

## **Energy Savings Performance Contract (ESPC) Timeline/Instructions to users**

**Pre-Qualified List of Vendors:** A list of energy service contractors/companies (ESCOs) has been established based on a qualification process that included their ability to be bonded, experience in providing services on similar contracts, references, judgements, claims and viability to support this program for the Commonwealth of Virginia.

**THIS REQUEST DOES NOT REQUIRE ANY PUBLIC POSTING OR POSTING ON EVA.**

### **1. Contracting Agency/Public Body makes decision to potentially use ESPC.**

- In consultation with Virginia Energy, the contracting Agency/Public Body determines whether there is a viable ESPC project available based upon Agency/Public Body needs, energy use, utility budget and/or available funds.

### **2. Back of Envelope (BOE) Phase: 3-6 months**

- A. The BOE is the first step of the ESPC process. It is a high-level audit of a few buildings to determine if there is a viable project and to select the Energy Services Company (ESCO) to be your energy partner. There are several important considerations, including an understanding of a few next steps in the ESPC process, which are factors in a decision to proceed with the BOE:
  - The Intent is to select a partner not a project.
  - If you move forward, you can perform the Investment Grade Audit (IGA) on additional facilities. One cannot manage what is unknown. This detailed audit allows the Agency/Public Body to appreciate and prioritize from a full range of scope that could be accomplished in a project and which meet the requirements of the Virginia Code for ESPC
  - A larger project allows the leveraging of utility and operational savings (avoided costs) for infrastructure upgrades. When items are bundled together in a larger project the quick payback item will fund the long-term payback items to produce a project that pays for itself within the 15-year term of the contract. (For state agencies, 15 years is the maximum financing term. Localities may be able to finance for up to 20 years.)
  - The final project selection comes at the end of the IGA phase where the performance numbers will be fixed, guaranteed, and bonded.
- B. Virginia Department of Energy (Virginia Energy) works with Agency/Public Body to begin the Request for Qualifications (RFQ) to select a minimum of 5 Energy Services Companies (ESCOs) to use for the Back of the Envelope (BOE) process.
- C. Virginia Energy and Agency/Public Body hold initial meeting to discuss the ESPC process.
- D. Virginia Energy reinforces the current contract requirements (i.e., state agencies must use the CO7DB, energy special terms and conditions, CO9DB, etc., which cannot be modified without DGS' prior approval).
- E. Agency/Public Body selects one or more facilities to include in the BOE.
- F. Virginia Energy works with the Agency/Public Body to gather 3 years of utility bills for the building/s included in the RFQ or BOE.
- G. Agency/Public Body fills out Facility Information worksheet (See item I in ESPC Forms & Templates Packet) to support the ESCO in their BOE submittal.
- H. Agency/Public Body fills out BOE facility Info document. (See item J in ESPC Forms & Templates Packet) to be sent to ESCOs with the RFQ or RFP.
- I. Virginia Energy provides customer with list of **ALL** pre-qualified ESCOs (See item C in ESPC Forms & Templates Packet)
- J. Agency/Public Body sends the RFQ document (item B. in ESPC Forms & Templates Packet) to all prequalified ESCOs with a deadline for submission

