annotated (NMSA) 1978, Chapter 6, Article 23 (6-23).

Eligible Agencies under the EPC Statute are state agencies, K-12 public school districts, higher education governmental entities, municipal and county governments, and other political subdivisions. EPC enables these Agencies to access financing and accomplish energy projects without using capital budgets; project financing costs are offset by energy cost savings. The Agencies and selected Qualified Providers will follow the EPC statute and program guidelines of EMNRD.

The selected ESCOs will commit to the EPC Statute and EMNRD’s program guidelines via subsequent contracts with Agencies for specific projects. The term of the Statewide Price Agreement will be four (4) years, with continuation subject to an annual review by EMNRD of each Qualified Provider’s performance. The Statewide Price Agreement will contain schedules of markups and fees as stated in the Offeror’s RFP response. Compensation to Qualified Providers for specific work projects will be detailed in the resulting contracts with Agencies to implement EPC projects.

The Qualified Provider will be required to develop proposals for potential projects. Agreements established between the Qualified Provider and the Agency, as described in the following, will incorporate current state statutes and directives that directly relate to EPC, including:

- Public Facility Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23] (**APPENDIX Q**); and
- Energy Efficiency Standards for Public Buildings, [NMSA 1978, 15-3-36] (**APPENDIX R**).

The selection of ESCOs and subsequent contracting with Qualified Providers serves as a major step to enable Agencies to initiate EPC projects that upgrade facilities and generate avoided energy costs. There are three (3) phases possible in a complete EPC project, after an Agency’s selection of a Qualified Provider, as follows:

### ***Phase 1: Investment-Grade Energy Audit and Project Proposal***

The selected Qualified Provider and the Agency will execute the Investment-Grade Energy Audit and Project Proposal contract (**APPENDIX L**). This contract sets specific expectations and

provides a detailed process for both the Qualified Provider and the Agency. The contract also defines the deliverables to Agency and establishes the basis for the Guaranteed Utility Savings Contract to follow. The Investment-Grade Energy Audit and Project Proposal will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the proposed financing term. A project proposal will present bundled ECMs and WCMs that can be financed through guaranteed savings.

### ***Phase 2: Guaranteed Utility Savings Contract and Implementation***

Upon satisfactory completion of the Investment-Grade Energy Audit and Project Proposal, the Agency will have the option to execute a Guaranteed Utility Savings Contract (**APPENDIX N**) with the Qualified Provider to implement the recommended project. The Guaranteed Utility Savings Contract will define the final agreed upon scope of work and all its associated costs and mutual responsibilities between the Qualified Provider and Agency, as well as improvement measures, the equipment and labor costs associated with them, and all guaranteed energy and maintenance cost savings. The Qualified Provider will solicit financing companies on behalf of Agency using the Financing Bid Package (**APPENDIX M**). A separate financing agreement will be developed including Qualified Provider payment schedules and lender financing terms and schedules. Upon execution of the Guaranteed Utility Savings Contract, the Qualified Provider proceeds to final design, construction, and commissioning of the ECMs and WCMs. Qualified provider shall inform EMNRD ECMD of contract execution and the total amount of the contract to initiate an invoice for the third-party fee.

### ***Phase 3: Performance Period***

The Performance Period of the Guaranteed Utility Savings Contract begins upon construction completion and project acceptance by Agency. The Guaranteed Utility Savings Contract may include a number of services the Qualified Provider will provide until the end of the contract, including, but not limited to, measurement and verification of savings, the savings guarantee, staff training, and contract maintenance services.

Each of the Agencies has the option to procure services of an ESCO to implement ECMs and WCMs in Agency facilities, which will avoid Agency energy costs. Selected ESCOs that establish Statewide Price Agreements will be deemed Qualified Providers for selection by any of the Agencies. The primary purposes of this Qualified Provider selection process are:

- (4) To ensure the Qualified Provider meets minimum qualifications and can implement successful EPC projects;
- (5) To provide each Agency with the opportunity to procure services of a Qualified Provider in a timely and cost-effective way;
- (6) To increase the number of successful Guaranteed Utility Savings Contracts statewide, as a means to implement comprehensive energy, transportation, and water efficiency projects.

There will be multiple ESCOs selected to become Qualified Providers. Selection will be based on the quality of proposals as determined by the evaluation committee. The number of EPC projects is not pre-determined and inclusion on a statewide price agreement is not a guarantee of engaging in EPC projects. However, it is also possible that the Qualified Provider may be engaged in developing and implementing more than one project at any point in time. The number of EPC

projects moving forward for Agency facilities will depend on the subsequent proposals for potential projects, as requested by the Agencies.

### 3. PAYMENT PROVISIONS

All payments under this agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within fifteen (15) days from the date the procuring agency receives written notice from the contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.

C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the contractor within thirty (30) days after the date of invoice. After the thirtieth (30<sup>th</sup>) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one- and one-half percent (1.5 %) per month. Contractors may submit invoices for payment no more frequently than monthly. Payment will be made to the contractor's designated mailing address. Payment on each invoice shall be due within thirty (30) days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.

D. Late Charges - If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than sixty (60) days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be one- and one-half percent (1.5%) and the corresponding Annual Percentage Rate for the State of New Mexico will be eighteen percent (18%). No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

E. Fees:

The Contractor agrees to remit an administrative reporting fee payable by check to the State Purchasing Division for an amount equal to one percent (1.00 %) of the total sales and other revenues derived from the New Mexico state agencies and local public bodies. The Contractor shall indicate the contract number ##### and include the remittance check with the quarterly sales report.

Reports may be submitted via U.S. mail to NM State Purchasing Division or via email to: GSD.QuarterlyUsageR@gsd.nm.gov

For payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division  
Joseph Montoya Building, Room 2016,  
1100 St. Francis Drive, Santa Fe, New Mexico 87505  
or P.O. Box 6850, Santa Fe, New Mexico 87502

#### **4. TERM**

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY. This Price Agreement shall begin on date approved by the agency and end four (4) years from the date of approval.

#### **5. DEFAULT**

The State reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the State, if the Vendor fails to meet the provisions of this Price Agreement and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

#### **6. TERMINATION**

A. For Cause - Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

#### **7. AMENDMENT**

This Price Agreement may be amended by mutual agreement of the State Purchasing Agent and the contractor upon written notice by either party to the other. An amendment to this Price Agreement

SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the proposal and contract documents.

#### **8. STATUS OF CONTRACTOR**

The contractor, and contractor's agents and employees, are independent contractors for the agency and are not employees of the State of New Mexico. The contractor, and contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this agreement. The contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes such as self-employment or business income and are reportable for self-employment tax.

#### **9. ASSIGNMENT**

A. Neither this price agreement, any orders placed under this price agreement, any, nor anyrest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this Price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

#### **10. SUBCONTRACTING**

The contractor shall not subcontract any portion of any services to be performed under this agreement without written approval from the State Purchasing Agent. The following subcontractor(s) have been approved to supply resources for this agreement: case by case basis.

#### **11. NON-COLLUSION**

In signing this agreement, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with the offer submitted to the State Purchasing Agent.

#### **12. INSPECTION OF PLANT**

The State Purchasing Agent may inspect, at any reasonable time, during Contractor's regular business hours and upon prior written notice the part of the contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

#### **13. COMMERCIAL WARRANTY**

The Vendor agrees that the tangible personal property or services furnished under this price agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the

State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

**14. CONDITION OF PROPOSED ITEMS**

All proposed items are to be NEW and of most current production, unless otherwise specified.

**15. RECORDS OF AUDIT**

During the term of this agreement and for three years thereafter, the contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of the agency to recover excessive or illegal payments.

**16. APPROPRIATIONS**

The terms of this agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this agreement. If sufficient appropriations and authorization are not made by the legislature, this agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final.

**17. RELEASE**

The contractor, upon final payment of the amount due under this agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico, unless the contractor has express written authority to do so, and then only within the strict limits of that authority.

**18. CONFIDENTIALITY**

Any confidential information provided to or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without prior written approval by the procuring agency.

**19. CONFLICT OF INTEREST**

The contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

**20. APPROVAL OF CONTRACTOR REPRESENTATIVES**

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the agency, serving the needs of the State of New Mexico adequately.

**21. SCOPE OF AGREEMENT**

This agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

**22. NOTICE**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**23. EQUAL OPPORTUNITY COMPLIANCE**

The contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this agreement. If contractor is found to be not in compliance with these requirements during the life of this agreement, contractor agrees to take appropriate steps to correct these deficiencies.

**24. INDEMNIFICATION**

The contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. The contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the agency, its officers or employees.

**25. NEW MEXICO EMPLOYEES' HEALTH COVERAGE.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

- 1) have in place, and agree to maintain for the term of the contract health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
- 2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009, if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

- 3) have in place and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to [additonal](http://bewellnm.com) information: <http://bewellnm.com>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a statewide price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

## **26. APPLICABLE LAW**

This agreement shall be governed by the laws of the State of New Mexico.

## **27. LIMITATION OF LIABILITY**

The contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the agency's, or the procuring agency's, claim. The foregoing limitation does not apply to paragraph 27 of this agreement or to damage resulting from personal injury caused by the contractor's negligence.

## **28. BINDING ARBITRATION**

Any controversy or claim arising between the parties shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **29. INCORPORATION BY REFERENCE AND PRECEDENCE**

This agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the contractor's best and final offer; and (3) the contractor's response to the request for proposals.

In the event of a dispute under this agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the agreement in reverse chronological order; (2) the agreement, including the scope of work; (3) the request for proposals, including attachments thereto and written responses to

questions and written clarifications; (4) the contractor's best and final offer; and (5) the contractors response to the request for proposals.

**30. WORKERS' COMPENSATION**

The contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the agency.

**31. IMPRACTICALITY OF PERFORMANCE**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**32. INVALID TERM OR CONDITION**

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall be valid and enforceable.

**33. ENFORCEMENT OF AGREEMENT**

A party's failure to require strict performance of any provision of this agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**34. PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

The contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the agency based upon contractor's trade secret infringement relating to any product or services provided under this agreement, the contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the agency shall:

- A. give the contractor prompt written notice within 48 hours of any claim;
- B. allow the contractor to control the defense of settlement of the claim; and
- C. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- A. provide the agency the right to continue using the product or service and fully indemnify the agency against all claims that may arise out of the agency's use of the product or service;
- B. replace or modify the product or service so that it becomes non-infringing; or,
- C. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the agency to the extent such modification is the cause of the claim.

### **35. SURVIVAL**

The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification; indemnification; and limit of liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

### **36. DISCLOSURE REGARDING RESPONSIBILITY**

***The Contractor and/or any of its Principals who seek to enter into a contract greater than twenty thousand dollars (\$20,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agree to disclose whether they, or any principal of their company:***

*Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.*

*Have within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.*

*Are presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with, commission of any of the offenses enumerated in Paragraph B of this disclosure.*

*Have preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied.*

- A. Taxes are considered delinquent if both of the following criteria apply:
  - 1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - 2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the

taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

- 3) The taxpayer has within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

The Offeror shall provide immediate written notice to the Procurement Manager or Buyer if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances.

A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts. If during the performance of the contract, the contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the contractor must provide immediate written notice to the Procurement Manager or Buyer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **37. NOTIFICATION**

Either party may give written notice to the other party in accordance with the terms of paragraph 38. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To agency:	Dorothy Mendonca, State Purchasing Agent
Office address:	State Purchasing Division
(for express carrier	1100 St. Francis Dr., Room 2016
and hand deliveries)	Santa Fe, New Mexico 87505

(505) 827-2321  
Dorothy Mendonca@gsd.nm.gov

For all US Mail use:

State Purchasing Division  
1100 St. Francis Dr., Room 2016  
Santa Fe, NM 87505  
505-827-2321

To contractor:

**Selected ESCO Contractor**  
**Address**  
**City, State Zip Code**  
**Phone Number**

Either party may change its representative or address above by written notice to the other in accordance with the terms of Paragraph 38. The carrier for mail delivery and notices shall be the agent of the sender.

**38. AMENDMENTS**

This agreement shall only be amended by written instrument executed by the parties.

**39. SUCCESSION**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by:

The records of the Taxation and Revenue Department reflect that the contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

**NM State Tax ID No.:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

STATE OF NEW MEXICO  
General Services Department

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_  
State Purchasing Agent

**DATE:** \_\_\_\_\_

**CONTRACTOR:**  
**Selected ESCO Contractor**  
**Address**  
**City, State Zip Code**  
**Signatory**  
**Phone Number**  
**EmailAddress@SelectedESCO.COM**

**Federal Tax ID No.:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## APPENDIX D

### COST RESPONSE FORMS

Please include the information in Appendix D in File 2 of your proposal. Instructions calling for brief responses indicate a short response of 2-4 sentences is requested.

In the table below, provide your company's proposed Maximum Percentage of Total Project Price for this project, for each category listed. These percentages must be equal to or less than the maximums proposed in the ESCO pre-qualification process. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are acceptable.

Clearly describe how incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). Incidental and ancillary work includes but is not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
<b>Pre-Construction Costs</b>		
Design and other Engineering <i>Professional architectural and engineering services; Energy modeling</i>		
Pre-Construction Services <i>Construction management and project development services</i>		
Other Pre-Construction Costs <i>Site visits, Owner meetings, Legal review, Accounting services, etc.</i>		
<b>Construction Costs</b>		
Trade Subcontractors <i>Construction contractors subcontracted to ESCO; Lighting, construction, sheet metal, etc.</i>	N/A until Investment Grade Audit is completed	
Design/Build Subcontracts <i>Construction and design contractors</i>	N/A until Investment Grade Audit is completed	
Direct Purchase Equipment <i>Equipment directly purchased by ESCO</i>	N/A until Investment Grade Audit is completed	
Construction Management <i>Construction manager and site superintendent</i>		

Project Engineering <i>Design engineer inspections; Engineering analysis</i>		
General Conditions <i>Miscellaneous non-staffing costs; Equipment rentals, security fencing, etc.</i>		
Construction Completion <i>Commissioning, Training, Construction M&amp;V, O&amp;M Manuals</i>		
Other Construction Costs <i>Site visits, Owner meetings, Permits, Insurance, Bonds, Warranty Labor</i>		

**Profit Markup**

In the table below provide the maximum percentage markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. The percentage must be equal to or less than the maximums proposed in the ESCO pre-qualification process. Note that overhead is included in Construction Costs - General Conditions.

	Maximum % Markup
Profit Percent	

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

**Contingency**

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

**Investment Grade Audit Fee**

Please refer to Figure D.1 and Table D.1 for mandatory pricing of Investment-Grade Energy Audit and Project Proposal Price Ranges

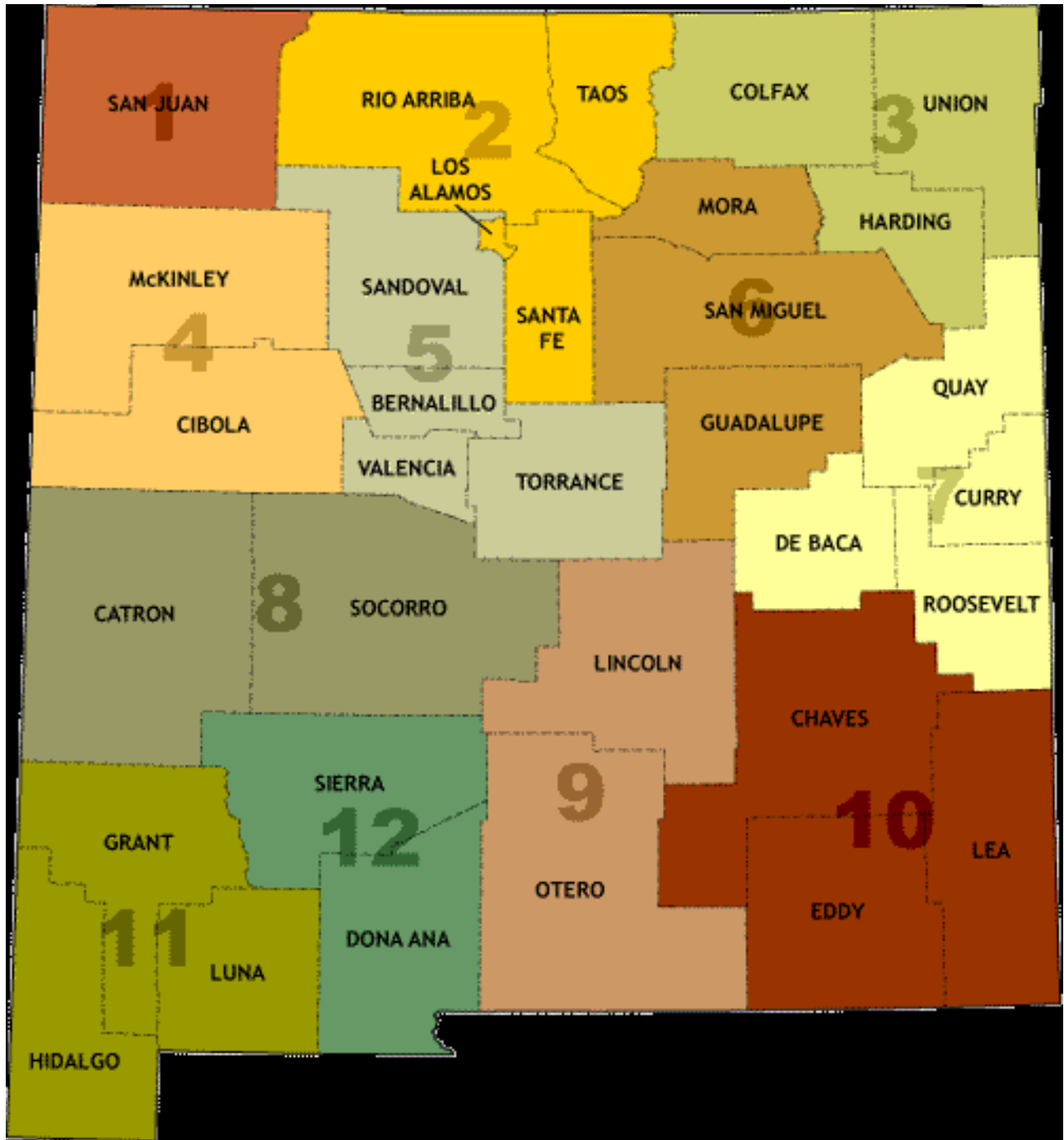


Figure D.1. GSD Purchasing Zones

Table D.1. Mandatory Pricing of Investment-Grade Energy Audit and Project Proposal.

<b>Price Range</b>			
	Facility Area (sqft)		
	< 25K	25-100K	100K+
<b>High</b>	\$0.300 per square foot (sqft)	\$0.275 per sqft	\$0.250 per sqft
<b>Low</b>	\$0.200 per square foot (sqft)	\$0.175 per sqft	\$0.150 per sqft


**Pricing**

Tiered Audit Pricing based on Difficulty and Price Range (\$/sqft)	GSD Purchasing Zone	Facility Area (sqft)		
		< 25K	25-100K	100K +
One-way travel distance to Zone from Albuquerque (Central & Broadway)	Zone 5	\$0.250	\$0.225	\$0.200
	Zones 2 and 8	\$0.275	\$0.250	\$0.225
	Zones 4 and 6	\$0.300	\$0.275	\$0.250
	Zones 1, 7, 9, and 12	\$0.325	\$0.300	\$0.275
	Zones 3, 10, and 11	\$0.350	\$0.325	\$0.300

**Self-Performed Work Fees**

In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company.

The purpose of this is to enable confirmation through open book pricing.

<b>Position Description</b>	<b>Hourly Rate</b>
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx

## **Annual Costs and Fees**

### ***Measurement and Verification – Annual Fee***

Briefly describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

### ***Warranty***

Briefly describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

### ***Other***

Briefly describe any other fees and how they will be determined.

### **Equipment/Labor Cost Competition**

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

### **Open Book Pricing**

Briefly describe your company's approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

### **Best Value**

Briefly describe how your approach to performance contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

## **APPENDIX E**

### **LETTER OF TRANSMITTAL FORM**

**APPENDIX E**  
**Letter of Transmittal Form**

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

**RFP#: 40-00000-23-00029**

**Offeror Name:** \_\_\_\_\_

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED TIN#</b>	
<b>NM BTIN#</b>	

**2: Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) Clarify/respond to queries on behalf of the Offeror:**

	(A) Contractually Obligate	(B) Negotiate*	(C) Clarify/Request to Queries*
Name			
Title			
E-mail			
Telephone			

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

**3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):**

\_\_\_ No.

\_\_\_ Yes. Identify subcontractor/s: \_\_\_\_\_

**4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)**

\_\_\_ No.

\_\_\_ Yes. Identify entity/-ies: \_\_\_\_\_

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

· On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;

· I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and

· I acknowledge receipt of any and all amendments to this RFP, if any.

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

(Must be signed by the individual identified in item #2.A, above.)

## **APPENDIX F**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

The State of New Mexico, as a part of the RFP process, requires Offerors to list a minimum of two (2) organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: [Tami.Concha@gsd.nm.gov](mailto:Tami.Concha@gsd.nm.gov) by November 9, 2023 at 3:00PM MST/MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP #40-00000-23-00029**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the State of New Mexico, General Services Department via e-mail at:

Name: Tami Concha  
Email: Tami.Conch@gsd.nm.gov

Forms must be submitted no later than November 21, 2023 at 3:00PM, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the State evaluate the above-referenced Offeror’s service history, successful execution of services and evidence of customer/client satisfaction.

**For questions or concerns regarding this form**, please contact the State of New Mexico **Procurement Manager** at (505) 660-8605, dennis.romero@gsd.nm.gov. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

**CONFIDENTIAL INFORMATION WHEN COMPLETED**

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project description</b>	
<b>Project dates (start and end dates)</b>	
<b>Technical environment for the project your providing a reference</b> – Energy Performance Contracting, Energy Service Contractor	

New Mexico Energy, Minerals and Natural Resources Department (EMNRD)

1220 S. St. Francis Dr., Santa Fe, NM 87505

<https://www.emnrd.nm.gov/ecmd/> (505) 476-3315

Application No. \_\_\_\_\_

For EMNRD use only

Form version date: 4/25/23

Question Scoring

Superior = 5 points

Acceptable = 3 points

Not Acceptable = 1 point

## Questionnaire for ESCO References

ESCO References will be asked the following questions by EMNRD Energy Conservation and Management Division. The responses will be evaluated and will contribute to the ESCO's score. The evaluation is needed to certify that an Energy Service Company (ESCO) meets the required criteria for a qualified provider as required by the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978).