- K. Based upon the RFQ responses and scoring/evaluation using the ESPC Evaluation Matrix (item D. in ESPC Forms & Templates), customer selects a minimum of 5 pre-qualified ESCOs to participate in the BOE process.
- L. Selected pre-qualified ESCOs are invited to the mandatory pre-proposal conference (item P below)
- M. In the event any ESCOs decide not to pursue the BOE, the Agency/Public Body reserves the right to go back to the pool of ESCOs and invite additional ESCO/ESCOs to the mandatory pre-proposal conference
- N. Invitation to mandatory BOE pre-proposal conference with ESCOs. (See item E in ESPC Forms and Templates Packet)
- O. Agency/Public Body identifies selection committee members & establishes selection criteria.
- P. Mandatory pre-proposal conference with ESCOs.
- Q. Info is shared, "ground rules" are established (see item F in ESPC Forms & Templates Packet)
- R. Due date for ESCO submission of BOE is agreed upon.
- S. After the mandatory pre-proposal meeting the official RFP (see item H in ESPC Forms and Templates Packet) is sent electronically to all pre-qualified ESCOs selected to participate in the BOE process for this project.
- T. ESCOs perform independent site surveys of facilities as part of the BOE.
- U. ESCOs submit completed BOE to Agency/Public Body on agreed upon due date.
- V. Virginia Energy & Agency/Public Body review the **written** BOE submittals prior to oral presentations. Agency/Public Body score proposal submissions using (Item L) according to scoring criteria (Item K). (See items K & L in ESPC Forms and Templates Packet)
- W. Agency/Public Body select ESCOs for the BOE proposal presentations.
- X. Dates are set for each ESCO to present their findings.
- Y. Oral presentations of BOEs are given by each participating ESCO to selection committee and Virginia Energy.
- Z. Agency/Public Body selection committee, scores the **oral** presentations (See item L in ESPC Forms and Templates Packet) and makes decision on which ESCO(s) to negotiate with
- AA. The State Contract states that the Agency/Public Body shall negotiate with 2 or more ESCOs unless 1 ESCO is deemed to be more qualified than the other ESCOs.
- BB. Agency/Public Body and Virginia Energy meets with selected ESCO(s) to negotiate.
- CC. Items include overhead and profit rates, Investment Grade Audit (IGA) audit fee, open book pricing, how contingency will be managed, firm fixed pricing with no change orders, etc. Virginia Energy will furnish the Agency/Public Body a list of commonly asked questions used during this process. (See item M in ESPC Forms and Templates Packet). The investment grade audit shall not be accepted at no cost.
- DD. If Agency/Public Body and ESCO come to terms, a Memorandum of Understanding (MOU) (See item N in ESPC Forms and Templates Packet) is completed by the ESCO and sent to the Agency/Public Body for review and signature.
- EE. If Agency/Public Body cannot come to terms with selected ESCO it has the option to begin negotiations with the next ESCO

### 3. MOU/IGA Phase (4 to 8 months depending upon scope)

- A. MOU is signed by Agency/Public Body and ESCO begins IGA.
- B. For state agencies only, Virginia Energy sends email to Treasury, Agency/Public Body DBP rep, & DGS informing them that the agency has begun the IGA.
- C. Virginia Energy works with Agency/Public Body through the IGA to review the Energy Conservation Measures (ECMs)/Facility Improvement Measures (FIMS) as they are developed to ensure they are technically sound and reasonable.
  - IGA is completed with concurrent scope development by Agency/Public Body (\$ down, ECMS, FIMS, etc.)

- D. For state agencies, DPB will review the proposed project if: (i) the total costs to the owner exceeds \$3 million and does not exceed \$7 million and the energy savings do not offset the total costs to the owner, or (ii) the total costs to the owner exceed \$7 million and forward to the Governor’s office for approval.)
- E. For state agencies, Virginia Energy sends the proposed project Energy Conservation Measures (ECMS) to DGS for review of code compliance & permitting.
  - Approximately \$2,000-\$5,000
  - 21-day maximum turnaround
- F. For state agencies, ESCO corrects any issues DGS finds in their code/permitting review.
  - Agency/Public Body determines whether to move forward to a design build contract (i.e., CO9DB) to execute the proposed scope; if so, then proceed with the process outlined below; if not, then Agency/Public Body pays ESCO for the IGA and the process is concluded.
- G. Documents finalized to include:
  - Proposed Contract (i.e., CO9DB) and all required attachments
  - ECM breakout
  - Financial pro forma
- H. All final documents are sent to Virginia Energy and to DPB if the project meets the criteria to be treated as a capital project (See paragraph D above).
  - Project must be cash flow neutral or positive each year for the term of the contract.
    - a. Agency/Public Body may be able to “buy down” projects that do not fully fund themselves via energy savings with funds from operating budgets.
- I. For state agencies, when Virginia Energy approves project, Virginia Energy sends a copy of the approval letter to the Agency/Public Body, Treasury, & DPB