Project Name:

Reference:

ESCO:

### Experience

#### 1. Satisfaction with methods of measuring energy savings

Superior  Acceptable  Not Acceptable

Discussion

#### 2. Overall satisfaction with the project

Superior  Acceptable  Not Acceptable

Discussion

#### 3. Energy savings achieved to date (actual and/or avoided costs)

Superior  Acceptable  Not Acceptable

Discussion

### Management

#### 4. Frequency/clarity of ESCO communication with client representatives

Superior  Acceptable  Not Acceptable

Discussion

<b>5. ESCO responsiveness to specific user requests to resolve problems</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>6. ESCO's coordination of construction scheduling with building staff</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>7. Ability of contractor to complete project on schedule</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>8. Quality of training for facility personnel provided by ESCO</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>Technical</b>				
<b>9. ESCO understanding of your facility systems</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>10. Comprehensiveness of overall assessment of the facility by ESCO</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				
<b>11. Completeness of installed retrofits</b>		Superior <input type="checkbox"/>	Acceptable <input type="checkbox"/>	Not Acceptable <input type="checkbox"/>
Discussion				

**APPENDIX G**

**NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM**

## *New Mexico Employees Health Coverage Form*

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:

(a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information [https://:bewellnm.com](https://bewellnm.com)

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

Signature of Offeror: \_\_\_\_\_ Date \_\_\_\_\_

## **APPENDIX H**

### **RESIDENT BUSINESS OR BUSINESS VETERANS CERTIFICATION**

**If you plan on including this certification, please make sure the certificate is current.**

**APPENDIX I**  
**CONFLICT OF INTEREST AFFIDAVIT**

**AFFIDAVIT**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

I, \_\_\_\_\_ (name), being first duly sworn upon my oath, depose and state the following:

1. I am a former employee of the \_\_\_\_\_ (name of Department/Agency), having separated/retired from state employment as of \_\_\_\_\_ (date).
2. I am a current employee of the \_\_\_\_\_ (name of Department/Agency), or a legislator with the state, or the family member (spouse, parent, child, sibling by consanguinity or affinity) of a current employee or legislator with the state. Being a current employee or legislator or family member of a current employee or legislator of the state, I hereby certify that I obtained this Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is, in accordance with the Procurement Code except that this Agreement has NOT been awarded via the sole source or small purchase procurement methods.
3. The Department/Agency and I have entered into an agreement in the amount of \$\_\_\_\_\_.
4. Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Agreement because I neither sought a contract with the Department/Agency, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the Department/Agency.
5. To the best of my knowledge, this Agreement was awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

\_\_\_\_\_  
name

Subscribed and sworn to before me by \_\_\_\_\_ (name of former employee) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**APPENDIX J**  
**ENERGY SERVICES COMPANY APPLICATION**

New Mexico Energy, Minerals and Natural Resources Department (EMNRD)

1220 S. St. Francis Dr., Santa Fe, NM 87505  
<https://www.emnrd.nm.gov/ecmd/> (505) 476-3315

Application No.

## Energy Services Company Application

The following information must be provided to the EMNRD Energy Conservation and Management Division to certify that an Energy Services Company (ESCO) meets the required criteria for a qualified provider as required by the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978).

For EMNRD use only  
 Form version date:  
 4/25/23

### Contact Information

Name of Firm		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
NM Registered Professional Engineer		Project Manager	

### Experience

Years experience as energy efficiency contractor		Number of qualified energy savings contracts undertaken by firm in past three years	
Summarize type and size of qualified energy savings projects implemented by ESCO or primary energy management contractor			

### Project Personnel

Name of Firm		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Responsibilities			

Experience, Licenses, and Certificates	
---	--

**Project Personnel (continued)**

Provide additional key personnel who will work on the project. Duplicate this page as necessary.

Name of Firm		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Responsibilities			
Experience, Licenses, and Certificates			

Name of Firm		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Responsibilities			
Experience, Licenses, and Certificates			

Name of Firm		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Responsibilities			
Experience, Licenses, and Certificates			

## References

Provide a reference for each qualified energy savings project undertaken by firm in last three years.

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Description			

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Description			

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Description			

--	--

**References (continued)**

Provide a reference for each qualified energy savings project undertaken by firm in last three years. Duplicate this page as necessary.

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Description			

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	
Project Description			

Name of Client		Principal Contact	
Mailing Address <i>(Address, City, Zip Code)</i>			
Telephone Numbers		Email	

Project Description	
------------------------	--

**Agreement**

The ESCO applicant named above and signing this statement through the authorized representative below agrees that all information provided in this application package is true and correct to the best of the authorized representative's knowledge. The applicant has read 6-23 NMSA 1978. The applicant understands that the purpose of this application is to evaluate ESCO qualifications and maintain a pool of qualified providers that may propose guaranteed utility savings contracts for governmental units under the Public Facilities Energy Efficiency and Water Conservation Act. The applicant is experienced in the design, implementation, and installation of energy conservation measures and meets EMNRD experience qualifications.

Printed Name of Authorized Representative	Title
<b>Signature of Authorized Representative</b>	<b>Date</b>

## **APPENDIX K**

[intentionally omitted]

**APPENDIX L**

**MODEL INVESTMENT-GRADE ENERGY AUDIT &  
PROJECT PROPOSAL CONTRACT**

## STATE OF NEW MEXICO

---

NAME OF AGENCY  
GENERAL SERVICES CONTRACT # \_\_\_\_\_  
FOR  
INVESTMENT-GRADE ENERGY AUDIT AND PROJECT PROPOSAL

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, a governmental entity hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA").

### RECITALS

WHEREAS, this Agreement was created for use by New Mexico government entities to obtain an Investment-Grade Energy Audit of a facility from a private energy service company (CONTRACTOR);

WHEREAS, authority exists in the law for Agency to enter into this contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies;

WHEREAS, Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at facilities similar in size, function and system type to Agency's facilities;

WHEREAS, Contractor has submitted a proposal, in response to Agency's Request for Proposals (RFP), pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at Agency's facilities;

WHEREAS, Agency has selected Contractor to provide the services described herein;

WHEREAS, Agency desires to enter into a contract to have Contractor perform an Investment-Grade Energy Audit and Project Proposal to determine the feasibility of entering into a Guaranteed Utility Savings Contract to provide for installation and implementation of energy and water conserving measures at Agency's facilities; and

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

*Energy Savings Performance Contracting  
Model Investment-Grade Energy Audit and Project Proposal Contract between Governmental  
Unit & Contractor  
Provided by EMNRD as technical assistance to eligible governmental units  
Agency legal review recommended  
December 16, 2015*

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

Contractor shall:

A. Perform an Investment-Grade Energy Audit (Audit) in accordance with this Agreement. Contractor shall work diligently to assess validity of information provided and to confirm or correct the information as needed to provide a complete and accurate Audit. Agency will assist Contractor in performing the Audit as described in this Agreement. Agency will work diligently to provide full and accurate information needed by Contractor for the Audit. The parties contemplate that development of the Audit will be an iterative process and that Agency will have a reasonable amount of time, not less than 30 calendar days but not exceeding 90 calendar days from Agency receipt of Audit report, to review and determine acceptance of Audit report before considering issuance of the Notice of Acceptance (Exhibit A).

B. Submit a Project Proposal (Proposal) to Agency within 30 calendar days of Audit report submittal that provides a package of energy and water conserving measures, including details as specified in this Agreement.

C. In order to successfully implement this project, Contractor shall:

I. **Conduct assessment.**

(a) Meet with Agency to establish interests, plans, problems, and any other issues related to facilities and operation of facilities.

(b) Collect data and background information on buildings, equipment and facilities operation and energy use for the most recent three years from the effective date of this Contract as follows:

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

*Energy Savings Performance Contracting  
Model Investment-Grade Energy Audit and Project Proposal Contract between Governmental  
Unit & Contractor  
Provided by EMNRD as technical assistance to eligible governmental units  
Agency legal review recommended  
December 16, 2015*

- (10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
  - (11) Original construction submittals and factory data (specifications, pump curves, and any similar documentation), as available;
  - (12) Operating engineer logs, maintenance work orders, and any similar documentation, as available;
  - (13) Records of maintenance expenditures on energy-using equipment, including service contracts;
  - (14) Prior energy audits or studies, if any.
- (c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.
- (d) Meet with Agency to present preliminary findings and establish agreement on measures to analyze.

**II. Identify potential measures.**

- (a) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
- (1) Facility operation, including energy management procedures;
  - (2) Equipment maintenance problems;
  - (3) Comfort problems and requirements;
  - (4) Equipment reliability;
  - (5) Projected equipment needs;
  - (6) Occupancy and use schedules for the facility and specific equipment;
  - (7) Past, planned, and desired facility improvements.
- (b) Survey major energy-using equipment, including indoor and outdoor lighting, heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment, exhaust systems and equipment, hot water systems, electric motors, transmission and drive systems, special systems (including kitchen/dining equipment), renewable energy systems, other energy using systems, and water consuming systems (restroom fixtures, water fountains, irrigation systems, and other water systems).
- (1) Verify settings of control systems that include computer controls systems and building thermostats
  - (2) Measure lighting levels at various locations in a building to determine if recommended lighting levels exist
  - (3) Inspect filters for heating and cooling systems to determine the status of maintenance activities
  - (4) Consider maintenance staff and occupant concerns related to heating, cooling, and lighting
- (c) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- (d) Develop a preliminary list of potential energy and water conserving measures. Consider the following for each system:
- (1) Comfort and maintenance problems;
  - (2) Energy use, loads, proper sizing, efficiencies and hours of operation;

*Energy Savings Performance Contracting  
Model Investment-Grade Energy Audit and Project Proposal Contract between Governmental  
Unit & Contractor  
Provided by EMNRD as technical assistance to eligible governmental units  
Agency legal review recommended  
December 16, 2015*

- (3) Current operating condition;
- (4) Remaining useful life;
- (5) Feasibility of system replacement;
- (6) Hazardous materials and other environmental concerns;
- (7) Agency's future plans for equipment replacement or building renovations;
- (8) Facility operation and maintenance procedures that could be affected;
- (9) Capability to monitor energy performance and verify savings.

**III. Analyze measures.**

(a) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, and any other energy or fuel types. Present base year consumption in terms of energy units as used in utility bills, in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (such as averaging, selecting most representative contiguous 12 months, or other methods). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor shall account for periods of time when equipment was broken or malfunctioning in calculating the base year.

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

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

(d) Propose adjustments to the baseline for energy and water conserving measures that will be implemented in the future. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:

- (1) utility rates;
- (2) number of days in the utility billing cycle;
- (3) floor area of the facility;
- (4) operational schedule of the facility;
- (5) facility temperature;
- (6) weather, if change is significant;
- (7) amount of equipment or lighting used in the facility, if change is significant;
- (8) space type(s) in the facility, if change is significant; and
- (9) material change(s) in or to the facility.

(e) Develop a preliminary analysis of potential energy and water conserving measures. This resulting list of measures shall be compiled and submitted to Agency within 90 calendar days of the execution of this Contract. Furthermore:

- (1) List all potential measures, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited

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to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water conserving devices.

- (2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.
- (3) For each measure, prepare a preliminary estimate of energy or water cost savings, including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

(f) Meet with Agency to present preliminary findings prior to thorough analysis.

Describe how the projected project economics meet the Agency's terms for completing the Investment-Grade Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Agency shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

(g) Perform final analysis of savings and costs for each energy and water conserving measure, including the following:

- (1) Follow the methodology of American Society of Heating, Refrigerating, and Air-Conditioning Engineers or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.
- (2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
- (3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
- (4) Use markups and fees stated above in all cost estimates.
- (5) Develop a preliminary measurement and verification plan for each measure.
- (6) Follow additional guidelines for analysis and report preparation given below.
- (7) Include cost to provide services and complete application for Energy Star Label, LEED-EB certification for Existing Buildings, or other certification. Also include cost for EPA's Tools for Schools or other such program related to improved air quality.

#### **IV. Provide Investment-Grade Energy Audit Report**

The report provides an engineering and economic basis for negotiating a potential Guaranteed Utility Savings Contract between the Agency and the Contractor.

(a) Contractor shall prepare and submit to Agency a draft Investment-Grade Energy Audit Report within 90 calendar days of the date of execution of this Contract. The report shall provide the following information:

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- (1) Overview, which shall include:
  - i) Contact information;
  - ii) Summary table of recommended energy and water conserving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
  - iii) Summary of annual energy and water use by fuel type and costs of existing or base year condition;
  - iv) Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost;
  - v) Description of the existing facility, mechanical and electrical systems;
  - vi) Summary description of measures, including estimated costs and savings for each as detailed above;
  - vii) Discussion of measures considered but not investigated in detail;
  - viii) Conclusions and recommendations.
- (2) Base year energy use, which shall include:
  - i) Description and itemization of current billing rates, including schedules and riders;
  - ii) Summary of all utility bills for all fuel types and water;
  - iii) Identification and definition of base year consumption and description of how established;
  - iv) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings).
- (3) Full written description of each energy and water conserving measure, which shall include:
  - i) Existing conditions;
  - ii) Description of equipment to be installed and how it will function;
  - iii) Discussion of facility operations and maintenance procedures that will be affected by installation/implementation;
  - iv) Plan for installing or implementing the recommended measure.
- (4) Allowable cost and savings factors approved for consideration. Agency will provide Contractor with sufficient guidance to develop savings estimates, which shall include:
  - i) Payment sources that can be incorporated:
    - Energy and water cost savings;
    - Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable);
    - Outside labor cost savings, including maintenance contracts;

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- In-house labor costs;
  - Deferred maintenance cost;
  - Offset of future capital cost;
  - Outside incentive funds (utility incentives, grants, etc.);
  - Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented;
- ii) Payment sources that may also be considered and negotiated;
- iii) Additional factors related to establishing savings that cover all costs:
- Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes; *NOTE: Use federal government guidelines on utility escalation rates to ensure reasonableness.*
  - Interest rates (municipal tax-exempt rates for public agencies);
  - Agency cash outlay (Agency's sole discretion);
- iv) The markup costs are presented in Exhibit B: Cost and Pricing. These rates will be used in the Investment-Grade Energy Audit and subsequent Guaranteed Utility Savings Contract.
- (e) Savings calculations
- (1) Base year energy use and cost.
  - (2) Post-retrofit energy use and cost.
  - (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
  - (4) Annual savings estimates. The cost savings for all energy conserving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
  - (5) Savings estimates must be limited to savings allowed by the Agency as described above.
  - (6) Percent cost-avoidance projected.
  - (7) Description and calculations for any proposed rate changes.
  - (8) Explanation of how savings interactions between retrofit options are accounted for in calculations.
  - (9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
  - (10) If computer simulation is used, include a short description and state key input data. If requested by Agency, access will be provided to the program and all assumptions and inputs used, and/or printouts

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shall be provided of all input files and important output files and included in the Investment-Grade Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.

- (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
  - (12) Conclusions, observations, and caveats.
- (f) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- (1) Engineering/design costs.
  - (2) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
  - (3) Permit costs.
  - (4) Construction management fees.
  - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
  - (6) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
  - (7) Conclusions, observations, and caveats.
  - (8) Other cost categories as defined above under "markups" in Section 3b above.
- (g) Other
- (1) Estimate of average useful service life of equipment.
  - (2) Preliminary commissioning plan.
  - (3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary M&V plan shall follow the format provided in Exhibit C: Guidelines for Draft Measurement and Verification Plan.
  - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
  - (5) Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.

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

(b) Contractor shall meet with Agency to: review the recommendations, savings calculations and impact of the measures on the operations of the facility; describe how the projected project economics meet the Agency's terms for completing the Investment-Grade Energy Audit and Project Proposal; and discuss the willingness and capability of Agency to make capital contributions to the project to improve the economics of the overall project.

(c) Contractor shall revise Audit Report as directed by Agency and shall submit **final Investment-Grade Energy Audit Report** within 30 days of the above meeting.

V. **Provide Project Proposal (term sheet).**

(a) In anticipation of Contractor and Agency entering into an Guaranteed Utility Savings Contract to design, install, and monitor the energy and water conserving measures proposed in the Investment-Grade Energy Audit Report, Contractor shall prepare a proposal for terms to be incorporated in the Guaranteed Utility Savings Contract, which shall include:

- (1) Project Cost is the total amount Agency will pay for the project and Contractor's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Investment-Grade Energy Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
- (2) Include a List of Services that will be provided as related to each cost.
- (3) Expected term of the Energy Performance Contract.
- (4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Agency at this time, and based on a 60-day and 90-day lock option.
- (5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.
- (6) Analysis of annual cash flow for Agency during the contract term.
- (7) Contractor agrees to meet with Agency to present results and negotiate final terms.

(b) Services will be performed (AT)(WITHIN)(LOCATION).

2. **Compensation.**

A. Except as provided for in subparagraphs 2D and 2E below, the Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work

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at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling \_\_\_\_\_ dollars (\$ \_\_\_\_\_) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_). This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. This amount is based on a maximum of [facility floor area to be audited] gross square feet at [unit dollar amount in words] US dollars (\$ [unit dollar amount] ) per square foot of audited facility floor area, as per Exhibit B, Cost and Pricing. Agency shall only pay for facility floor area actually audited. Areas not audited Contractor will not be charged to Agency.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Agency shall have no payment obligations under this contract, provided that Contractor and Agency execute a Guaranteed Utility Savings Contract within 120 days *[allows sufficient time for contract negotiation, attorney review, and Agency processing days]*, after issuance of the Notice of Acceptance (Exhibit A) of the final Investment-Grade Energy Audit and Project Proposal, but the fee indicated above shall be incorporated into Contractor's project costs in the Guaranteed Utility Savings Contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.

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E. Agency shall have no payment obligations under this Contract in the event that Contractor's final Investment-Grade Energy Audit and Project Proposal does not contain a package of energy and water conservation measures which, if implemented and as meeting terms of Scope of Work, will provide the Agency with utility cost savings sufficient to fund Agency's payments of all costs and fees associated with the Guaranteed Utility Savings Contract, including: 1) the fee associated with the Investment-Grade Energy Audit; 2) all monthly payments on a lease purchase agreement to finance the measures; and 3) any annual fees for monitoring and maintenance incurred by the Contractor. Should the Contractor determine at any time during the Investment-Grade Energy Audit that savings cannot be attained to meet these terms, the Investment-Grade Energy Audit will be terminated by written notice by Contractor to Agency. In this event, this Agreement shall be terminated and Agency shall have no obligation to pay, in whole or in part, the amounts specified in subparagraphs 2A or 2B.

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY OR THE STATE PURCHASING AGENT, IF REQUIRED. This Agreement shall begin on date approved by the agency or the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on **DATE**. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of **four** years in accordance with NMSA 1978 §13-1-150.

**4. Termination.**

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

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C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor, and Contractor's agents and employees, are independent Contractors for the agency and are not employees of the State of New Mexico. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

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The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business

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in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

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A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers

Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

**20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**21. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

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Model Investment-Grade Energy Audit and Project Proposal Contract between Governmental  
Unit & Contractor  
Provided by EMNRD as technical assistance to eligible governmental units  
Agency legal review recommended  
December 16, 2015*

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:  
[insert name, address and email].

To the Contractor:  
[insert name, address and email].

**26. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.**

By: \_\_\_\_\_  
Agency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Agency's Legal Counsel – Certifying legal sufficiency

Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Agency's Chief Financial Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

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Exhibit A

**Notice of Acceptance**

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Exhibit B

**Cost and Pricing**

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Exhibit C

**Guidelines for Draft Measurement and Verification Plan**

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## Exhibit D

### Performance Measures

*(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")*

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

**Example:** Goal: Reduce or Increase or Other Service [insert blank].<sup>1</sup>

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.<sup>2</sup>

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

**OR:** Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below *(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties)*.

---

<sup>1</sup> A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

<sup>2</sup> An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

**APPENDIX M**  
**MODEL FINANCING RFP FOR ISSUANCE BY**  
**QUALIFIED PROVIDER**

## Request for Proposal

---

**RFP Reference:** Institution Name  
**RFP Date:** Date  
**RFP Closing Date:** Date  
**ESCO - Contact:** Name, Address, Phone, Fax, E-mail

### Notice to Firms

Invitations are extended for proposals using the attached proposal format

Scope of Request: Provide pursuant to a tax-exempt lease purchase agreement with Institution financing for energy and water savings measures for those certain facilities located at the Institution's campus.

Properly Completed Responses will include:

1. a signed and dated proposal letter in the format included
2. a redlined copy of the Model Lease Contract With Explanation of Any Changes proposed thereto
3. a signed and completed signature sheet
4. a schedule of payments and amortization schedule including any purchase options
5. escrow information (contact, Escrow Agreement and List of All Fees)

## Proposal Information

### Specific Terms

Lessee:	Board of Institution
Lessor:	The Provider of the Financing or a Mutually Agreeable Nominal Lessor
Contract:	A Model Lease Contract between Lessor and the Institution. Each firm is required to review and comment on the Model Lease Contract, attached hereto as Attachment A. The extent and content of those comments will be important to the evaluation of the proposals. If any changes in the Model Lease Contract are proposed, such changes must be specifically identified in the proposal and alternate language set forth in the proposal. Also, any changes should be accompanied with an explanation clarifying the proposed change.
Security:	The Lessor will be secured by the Institution's obligation to pay the lease payments, which are subject to annual appropriations and by a security interest in the equipment purchased for the energy and water savings measures to be installed by ESCO, which can be salvaged without damage to the facility to which such equipment is attached.
Interest Rate:	A fixed rate of interest for the term of the financing. The proposal should include the relevant index and spread along with the period of time the proposed fixed interest is committed
Prepayment:	The final tax-exempt lease purchase agreement shall include certain prepayment provisions pursuant to a schedule to be agreed to by the parties
Assignment:	The Lessor may assign its rights to receive lease payments and its security interest in the equipment installed pursuant to the Energy Savings Performance Contract but only with the advance written consent of the Institution. Each assignment must specifically mention the Institution's rights regarding prepayment.
Amendment:	The Institution reserves the right to amend the Model Lease Contract that is entered into pursuant to this Request for Proposal. Any such amendment will be in writing and subject to the mutual consent of both parties.
Cost:	The proposal should identify specifically all costs associated with the transaction, if any, that would be an obligation of the Institution as either a direct payment or as additional project costs for purpose of determining the funded lease amount an/or ongoing lease payment obligation. these costs must be all-inclusive and may include commitment fees, legal counsel, trustee fees and any other costs. The Model Lease Agreement does not require the Institution to pay any supplemental financing costs, either direct (upfront) or as an addition to the project cost.
Requirement of ESCO:	The proposal shall identify specifically any requirements to be imposed upon ESCO as a result of this financing.
Requirement of Lender:	The Lessee will agree that Lessor will bear the risk of loss if the equipment is damaged or destroyed, and to pay lease payments from

funds available for that purpose, when and if appropriated by the State Legislature.

### **Conditions to Proposal**

#### Cost of Preparing

**Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the firms submitting a response to this Request for Proposal. This includes, but is not limited to, costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request for Proposal.

#### No Oral or Implied

**Contracts:** There shall be no oral or implied contracts relating this Request for Proposal.

#### Acceptance or

**Rejection:** The Institution reserves the right to select, accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request for Proposal; and establish financing at any time.

#### Contract:

The successful firm will be required to enter into a tax-exempt lease purchase agreement with the Institution.

The tax-exempt lease purchase agreement shall be substantially in the form set forth on Attachment A (Model Lease Contract). Each firm is required to provide comments and specific alternate language for those items in the Model Lease Contract from which the firm wishes to deviate.

#### Contract Documents:

This Request for Proposal and any amendments and the response and any amendments of the successful firm shall become a part of the written contract, which shall compose of the complete understanding of the parties.

In the event a conflict in terms of language among the documents, the following order of precedence shall govern:

1. written modifications to the executed contract;
2. tax-exempt lease purchase agreement signed by the parties;
3. this Request for Proposal, including any and all addenda

#### Contract Formation:

No contract shall be considered to have been entered into by the Institution until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful firm.

#### Open Records Act:

All proposals become the property of the Institution. State statute requires all information contained the proposals become open for public review once a contract is signed or all proposals are rejected.

#### Submission of Proposals:

A copy of the firm's proposal shall be received on or before Time, Date, addressed as follows:

Name, Address

Responses via email or facsimile will be accepted provided that such response includes all of the requisite information.

Proposals received prior to the closing date shall be kept secured until closing. The Institution shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date.

Signature of Proposals: Each proposal shall give the complete mailing address of the firm and be signed by an authorized representative with his or her name and legal title typed below the signature line.

Acknowledgement of

Addenda: All firms shall acknowledge receipt of any addenda to this Request for Proposal by original signature with his or her name and legal title typed below the signature line. Each proposal shall include the firm's social security number or Federal Employer Identification Number.

Modification of Proposal: A firm may modify a proposal by written notification at any time prior to the closing date. Any modifications received after the closing date shall not be accepted.

Withdrawal of Proposal: A proposal may be withdrawn on written request from the firm to the representative designed above.

Proposal Disclosures: At the time of closing, only the names of the firms who submitted proposals shall be made available to the public. No interest rate information will be released until there is an award and contract.

Notice of Award: An award is made on the execution of the written contract by the all parties. Only the Institution is authorized to issue news releases relating to this Request for Proposal, its evaluation, award and/or performance of the tax-exempt lease financing.

Prohibition of Gratuities: Neither the successful firm nor any person, firm or corporation employed by the successful firm in the performance of this contract shall offer or give any gift, money or anything of value or any promise of future award or compensation to any Institution employee at any time.

Third Party Beneficiaries: This Request for Proposal and resulting tax-exempt lease purchase agreement shall not be construed as providing an enforceable obligation to any third party.

No Liability: The Institution shall have no liability, obligation nor shall it be compelled to enter into any tax-exempt lease purchase agreement or any other financing arrangement as a result of issuing this Request for Proposal.

FINANCING PROPOSAL LETTER

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PROPOSING FINANCING FIRMS: SUBMIT ON FIRM LETTERHEAD

Date

RE: Institution

Lender is pleased to submit the following financing proposal for Institution energy and water savings conservation project. This proposal is being submitted in response to your request for proposals dated Date.

**I. Lender Information**

Lender Name:

Address:

Contact:

Telephone:

Fax:

Email:

Background: Discuss experience in financing state projects and / or performance contracts, with attention given to experience in the state, and what advantages your firm offers.

**II. Financing Structure**

Purpose: Finance the energy and water savings conservation projects to be engineered, designed, constructed and commissioned by ESCO for Institution.

Structure: Tax-exempt Lease Purchase arrangement using the Model Lease Contract distributed with this request for proposals.

Security: First lien on the equipment  
Lessee appropriations

Proceeds: Approximately \$ \_\_\_\_\_ plus capitalized interest for the \_\_\_\_\_ month construction period.

Term: \_\_\_\_\_ months ( \_\_\_\_\_ months of construction plus \_\_\_\_\_ months of amortization period)

Payments: Presented in the following options: Quarterly, bi-yearly, and monthly options - in arrears.

Prepayment: List prepayment terms / conditions / penalty

Interest Rate: \_\_\_\_\_ % (This is a non-bank qualified financing)

Rate will be held until \_\_\_\_\_. After that date, the rate will be adjusted as follows: \_\_\_\_\_ (name and source of index).

Example: This rate will be held until \_\_\_\_\_. After that date, the rate will float at 75 basis points over the 10 year treasury, constant maturity, as published daily in the Federal Reserve Bulletin Statistical Release H-15.

Closing Costs: \$ \_\_\_\_\_ (if any)

Escrow Account  
Terms:

Agent name and all costs associated with opening and maintaining the escrow, including any investment management fees, if any. Include a copy of the escrow agreement as part of the response documents.

Documents:

A Model Lease Contract is included with this response and is customized for the state and the institution type, meeting all legislative requirements, and/or it contains the edits to a Model Lease Contract that we require in order to execute the agreement.

Payment and  
Performance

Bonds:

We do / do not require to be named as dual obligee on the payment and performance bonds.

Other Conditions  
Of ESCO:

\_\_\_\_\_

Credit Approval:

The transaction is / is not subject to credit approval of the lender. If the financing is not approved, please list requirements and time frame required for approval.

Estimated Closing

Date:

Within 60 days of the award of the financing.

Other Requirements or conditions:

### ***III. Other Information***

Please provide any other information that you would like to share regarding your firm's qualifications, references, contacts, etc.

Thank you for the opportunity to provide this proposal. If you have any questions or would like to discuss this proposal in further detail, please let us know.

Sincerely,

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Signature Sheet

---

Item: Tax-exempt lease financing for Institution energy and water conservation projects.

Entity: Board of Institution

We submit a proposal to furnish the financing for the term of the contract in accordance with the specifications and schedule of supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one, which a reasonable person would think would compromise the open competitive bid process.

Addenda: The undersign acknowledges receipt of the following addenda:

1. Proposal letter dated \_\_\_\_;
2. Model Lease Contract – Attachment A;
3. List of energy and water savings measures and the associated capital cost – Attachment B;

Legal Name of Person, Firm or Corporation: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City & State: \_\_\_\_\_ Zip: \_\_\_\_\_

FEIN Number: \_\_\_\_\_

Please indicate taxes currently registered for in the State:  
Corporate Income Tax [  ]; Sales Tax [  ]; Withholding Tax [  ]  
Compensating Use Tax [  ]; None [  ]

The undersigned attests this bidder is not in arrears in taxes due the State.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name of Signature: \_\_\_\_\_ Title: \_\_\_\_\_

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Address \_\_\_\_\_

City & State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

## Overview of Facility Improvement Projects

ESCO:

Contractual

Arrangement: Energy Savings Performance Contract by and between ESCO and Board of Institution

Total Installed Costs: \$ \_\_\_\_\_, subject to adjustment based upon final analysis by ESCO

Financed Capital: Approximately \$ \_\_\_\_\_, which is the Total Installed Costs plus capitalized interest for the \_\_\_\_\_ month construction period

Term: \_\_\_\_\_ months (\_\_\_\_\_ months of construction plus \_\_\_\_\_ months of amortization period)

Payments: no more frequent than quarterly and such payment shall be in arrears

Projects: Energy and Water Savings Measures including but not limited to:

- Item 1
- Item 2

A more detailed description of these measures is included with this Request for Proposal along with an estimate of the capital cost associated with each.

Anticipated Draw

Schedule:

**APPENDIX N**

**MODEL GUARANTEED UTILITY SAVINGS**

**CONTRACT**

**STATE OF NEW MEXICO  
NAME OF AGENCY  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_  
For Energy Performance Contracting**

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**Schedules**

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Optional Exhibits

Manifest of Ownership

Minority and Woman-Owned Business Certification

Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime

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**Appendices**

Appendix A RFP for Contractor Solicitation (Pre-qualification Phase; Final Selection Phase)

Appendix B Contractor Proposal (Pre-qualification Phase; Final Selection Phase)

Appendix C Investment-Grade Energy Audit and Project Development Contract

Appendix D Investment-Grade Energy Audit Report

**STATE OF NEW MEXICO**  
**NAME OF AGENCY**  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_  
**For Energy Performance Contracting**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA").

**RECITALS**

WHEREAS, Agency owns and operates the Project Site(s), and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Agency has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as hereinafter defined); and

WHEREAS, Contractor has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of Agency; and

WHEREAS, Contractor was selected after a determination that its proposal was the most advantageous to Agency pursuant to a Request for Proposal and contract for the Investment Grade Audit and Project Development Proposal (as hereinafter defined); and

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in Schedule Q (Description of Project Site(s)), which was delivered to Agency as an Investment-Grade Energy Audit Report which Agency has approved and is attached as Appendix D; and

WHEREAS, Agency desires to retain Contractor to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Agency is authorized under the New Mexico Constitution and state law, Chapter 6, Article 23, New Mexico Statutes Annotated (NMSA) 1978, to enter into this Contract for the purposes set forth herein.

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NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

IT IS AGREED BETWEEN THE PARTIES:

**1. Definitions.**

A. “Commencement Date” means the date described in Section 6 (Commencement Date);

B. “Contract” means this Energy Performance Contract and all Schedules, Exhibits, and Appendices attached hereto;

C. “Contract Sum” means the sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project;

D. “Energy and Cost Savings Guarantee” means the guarantee of Schedule A (Savings Guarantee) that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule J (Compensation to Contractor for Annual Services) and in accordance with the Savings Calculation Formula as set forth in Schedule C (Savings Measurement and Verification (M&V) Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements);

E. “Energy and Water Cost Savings” means the savings as provided in Schedule A (Savings Guarantee);

F. “Equipment” means the material goods enumerated in Schedule R (Equipment to be Installed by Contractor) that is now, or hereafter from time to time, attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof;

G. “Event of Default” means those events described in Sections 65 (Events of Default by Contractor) and 64 (Events of Default by Agency) hereof;

H. “Interim Period” means the period from contract execution until the Commencement Date;

I. “Investment Grade Audit” means a study by the Contractor selected for a particular energy performance contracting project, which includes detailed descriptions of the improvements

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recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements;

J. "Project Site(s)" means the facilities of the Agency in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s);

K. "Qualified Provider" means the Contractor, who is a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the Energy, Minerals and Natural Resources Department (EMNRD) for energy conservation measures or the Office of the State Engineer for water conservation measures;

L. "Substantial Completion" means the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose.

M. "Work" means the Equipment, materials, professional services and construction services for the project at Agency's Project Site, as described by this Agreement and attachments.

**2. Scope of Work.**

Contractor shall:

A. perform and complete the Work at the Agency's Project Site, as defined and described in this Agreement and the attached Schedules, Exhibits, and Appendices;

B. provide the Equipment, together with installation, maintenance and other services as provided herein, as in Schedule R (Equipment to be Installed by Contractor) based upon the terms and conditions set forth in Schedule S (Construction and Installation Schedule);

C. provide the Work and all related services identified in Schedule R (Equipment to be Installed by Contractor) and the services detailed in Schedule BB (Contractor's Maintenance Responsibilities) and Schedule J (Compensation to Contractor for Annual Services);

D. supervise and direct the Work and shall be responsible for the engineering, design, and quality control; construction means, methods, techniques, sequences, and procedures; and for coordinating all portions of the Work under this Contract; and

E. comply with all federal, state, and local government laws, codes, and regulations in effect at the time the Agreement is fully executed.

**3. Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.).

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The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling \_\_\_\_\_ dollars (\$ \_\_\_\_\_) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_) as set forth in Schedule H (Final Project Cost & Project Cash Flow Analysis). This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. Payment terms are described in Schedule I (Financing Agreement and Payment Schedule).

D. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**4. Term.**

*The Energy Performance Contract shall have a term no greater than 25 years and no greater than the cost-weighted average lifetime of the equipment, in compliance with Section 6-23-3 NMSA 1978. Agency's goal is for a term no greater than its desired financing term.*

A. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978. An exception is that for contracts entered into pursuant

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to the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978), the term shall not exceed twenty-five years, including all extensions and renewals.

*Prior to the Commencement Date the final contract and technical schedules are negotiated and executed by signature. At that point in time the Contractor typically begins the final design of the project and finalizes the construction schedule with the Agency. The "Interim Period" refers to the construction period, during which some amount of energy savings will start to accrue. The treatment of those energy savings can be negotiated to either be credited to the Contractor's guarantee or credited to the Agency. If such savings are credited to the Contractor's guarantee, it is recommended that such credit be extended for a specified period of time (e.g. 1-2 years). If the Contractor is credited with the interim period savings, the Agency and Contractor will need to agree to develop an approach to the measurement of those savings.*

B. Subject to the following sentence, the term of this Contract shall be \_\_\_\_\_ years measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to the Agency.

## **5. Termination.**

*The Agency has an option to terminate the contract but the Contractor does not. Contractor's termination is considered a default as described in the default clause.*

A. Termination. This Agreement may be terminated by the Agency upon written notice delivered to the Contractor at least ten (10) days prior to the intended date of termination. By such termination, the Contractor may not nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management. Immediately upon receipt by the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to

or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**6. Commencement Date.**

*This section defines the Commencement Date which is the actual beginning date for the savings guarantee period. It is standard for this date to be the first month AFTER the Contractor has completed construction and delivered a notice that all equipment is installed and operating. In addition, the Agency will have accepted the installation by signing a Certificate of Acceptance which should be attached to the contract. It also clearly states that no payment for any of the Contractor's on-going services (e.g. measurement and verification, project monitoring, maintenance, training etc.) will be made prior to the Commencement Date. It is recommended that the repayment obligation of project financing be arranged to coincide with the Commencement Date. The timing of the Commencement Date may also need to be arranged to accommodate the Agency's fiscal year for the purpose of appropriations and budgeting. This date alignment should not prevent the Contractor from timely remuneration for training and other services performed prior to Commencement Date.*

A. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency and Contractor shall have delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in **Schedule R (Equipment to be Installed by Contractor)** and in accordance with the provisions of **Schedule S (Construction and Installation Schedule)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit VI (Agency Certificate of Acceptance—Installed Equipment)**.

B. Notwithstanding anything to the contrary in **Sections herein (Purchase and Sale; Commencement Date and Terms; Interim Period)**, the Commencement Date shall not occur and the Agency shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by Contractor in accordance with the terms and conditions of this Contract. Agency shall have \_\_\_\_\_ days after notification by the Contractor to inspect and accept the Equipment. Agency reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until after the punch list is completed and Contractor has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Agency.

C. Compensation payments due to Contractor for on-going services and maintenance under this Contract as set forth in **Schedule J (Compensation to Contractor for Annual Services)** shall begin no earlier than \_\_\_\_\_ from the Commencement Date as defined herein.

**7. Performance Measures.**

Contractor shall substantially perform the following Agency Performance Measures:

- A. *[Insert Agency Performance Measure involving facility capital upgrades, if applicable.]*
- B. *[Insert Agency Performance Measure involving operational cost reduction, if applicable.]*
- C. *[Insert other Agency Performance Measure, if applicable]*

Agency Performance Measures documentation is provided as Attachment I.

**8. Contractor is Qualified Provider.**

*This section records the certification by EMNRD of the Contractor as a Qualified Provider, pursuant to Sections 6-23-2E and 6-23-5 NMSA 1978, which must be completed prior to the execution of this contract. An EMNRD Certification of Contractor as Qualified Provider must be signed by EMNRD and attached to the contract (Exhibit III).*

Contractor is certified as a Qualified Provider by EMNRD to perform the Work, pursuant to Sections 6-23-2E and 6-23-5 NMSA 1978 and as shown by Exhibit III (EMNRD Certification of Contractor as Qualified Provider).

**9. Investment-Grade Energy Audit Report and Project Development Proposal.**

*This section records the certification by EMNRD of the Investment-Grade Energy Audit Report which must be completed prior to the execution of this contract. An EMNRD Certification of Guaranteed Energy Savings must be signed by EMNRD and attached to the contract - Exhibit IV(Agency Certificate of Acceptance – Installed Equipment). If the list of measures is not completely finalized prior to the signing of this contract, then language to that effect should be included.*

Contractor has provided the complete Investment-Grade Energy Audit Report and Project Development Proposal of the Project Site(s), as set forth in Appendix D (Investment-Grade Energy Audit and Project Proposal Contract) and dated \_\_\_\_\_. The Investment-Grade Energy Audit Report includes all energy conservation measures agreed upon by Agency and Contractor for implementation in the Work. The guaranteed energy savings of energy conservation measures stated in the Investment-Grade Energy Audit Report appear to be accurately estimated and reasonable and are certified by EMNRD, as shown in Exhibit IV (EMNRD Certification of Guaranteed Energy Savings).

**10. Schedules, Exhibits and Appendices.**

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Contractor has provided and Agency has approved the following Schedules, Exhibits and Appendices, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment II and made a part of this Contract by reference.

A. Schedules

Savings Guarantee

Schedule A	Energy and Cost Savings Guarantee
Schedule B	Baseline Energy Consumption; Methodology to Adjust Baseline
Schedule C	Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
Schedules D-G	<i>[optional schedules]</i>

Payments and Schedule

Schedule H	Final Project Cost & Project Cash Flow Analysis
Schedule I	Financing Agreement and Payment Schedule
Schedule J	Compensation to Contractor for Annual Services
Schedule K	Rebates, Incentives and Grants
Schedules L-P	<i>[optional schedules]</i>

Design and Construction Phase

Schedule Q	Description of Project Site(s)
Schedule R	Equipment to be Installed by Contractor
Schedule S	Construction and Installation Schedule
Schedule T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U	Standards of Comfort
Schedule V	Contractor's Training Responsibilities
Schedules W-AA	<i>[optional schedules]</i>

Post-Construction

Schedule BB	Contractor's Maintenance Responsibilities
Schedule CC	Agency's Maintenance Responsibilities
Schedule DD	Facility Maintenance Checklist
Schedules EE-II	<i>[optional schedules]</i>

Administration

Schedule JJ	Alternative Dispute Resolution Procedures
Schedules KK-OO	<i>[optional schedules]</i>

Optional Schedules

Pre-Existing Service Contracts

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Energy Savings Projections  
Facility Changes Checklist  
Current and Known Capital Projects at Facility

B. Exhibits

Exhibit I Performance Bond  
Exhibit II Labor and Material Payment Bond  
Exhibit III EMNRD Certification of Contractor as Qualified Provider  
Exhibit IV EMNRD Certification of Guaranteed Energy Savings  
Exhibit V Agency Approval of Contracts and Agreements  
Exhibit VI Agency Certificate of Acceptance—Installed Equipment  
Exhibit VII Equipment Warranties

Optional Exhibits

Manifest of Ownership  
Minority and Woman-Owned Business Certification  
Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime  
Notice to Proceed with Construction Phase  
Record of Reviews by Agency

C. Appendices

Appendix A RFP for Contractor Solicitation (Pre-qualification Phase; Final Selection Phase)  
Appendix B Contractor Proposal (Pre-qualification Phase; Final Selection Phase)  
Appendix C Investment-Grade Energy Audit and Project Development Contract  
Appendix D Investment-Grade Energy Audit Report

**11. Purchase and Sale.**

*When using a third-party lease-purchase structure the Contractor will receive 100% of the Contract Sum from the Agency once the Exhibit VI (Agency Certificate of Acceptance—Installed Equipment) is signed. The payments to the Contractor during the construction period (Interim Period) can be drawn down by the Contractor from the proceeds of the lease through an escrow account set up by the leasing Contractor. Payments will be made based upon the percentage of work completed and approved by the Agency. The Agency should require a percentage retainage be withheld from the Contractor until the Exhibit VI (Agency Certificate of Acceptance—Installed Equipment) is executed, at which time final payment can be made.*

A. Agency agrees to lease Equipment through a third-party financier, **NAME OF LENDER**, as provided for in a separate lease document, Schedule I (Financing Agreement and Payment Schedule).

B. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

**12. Energy Usage Records and Data.**

*This section ensures that the Contractor has access to the historical energy consumption, facility operations and occupancy data in order to develop baseline utility consumption. At a minimum, there should be 24 months of data made available, however, 36 months is recommended. Existing facility conditions, operations and equipment needs to be carefully recorded to establish an accurate baseline. This will serve as a record of your buildings as they were configured prior to project installation and will be critical to the establishment and adjustment of baseline, and measurement of savings. As well, any prior technical studies and/or energy audits should also be made available for the Contractor's review and verification.*

Agency has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

**13. Location and Access.**

*This states the Agency's responsibility for providing adequate space and protection for the installed equipment and authorizes the Contractor's access to the facility to perform routine and emergency operations.*

Contractor acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Agency shall provide access to the Project Site(s) for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the Agency. Contractor shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The Contractor's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Agency. Contractor shall immediately notify the Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

**14. Permits and Approvals.**

*This standard construction provision requires the Contractor comply with all code requirements, pay all associated permit fees and provide the Agency with copies of each permit and license required to do the work. The Agency agrees to assist the Contractor to the best of its ability to obtain all required permits and approvals.*

Agency shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Agency, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by Contractor shall at all times conform to all federal, state and local code requirements. Contractor shall furnish copies of each permit or license which is required to perform the work to the Agency before the Contractor commences the portion of the work requiring such permit or license.

**15. Coordination During Installation.**

*This standard provision directs the Agency and Contractor to coordinate the equipment installation activities to not interfere with the Agency's business activities. If an installation will require interference, the Contractor must first obtain the Agency's written approval to proceed. If a facility generates revenue for the Agency (e.g. civic center, theater, arena etc.) and scheduled revenue-producing activities are interrupted due to the fault of the Contractor, either during project installation or operation, then a provision for the collection of damages may be negotiated.*

The Agency and Contractor shall coordinate the activities of Contractor's equipment installers with those of the Agency, its employees, and agents. Contractor shall not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency.

**16. Construction Schedule; Equipment Installation.**

Construction and equipment installation shall proceed in accordance with the construction schedule approved by Agency and attached as Schedule S (Construction and Equipment Installation Schedule).

**17. Systems Startup and Equipment Commissioning.**

*This section requires the Contractor to conduct performance testing of the equipment as specified in its Commissioning Plan located in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and verify the specified operating parameters to make certain the system is working properly. In most instances this activity occurs prior to the Agency's final acceptance of the project as fully installed, however, if any testing is negotiated to occur after project acceptance, language to that effect should be included here. It also requires the Contractor notify the Agency of when the testing will take place and gives the Agency (or its designee) the right to be present during all tests. Make sure the commissioning plan includes manufacturer's startup and performance sheets.*

The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule T

(Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment) and prior to acceptance of the project by the Agency as specified in Exhibit VI (Certificate of Acceptance—Installed Equipment). Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The Contractor shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment). The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Agency acceptance Contractor shall also provide Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule R (Equipment to be Installed by Contractor).

**18. Equipment Warranties.**

*This warranty provision requires all installed equipment be new and protected by appropriate written manufacturers' warranties for a minimum of one year, covering parts and performance. It also requires warranties provide for the installation of only new parts (not used or reconditioned) during the warranty period. While equipment warranties will be transferred to the Agency after completed project installation, this provision makes the Contractor responsible for pursuing any necessary remedies during the warranty period. If the Contractor fails to exercise the warranty and damages occur, the Contractor is responsible for all costs of repair and any lost savings.*

A. Contractor warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of at least one (1) year from the date of the Substantial Completion for the particular energy conservation measure, if operated and maintained in accordance with the procedures established per building. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and Exhibit V (Notice of Substantial Completion) is fully executed.

B. After the warranty period, Contractor shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in Schedule BB (Contractor's Maintenance Responsibilities).

C. Contractor further agrees to assign to Agency all available manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as Exhibit VII (Equipment Warranties); pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. Contractor shall, during the warranty period, notify

the Agency whenever defects in Equipment parts or performance occur, which give rise to such rights and remedies and those rights and remedies are exercised by Contractor. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Agency or the Project Site(s), due to Contractor's failure to exercise its warranty rights, shall be borne solely by Contractor.