**4. Contract (i.e., CO9DB) and Design/Construction Implementation Phase (8 to 18 months depending on scope) \*Items A-I in bold are for state agencies only.**

- A. Upon OAG approval of the payment and performance bonds for the construction effort (See forms V & W in ESPC Forms and Templates Packet) & the Virginia Energy approval letter, the Agency/Public Body signs the contract (i.e., CO9DB) with the ESCO. OAG review of the bonds is always required; OAG review of the contract is at the Agency/Public Body’s discretion.**
- B. Required documents are sent to Treasury (see items S, T, & approved OAG forms V & W) in Forms & Templates Packet)**
- C. Treasury approves financing and locks in interest rates.**
  - **ESCO has been monitoring the rates and making necessary changes to ensure the project will cash flow as required by code.**
- D. After Treasury approves financing, Agency/Public Body issues a notice to proceed (NTP).**
- E. Once ESCO receives notice to proceed, the ESCO produces any engineered drawings, permits, etc.**
- F. Agency Director notifies Director of DPB that the Agency/Public Body has entered an ESPC over \$250,000.**
- G. ESCO begins work except for any ECMS that require further review by DGS or by the local building official (i.e., for any construction which requires a building permit)**
- H. Agency/Public Body has DGS perform a final review of any ECMS that require their review for code compliance, safety & permitting. The cost for the DGS or local building code review is covered by energy savings.**
- I. After receiving a Building Permit from the State Building Official (state agencies) or the applicable local building official (for any construction requiring a building permit), ESCO will then begin work on the additional ECMS (item G above)**

- J. Public Bodies perform required reviews and internal approvals, secure financing, bonding, legal reviews, etc. Once all approvals are in place the Public Body will provide the ESCO with a notice to proceed.
- K. Construction of project
- L. Virginia Energy will continue to work with Agency/Public Body during construction if technical assistance is requested.
- M. Following Virginia Energy's initial entry of the ESPC project into the ePB database, ESCO enters all required project data, subject to Virginia Energy approval.

## **5. Measurement & Verification (M&V) Phase (ongoing)**

- A. Following Virginia Energy's initial entry of the ESPC project into the ePB database, ESCO enters all required project data, subject to Virginia Energy approval. The M&V guarantee begins on the first day of the month following substantial completion/owner acceptance. Prior to substantial completion of the construction effort, the ESCO provides guaranteed energy savings bond. Bond is purchased yearly on the anniversary of the guarantee for the term of the contract. ESCO holds reconciliation meeting each year of the contract (Code of VA); agencies/localities have the option to use independent, 3<sup>rd</sup> party measurement and verification, in support of this annual reconciliation. Virginia Energy will attend review and review the M&V for the Agency/Public Body. If shortfall in the guarantee is identified, ESCO writes a check covering the difference to the Agency/Public Body. ESCO makes necessary repairs to correct shortfalls at no cost to Agency/Public Body -- ESCO pays for the work, not the Agency/Public Body. Virginia Energy receives annual reconciliation/M&V reporting for review at the time of delivery to the customer.

## **6. High-risk Contracts (State Agencies)**

### **§ 2.2-4303.01. High-risk contracts; definition; review.**

- A. **For the purposes of this section, "high-risk contract" means any public contract with a state Agency for the procurement of goods, services, insurance, or construction that is anticipated to either (i) cost in excess of \$10 million over the initial term of the contract or (ii) cost in excess of \$5 million over the initial term of the contract and meet at least one of the following criteria: (a) the goods, services, insurance, or construction that is the subject of the contract is being procured by two or more state public bodies; (b) the anticipated term of the initial contract, excluding renewals, is greater than five years; or (c) the state Agency procuring the goods, services, insurance, or construction has not procured similar goods, services, insurance, or construction within the last five years. See Item U.**