D. All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

E. Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the Contractor from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

#### **19. Standards of Comfort.**

*This section references the **Schedule U (Standards of Comfort)** which the Contractor is contractually liable to maintain throughout the term of the contract. These standards are negotiated between the Contractor and Agency to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, and other specified comfort and operating parameters to be maintained.*

Contractor shall maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in Schedule U (Standards of Comfort). During the term of this Contract, Contractor and Agency will maintain, according to Schedule BB (Contractor's Maintenance Responsibilities) and Schedule CC (Agency's Maintenance Responsibilities), and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in Schedule U (Standards of Comfort).

#### **20. Environmental Requirements, Excluded Material and Activities.**

*This section addresses hazardous materials and establishes that the Contractor may encounter such materials but is not responsible for identification, handling or any work. The Agency will be responsible for such handling at its expense. In the event the Contractor discovers such materials, the Contractor will stop work and the Agency will handle it. Neither the Contractor's stoppage of work nor the Agency's discovery is grounds for default. If work can commence, any lost time will be added to the time schedule. The Contractor is responsible for any hazardous materials related to equipment it brings to the site.*

Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at Agency's Project Site(s), Contractor may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal,

containment or treatment thereof; (ii) fungus (any type of form of fungi, including mold or mildew, and mycotoxins, spores, scents or by-products produced or released by fungi); (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement; or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively “Hazardous Materials”), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as “Excluded Materials and Activities.” Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel or subcontractors from the site, and notify the Agency. The Agency shall be responsible to handle such Materials at its expense. Contractor shall undertake no further work on the Project Site(s) except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by the Agency. In the event of such stoppage of work by Contractor, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result will be added by Change Order.

Contractor shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

**21. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.**

*The Contractor is required to have an agreement with an approved PCB ballast disposal company that will properly handle transport, recycling, and incineration, providing information for site handling and a Certificate of Destruction. Similarly the Contractor is required to have an agreement with an approved lamp disposal company. In both cases, the Agency will sign manifests of ownership.*

A. Contractor shall enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Agency’s PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Agency. Contractor’s responsibility shall be for the proper and legal management of any of Agency’s PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal Contractor’s vehicle for transportation.

B. Contractor shall enter into an agreement with an approved lamp disposal company, who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

C. Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

**22. Training by Contractor.**

*In many performance contracts the training of facility personnel is often conducted prior to acceptance by the Agency of the completed installation. There are occasions, however, where it may be necessary to conduct training after project acceptance, which can be noted and included in the appropriate schedule. If there are charges for unscheduled training, such charges should be noted in this section.*

The Contractor shall conduct the training program described in Schedule V (Contractor's Training Responsibilities) hereto. The must be completed prior to acceptance of the Equipment installation. The Contractor shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Agency and shall have no effect on prior acceptance of Equipment installation.

**23. Equipment Service, Actions by Contractor.**

*This section refers to the maintenance and service responsibilities of each party as they are specified in Schedules CC (Agency's Maintenance Responsibilities) and BB (Contractor's Maintenance Responsibilities). It also states that if the Agency is at fault for causing additional maintenance or repair to the equipment, then the Agency will be charged by the Contractor for the cost of the required maintenance or repair.*

Contractor shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule BB (Contractor's Maintenance Responsibilities). Agency shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedule J (Compensation to Contractor for Annual Services), provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and Contractor can so demonstrate such causal connection, Contractor may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

**24. Malfunctions and Emergencies.**

*This section requires the Agency to notify the Contractor within a specified number of hours of actually knowing about any situation that impacts the performance of the equipment. As described here, the impacts cover both pre-existing energy related equipment and the newly installed equipment. The impacts defined here include equipment malfunction or modification, interruption of power supply or any emergency situation which may affect the Energy and Cost Savings Guarantee. If such an impact is known by the Agency to have occurred and the Agency delays in*

*notifying the Contractor and doesn't correct the situation, it will be treated as a Material Change and the baseline will be adjusted accordingly. If the Agency makes an effort to assess the situation and incorrectly determines it doesn't have an impact, then the Contractor will not fault the Agency, although an adjustment to the baseline may still be warranted.*

A. Agency shall use its best efforts to notify the Contractor or its designated subcontractors within 24 hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

B. Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify Contractor within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. Contractor shall respond or cause its designee(s) to respond within \_\_\_ hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to Contractor from Agency. If Agency unreasonably delays in so notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, Contractor may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that Contractor is able to show the direct causal connection between the delay and the loss.

C. The Contractor shall provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

## **25. Actions by Agency.**

*This section states the Agency may not make any changes to the operation and maintenance of the equipment without the prior written approval of the Contractor unless otherwise indicated in **Schedule CC (Agency's Maintenance Responsibilities)** or if there is an emergency and the Contractor can't be reasonably notified. In the case of such emergency, the Agency should follow instructions provided by the Contractor for emergency action.*

Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of Contractor except as set forth in Schedule CC (Agency's Maintenance Responsibilities). Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency

action provided in advance by Contractor. Agency agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

**26. Modification of Equipment.**

During the Term of this Contract, Agency will not, without the prior written consent of Contractor, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without Contractor's prior written approval, which shall not be unreasonably withheld.

**27. Upgrade or Alteration of Equipment.**

*This section describes the terms and conditions under which the Contractor may make changes to the equipment, operating procedures or take other energy savings actions. If such changes are implemented during any time during the contract they must be described in a supplemental schedule and be approved by the Agency. Any equipment replaced is required to be new and have the potential to produce at least as much or more savings. If computer software is updated, the licensing provisions of **Section 41 (Ownership of Certain Proprietary Property Rights)** still apply.*

A. Contractor shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the Contractor complies with the standards of comfort and services set forth in Schedule U (Standards of Comfort) herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the Contractor to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the Contractor.

B. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The Contractor shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 41 (Ownership of Certain Proprietary Rights) and Schedule BB (Contractor's Maintenance Responsibilities). All replacements of and alterations or additions to the Equipment shall become part the Equipment described in Schedule R (Equipment to be Installed by Contractor) and shall be covered by the provisions and terms of **Section 16 (Construction Schedule; Equipment Installation)**.

**28. Material Change Defined.**

*This section defines the term "Material Change" which covers any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion). It is typical for the percent of deviation to be negotiated as a value ranging between 2% and 5% based on aggregate consumption costs. The lower value (2%) may be appropriate for large facilities (over \$20,000/month utility bills) and the higher value (5%) may be appropriate for small facilities (less than \$5,000/month utility bills).*

A. A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) by at least \_\_\_ % after adjustments for climatic variations.

B. Actions by the Agency which may result in a Material Change include, but are not limited to, the following:

- i) manner of use of the Project Site(s) by the Agency; or
- ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- iii) Permanent changes in the comfort and service parameters set forth in Schedule U (Standards of Comfort); or
- iv) occupancy of the Project Site(s); or
- v) structure of the Project Site(s); or
- vi) types and quantities of equipment used at the Project Site(s) or
- vii) modification, renovation or construction at the Project Site(s); or
- viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule CC (Agency's Maintenance Responsibilities); or
- ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
  - x) casualty or condemnation of the Project Site(s) or Equipment, or
  - xi) changes in utility provider or utility rate classification, or
  - xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
- xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

**29. Reported Material Changes; Notice by Agency.**

*This section requires the Agency to notify the Contractor in writing if there are any actual or planned changes to the facility which would effect energy consumption by more than the specified*

*percentage. In the event of an emergency or situation that would prevent advance notification, the Agency has a specified number of hours to inform the Contractor that a Material Change has occurred.*

The Agency shall use its best efforts to deliver to the Contractor a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least \_\_\_ days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the Contractor of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within \_\_\_ hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

**30. Other Adjustments.**

*This section states that if all building conditions and operations stay the same, then energy consumption will not vary more than the negotiated percentage during any month when compared to the baseline use for that month and after adjustments for weather are made. See above discussion. In the event such a variation occurs, the Contractor will try to determine the cause of the deviation and report its findings the Agency. The Contractor and Agency will then determine what adjustments will be made to the baseline as described in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**.*

As agreed in **Section 29 (Reported Material Changes; Notice by Agency)** Agency will alert Contractor of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the Contractor shall work with Agency to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, Contractor and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). Any disputes between the Agency and the Contractor concerning any such adjustment shall be resolved in accordance with the provisions of Schedule JJ (Alternative Dispute Resolution Procedures) hereto.

**31. Corrective Action; Accuracy of the Services.**

*This section directs the Contractor to protect the Project Site(s) and its contents to repair and restore to the original condition any damage caused by the Contractor in connection with this contract. Any costs incurred to correct such damage are to be paid by the Contractor. The Contractor is solely responsible for the technical professional accuracy of all work performed under this Contract including work done by subcontractors or others.*

A. Contractor shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings

or their operating systems and so as to conform to the standards set forth in Schedule U (Standards of Comfort) and the construction schedule specified in Schedule S (Construction and Installation Schedule). Contractor shall repair and restore to its original condition any area of damage caused by Contractor's performance under this Contract. The Agency reserves the right to review the work performed by Contractor and to direct Contractor to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by Contractor's performance of the work shall be borne by Contractor.

B. Contractor shall remain responsible for the professional and technical accuracy of all services performed, whether by the Contractor or its subcontractors or others on its behalf, throughout the term of this Contract.

**32. Annual Reporting Requirements; Annual ENERGY STAR Rating.**

At the end of each year during the guarantee period as specified in Schedule A (Savings Guarantee) and no later than ninety (90) days thereafter, the Contractor shall complete and submit the data required in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). The Contractor shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period if applicable.

**33. Other Documents.**

*This section makes the original Request for Proposals (RFP) and the selected Contractor's proposal part of the contract. It also acknowledges the completion of the Contractor's Technical Energy Audit Report and its approval and acceptance by the Agency. It is recommended that the original Technical Energy Audit Report in its entirety be attached and/or referenced as an Exhibit to this contract. It is important to note the last sentence of this provision makes it clear that if there is any future discrepancy between the Technical Energy Audit Report and any technical schedule(s), the terms of this contract shall apply.*

This Contract incorporates herein and makes a part hereof the entire Request for Proposal and Project Development Proposal, labeled Appendix A and B, respectively. Notwithstanding, the provisions of this Contract and the attached Schedules, Exhibits and Appendices shall govern in the event of any inconsistencies between the Investment-Grade Energy Audit Report and the provisions of this Contract.

**34. Energy and Cost Savings Guarantee.**

*This section establishes the term of the Energy and Cost Savings Guarantee to be on an annual basis and structured to cover any and all annual payments (debt service/lease payment and on-going Contractor fees) to be made by the Agency. It ensures that the Contractor's savings*

*guarantee will at least cover annual project lease-purchase costs (principal and interest) and all annual Contractor service fees for maintenance.*

Contractor has formulated and, subject to the adjustments provided for in Sections 28, 29 and 30 (Material Changes), has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule A (Savings Guarantee) and has been structured by the Contractor to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule J (Compensation to Contractor for Annual Services) and Schedule I (Financing Agreement and Payment Schedule).

**35. Annual Review and Reimbursement/Reconciliation.**

*At the end of each year of the contract and within a specified number of days, there will be a review and reconciliation of the actual achieved savings (subject to any adjustments made for weather, occupancy, operations etc.) with the Contractor's guaranteed savings. If there is a savings shortfall, the Contractor is contractually liable to reimburse the Agency for the difference between what was actually achieved and the amount guaranteed. If in any future year, the achieved savings exceed the guarantee, the excess savings will be used to reimburse the Contractor for any shortfall payments made in previous years. It is recommended that all excess savings be retained by the Agency except when the Contractor has had a previous year's shortfall and not be credited to satisfy savings guarantees in future years of the contract. Agency may negotiate to receive cash, equipment or services equivalent to any deficiency in savings.*

A. Energy-related cost savings shall be measured and/or calculated as specified in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) and a report provided within ninety (90) days of the end of the year for the previous year for each anniversary of the Commencement Date.

B. In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in Schedule A (Savings Guarantee), Contractor shall pay the Agency an amount equal to the deficiency.

C. The Contractor shall remit such payments to the Agency within \_\_\_ days of written notice by the Agency of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in Schedule A (Savings Guarantee) and are in addition to those monies due the Contractor for compensation for services as set forth in Schedule J (Compensation to Contractor for Annual Services), such excess savings shall first be applied to reimburse Contractor for any payment Contractor made to Agency to meet Contractor's guarantee for previous years in which the energy savings fell short of Contractor's

Energy and Cost Savings Guarantee under the terms as set forth in Schedule A (Savings Guarantee). In no event shall credit for excess savings be used to satisfy saving guarantees in future years of the Contract

**36. Contractor Compensation and Fees.**

*This section ensures that the Contractor's savings guarantee will, at a minimum, cover annual project financing costs (principal and interest). In addition, it states that all annual Contractor service fees for maintenance will also be paid from savings.*

Contractor has structured the Energy and Cost Savings Guarantee referred to in Section 34 above, to be sufficient to include any and all annual payments required to be made by the Agency in connection with financing/purchasing the Equipment to be installed by Contractor under this Contract as set forth in Schedule I (Financing Agreement and Payment Schedule). Actual energy and operations savings achieved by Contractor through the operation of Equipment and performance of services by Contractor shall be sufficient to cover any and all annual fees to be paid by Agency to Contractor for the provision of services as set forth and in accordance with the provisions of Schedules J (Compensation to Contractor) and BB (Contractor's Maintenance Responsibilities).

**37. Billing Information Procedure.**

A. Payments due to Contractor shall be calculated each \_\_\_\_\_ in the following manner:

i) By the \_\_\_\_\_ day after receipt, Agency shall provide Contractor with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;

ii) Upon receipt of the required information, Contractor shall calculate the savings in accordance with the agreed-upon calculation formulae in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements).

B. Based upon paragraphs (i) and (ii) above, Contractor shall prepare and send to Agency a \_\_\_\_\_ invoice which shall set forth for each \_\_\_\_\_ the amounts of the energy and operations dollar savings calculated in accordance with Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) and for the services as provided for in Schedule J (Compensation to Contractor for Annual Services). The invoice will set forth the total \_\_\_\_\_ payment due from Agency.

**38. Payment.**

Agency shall pay Contractor within \_\_\_ days of receipt of Contractor's invoice.

**39. Effective Date of Payment Obligation.**

*This section states that no Contractor fees for ongoing maintenance, monitoring or other services shall be paid until all equipment is installed and operating in accordance with the agreed upon Construction Schedule and Agency has approved the completed installation and signed the Exhibit VI (Certificate of Acceptance—Installed Equipment).*

Notwithstanding the above provisions, Agency shall not be required to begin any payments to Contractor under this Contract unless and until all equipment installation is completed by Contractor in accordance with the provisions of Section 16 (Construction Schedule; Equipment Installation) and Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in Exhibit VI (Certificate of Acceptance—Installed Equipment), and unless and until said equipment is fully and properly functioning.

**40. Open Book Pricing.**

*This section establishes that the Contractor will fully disclose all costs, providing access to records for all labor and material costs, making them available for three years beyond final payment.*

Open book pricing will be required, such that the Contractor shall fully disclose all costs of materials and labor purchased and subcontracted by the Contractor and a list of hourly rates and position descriptions for labor or services provided by the Contractor. Estimates for number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the owner or shall not be paid. Contractor shall maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor shall afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

**41. Ownership of Certain Proprietary Property Rights.**

*This provision addresses the Contractor's proprietary rights over customized (or exclusive) software used in an energy management system which may control, manage and perform other functions in conjunction with the project (there may other technical designs, processes, formulas etc., which this provision would cover). Of particular importance is the stipulation that grants the Agency a continuing license (at no charge) to use and operate the project without violating any Contractor's proprietary rights.*

Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The Contractor shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. Contractor shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

**42. Ownership of Existing Equipment.**

*This provision states that the Agency has ownership of all existing equipment and that the Contractor shall notify the Agency in writing of what equipment and materials are to be replaced. If the Agency chooses to keep the equipment to be replaced, the Contractor will be notified and the Agency responsible for identifying the location of where the property is to be stored or relocated. The Contractor is responsible for all equipment and materials to be disposed. The exception to this is the treatment of any hazardous or environmentally sensitive materials.*

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Agency in writing of all equipment and materials to be replaced at the Project Site(s) and the Agency shall within \_\_\_\_ days designate in writing to the Contractor which equipment and materials that should not be disposed of off-site by the Contractor. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The Contractor shall be responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

**43. Damages to Equipment or Property.**

*This section needs to reflect the individual Agency's standard requirements with regard to insurance and indemnification.*

Contractor shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of Contractor's performance under this Contract.

**44. Liabilities.**

Neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

**45. Appropriations.**

*This section protects the Agency in the event no funds or insufficient funds are appropriated to cover the financial payments due to the Contractor under the terms of this Contract, in effect terminating the contract with no penalty to the Agency. This is a standard provision in public sector performance contracting and is generally accepted by the ESCO industry since it is unlikely that funding for utilities (source of funds) would be withheld.*

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate on the last day of the fiscal year for which appropriations were made, without penalty or expense to the Agency of any kind whatsoever, except as to the portions of payments herein agreed upon for which Agency and/or other funds shall have been appropriated and budgeted or are otherwise available, and upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**46. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**47. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

**48. Release.**

*State Energy Performance Contracting  
Model Guaranteed Utility Savings Contract between Governmental Unit & Contractor  
Provided by EMNRD as technical assistance to eligible Governmental Units  
Agency legal review recommended  
DRAFT September 28, 2011*

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**49. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**50. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**51. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**52. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**53. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**54. Penalties for violation of law.**

*State Energy Performance Contracting  
Model Guaranteed Utility Savings Contract between Governmental Unit & Contractor  
Provided by EMNRD as technical assistance to eligible Governmental Units  
Agency legal review recommended  
DRAFT September 28, 2011*

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**55. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**56. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**57. Insurance.**

At all times during the term of this Contract, Contractor shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (Contractor) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$ \_\_\_\_\_ for injury to or death of one person in a single occurrence and \$ \_\_\_\_\_ for injury to or death of more than one person in a single occurrence and \$ \_\_\_\_\_ for a single occurrence of property damage. Such policies shall name the Agency as an additional insured.

Prior to commencement of work under this Contract, Contractor will be required to provide Agency with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Agency.

**58. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**59. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

**60. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**61. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**62. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**63. Conditions Beyond Control Of The Parties.**

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

**64. Events of Default by Agency.**

A. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

i) any failure by Agency to pay Contractor any sum due for a service and maintenance period of more than \_\_\_ days after written notification by Contractor that Agency is delinquent in making payment and provided that Contractor is not in default in its performance under the terms of this Contract; or

ii) any other material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for \_\_\_ days after notice to Agency demanding that such failures to perform be cured or if such cure cannot be effected in \_\_\_ days, Agency shall be deemed to have cured default upon the commencement of a cure within \_\_\_ days and diligent subsequent completion thereof;

iii) any representation or warranty furnished by Agency in this Contract which was false or misleading in any material respect when made.

**65. Events of Default by Contractor.**

A. Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

i) the standards of comfort and service set forth in Schedule U (Standards of Comfort) are not provided due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within \_\_\_ days after written notice by Agency to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract.

ii) any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made;

iii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Schedule R (Equipment to be Installed by Contractor) and Schedule S (Construction and Installation Schedule);

iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in Schedule U (Standards of Comfort) are maintained, any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within \_\_\_ days

after written notice by the Agency to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;

v) any lien or encumbrance upon the equipment by any subcontractor, laborer or material vendor of Contractor;

vi) the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within \_\_\_\_\_ days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor.

vii) failure by the Contractor to pay any amount due the Agency or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in Schedule A (Savings Guarantee).

**66. Remedies upon Default by Agency.**

If an Event of Default by Agency occurs, Contractor may, without a waiver of other remedies which exist in law or equity, exercise any remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

**67. Remedies Upon Default by Contractor.**

In the Event of Default by Contractor, Agency may exercise any remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees.

**68. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

**69. Assignment by Contractor.**

*This assignment provision first acknowledges that the Agency selected the Contractor for its unique expertise and qualifications to perform the services specified in the contract. The Contractor may not assign this contract to another Contractor without the written approval of the Agency and any Contractor assigned this contract must fully comply with all terms and conditions. In addition, the Contractor and any assignee remain contractually liable to the Agency for fulfilling all of the Contractor's obligations as specified in the contract.*

The Contractor may, with prior written approval of the Agency, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize Contractors, provided that any assignee(s), delegee(s), or Contractor(s) shall fully comply with the

terms of this Contract. Notwithstanding the provisions of this paragraph, the Contractor shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Agency for all of its obligations under this Contract.

**70. Assignment by Agency.**

*In turn, this provision allows the Agency to transfer or assign this contract to a new building owner or occupant. The Agency and its assignee, however, still remain responsible to the Contractor for the Agency's obligations as specified in the contract.*

Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Agency shall remain jointly and severally liable with its assignees or transferees to the Contractor for all of its obligations under this Contract.

**71. Representations and Warranties.**

*This boilerplate provision states that each party has the requisite authority and ability to enter into this contract.*

- A. Each party warrants and represents to the other that:
- i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
  - ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
  - iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
  - iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

**72. Additional Representations of the Parties.**

*These additional representations address several areas specific to the performance contract. The Agency certifies it has or will provide the Contractor will all energy and energy-related records and all future records to be provided will be truthful and accurate. The Agency also declares it has not entered into any leases or service contracts relating to energy equipment or servicing of pre-existing equipment and will notify the Contractor within a specified period of time if it does so.*

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A. Agency hereby warrants, represents and promises that:

i) it has provided or shall provide timely to Contractor, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by Contractor and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Agency shall provide Contractor with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter within \_\_\_\_ days after execution thereof.

B. Contractor hereby warrants, represents and promises that before commencing performance of this Contract:

i) it shall have become licensed or otherwise permitted to do business in the State of New Mexico.

ii) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;

iii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

iv) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;

v) the Equipment will meet or exceed the provisions set forth in Section 17 (Systems Start Up and Equipment Commissioning) and in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment).

vi) the Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

vii) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

**73. Construction Performance and Payment Bonds, Labor and Material Payment Bonds.**

Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond, if applicable).**

**74. Further Documents.**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

**75. Methods of Operation by Agency.**

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Agency on a regular and continuous basis.

**76. Agency's Maintenance Responsibilities.**

*This provision protects both the Contractor and the Agency by establishing a method for the Contractor to supervise the Agency's compliance with the scheduled routine and preventative maintenance activities to be performed by the Agency (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.*

Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule CC (Agency Maintenance Responsibilities), to be attached hereto and made a part hereof after Agency's approval, such approval not to be unreasonably withheld, conditioned or delayed.

**77. Inspection of Project Site(s).**

Agency agrees that Contractor shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Agency is complying, and shall have complied with its obligations as set forth in **Section 76 (Agency's Maintenance Responsibilities)**. For the purpose of determining Agency's said compliance, the checklist to be set forth at **Schedule DD (Facility Maintenance Checklist)** as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record Agency's said compliance. Agency shall make the Project Site(s) available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. Agency may complete its own checklist at the same time. Contractor agrees to not interfere with the Agency operations during any monthly inspection.

**78. Waiver Of Liens.**

Contractor shall obtain and furnish to Agency a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

**79. Conflicts of Interest.**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

**80. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: [insert name, address and email].

To the Contractor: [insert name, address and email].

**81. Non-Substitution.**

*In the rare event that funds were not appropriated or the Agency is in default, and to protect the Contractor, this provision prevents the Agency from securing funding for the same purposes for a period of one year following the termination of the contract.*

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by Contractor due to a default by the Agency, the Agency agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by Contractor under the terms of this Contract for a period of three-hundred sixty five (365) calendar days following such default by Agency, or termination of this Contract due to non-appropriations.

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**82. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract. (I've encountered some situations where there was a question whether the person signing had authority; having the contractor assure the agency the person signing has authority creates an argument the agency has no obligation to check.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Legal Counsel –Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

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The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

This Agreement has been approved by the DFA Contracts Review Bureau:

By: \_\_\_\_\_  
DFA Contracts Review Bureau

Date: \_\_\_\_\_

## **Performance Measures**

***(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Strategic Plan should be referenced in the Performance Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Performance Measures should be "Output" oriented and specify an "Outcome.")***

Performance Measures in the Scope of Work shall contain measurable goals and objectives that are linked to the Performance Measures of the Agency's Strategic Plan:

**Example:** Goal: Reduce or Increase or Other Service [insert blank].<sup>3</sup>

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.<sup>4</sup>

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

**OR:** Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below *(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties)*.

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<sup>3.</sup> A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

<sup>4.</sup> An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

**APPENDIX O**

**MODEL ATTACHMENTS FOR GUARANTEED  
UTILITY SAVINGS CONTRACT**

**CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices**

**TABLE OF CONTENTS**

**Schedules**

**Savings Guarantee**

- Schedule A Savings Guarantee
- Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline
- Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan;  
Annual M&V Reporting Requirements
- Schedule D-G Left blank for optional schedules

**Payments and Schedule**

- Schedule H Final Project Cost & Project Cash Flow Analysis
- Schedule I Financing Agreement and Payment Schedule
- Schedule J Compensation to ESCO for Annual Services
- Schedule K Rebates, Incentives and Grants
- Schedule L-P Left blank for optional schedules

**Design and Construction Phase**

- Schedule Q Description of Project Site(s)
- Schedule R Equipment to be Installed by ESCO
- Schedule S Construction and Installation Schedule
- Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed  
Equipment
- Schedule U Standards of Comfort
- Schedule V ESCO's Training Responsibilities
- Schedule W-AA Left blank for optional schedules

**Post-Construction**

- Schedule BB ESCO's Maintenance Responsibilities
- Schedule CC Institution's Maintenance Responsibilities
- Schedule DD Facility Maintenance Checklist
- Schedules EE – II Left blank for optional schedules

**Administration**

- Schedule JJ Alternative Dispute Resolution Procedures
- Schedule KK – OO Left blank for optional schedules

**Optional Schedules**

- Pre-Existing Service Contracts
- Energy Savings Projections
- Facility Changes Checklist
- Current and Known Capital Projects at Facility

***Exhibits***

- Exhibit I Performance Bond
- Exhibit II Labor and Material Payment Bond *if required*
- Exhibit III (i) Certificate of Acceptance—Investment Grade Audit Report
- Exhibit III (ii) Certificate of Acceptance—Installed Equipment
- Exhibit IV Equipment Warranties
- Optional Exhibits
  - Manifest of Ownership
  - Minority and Woman-Owned Business Certification

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Certification that Financing Term is no Longer than the Aggregated  
Equipment Lifetime  
Notice of Substantial Completion  
Notice to Proceed with Construction Phase  
Record of Reviews by Institution

***Appendices***

Appendix A	RFP for ESCO Solicitation (Pre-qualification Phase; Final Selection Phase)
Appendix B	ESCO Proposal (Pre-qualification Phase; Final Selection Phase)
Appendix C	Investment Grade Audit and Project Development Contract
Appendix D	Investment Grade Audit Report

**SAVINGS GUARANTEE SCHEDULES**

**SCHEDULE A. SAVINGS GUARANTEE**

***Fully describe all provisions and conditions of the ESCO's energy saving guarantee. The guarantee should be defined in units of energy to be saved for the duration of the contract term. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation. See Section 35 (Annual Review and Reimbursement/Reconciliation).***

**SCHEDULE B. BASELINE ENERGY CONSUMPTION; METHODOLOGY TO ADJUST BASELINE**

***The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured.***

***B.1. BASELINE ENERGY CONSUMPTION***

***Present the methodology and all supporting documentation used to calculate the baseline including unit consumption and current utility rates for each fuel type. Also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballasts, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts.***

**Energy and Water Baseline Development** - Describe in general terms how the baseline for this ECM is defined.

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

- Define key system performance factors characterizing the baseline conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Define requirements for Institution's witnessing of measurements if different than whole project data requirements.
- Provide details of baseline data collected, including: Parameters monitored, Details of equipment monitored, i.e., location, type, model, quantity, etc., Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Personnel, dates, and times of measurements, Proof of Institution's witnessing of measurements (if required), Monitoring equipment used, Installation requirements for monitoring equipment (test plug for temperature sensors, straight pipe for flow measurement etc.), Certification of calibration/calibration procedures followed, Expected accuracy of measurements/monitoring equipment, Quality control procedures used, Form of data (.xls, .csv, etc.), Results of measurements (attach appendix and electronic forms as necessary), Completed data collection forms, if used.
- Provide details of baseline data analysis performed, including: Analysis using results of measurements, Weather normalized regressions, Weather data used and source of data

#### *B.2 METHODOLOGY TO ADJUST BASELINE.*

Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions during the measurement period. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:

- utility rates;
- number of days in the utility billing cycle;
- floor area of the facility;
- operational schedule of the facility;
- facility temperature;
- weather, if change is significant;
- amount of equipment or lighting used in the facility, if change is significant;
- space type(s) in the facility, if change is significant; and
- material change(s) in or to the facility.

All methodologies used to account for any of these adjustments to the baseline shall be clearly defined.

### **SCHEDULE C. SAVINGS MEASUREMENT AND VERIFICATION PLAN; POST-RETROFIT M&V PLAN; ANNUAL M&V REPORTING REQUIREMENTS**

The monitoring and verification (M&V) process is divided into three phases:

#### **C.1 Savings Measurement and Verification Plan**

#### **C.2 Post-Installation M&V Plan**

#### **C.3 Annual M&V Reporting Requirements**

Also see **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline.**

The latest version of the *International Performance Monitoring and Verification Protocol (IPMVP)* is used as the basis of the savings calculation and verification methodology.

To help ensure plans and reports are complete and consistent, use the process and tables provided.

### **C.1 SAVINGS MEASUREMENT AND VERIFICATION PLAN.**

A preliminary monitoring and verification plan would typically have been developed in the Investment Grade Audit process. In the Energy Savings Performance Contract process this plan is finalized.

Include a description of the energy savings measurement, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment. Include methods to compare the level of energy that would have been consumed without the project referred to as the "Baseline") with the amount of energy that was actually consumed during a specific time period (monthly, quarterly, etc.). Explicitly describe all methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. for all equipment installed. Provide a clear methodology for converting energy savings into energy cost savings. Define the utility rates to be used for the baseline and actual energy costs. Clearly describe how the calculations are affected by rising or lowering utility rates. Clearly predictable annual variations are usually handled through established procedures for each identified factor (e.g., weather, billing days, occupancy, etc.) in the savings formulas. Explicitly define any routine adjustments that will be made during the performance period. Non-routine adjustments may be required for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a conceptual approach versus a method to cover each eventuality. Specify how permanent changes, such as changes in square footage, will be handled. Options include use of agreement clauses that allow predictable or expected changes and/or through a "re-open" clause that allows either party to renegotiate the baseline. A Facility Changes Checklist or other method may be provided by the ESCO for the Institution to notify the ESCO of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.).

Prepare the M&V Plan as presented below.

#### **List of Processes and Tables:**

##### **Risk, Responsibility and Performance Matrix.**

##### **M&V Plan and Savings Calculation Methods**

- Proposed Annual Savings Overview
- Site Use and Savings Overview (Optional)
- M&V Plan Summary
- Schedule of Verification Reporting Activities
- Proposed Annual Savings For ECM
- Expected Year 1 Savings for ECM
- ENERGY STAR Ratings

#### **Risk, Responsibility and Performance Matrix.**

The ESCO shall complete and include the matrix below to summarize the allocation of responsibility for key items related to M&V.

### **RISK, RESPONSIBILITY AND PERFORMANCE MATRIX**

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RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
<b>1. Financial</b>	
<p><b>a. <u>Interest rates:</u></b> Neither the contractor nor the Institution has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.</p>	
<p><b>b. <u>Construction costs:</u></b> The contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the Institution assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, the Institution loses some design control. <b>Clarify design standards and the design approval process (including changes) and how costs will be reviewed.</b></p>	
<p><b>c. <u>M&amp;V confidence:</u></b> The Institution assumes the responsibility to determine the confidence that it desires to have in the M&amp;V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&amp;V program, and the ESCO must consider the requirement prior to submittal of the final proposal. <b>Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&amp;V costs.</b></p>	

<p><b><u>d. Energy Related Cost Savings:</u></b> The Institution and the contractor may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the Institution. Recurring savings generally result from reduced O&amp;M expenses or reduced water consumption. These O&amp;M and water savings must be based on actual spending reductions. <b>Clarify sources of nonenergy cost savings and how they will be verified.</b></p>	
<p><b><u>e. Delays:</u></b> Both the contractor and the Institution can cause delays. Failure to implement a viable project in a timely manner costs the Institution in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). <b>Clarify schedule and how delays will be handled.</b></p>	
<p><b><u>f. Major changes in facility:</u></b> The Institution controls major changes in facility use, including closure. <b>Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</b></p>	
<p><b>2. Operational</b></p>	
<p><b><u>a. Operating hours:</u></b> The Institution generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in “savings” depending on the M&amp;V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). <b>Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.</b> If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	

<p><b><u>b. Load:</u></b> Equipment loads can change over time. The Institution generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in “savings” depending on the M&amp;V method. <b>Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.</b> If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p><b><u>c. Weather:</u></b> A number of energy efficiency measures are affected by weather. Neither the contractor nor the Institution has control over the weather. Should the Institution agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. <b>Clearly specify how weather corrections will be performed.</b></p>	
<p><b><u>d. User participation:</u></b> Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can be variable and the contractor may be unwilling to invest in these measures. <b>Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.</b> If performance is stipulated, document and review assumptions carefully and consider M&amp;V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).</p>	
<p><b>3. Performance</b></p>	
<p><b><u>a. Equipment performance:</u></b> The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. <b>Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</b></p>	

<p><b><u>b. Operations:</u></b> Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity.  <b>Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</b></p>	
<p><b><u>c. Preventive Maintenance:</u></b> Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity.  <b>Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</b></p>	
<p><b><u>d. Equipment Repair and Replacement:</u></b> Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable, however it is often tied to project performance. The contractor bears the ultimate risk regardless of which party performs the activity.  <b>Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.</b> Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.</p>	

**M&V PLAN AND SAVINGS CALCULATION METHODS OUTLINE**

Fill in the following tables or provide equivalent information.

**PROPOSED ANNUAL SAVINGS OVERVIEW**

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[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
<b>Total savings</b>									
<b>First Year Guaranteed Cost Savings: \$</b>									

Notes  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 MBtu=10<sup>6</sup> Btu.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**SITE USE AND SAVINGS OVERVIEW**

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**
Total proposed project savings						
Usage for entire site**						
% Total site usage saved						
Project square footage (KSF)						
Total site square footage (KSF)						
% Total site area affected						

<p><u>Notes</u>          MBtu=10<sup>6</sup> Btu          *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.          **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).          ***Define usage period.          KSF = 10<sup>3</sup> square feet.</p>

**M&V PLAN SUMMARY**

ECM No.	ECM Description	M&V Option Used*	Summary of M&V Plan

\*M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

**SCHEDULE OF VERIFICATION REPORTING ACTIVITIES**

Item	<sup>a</sup> Recommended time of submission	<sup>a</sup> Institution's review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

<sup>a</sup>Times are recommended based on industry practice; modify as needed.

**PROPOSED ANNUAL SAVINGS FOR EACH ECM**

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

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	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 (\$/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 (\$/yr)	Water use (gallons/yr)	Water cost, Year 1 (\$/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 (\$/yr)	Other energy-related O&M costs, Year 1 (\$/yr)	Total costs, Year 1 (\$/yr)
Baseline use													
Post-installation use													
Savings													

**Notes**

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

MBtu = 10<sup>6</sup> Btu.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**ECM-SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS**

**Develop section for each ECM.**

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Specify the M&V guideline and option used from the International Performance Measurement and Verification Protocol (IPMVP).
- Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
- Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

**Proposed Energy and Water Savings Calculations and Methodology**

- Provide detail description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any savings or baseline adjustments that may be required.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors.
- Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include table - Proposed Annual Savings for Each ECM.

**Operations and Maintenance Cost Savings**

- Provide justification for O&M cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

**Details of other savings (if applicable)**

- Provide justification for cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

**Post-Installation M&V Activities** - Describe the intent of post-installation verification activities, including what will be verified.

- Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
- Define requirements for Institution witnessing of measurements if different than whole project data requirements.
- Provide details of post-installation data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model, quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .csv, etc.), Sample data collection forms (optional)
- Detail data analysis to be performed.

**Post-Acceptance Performance Period Verification Activities**

- Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities – what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for Institution witnessing of measurements if different than whole project data requirements.
- Provide details of post-acceptance performance period data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model,

quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .cvs, etc.), Sample data collection forms (optional)

- Detail data analysis to be performed.
- Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of Institution and contractor on operations and maintenance items. Define reporting schedule.

**ENERGY STAR:** For each building included in the project, ESCO will provide a Portfolio Manager rating. Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label. ESCO shall provide a Portfolio Manager rating and energy performance target score estimate. For each eligible building, ESCO shall provide a pre-retrofit Energy Performance Rating using EPA ENERGY STAR's Portfolio Manager, the weather normalized energy intensity in kBtu/SF, and an estimated post-retrofit Energy Performance Rating. If the building type is not eligible for rating in Portfolio Manager, then the normalized source EUI will suffice. ESCO shall provide a completed Cash Flow Opportunity Calculator (CFO Calculator) for the project, with variables inserted that represent the most likely options available to the customer. This will enable the ESCO and the customer to have an agreed-upon format for discussing project financing options and the potential costs of project delays. The CFO Calculator will be provided in both hard copy and electronic format, so that the agency can run its own analyses on financing options in the agreed format. ESCO will submit a completed Cash Flow Opportunity spreadsheet using the Cash Flow Opportunity Calculator (CFO Calculator) for the total project which shall include all facilities to be improved.

## **C.2 POST-INSTALLATION M&V PLAN.**

The Post-Installation M&V Plan updates the M&V Plan and includes detailed measurements, monitoring, and inspections.

### **List of Processes and Tables:**

- Proposed Annual Savings Overview
- Expected Savings Overview for First Performance Year
- Impact to Energy Cost Savings from Changes between Final Proposal and As-Built Conditions for ECM
- Expected Year 1 Savings for ECM
- ENERGY STAR Ratings

## **POST-INSTALLATION REPORT OUTLINE**

**Post-Acceptance Performance Period Dates Covered:** \_\_\_\_\_ to \_\_\_\_\_

### **EXECUTIVE SUMMARY**

**Project Background** - Provide an overview of project background, including:

- Dates of relevant contract modifications



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							Year 1 (\$/yr)	savings, Year 1 (\$/yr)	
Total savings									

**Notes**  
**MBtu=10<sup>6</sup> Btu.**

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**Guaranteed Cost Savings for First Performance Year**

First Year Guaranteed Cost Savings: \$

**Energy, Water, and O&M Rate Data**

- Detail energy and water rates used to calculate cost savings for this period.
- Provide post-acceptance performance period rate adjustment factors for energy, water, and O&M cost savings, if used.
- Report actual energy and water rates at site for same period (optional).

**Savings Adjustments**

- Provide summary of any energy and/or cost savings adjustments required between final proposal (including any relevant contract modifications) and as-built conditions.
- Describe the impact in changes between the final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results.

**Construction Period Savings**

- Provide a summary of construction period savings, if applicable.
- Provide overview of how construction period savings are calculated.

**Status of Rebates** - Include if applicable.

- Provide a summary of the source of any third-party rebates or incentives provided on this project.
- Provide status of any third-party rebates or incentives.

**ECM-SPECIFIC M&V ACTIVITIES AND EXPECTED FIRST YEAR SAVINGS**

Develop section for each ECM.

**Overview of ECM, M&V Plan, and Savings Calculation for ECM**

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

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- Provide an overview of M&V activities for ECM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of Savings Calculation Methods for ECM. Provide a general description of analysis methods used for savings calculations.

**Installation Verification**

- Detail any changes between final proposal (including any relevant contract modifications) and as-built conditions.
- Provide details of energy and cost savings impact from changes between final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results. Include Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for each ECM.

**Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for Each ECM**

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric energy cost savings, Year 1 (\$/yr)	Electric demand savings* (kW/yr)	Electric demand cost savings, Year 1 (\$/yr)	Natural gas savings (MBtu/yr)**	Natural gas cost savings, Year 1 (\$/yr)	Water savings (gallons/yr)	Water cost savings, Year 1 (\$/yr)	Other energy savings (MBtu/yr)**	Other energy cost savings, Year 1 (\$/yr)	Other energy - related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Proposed													
Expected													
Variance													

Notes  
 MBtu = 10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual M&V report. The proposed savings for each ECM are included in the contract.

- Describe construction period savings (if applicable). Include date ECM was in effect, and reference acceptance documentation.
- Detail savings calculations for construction period savings.

**Post-Installation M&V Activities Conducted** - Detail measurements, monitoring, and inspections conducted in accordance with M&V plan (include all that apply for each one):

- Measurement equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Institution witnessing.
- Details to confirm adherence to sampling plan.
- Include all post-installation measured values. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by ESCO or Institution.
- Note impact of performance deficiencies or enhancements on generation of savings.

**Expected Savings Calculations and Methodology**

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any baseline or savings adjustments made.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at site for same period (optional).
- Detail expected savings for this energy conservation measure for first year. Include Expected Year 1 Savings for ECM.

**Details of O&M Savings (if applicable)**

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

**Details of other savings (if applicable)**

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual report. The proposed savings for each ECM are included in Schedule TO-4 of the contract.

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**Expected Year 1 Savings for ECM**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost (\$/yr)	Electric demand* (kW/yr)	Electric demand cost (\$/yr)	Natural gas use (MBtu/yr)*	Natural gas cost (\$/yr)	Water use (gallons/yr)	Water cost (\$/yr)	Other energy use (MBtu/yr)*	Other energy cost (\$/yr)	Other energy - related O&M costs (\$/yr)	Total costs (\$/yr)
Baseline use													
Post-installation use													
Savings													

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**ENERGY STAR Ratings:** For each building included in the project, ESCO will provide an updated Portfolio Manager rating. Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label.

**C.3 ANNUAL M&V REPORTING REQUIREMENTS**

Summarize the project including energy, water and operational cost savings (in dollars and MMBTUs) for the annual reporting period, annual emission reductions and ENERGY STAR rating (if applicable). This summary information is useful for tracking and reporting on annual project performance.

Prepare the Annual Report as presented below.

**List of Processes and Tables:**

- Annual Report Overview
- Proposed Annual Savings Overview
- Verified Savings Overview for Performance Year # \_\_\_\_\_
- Verified Savings for Performance Period to Date
- Verified Annual Savings for ECM for Performance Year # \_\_\_\_\_

*Annual Report Overview*

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<b>Institution Name/Institution Contact (Include Email and Phone Number)</b>	
<b>Facility Name/Facility Contact (Include Email and Phone Number)</b>	
<b>ESCO Name/ESCO Contact (Include Email and Phone Number)</b>	
<b>Total Square Footage of Project Site/Contract Start Date/Contract End Date</b>	
<b>Current Repayment Year (ex. Yr. 3/ 2005)</b>	
<b>Reporting Timeframe (ex. Jan 1-Dec. 31)</b>	
<b>Installed Project Cost (no financing costs)</b>	
<b>Total Contract Value of Guaranteed Savings</b>	
<b>Annual Value of Guaranteed Savings</b>	
<b>Measured Energy Savings</b>	
<b>Operational Savings</b>	
<b>Avoided Capital Cost (if applicable)</b>	
<b>Annual Dollar Value of Achieved Savings</b>	
<b>Total Annual Achieved Energy Savings (MMBTU)</b>	
<b>Electric</b>	
<b>Natural Gas</b>	
<b>Oil</b>	
<b>Coal</b>	
<b>Steam</b>	
<b>Other</b>	

<b>Annual Water Savings (kgal)</b>	
<b>Annual Avoided NOx Emissions (Tons)</b>	
<b>Annual Avoided SOx Emissions (Tons)</b>	
<b>Annual Avoided CO2 Emissions (Tons)</b>	
<b>ENERGY STAR Rating</b>	

**ENERGY STAR Ratings:** For each building included in the project, ESCO will provide an updated Portfolio Manager rating to be included in the Measurement and Verification report at the conclusion of each year of project operation (alternately, at the conclusion of each of the first xx years of project operation). Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label.

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**ANNUAL MEASUREMENT AND VERIFICATION REPORT OUTLINE**

**Post-Acceptance Performance Period Dates Covered:** \_\_\_\_\_ to \_\_\_\_\_

**Contract year #:** \_\_\_\_\_

**EXECUTIVE SUMMARY**

**Project Background** - Provide an overview of project background, including:

- Date of Contract Execution and primary parties to the contract
- Dates of relevant contract modifications
- Post-acceptance performance period dates covered
- Project acceptance date (actual or expected)

**Brief Project and ECM Descriptions** - Provide an overview including what was done and how savings are generated.

**Summary of proposed and verified energy and cost savings.** Compare verified savings for Performance Year # to Guaranteed Cost Savings for Year #. State whether guarantee is fulfilled for year. If not, provide detailed explanation.

- Define post-acceptance performance period.
- Include Proposed Annual Savings Overview.

### Proposed Annual Savings Overview

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
<b>Total Savings</b>									

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: The proposed savings for each ECM are included in the contract as well as the guaranteed savings.

### Verified Savings for Performance Year #

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
<b>Total savings</b>									

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**Savings Adjustments** - Provide summary of any energy and/or cost savings adjustments required.  
**Performance and O&M Issues**

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Note impact of operating deficiencies or enhancements on generation of savings.  
Note impact of maintenance deficiencies on generation of savings.  
Detail any deficiencies needed to be addressed by contractor or Institution.

**Energy, Water, and O&M Rate Data**

Detail energy and water rates used to calculate cost savings for this period.  
Provide post-acceptance performance period rate adjustment factors for energy, water and O&M, if used.  
Report actual energy and water rates at site for same period (optional).

**Verified Savings To Date - Include Table 3.**

**Verified Savings for Post-Acceptance Performance Period to Date**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

Year #	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)	Guaranteed cost savings for year
<b>Total savings</b>										

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**DETAILS FOR EACH ECM**

Develop section for each ECM.

**Overview of ECM, M&V Plan, and Savings Calculation for ECM**

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Provide an overview of M&V Activities for ECM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of savings calculation methods for ECM. Provide a general description of analysis methods used for savings calculations.

**M&V Activities Conducted This Period** - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):

- Measurement equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Institution witnessing.
- Details to confirm adherence to sampling plan.
- Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by ESCO or Institution. Note impact of performance deficiencies or enhancements on generation of savings.

**Verified Savings Calculations and Methodology**

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any baseline or savings adjustments made.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at site for same period (optional).
- Detail verified savings for this energy conservation measure for performance year.

**Details of O&M Savings (if applicable)**

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

**Details of other savings (if applicable)**

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

**Verified Annual Savings For ECM for Performance Year #**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

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	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year # (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year # (\$/yr)	Natural gas (MBtu/yr)**	Natural gas cost, Year # (\$/yr)	Water use (gallons/yr)	Water cost, Year # (\$/yr)	Other energy use (MBtu/yr)	Other energy cost, Year # (\$/yr)	Other energy-related O&M costs, Year # (\$/yr)	Total costs, Year # (\$/yr)
Baseline use													
Performance Year # use													
Savings													
<u>Notes</u> MBtu = 10 <sup>6</sup> Btu. *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings. **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).													

**O&M Activities**

**Operating requirements**

1. State organization(s) responsible for equipment operations. If appropriate, detail how responsibilities are shared.
2. Detail any deficiencies needed to be addressed by contractor or Institution.
3. Note impact of operating deficiencies or enhancements on generation of savings.

**Preventive Maintenance requirements** - State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.

**Verification of scheduled maintenance items completed by ESCO or Institution**

1. Detail any deficiencies needed to be addressed by contractor or Institution.
2. Note impact of maintenance deficiencies on generation of savings.

**Repair and replacement requirements**

1. State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.
2. Summary of activities conducted this period by contractor or Institution.
3. Detail any deficiencies needed to be addressed by contractor or Institution.
4. Note impact of maintenance deficiencies on generation of savings.

**SCHEDULE D. Left blank for optional schedule related to Savings Guarantee**

**SCHEDULE E. Left blank for optional schedule related to Savings Guarantee**

**SCHEDULE F. Left blank for optional schedule related to Savings Guarantee**

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**SCHEDULE G. Left blank for optional schedule related to Savings Guarantee**

**PAYMENTS SCHEDULES**

**SCHEDULE H. FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS**

This schedule contains a spreadsheet depiction of the expected financial performance of the project throughout the entire contract term. The documentation should clearly identify all financial components of the project, including interest rates, current fuel prices, any escalation rates, guaranteed savings figures, ESCO compensation figures, cash-flow projections, and projected Net Present Value of any cumulative positive cash flow benefits to the Institution. Savings projections should be delineated by utility/fuel type and should identify ongoing annual service fees provided over the contract term. Project cost breakdowns should identify both hard costs (labor costs, subcontractor costs, cost of materials and equipment, and miscellaneous costs like permits, bonds taxes, insurance, mark-ups, overhead and profit, etc.).

**SCHEDULE I. FINANCING AGREEMENT AND PAYMENT SCHEDULE**

*This schedule contains a copy of the project financing agreement or terms and conditions of whatever financing vehicle is used (lease, COPs, bank financing etc.). An amortization and payment schedule should also be included as well as the progress payment disbursement schedule that will be used to pay the ESCO during the Interim Period (construction and installation) for the agreed-upon percentages of work completed.*

**SCHEDULE J. COMPENSATION TO ESCO FOR ANNUAL SERVICES**

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

**SCHEDULE K. REBATES, INCENTIVES AND GRANTS**

*List and describe any rebates, incentives and grants related to this project.*

**SCHEDULE L.** Left blank for optional schedule related to Payments and Schedule

**SCHEDULE M.** Left blank for optional schedule related to Payments and Schedule

**SCHEDULE N.** Left blank for optional schedule related to Payments and Schedule

**SCHEDULE O.** Left blank for optional schedule related to Payments and Schedule

**SCHEDULE P.** Left blank for optional schedule related to Payments and Schedule

**DESIGN, AUDIT AND CONSTRUCTION PHASE SCHEDULES**

**SCHEDULE Q. DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY**

This schedule contains basic information about the condition of the Project Site(s) at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

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

**SCHEDULE R. EQUIPMENT TO BE INSTALLED BY ESCO**

*Schedule H: This schedule should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). This schedule should also describe any modifications that may have been made to existing equipment, if applicable.*

**SCHEDULE S. CONSTRUCTION AND INSTALLATION SCHEDULE**

*Include the timetables and milestones for project construction and installation. If so desired, document required insurance, subcontractor lists and any MBE/WBE required subcontracts or break out into a separate schedule. NOTE: It is important that the construction/installation phase of the project be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.*

**SCHEDULE T. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT**

*Specify the performance testing procedures that will be used for start-up and commissioning of the installed equipment and total system. Define procedures for developing and implementing a commissioning plan and specify any requirements for the Institution and/or third party review and approvals, pre-functional inspections, use of manufacturers' start-up procedures, and for executing functional performance tests. Include operating parameters should for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.*

Provide a general commissioning schedule, including any seasonal testing, and outline commissioning tracking and reporting requirements, including periodic and final commissioning reports, and any other required submittals such as a systems manual. Prescribe any requirements for warranty walk-through or other commissioning follow-up procedures.

Include specific provisions on how the Institution's project requirements or design intent for each measure or system will be defined. Define any requirements for certification that the tests followed the specified procedures and met or exceeded the expected results.

Define the qualifications and affiliation of the commissioning agent, and provide an overview of the roles and responsibilities of the commissioning agent, ESCO and the Institution in the commissioning process. Provide for the Institution to be notified of and present during all commissioning procedures. Include a provision for the documentation of the Institution's attendance at the various tests and the Institution's approval that the tests followed the specified procedures and met or exceed the expected results.

Because of the design-build nature of ESPCs, the details of the commissioning activities are developed along with the project scope, rather than being explicitly defined at the beginning of the project. Commissioning requirements must be: 1) specified in the contract, 2) defined explicitly after design, 3) implemented during construction, 4) completed prior to final project acceptance, and 5) followed-up on after acceptance.

Specify commissioning that will be completed during the following stages:

- Commissioning Process Defined at the Time of Contract Execution
- Defining Commissioning Activities During Project Design
- Implementing Commissioning Activities During Construction
- Completing Commissioning Activities Prior to Project Acceptance

#### **PHASE 1 – CONTRACT DEVELOPMENT**

Outline the project's specific commissioning requirements including:

- Qualifications and affiliation of the Commissioning Agent (CxA);
- Roles and responsibilities of CxA, ESCO and Institution, including witnessing of Cx activities;
- Process that will be followed to document the design intent or Institution's project requirements for each energy conservation measure (ECM) or system;
- Requirements for Institution or 3rd party design reviews or submittal approvals;
- Schedule for developing and approving a Cx plan, including expected content such as:
  - Pre-functional inspections,
  - Functional testing procedures,
  - Required use of manufactures' start-up procedures,
- Plan for seasonal testing and conditional acceptance, if needed;
- Contents and timing of periodic project reports, Final Cx Report, and
- Systems Manual;
- Requirements for CxA oversight of O&M training; and
- Plan for warranty walk-through or other follow-up procedures.

Designate both the affiliation and qualifications of the Commissioning Agent (CxA) that will lead the commissioning process for the project. The key responsibilities of the CxA are: 1) Directing the

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September 14, 2012*

commissioning team in the completion of the commissioning requirements; 2) Overseeing or performing the commissioning tests; and 3) Verifying the adequacy of the commissioning results.

Develop a written design intent for each system or ECM installed documenting the Institution's project requirements. Specific operational parameters, design details, performance requirements (conditions in addition to energy savings), or other provisions that are established by a design intent are:

- Operational parameters, such as temperature setback capabilities or operator interface features;
- Requirements for design details or ancillary items, such as sensors, valves, access, electrical, existing equipment demolition, etc.;
- Performance requirements, such as equipment efficiencies, or ton-hours of chilled water to be delivered.

### **PHASE 2 – PROJECT DESIGN**

Commissioning related activities performed by the Cx team in the design phase include:

- ESCO completes project design;
- Institution and CxA review design and approve equipment submittals;
- ESCO and Institution document the design intent for each ECM or system;
- CxA develops a draft Cx Plan, including the specifics of all pre-functional inspections and functional performance tests;
- CxA develops Cx specifications for project (if needed);
- Institution and ESCO review and accept Cx documents;
- CxA issues Final Commissioning Plan and specifications.

### **PHASE 3 – CONSTRUCTION**

Commissioning related activities that occur during the construction phase include:

- Construction observation by Institution's Cx representative and Commissioning Agent;
- Periodic Cx meetings are held with the project team;
- Cx progress reports are submitted by the CxA;
- Pre-functional inspections are completed and certified by the ESCO prior to equipment start-up and functional testing;
- Manufactures' start-up procedures are completed by the ESCO or manufacturer's representative.

### **PHASE 4 – PROJECT ACCEPTANCE**

In this phase the functional performance tests are executed and the procedures are documented by the CxA, explicitly including how the Institution's project requirements or design intent prescribed for each system were met. Any items that did not pass shall be tracked and presented to the project team in a deficiency log. The ESCO will rectify the items and then perform a retest in the presence of the CxA to confirm that the items have been fixed. The deficiency log is then updated by the CxA, noting the date and corrective action taken. The Institution may choose to specify consequences for multiple failed re-tests to limit the possibility of excessive use of the CxA's time. The ESCO then assembles the Final Commissioning Report or a Systems Manual including, at minimum, the following:

- Commissioning summary report;
- ESCO certified pre-functional checklists;
- Completed manufacturers start-up sheets;
- Results of functional testing and verification of system performance;
- Detailed operating procedures / sequences of operations;

- Closed out deficiency log;
- Overview of training provided to O&M staff.
- Some Agencies may prefer to receive a more comprehensive Systems Manual, which is
- required for LEED certification. A systems manual typically brings together
- comprehensive project documentation:
- Institution's project requirements or design intent;
- Schematic system drawings;
- Approved submittals;
- Recommended record keeping procedures;
- Maintenance procedures & schedules;
- Test requirements for ongoing commissioning.

#### **PHASE 5 – POST-ACCEPTANCE PHASE**

Commissioning activities that typically extend beyond Project Acceptance include deferred functional testing and warranty verification. Some functional testing may be postponed until seasonal conditions are appropriate to evaluate the system. When some functional testing has been deferred, acceptance of the project is conditional upon the success of the scheduled tests. Most equipment installed will have a one-year warranty provided by the manufacturer. A warranty check-out with the ESCO after 8 to 10 months of operation is a recommended commissioning activity. Reviewing the equipment warranties and performing a site walk through at this time can identify any problems that may still be covered by a manufacturer's or contractor's warranty.

#### **SCHEDULE U. STANDARDS OF COMFORT**

*Explicitly describe the standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of each building.*

#### **SCHEDULE V. ESCO'S TRAINING RESPONSIBILITIES**

*Describe the ESCO's training program or sessions for facility personnel including the duration and frequency of the specified training. Describe any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades. Also specify any fees associated with the Institution's request for training beyond what the ESCO is contractually bound to provide.*

**SCHEDULE W.** Left blank for optional schedule related to Design and Construction Phase

**SCHEDULE X.** Left blank for optional schedule related to Design and Construction Phase

**SCHEDULE Y.** Left blank for optional schedule related to Design and Construction Phase

**SCHEDULE Z.** Left blank for optional schedule related to Design and Construction Phase

**SCHEDULE AA.** Left blank for optional schedule related to Design and Construction Phase

#### **POST-CONSTRUCTION SCHEDULES**

**Also see Schedule T: Start-Up Commissioning**

**SCHEDULE BB. ESCO'S MAINTENANCE RESPONSIBILITIES**

*Include a complete description of the ESCO's specific operations and maintenance responsibilities along with the time intervals for their performance of the stated O&M activities.*

The description shall include but is not limited to:

1. Description of ESCO's operations and maintenance responsibilities.
2. Performance period for ESCO's performance of the stated operating and maintenance activities.
3. Period of time for Maintenance during or after warranty period.
4. Payment terms for Maintenance: annually and for how much.

**SCHEDULE CC. INSTITUTION'S MAINTENANCE RESPONSIBILITIES**

*Describe the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances this will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.*

*The description shall include but is not limited to:*

1. Description of the Institution's operations and maintenance responsibilities.
  - a. Existing maintenance and operations
  - b. Additional maintenance and operations necessitated by the Work

Institution shall provide all maintenance tasks on all existing equipment at all times. Institution shall provide all maintenance duties on new equipment after Substantial Completion. Maintenance Duties will be outlined in Operation and Maintenance Manuals, which will be provided by ESCO.

**SCHEDULE DD. FACILITY MAINTENANCE CHECKLIST**

*This checklist is a method by which the ESCO may record and track the Institution's compliance with any of the maintenance procedures being performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and Institution to verify that the required maintenance activities are being performed at the scheduled intervals).*

**SCHEDULE EE. Left blank for optional schedule related to Post-Construction Phase**

**SCHEDULE FF. Left blank for optional schedule related to Post-Construction Phase**

**SCHEDULE GG. Left blank for optional schedule related to Post-Construction Phase**  
**SCHEDULE HH. Left blank for optional schedule related to Post-Construction Phase**  
**SCHEDULE II. Left blank for optional schedule related to Post-Construction Phase**

### **ADMINISTRATION SCHEDULES**

#### *SCHEDULE JJ. ALTERNATIVE DISPUTE RESOLUTION*

This schedule describes methods for resolving disputes or claims relating to construction or the contract, wherein the parties agree to exercise good faith efforts (e.g., mediation, dispute resolution board) and to only use litigation as a last resort. This schedule is included as an alternative to costly binding arbitration and litigation.

**SCHEDULE KK. Left blank for optional schedule related to Administration**  
**SCHEDULE LL. Left blank for optional schedule related to Administration**  
**SCHEDULE MM. Left blank for optional schedule related to Administration**  
**SCHEDULE NN. Left blank for optional schedule related to Administration**  
**SCHEDULE OO. Left blank for optional schedule related to Administration**

### **OPTIONAL SCHEDULES**

#### **PRE-EXISTING SERVICE CONTRACTS**

Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the Institution and ESCO information about how and when the existing equipment is being serviced. As well, if the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will be useful in tracking the performance of the ESCO in providing the required services and documenting any attributable cost savings.

#### **ENERGY SAVINGS PROJECTIONS**

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

#### **FACILITY CHANGES CHECKLIST**

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

#### **CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY**

If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

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Model Attachment for Guaranteed Utility Savings Contract  
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September 14, 2012*

**EXHIBITS**

EXHIBIT I	PERFORMANCE BOND/CONSTRUCTION BOND
EXHIBIT II	LABOR AND MATERIAL PAYMENT BOND <i>if required</i>
EXHIBIT II (i)	CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT
EXHIBIT II (ii)	CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT
EXHIBIT III	EQUIPMENT WARRANTIES

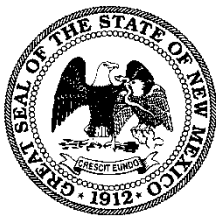
**APPENDICES**

APPENDIX A	RFP FOR ESCO SOLICITATION
APPENDIX B	ESCO PROPOSAL
APPENDIX C	INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT
APPENDIX D	INVESTMENT GRADE AUDIT REPORT

NOTE: THESE SCHEDULES CAN BE INCLUDED AS OPTIONAL AND INCLUDED OR COMBINED WITH OTHERS OR MAY BE CONTAINED IN THE AUDIT REPORT AS DESIRED.

**APPENDIX P**

**GUIDELINES FOR GUARANTEED ENERGY  
EFFICIENCY PROJECTS**



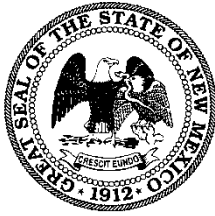
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<b>STANDARD OPERATING GUIDELINES</b>	<b>Number</b> <b>1-Rev. 3</b>
<b>TITLE: UTILIZING PRICE AGREEMENTS FOR ENERGY SERVICES COMPANIES</b>	<b>Effective Date:</b> <b>July 17, 2015</b>
	<b>No. of Pages</b> <b>25</b>

### REVISION LOG

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Initial Draft	7/17/15	D. Griego	
Final Draft	8/1/15	E. Velarde	
Rev. 1	10/27/15	D. Griego	
Rev. 2	4/20/16	D. Griego	Incorporate funding changes
Rev. 3	4/28/23	D. Zigich	Update and remove WISE reference

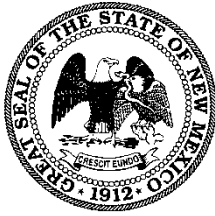
DATE: April 28, 2023



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**TITLE: UTILIZING PRICE AGREEMENTS FOR ENERGY SERVICES COMPANIES**

**ISSUE DATE: July 17, 2015**

**REVISION: 3**

### **1.0 INTRODUCTION**

These Standard Operating Guidelines apply to State Agencies, Local Governments, Public Schools, and the Higher Education Department, given that do not occupy facilities owned by the General Services Department (GSD). Those that do occupy GSD facilities shall refer to the Standard Operating Procedure (SOP) for Tenant-Agencies of GSD. Energy services companies (ESCOs) are available to government agencies by statewide price agreements maintained by the GSD State Purchasing Division (see 3.0, References). Other ESCOs may be selected outside of the price agreements by separate processes that comply with the New Mexico procurement code.

#### ***1.1 Purpose***

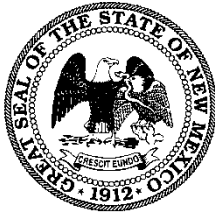
The purpose of these guidelines is to provide a documented method for the use of an ESCO by any State Agency, Local Government, Public School, or the Higher Education Department.

#### ***1.2 Scope***

These Standard Operating Guidelines provide requirements and guidance for selection of an ESCO for evaluation, design, financing, implementation, monitoring, and reporting on energy efficiency projects for State Agencies, Local Governments, Public Schools, or the Higher Education Department. These projects may include measures for conservation-related cost savings, renewable energy systems, water conservation, and alternative fuel options for vehicles.

#### ***1.3 Requirements***

Projects must comply with the *Public Facilities Energy Efficiency & Water Conservation Act* ("Act") [NMSA 1978, 6-23]. The Act identifies eligible Agencies, Qualified Provider, accuracy and reasonableness of ECM calculations. An energy efficiency project must comply with the Act if one or both of the following conditions exists: 1) a guarantee of utility cost savings is provided by a private party and 2) a contract term of greater than eight years is planned (or the Agency should know what other statute allows for longer contract terms). The ESCOs with price agreements have met the Qualified Provider requirement (if they remain in good standing with GSD State Purchasing Division (SPD)). Agencies must report annually on utility cost savings resulting from an energy performance contracting project.



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A statute that may be used in tandem with the Act is the Energy Efficiency & Renewable Energy Bonding Act (“Clean Energy Revenue Bond”) [NMSA 1978, 6-21D]. The Clean Energy Revenue Bond can provide financing for energy efficiency projects and may be involved when an ESCO guarantees savings for financing through the New Mexico Finance Authority.

### ***1.4 Definitions and Acronyms***

**Agencies/Agency** - Eligible governmental entities under the Public Facilities Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23], which are state government, local governments, public schools, higher educational institutions, and other instrumentalities of state government.

**ECMD** - The Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department (<https://www.emnrd.nm.gov/ECMD/>).

**EMNRD** - The Energy, Minerals and Natural Resources Department which is responsible for managing the Energy Performance Contracting (EPC) Program.

**Energy Conservation Measure** - A training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs.

**Energy Performance Contracting** - A project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.

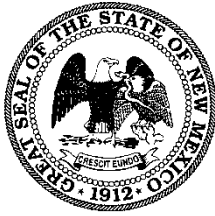
**Energy Services Company** - Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.

**Guaranteed Utility Savings Contracts** - Contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.

**Investment-Grade Energy Audit** – A study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.

**Lender** – Financer of the energy conservation measures.

**Pre-qualified** - The status of an ESCO or vendor that has been selected through an RFP process, certified by EMNRD as a Qualified Provider, and has established a statewide price



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agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.

**Qualified Provider** - A person experienced in the design, implementation and installation of energy or water conservation measures and who meets EMNRD's experience qualifications for energy conservation measures (ECMs) or the Office of the State Engineer for water conservation measures (WCMs). *(A Qualified Provider is typically an interdisciplinary company or team of people meeting requirements of the Act and capable of managing complex EPC projects through the energy audit, project proposal, design, financing, implementation, monitoring, and reporting phases.)*

**Secretary** – The Cabinet Secretary or other senior executive head of an Agency as designated by statute.

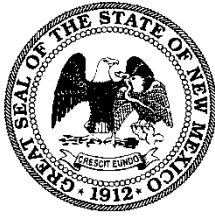
**Statewide Price Agreement** - The contract executed by the State Purchasing Division (SPD) Director and an ESCO, as selected through a competitive process that is pre-qualified by EMNRD as a Qualified Provider under the Act. Statewide price agreements provide competitively-selected contractors that offer commodities or services under specific provisions approved by the State of New Mexico. These are available to all governmental entities funded by the State of New Mexico. The term is four years, with continuation subject to an annual review by EMNRD of each Qualified Provider's performance, which is provided to SPD for the renewal process.

**Utility Cost Savings** - The amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract. *(For equitable comparisons of different years needed to estimate the cost savings of energy reduction, an engineering approach involving adjustments to purchased energy or water data is typical practice.)*

**Water Conservation Measure** - A training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

### **Frequently used acronyms -**

- **DFA** – Department of Finance and Administration
- **ECM** – Energy Conservation Measure
- **ECMD** – Energy Conservation and Management Division
- **EMNRD** – Energy, Minerals & Natural Resources Department
- **EPC** – Energy Performance Contracting
- **ESCO** – Energy Services Company
- **GSD** – General Services Department



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- **HED** – Higher Education Department
- **IGA** – Investment-Grade Energy Audit
- **M&V** – Measurement and Verification
- **OSE** – Office of the State Engineer
- **PM** – Project Manager
- **PSFA** – Public School Finance Authority
- **SBOF** – State Board of Finance
- **SPD** – State Purchasing Division
- **WCM** – Water Conservation Measure

### ***1.5 Implementation***

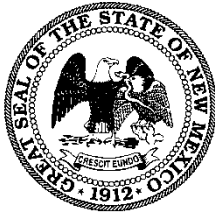
These guidelines apply to all financed energy efficiency projects that will be facilitated by a pre-qualified ESCO for any eligible Agency. Pre-qualified ESCOs have statewide price agreements, found at the SPD website. The EPC Process guides the steps to be taken for all projects facilitated by an ESCO. Financed energy efficiency projects require that utility cost savings meet or exceed payments to the lender. Energy Efficiency projects are to be comprised of eligible ECMs as stated in the Act.

ECP is the program for State government agencies to reduce energy usage, water usage, and utility costs in public facilities. Through strategic planning led by EMNRD, Agency building inventories are evaluated, energy reduction goals are set, and energy efficiency projects are implemented. The EPC Process (see 2.0, Instructions) serves as a guide for creating sustainable progress in facility performance throughout New Mexico's public facilities. For more information on the EPC Program and how to participate, contact EMNRD.

### ***1.6 Eligible Energy Conservation Measures***

ECMs that may be proposed by Qualified Providers are stated in the Act and include:

- a) Insulation of the building structure or systems within the building;
- b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
- c) Automated or computerized energy control systems;
- d) Heating, ventilating or air conditioning system modifications or replacements;
- e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;



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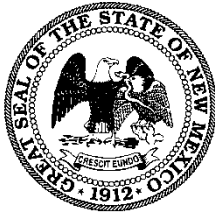
- f) Energy recovery systems;
- g) Solar heating and cooling systems or other renewable energy systems;
- h) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- i) Energy conservation measures that provide long-term operating cost reductions;
- j) Maintenance and operation management systems that provide long-term operating cost reductions;
- k) Traffic control systems; or
- l) Alternative fuel options or accessories for vehicles.

ECMs may also include “conservation-related cost savings,” which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

### ***1.7 Roles and Responsibilities***

**ESCO** – ESCOs shall provide information about themselves to Agencies that inquire about their services. An ESCO will determine if Agency is a tenant of GSD. If so, ESCO will contact FMD for notification of services inquiry. ESCO will review and sign the Investment-Grade Energy Audit (IGA) & Project Proposal Contract. ESCO will develop the IGA & Project Proposal and submit to Agency and EMNRD. If the IGA contains WCMs, the IGA will be submitted to the OSE also. ESCO will review the EMNRD-certified IGA & Project Proposal, along with EMNRD and the Agency, to determine the EPCs to be completed, financing mechanisms, and duration of the contract. ESCO will, if requested, provide information about possible lenders that the ESCO works with to finance ECMs. ESCO will review and sign the Guaranteed Utility Savings Contract. ESCO will design and construct all ECMs and WCMs that were agreed upon in the Guaranteed Utility Savings Contract. ESCO will, if agreed upon in the contract, provide all necessary maintenance for the ECMs and WCMs implemented. ESCO will monitor the energy savings and report those savings to the Agency and EMNRD.

**Third-Party Reviewer** – Third-Party Reviewer will independently review IGA & project proposal provided by ESCO for feasibility and report findings to Agency and EMNRD. Compile a comprehensive file of all documentation developed. Conduct on-site construction inspections to ensure measures are being installed according to the separate contracts between public entities and energy performance contractors. They will also provide oversight services for commissioning, conduct measurement and verification (M&V) of energy usage, and provide an M&V report to EMNRD. The evaluator will also alert EMNRD to any deficiencies, issues, or building code violations that occur throughout the duration of each project, and finally compile an energy evaluation report with one full year of post implementation utility data.



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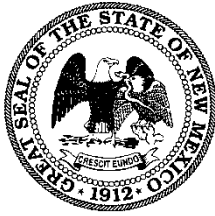
**State Agency** – Agency Secretary will review and sign the *EPC Project Application and Commitment for Energy Performance Contracting*. Agency Secretary will review and sign the Investment-Grade Energy Audit & Project Proposal Contract. Agency will review the EMNRD-certified IGA & Project Proposal, along with EMNRD and the ESCO, to confirm the proposed ECMs and WCMs, financing mechanisms, and duration of the contract. Agency Secretary will review and sign the Guaranteed Utility Savings Contract. Agency will make payments to the lender according to the signed Guaranteed Utility Savings Contract.

**PUBLIC SCHOOLS** – The Public Education Department (PED) Secretary will review and sign the Guaranteed Utility Savings Contract (GUSC) after EMNRD Certifies the project. The PED will also set up a fund to pay the ESCO from the school that is implementing the project. The PED may review the investment grade audit along with EMNRD. EMNRD will review the proposed ECMs, financing mechanisms, and duration of the contract. EMNRD will certify the energy savings of the project and forward the certification to the PED, PSFA, and the public school. The public school will make payments to the lender according to the signed GUSC. Water conservation projects will be reviewed and certified only by the Office of State Engineer.

**HED** – The university or community college must submit the project for review and approval by the Capital Projects Committee (CPC) of HED after EMNRD certifies the project. The Higher Education Department (HED) Secretary will review and sign the Guaranteed Utility Savings Contract (GUSC) after approval by the CPC. The HED may review the investment grade audit along with EMNRD. EMNRD will review the proposed ECMs, financing mechanisms, and duration of the contract. EMNRD will certify the energy savings of the project and forward the certification to the HED and university or community college. The university or college will make payments to the lender according to the signed GUSC. Water conservation projects will be reviewed and certified only by the Office of State Engineer.

**LOCAL GOVERNMENT PROJECTS** - Cities, Counties and other local governments will review and sign the Guaranteed Utility Savings Contract (GUSC) after EMNRD Certifies the project. The local government shall submit the project for review by the Local Government Division of The Department of Finance and Administration after certification by EMNRD. The Local Government may review the investment grade audit along with EMNRD. EMNRD will review the proposed ECMs, financing mechanisms, and duration of the contract. EMNRD will certify the energy savings of the project and forward the certification to the Local Government. The Local Government will make payments to the lender according to the signed GUSC. Water conservation projects will be reviewed and certified only by the Office of State Engineer.

**EMNRD/ECMD** – EMNRD will collaborate with DFA to format the *EPC Annual Report of Energy Performance Contracting Project* (Form B). ECMD will provide support/information



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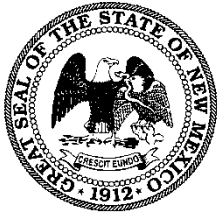
to Agencies inquiring about the ESCO process. ECMD will review the *EPC Project Application and Commitment for Energy Performance Contracting* (Form A). ECMD will review the IGA & Project Proposal Contract and provide technical assistance to Agency. EMNRD will review and make a certification determination under the Act of the EMNRD-certified IGA & Project Proposal. ECMD will review the Guaranteed Utility Savings Contract and provide technical assistance to Agency. ECMD will develop and publish the *EPC Annual Report of Energy Performance Contracting Project*.

**DFA** – DFA will collaborate with EMNRD to format the *EPC Annual Report of Energy Performance Contracting Project* (Form B) under the Act [NMSA 1978, 6-23-6.1

**SBOF** - The State Board of Finance approves all contracts of more than \$5 million before gross receipts tax.

**NMFA** – provides a financing mechanism through the Clean Energy Revenue Bond and Public Project Revolving Fund programs.

## **2.0 INSTRUCTIONS**



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*The EPC Process is adopted by GSD in the management of its facilities, statewide, and shall be adopted by the Agency in addressing each facility:*

- |                           |                                       |
|---------------------------|---------------------------------------|
| <i>1) Evaluate Needs;</i> | <i>4) Implementation;</i>             |
| <i>2) Energy Audit;</i>   | <i>5) Preventive Maintenance; and</i> |
| <i>3) Financing;</i>      | <i>6) Continuous Commissioning.</i>   |

The purpose of using an ESCO is to procure facility system upgrades utilizing a financing mechanism called energy performance contracting (EPC). This process allows those Agencies that do not have the necessary funding for system upgrades to finance the projects, paying for them through energy savings over multiple years. These guidelines are to facilitate the utilization of statewide price agreements for pre-qualified ESCO services. ESCO pre-qualification was established to ease the administrative burden on Agencies, fulfill the EPC Process (see 2.0, Instructions), and provide a source of expertise from the private sector (the ESCOs) to comprehensively upgrade New Mexico's public facilities.

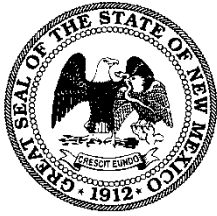
Agencies responsible for payment of utility bill invoices may select pre-qualified ESCOs to implement facilities upgrades utilizing EPC. This process is available for Agencies that will commit upfront to implementing energy efficiency projects based on findings of certified IGAs. The following sections provide direction for the Agencies to incorporate the EPC Process and implement a project, from preliminary information stage to post-project reporting.

### ***2.1 Agency Buildings Inventory and Funding Needs Assessment***

*The activities of this section support Step 1—Evaluate Needs—of the EPC Process.*

Before selecting a pre-qualified ESCO, the Agency shall conduct a preliminary screening of its building inventory to identify candidate facilities for upgrades that may yield utility cost savings. For assistance, contact EMNRD. This initial attempt to gather information on buildings will help the ESCO evaluate next steps needed. Formal facilities condition assessments, energy audits, and existing energy usage tracking databases (e.g., ENERGY STAR Portfolio Manager) would be the most helpful in this first step. The energy usage for the previous year should be entered into ENERGY STAR Portfolio Manager ([www.energystar.gov/buildings](http://www.energystar.gov/buildings)). This is an energy usage tracking database sponsored by the federal government. It is available at no cost and allows for easy documentation of utility usages (electricity, natural gas, water) for comparison after ECM implementation.

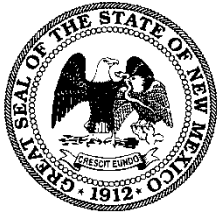
In the absence of such information, alternative criteria that may be used to initiate evaluation are utility costs, building age, building systems conditions, and indoor environment conditions. This can be done by a combination of reviewing energy bills, reviewing facilities condition assessments



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if available, reviewing building systems inventories, speaking to maintenance staff or contractors familiar with the facilities, by occupant interviews, and documenting observed conditions. If contact with an ESCO has been initiated, the ESCO also may be able to assist; however, no contract shall be established at this point, before approvals are obtained in Subsection 2.2.

In addition, the Agency should review available funding for facilities upgrades and determine if private financing available through the Act should be considered. Agency funding can be combined with the private financing of an EPC project.



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### ***2.2 Agency Education on EPC Process and Approval to Proceed***

*The activities of this section support Step 1—Evaluate Needs—of the EPC Process.*

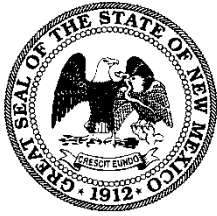
Upon the Agency assessing its facilities and funding needs in the above steps, the Agency shall contact EMNRD to request technical assistance under the Act. The Agency will complete the *EPC Project Application and Commitment for Energy Performance Contracting* (Form A) provided by EMNRD. EMNRD will review the Agency's information and provide education and training to the Agency on using EPC and selecting an ESCO by statewide price agreement. The Commitment must be signed by the senior executives of the Agency, which commits the Agency to an energy efficiency project utilizing EPC.

The commitment step demonstrates to all parties involved that the highest level of approval in the Agency has been obtained. This is critical in terms of requirements of the Act, which states at 6-23-5, Contract Approval:

*A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:*

- (1) for school districts, by the superintendent of public instruction;*
- (2) for state agencies:*
  - (a) if the facilities, systems or vehicles are owned, leased or otherwise controlled by the general services department, by the secretary of general services; and*
  - (b) if the facilities, systems or vehicles are not owned, leased or otherwise controlled by the general services department, by the executive head of the state agency;*
- (3) for municipalities and counties, by the governing body of the municipality or county; and*
- (4) for all post-secondary educational institutions and the state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, by the commission on higher education.*

The Agency commitment serves as preliminary approval to proceed to an energy audit by an ESCO, including approval of the Investment-Grade Energy Audit & Project Proposal contract between the Agency and the ESCO. Furthermore, the Agency commitment is also preliminary approval that the Agency will proceed to implement the energy efficiency project, including approval of the Guaranteed Utility Savings contract. If the commitment cannot be given, the Agency must demonstrate that adequate funds are available to pay for the energy audit services provided by the ESCO. Upon the Agency commitment being approved, the process to select a Third-Party Reviewer to provide independent oversight of the ESCO will be initiated.



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### ***2.3 Selection of an Energy Services Company (ESCO)***

*The activities of this section support Step 2—Energy Audits—of the EPC Process.*

Once the Agency commitment is obtained, the selection of an ESCO can occur. This is done via Statewide Price Agreements #90-000-18-00017AA through AI, maintained by SPD. The price agreements, one for each pre-qualified ESCO, consists of the typical price agreement contract and vendor specific maximum mark ups at which the vendor has been contracted. These mark ups are the only part of the price agreements that are different among the ESCOs. These mark ups are documented as the MAXIMUM the ESCO can charge an Agency. This should not be viewed as exactly what will be used in the specific contract, only as a reference to what the maximum could be. Research should be done by the Agency into specific ESCOs to determine which ones are suitable for their needs, because different ESCOs specialize in different areas.

The independent Third-Party Reviewer will be assigned to the project.

### ***2.4 Energy Audits***

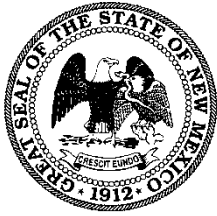
*The activities of this section support Step 2—Energy Audits—of the EPC Process.*

The next step after selecting the ESCO will be planning, conducting, and reporting on the energy audit. This audit will follow the guidelines for, at minimum, an ASHRAE Level 2 audit. Descriptions of the ASHRAE energy audit levels are provided in an attachment (Section 5.0). From the energy audit, the ESCO will develop recommended ECMs proposed for the energy efficiency project. This list will then be delivered to the Agency, along with the energy audit, for review. The energy audit will also be delivered to EMNRD and the Office of the State Engineer (OSE), as applicable, for certification. Levels of Effort in performing energy audits are defined by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (see 3.0, References and 5.0, Appendices / Attachments / Forms).

### ***2.5 Project Selection***

*The activities of this section support Step 2—Energy Audits—of the EPC Process.*

The recommended ECMs should be reviewed thoroughly. The projects will provide information such as cost of project, projected payback period, and energy savings. All of this information will determine the cost and length of the project contract. Projects that have a long payback period can



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be combined with those that have a much shorter payback period to create an overall project payback period that is within the necessary payback timeframe determined by the Agency.

Facilities in which projects are to be implemented will be sub-metered, if necessary. If the facility is not currently sub-metered, a charge to provide and install the sub-meters will be added into the contract for financing. This is to be done to make the task of monitoring easier as some facilities share utility meters. The ESCO shall also provide training on use of the sub-meter for facility inhabitants.

### ***2.6 Financing of Energy Efficiency Projects***

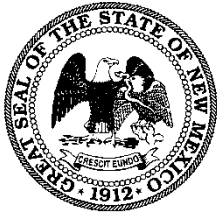
*The activities of this section support Step 3—Financing—of the EPC Process.*

The State Agency, HED, or Public School should conduct a competitive process for the purpose of obtaining the most favorable financing terms for the project. The financing may cover the full project costs or may be combined with other funding sources. The Agency paying the utility bills is responsible for paying the lender. The payment schedule will be provided in the financing terms with the lender.

The payment instrument shall be a Purchase Order in a form acceptable to the Agency. The Agency shall incorporate the schedule of payments to the lender in its annual budgeting process for the term of the financing arrangement. It is the responsibility of the Agency to encumber funds, issue warrants, document payment, and obtain approvals each year of the financing term, or other processing actions as may be necessary. The Agency is liable for late charges per the financing agreement with the lender if payments do not meet the agreed schedule in a timely manner.

Utility company rebates that are generated by an energy efficiency project shall be provided to the contracting entity to deposit into a separate fund. This fund may be used by the entity for other expenses, to pay for more work from the ESCO, or if the lender is willing, to make a larger payment to the lender. The ESCO is responsible for evaluating available utility company rebates on all energy efficiency projects, for electricity, natural gas, and water.

The services of an independent Third-Party Evaluator selected by EMNRD shall be included in all energy efficiency projects utilizing EPC. The cost of these services will be no greater than 3% of the total project cost and shall be included in the financing package. The percentage used will be based upon the size of the project, and subsequent cost of the Third-Party Evaluator. Upon acceptance of the project by the Agency, the Agency shall make a separate payment to EMNRD. The Third-Party Evaluator will serve as an agent of the Agency and EMNRD, to ensure that the ESCO of each project is accountable to the agreements, implementation of the ECMs and WCMs, and guaranteed utility savings. The Third-Party Evaluator's tasks and amount of the payment to



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EMNRD shall be stated in a Governmental Services Agreement between the Agency and EMNRD.

### **2.7 Approval of Contracts**

*The activities of this section support Step 3—Financing—of the EPC Process.*

Once the ECMs have been selected, the ESCO will draft a contract. This contract is to be signed by the position deemed as signatory authority in the *Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978)*. In order for the contract to be approved, it must meet the following statutory requirements:

*The approval required under this section shall be given upon:*

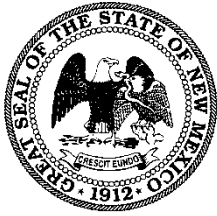
- (1) a determination that the contracts and agreements comply with the provisions of the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978] and other applicable law;*
- (2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and*
- (3) certification by the office of the state engineer that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable.*

By signing the Guaranteed Utility Savings Contract, the signatory authority of the Agency is indicating approval to implement ECMs under the Act. The Agency shall insure that the Guaranteed Utility Savings Contract complies with all applicable State laws.

### **2.8 Project Implementation**

*The activities of this section support Step 4—Implementation—of the EPC Process.*

Implementation of the agreed upon ECMs and WCMs will be scheduled by the Agency and the ESCO. The ESCO will provide the Agency's Construction Manager with regular status updates on progress with the project. The ESCO shall coordinate with the Agency on scheduling the work so that disturbances to Agency business are minimized. The ESCO shall coordinate with the Agency on temporary storage areas needed for ESCO property and ECM/WCM materials, supplies, and equipment.



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### **2.9 Maintenance**

*The activities of this section support Step 5—Preventive Maintenance—of the EPC Process.*

Upon acceptance of an energy efficiency project by the Agency, the post-project task of maintenance will begin. The maintenance of the ECMs and WCMs shall be clearly defined in a plan as the responsibility of the ESCO, the Agency, or a combination. These tasks and responsibilities shall be stated in the Guaranteed Utility Savings Contract. The ESCO shall train Agency, as applicable for the facility, in cases where the ESCO is not responsible for maintenance of an ECM or WCM.

### **2.10 Monitoring and Annual Reporting**

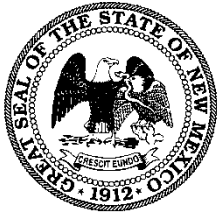
*The activities of this section support Step 6—Continuous Commissioning—of the EPC Process.*

Upon acceptance of implementation of an energy efficiency project by the Agency, the post-project tasks of monitoring and reporting will begin. Facility performance data from the post-project period provides feedback to the Agency on how well the property asset, occupants, and maintenance are performing.

Energy usage must be closely monitored by the ESCO and the approved Measurement & Verification (M&V) Plan of the Guaranteed Utility Savings Contract must be initiated. The M&V Plan shall comply with requirements of the International Performance Measurement and Verification Protocol (IPMVP). An annual report to EMNRD and the Agency shall be provided by the ESCO by July 30<sup>th</sup> for the previous fiscal year ending June 30<sup>th</sup>. The *EPC Annual Report of Energy Performance Contracting Project* (Form B) provides the format. These tasks and responsibilities of the ESCO shall be stated in the Guaranteed Utility Savings Contract. The US Department of Energy (DOE) tool *eProject Builder* may be used for annual reporting if approved by EMNRD and DFA.

Energy usage data during post-project monitoring should also be kept by the Agency. The data will be used in energy savings reporting and to verify the report of the ESCO. The Third-Party Reviewer will track the M&V Plan deliverables, review data and reports from the ESCO on the M&V Plan, and provide comments to the ESCO, Agency, and EMNRD, as applicable, on meeting M&V Plan requirements and guaranteed utility savings under the Act.

Energy usage is the basis of the ESCO's annual reporting to the Agency, provided each year for a length determined in the Guaranteed Utility Savings Contract. Facility energy performance will be closely monitored by both the ESCO and the Agency, to determine each fiscal year if the ESCO's



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guarantee is being met or not. It is the responsibility of the Agency to verify that the guarantee is being met, in consultation with EMNRD. This is done by monitoring the sub-meter installed in the facility, or facilities, as well as the energy bills. The sub-meter should be compared to the utility bill for accuracy. This data will also be entered in ENERGY STAR Portfolio Manager for comparison to the agreed upon baseline. The data entry will be performed by either the Agency or the ESCO, as determined when developing the Guaranteed Utility Savings Contract. The baseline year remains the same throughout the financing period, with adjustments made for a fair comparison to each new current year. Monitoring will depend greatly on what projects are implemented. Metering of systems that projects are implemented on will be discussed upon selection of projects. This is done to directly verify that the implemented projects are performing as designed, without input from systems that were not selected for upgrade.

The ESCO will provide quarterly updates of utility billings in Portfolio Manager, which will be shared with the Agency and EMNRD. A reduction in energy usage should be clearly shown in the updates. In each year's annual report, the ESCO shall extend the energy usage data to provide the utility cost savings, comparing the most recent current year to the agreed baseline year. This is an engineering analysis of avoided energy costs, not utility bill accounting, which shall be reviewed by EMNRD for accuracy. If the energy cost avoidance is not equal to or greater than utility cost savings guaranteed by the ESCO, the Agency shall notify the ESCO that the cause needs to be identified. A plan shall be developed by the ESCO and approved by EMNRD to guide resolution of the shortfall in utility cost savings.

### **3.0 REFERENCES**

Public Facility Energy Efficiency & Water Conservation Act [6-23 NMSA 1978].

Energy Efficiency & Renewable Energy Bonding Act [6-21D NMSA 1978].

Energy Efficiency Standards for Public Buildings [15-3-36 NMSA 1978].

State of New Mexico Energy Efficient Green Building Standards for State Buildings,  
January 2006 [Executive Order 2006-01].

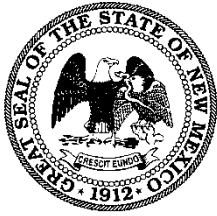
Statewide Price Agreements #90-000-18-00017AA, AB, AC, AD, AE, AF, AG, AH and AI, New  
Mexico General Services Department, Purchasing Division,  
[www.generalservices.state.nm.us/statepurchasing/Statewide Price Agreements.aspx](http://www.generalservices.state.nm.us/statepurchasing/Statewide_Price_Agreements.aspx).

International Performance Measurement and Verification Protocol (IPMVP), Efficiency Valuation  
Organization, [www.evo-world.org](http://www.evo-world.org).

Procedures for Commercial Building Energy Audits, 2<sup>nd</sup> Edition, 2011, American Society of  
Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), Atlanta GA.

ENERGY STAR Portfolio Manager, US Environmental Protection Agency,  
<http://www.energystar.gov/buildings/index.cfm>.

eProject Builder, US Department of Energy, <https://eprojectbuilder.lbl.gov>.



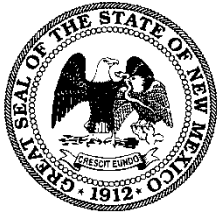
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### **4.0 REQUIRED RECORDS**

- a) EPC Project Application and Commitment for Energy Performance Contracting (signed)
- b) Utilize ENERGY STAR Portfolio Manager to document, at a minimum, the previous year's energy usage (electricity, gas, water) for all buildings involved in the ECMs. Maintain the data to document the energy savings in a standardized, reportable format.
- c) Investment-Grade Energy Audit certified by EMNRD
- d) Statewide Price Agreement with ESCO used on project
- e) Investment-Grade Energy Audit contract (signed)
- f) Guaranteed Utility Savings Contract (signed)
- g) EPC Annual Report for Energy Performance Contracting Project (all years to present through term of Guaranteed Utility Savings Contract)

### **5.0 APPENDICES / ATTACHMENTS / FORMS**

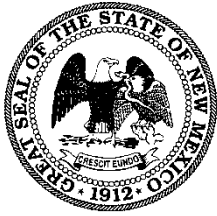
- Form A: EPC Project Application and Commitment for Energy Performance Contracting.
- Form B: EPC Annual Report for Energy Performance Contracting Project (*pending development by ECMD*).
- *Levels of Effort*, pages 3-5, ASHRAE Procedures for Commercial Building Energy Audits



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- Form A: EPC Application and Commitment for Energy Performance Contracting (*pending development by ECMD*).
- Form B: EPC Annual Report for Energy Performance Contracting Project (*pending development by ECMD*).

Levels of Effort, pages 3-5, ASHRAE Procedures for Commercial Building Energy Audits



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# LEVELS of Effort

## OVERVIEW

A commercial building energy analysis can generally be classified into the following three levels of effort:

- Level 1—Walk-Through Analysis
- Level 2—Energy Survey Analysis
- Level 3—Detailed Analysis of Capital Intensive Modifications

In addition, there is a Preliminary Energy-Use Analysis (PEA), which is a prerequisite for any audit, and there are targeted audits, which do not have a strictly defined level of effort but may be useful or necessary for some situations.

This section contains a brief overview of the PEA, each audit level, and targeted audits. More rigorous definitions for each level also follow in this section.

## PRELIMINARY ENERGY-USE ANALYSIS (PEA)

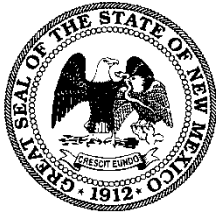
The PEA precedes an audit of the building. During the PEA the analyst analyzes the historic utility use, peak demand, and cost; develops the Energy Cost Index (ECI) of the building (expressed in dollars per floor area per year); and develops the Energy Utilization Index (EUI) of the building (expressed in kBtu/ft<sup>2</sup> [MJ/m<sup>2</sup>] per year). The analyst then compares the building EUI to similar buildings' EUIs to assess the potential for improved energy performance and to determine whether further engineering study and analyses are likely to produce significant energy savings. Monthly energy use and peak demand or, if available, interval billing data (such as 15 minute data), are reviewed to identify efficiency or behavioral modification opportunities.

Use the PEA Template found in Part 3 to assist with developing and comparing the ECI and EUI and analyzing monthly energy use.

A PEA provides necessary background data for Levels 1, 2, or 3 analyses.

## LEVEL 1—WALK-THROUGH SURVEY

First, the building's energy cost and efficiency are assessed by analyzing energy bills, compiled in the PEA, and conducting a brief on-site survey of the building. A Level 1 energy survey will identify low-cost/no-cost measures for



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PROCEDURES FOR COMMERCIAL BUILDING ENERGY AUDITS, SECOND EDITION

improving energy efficiency and provide a listing of potential capital improvements that merit further consideration. Because calculations at this level are minimal, savings and costs are approximate.

A Level 1 analysis is applicable when the desire is to establish the general energy savings potential of a building or to establish which buildings in a portfolio have the greatest potential savings. Level 1 results can be used to develop a priority list for conducting Level 2 and 3 audits.

## LEVEL 2—ENERGY SURVEY AND ANALYSIS

A Level 2 audit involves a more detailed building survey, including energy consumption and peak demand analysis. A breakdown of energy end uses within the building is developed.

A Level 2 energy analysis will identify and provide the savings and cost analyses of all practical energy efficiency measures (EEMs) that meet the owner's/operator's constraints and economic criteria, along with proposed changes to operation and maintenance (O&M) procedures. It may also provide a listing of potential capital-intensive improvements that require more thorough data collection and engineering analysis as well as an assessment of potential costs and savings. This level of analysis will provide adequate information for the owner/operator to act upon recommendations for most buildings and for most measures.

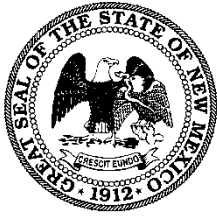
## LEVEL 3—DETAILED ANALYSIS OF CAPITAL-INTENSIVE MODIFICATIONS

The third level of engineering analysis focuses on potential capital-intensive projects identified during a Level 2 analysis. It requires more detailed field data gathering as well as more rigorous engineering and economic analyses, often including modeling (simulation) of the annual energy performance of the building and vendor pricing. It provides detailed project cost and savings calculations with a high level of confidence sufficient for major capital investment decisions. It often goes beyond the economic analysis of a Level 2 audit and uses a comprehensive life-cycle cost analysis (LCCA) as a decision-making tool.

## TARGETED AUDITS

A targeted audit is an investigation with a limited scope, typically a single energy-using system, central plant, or area of the building. Some examples include lighting-only audits, cooling tower replacements, boiler control assessments, and tenant improvement projects.

A targeted audit will identify and provide savings and cost analyses for retrofits and control strategy improvements for the systems of interest. The level of effort may be tailored to the needs of the facility. Because the audit is limited to a portion of the building, whole-building approaches such as end-use allocation and comparisons with historical utility bills cannot be used to provide a check on analytical methods. Similarly, whole-building simulation is typically not a cost-effective approach except for large systems. For this reason, targeted audits rely on measurements, data logging, and trend data to provide a check on the energy use estimates in the base case.



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Levels of Effort

## Discussion

There are not sharp boundaries between these levels. The levels are general categories for identifying the type of information that can be expected and an indication of the level of confidence in the results. While performing an energy analysis in a particular building, various measures may be subjected to different levels of analysis based on their savings potential or expected implementation costs.

The matrix presented in Table 1 is a general representation of the tasks required for each level of effort.

**Table 1 — ENERGY AUDIT REQUIRED TASKS**

Process	Level		
	1	2	3
Conduct PEA	•	•	•
Conduct walk-through survey	•	•	•
Identify low-cost/no-cost recommendations	•	•	•
Identify capital improvements	•	•	•
Review mechanical and electrical (M&E) design and condition and O&M practices		•	•
Measure key parameters		•	•
Analyze capital measures (savings and costs, including interactions)		•	•
Meet with owner/operators to review recommendations		•	•
Conduct additional testing/monitoring			•
Perform detailed system modeling			•
Provide schematic layouts for recommendations			•
Report	Level		
	1	2	3
Estimate savings from utility rate change	•	•	•
Compare EUI to EUIs of similar sites	•	•	•
Summarize utility data	•	•	•
Estimate savings if EUI were to meet target	•	•	•
Estimate low-cost/no-cost savings		•	•
Calculate detailed end-use breakdown		•	•
Estimate capital project costs and savings		•	•
Complete building description and equipment inventory		•	•
Document general description of considered measures		•	•
Recommend measurement and verification (M&V) method		•	•
Perform financial analysis of recommended EEMs		•	•
Write detailed description of recommended measures			•
Compile detailed EEM cost estimates			•

**APPENDIX Q**

**PUBLIC FACILITY ENERGY EFFICIENCY AND  
WATER CONSERVATION ACT**

## **6-23-6.1. Reporting and retention of utility cost savings for state agencies.**

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, that estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

- (1) the name or description of each facility or major utility system covered by the report;
- (2) utility account numbers;
- (3) a record of monthly consumption of water or energy by fuel type; and
- (4) a record of monthly per-unit cost of water or energy by fuel type.

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than twenty-five years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

- (1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;
- (2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and
- (3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or twenty-five years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district.

**History:** 1978 Comp., § 6-23-6.1, enacted by [Laws 1997, ch. 42, § 7](#); [1999, ch. 257, § 3](#); [2001, ch. 247, § 6](#); [2009, ch. 138, § 3](#).

#### ANNOTATIONS

**The 2009 amendment**, effective July 1, 2009, in Subsection C, changed "ten" to "twenty-five".

**The 2001 amendment**, effective June 15, 2001, substituted "water or energy by fuel type" for "water, energy by fuel type, or both" in Subsections A(3) and (4); in Subsection B, inserted "cost savings" following "shows a utility", deleted "operating" preceding "cost savings at the end", inserted "and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract", and substituted "the utility cost savings or conservation-related cost" for "the energy, water or conservation-related operating cost"; substituted "energy or water conservation" for "utility cost savings and conservation-related operating costs" in Subsection C; in Subsection E, substituted "utility cost savings" for "energy, water", deleted "operating" following "conservation-related", deleted "or both" following "water conservation measures" in Subsections E (1) and (2), substituted "appropriate fund" for "general fund" at the end of Subsection E(2); and deleted "eligible to receive income from lands granted for the use of certain institutions and deposited in income funds pursuant to Section 19-1-17 NMSA 1978" following "New Mexico" in Subsection F.

**The 1999 amendment**, effective June 18, 1999, in Subsection B deleted "the department of finance and administration shall carry forward" following "line item", and inserted "shall be carried over", and in Subsection E inserted "or for payment of guaranteed utility savings contracts" in Paragraphs (1) and (2).

### **6-23-7. Public school utility conservation fund created; use.**

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the secretary of public education shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Section [22-8-25 NMSA 1978](#) and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the public education department solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the secretary of public education that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act.

E. The secretary of public education shall submit to the legislative finance committee and the legislative education study committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund.

**History:** [Laws 1993, ch. 231, § 7](#); [1997, ch. 42, § 8](#); [2001, ch. 247, § 7](#); [2021, ch. 52, § 2](#).

#### **ANNOTATIONS**

**The 2021 amendment**, effective July 1, 2021, substituted "superintendent of public instruction" with "secretary of public education", and required the secretary of public education to submit to the legislative education study committee, prior to each regular legislative session, a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year; in Subsection B, substituted

"superintendent of public instruction" with "secretary of public education" throughout, and after "distribution of school districts pursuant to", deleted "Paragraph (7) of Subsection D of"; and in Subsection E, after "legislative finance committee", added "and the legislative education study committee".

**The 2001 amendment**, effective June 15, 2001, substituted "distribution" for "income" in Subsection A; in Subsection B, updated the internal reference and substituted "Distributions" for "Income"; deleted "or both" following "conservation measures" in Subsection C; and substituted "Public Facility" for "Public Building" in Subsection D.

**The 1997 amendment**, effective June 20, 1997, substituted "utility" for "energy" throughout the section; substituted "utility conservation" for "energy efficiency" throughout the section and in the section heading; made stylistic changes in Subsection B; in Subsection C, inserted "or water" and inserted "or both"; and inserted "and Water Conservation" in Subsection D.

### **6-23-8. Municipalities; use of certain revenues authorized.**

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge utility cost savings, conservation-related cost savings or any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality pursuant to Section 7-1-6.4 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality.

**History:** Laws 1993, ch. 231, § 8; 1997, ch. 42, § 9; 2001, ch. 247, § 8.

#### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, inserted "or resolution" following "ordinance" in the first and second sentences; and inserted "utility cost savings, conservation-related cost savings or" in the first sentence.

**The 1997 amendment**, effective June 20, 1997, substituted "utility" for "energy" throughout the section and deleted "Subsections A and E of" preceding "Section 7-1-6.12 NMSA 1978" in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes - modern cases, 58 A.L.R.5th 187.

### **6-23-9. Counties; use of certain revenues authorized.**

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge utility cost savings, conservation-related cost savings or any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county.

**History:** Laws 1993, ch. 231, § 9; 1997, ch. 42, § 10; 2001, ch. 247, § 9.

#### ANNOTATIONS

**The 2001 amendment**, effective June 15, 2001, inserted "or resolution" following "ordinance" in the first and second sentences; and inserted "utility cost savings, conservation-related cost savings or" in the first sentence.

**The 1997 amendment**, effective June 20, 1997, substituted "utility" for "energy" throughout the section and deleted "Subsection B of" preceding "Section 7-1-6.13 NMSA 1978" in the first sentence.

### **6-23-10. State institutions and buildings; use of certain revenues authorized.**

Resulting utility cost savings and conservation-related cost savings, income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 or special funds of institutions may be appropriated and pledged for payments pursuant to a guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act. Money appropriated for that purpose shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

**History:** Laws 1993, ch. 231, § 10; 1997, ch. 42, § 11; 1999, ch. 257, § 4; 2001, ch. 247, § 10; 2009, ch. 138, § 4.

## ANNOTATIONS

**The 2009 amendment**, effective July 1, 2009, at the beginning of the section, added "Resulting utility cost savings and conservation-related cost savings"; and deleted former Subsection D, which provided for the pledge of resulting utility cost savings or conservation-related cost savings for payment under a contract.

**The 2001 amendment**, effective June 15, 2001, inserted the Subsection A designation and added Subsection B; in Subsection A, substituted "Public Facility" for "Public Building" in two places and inserted "except as provided in Subsection B of this section".

**The 1999 amendment**, effective June 18, 1999, inserted "and special funds of institutions" preceding "may be" and substituted "pledged for" for "used to make such" near the end of the section.

**The 1997 amendment**, effective June 20, 1997, in the first sentence, substituted "utility" for "energy" and inserted "and Water Conservation", and in the second sentence, inserted "pursuant" and inserted "and Water Conservation".

**APPENDIX R**  
**ENERGY EFFICIENCY STANDARDS FOR PUBLIC**  
**BUILDINGS**

## **15-3-36. Energy efficiency standards for public buildings.**

A. As used in this section:

- (1) "department" means the energy, minerals and natural resources department;
- (2) "new building" means a building to be constructed that is designed with a square footage of three thousand or more square feet;
- (3) "selected building addition" means an addition to a building that increases the square footage of the building by three thousand or more square feet; and
- (4) "selected building renovation" means a renovation of a building that includes upgrade or replacement of at least two of the following:
  - (a) heating, ventilation and air conditioning systems;
  - (b) electrical systems, including lighting systems; and
  - (c) the components that separate the interior and the exterior environments of a building and serve to protect the indoor environment and facilitate climate control.

B. Except as provided in Subsection C of this section, a new building, selected building addition or selected building renovation that is financed to any extent with legislative appropriations of state general fund revenues, severance tax bond proceeds, supplemental severance tax bond proceeds or state general obligation bond proceeds shall be designed and constructed to attain the energy star qualification of the United States environmental protection agency, or an alternative, equivalent standard specified by rule of the department.

C. The requirements of this section do not apply to:

- (1) a new building, a selected building addition or a selected building renovation for which the initial legislative appropriation is made prior to January 1, 2011;
- (2) a new building, a selected building addition or a selected building renovation for which, in the department's opinion, substantial design expenditures have been made prior to July 1, 2010;
- (3) a selected building addition to an existing building or a selected building renovation to an existing building if the existing building is listed in the state register of cultural properties of the national register of historic places; or
- (4) a new building, selected building addition or selected building renovation if the department determines that the costs of compliance with the requirements of this

section would exceed the estimated life-cycle savings of the building, addition or renovation.

**History:** [Laws 2010, ch. 73, § 1.](#)

**APPENDIX S**

**ASHRAE PROCEDURES FOR ENERGY AUDITS**

# LEVELS OF EFFORT

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## OVERVIEW

A commercial building energy analysis can generally be classified into the following three levels of effort:

- Level 1—Walk-Through Analysis
- Level 2—Energy Survey Analysis
- Level 3—Detailed Analysis of Capital Intensive Modifications

In addition, there is a Preliminary Energy-Use Analysis (PEA), which is a prerequisite for any audit, and there are targeted audits, which do not have a strictly defined level of effort but may be useful or necessary for some situations.

This section contains a brief overview of the PEA, each audit level, and targeted audits. More rigorous definitions for each level also follow in this section.

## PRELIMINARY ENERGY-USE ANALYSIS (PEA)

The PEA precedes an audit of the building. During the PEA the analyst analyzes the historic utility use, peak demand, and cost; develops the Energy Cost Index (ECI) of the building (expressed in dollars per floor area per year); and develops the Energy Utilization Index (EUI) of the building (expressed in kBtu/ft<sup>2</sup> [MJ/m<sup>2</sup>] per year). The analyst then compares the building EUI to similar buildings' EUIs to assess the potential for improved energy performance and to determine whether further engineering study and analyses are likely to produce significant energy savings. Monthly energy use and peak demand or, if available, interval billing data (such as 15 minute data), are reviewed to identify efficiency or behavioral modification opportunities.

Use the PEA Template found in Part 3 to assist with developing and comparing the ECI and EUI and analyzing monthly energy use.

A PEA provides necessary background data for Levels 1, 2, or 3 analyses.

## LEVEL 1—WALK-THROUGH SURVEY

First, the building's energy cost and efficiency are assessed by analyzing energy bills, compiled in the PEA, and conducting a brief on-site survey of the building. A Level 1 energy survey will identify low-cost/no-cost measures for

improving energy efficiency and provide a listing of potential capital improvements that merit further consideration. Because calculations at this level are minimal, savings and costs are approximate.

A Level 1 analysis is applicable when the desire is to establish the general energy savings potential of a building or to establish which buildings in a portfolio have the greatest potential savings. Level 1 results can be used to develop a priority list for conducting Level 2 and 3 audits.

## LEVEL 2—ENERGY SURVEY AND ANALYSIS

A Level 2 audit involves a more detailed building survey, including energy consumption and peak demand analysis. A breakdown of energy end uses within the building is developed.

A Level 2 energy analysis will identify and provide the savings and cost analyses of all practical energy efficiency measures (EEMs) that meet the owner's/operator's constraints and economic criteria, along with proposed changes to operation and maintenance (O&M) procedures. It may also provide a listing of potential capital-intensive improvements that require more thorough data collection and engineering analysis as well as an assessment of potential costs and savings. This level of analysis will provide adequate information for the owner/operator to act upon recommendations for most buildings and for most measures.

## LEVEL 3—DETAILED ANALYSIS OF CAPITAL-INTENSIVE MODIFICATIONS

The third level of engineering analysis focuses on potential capital-intensive projects identified during a Level 2 analysis. It requires more detailed field data gathering as well as more rigorous engineering and economic analyses, often including modeling (simulation) of the annual energy performance of the building and vendor pricing. It provides detailed project cost and savings calculations with a high level of confidence sufficient for major capital investment decisions. It often goes beyond the economic analysis of a Level 2 audit and uses a comprehensive life-cycle cost analysis (LCCA) as a decision-making tool.

## TARGETED AUDITS

A targeted audit is an investigation with a limited scope, typically a single energy-using system, central plant, or area of the building. Some examples include lighting-only audits, cooling tower replacements, boiler control assessments, and tenant improvement projects.

A targeted audit will identify and provide savings and cost analyses for retrofits and control strategy improvements for the systems of interest. The level of effort may be tailored to the needs of the facility. Because the audit is limited to a portion of the building, whole-building approaches such as end-use allocation and comparisons with historical utility bills cannot be used to provide a check on analytical methods. Similarly, whole-building simulation is typically not a cost-effective approach except for large systems. For this reason, targeted audits rely on measurements, data logging, and trend data to provide a check on the energy use estimates in the base case.

## Discussion

There are not sharp boundaries between these levels. The levels are general categories for identifying the type of information that can be expected and an indication of the level of confidence in the results. While performing an energy analysis in a particular building, various measures may be subjected to different levels of analysis based on their savings potential or expected implementation costs.

The matrix presented in Table 1 is a general representation of the tasks required for each level of effort.

TABLE 1 — ENERGY AUDIT REQUIRED TASKS

Process	Level		
	1	2	3
Conduct PEA	•	•	•
Conduct walk-through survey	•	•	•
Identify low-cost/no-cost recommendations	•	•	•
Identify capital improvements	•	•	•
Review mechanical and electrical (M&E) design and condition and O&M practices		•	•
Measure key parameters		•	•
Analyze capital measures (savings and costs, including interactions)		•	•
Meet with owner/operators to review recommendations		•	•
Conduct additional testing/monitoring			•
Perform detailed system modeling			•
Provide schematic layouts for recommendations			•
Report	Level		
	1	2	3
Estimate savings from utility rate change	•	•	•
Compare EUI to EUIs of similar sites	•	•	•
Summarize utility data	•	•	•
Estimate savings if EUI were to meet target	•	•	•
Estimate low-cost/no-cost savings		•	•
Calculate detailed end-use breakdown		•	•
Estimate capital project costs and savings		•	•
Complete building description and equipment inventory		•	•
Document general description of considered measures		•	•
Recommend measurement and verification (M&V) method		•	•
Perform financial analysis of recommended EEMs		•	•
Write detailed description of recommended measures			•
Compile detailed EEM cost estimates			•

**APPENDIX T**  
**EPC COMMITMENT FORM**

**EPC Project Application and Commitment for Energy Performance Contracting Form**

**Applicant information**

Name of Agency/public entity:		
Name of authorized representative		
Mailing address:		
County:	DUNS number:	Federal tax ID number:
Telephone:	Fax:	E-mail:

**Staff contact information**

Name/title:		
Address:		
Telephone:	Fax:	E-mail:

**Feasibility and readiness**

Is the Agency a tenant of GSD?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, has the Agency contacted GSD in regards to EPC?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

**ECMD WILL VERIFY THAT THE TENANT-AGENCY HAS CONTACTED GSD AND RECEIVED PERMISSION TO MOVE FORWARD WITH THE EPC PROCESS.**

Has the Agency contacted an Energy Service Company (ESCO)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, does this ESCO have a Statewide Price Agreement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the Agency know how long of a contract they are targeting?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, how long?	Years	
Does the Agency know how much they are willing to finance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, how much?	\$	
Does the Agency currently have other EPCs?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If yes, please provide the facilities, contract date/length, and contract amounts below.

Facility	Date/Length	Contract Amount
		\$
		\$
		\$
		\$
		\$

**If more spaces are needed, leave this list blank and attach a sheet with ALL ongoing EPCs with the same information (facility, date/length, contract amount).**

**EPC Project Application and Commitment for Energy Performance Contracting Form**

**Summary of energy-related need:** (Briefly describe the need that is being addressed)

--

**Facility to be audited:**

Facility name:

--

Facility location:

--

Floor area (sq. ft.):

--

Electricity

Meter shared with another facility, building, or end use?

Yes

No

Propane

Meter shared with another facility, building, or end use?

Yes

No

Natural gas

Meter shared with another facility, building, or end use?

Yes

No

Other:

If other, please specify type:

--	--	--	--

Meter shared with another facility, building, or end use?

Yes

No

**Energy Star rating:**

Does the facility have a minimum of one year's utility data entered in Portfolio Manager?

Yes

No

Facility's Energy Star rating (if available):

--

**EPC Project Application and Commitment for Energy Performance Contracting Form**

**Certifications:**

By signing this application, below, Applicant certifies that:

- (1) Applicant agrees to provide portfolio manager utility data for a minimum of one (1) year prior to project implementation and also to maintain the utility data in portfolio manager for the life of the Guaranteed Utility Savings Contract.
- (2) Applicant commits to signing the Guaranteed Utility Savings Contract and therefore implementing the recommended energy conservation measures proposed by the selected ESCO.
- (3) Applicant shall use no federal appropriated funds to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (4) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any agreement which may result from this this federally-funded RFA, Applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" to EMNRD with Applicant's completed application.
- (5) Applicant shall not use funds received through any contract issued pursuant to this RFA to supplant funds that it may have at its disposal.

**Signature:**

I, the Applicant's undersigned authorized representative, certify that I am authorized to file this application for Energy Performance Contracting and the use of an ESCO. I additionally certify that the information contained herein is true, correct, and complete to the best of my knowledge and belief, and that the Applicant shall adhere to all federal and state requirements.

**Authorized signature:**

**Date:**

**Printed name and title**