Arkansas Energy Performance Contracting Program Manual

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ARKANSAS
Economic Development Commission
ENERGY OFFICE

About this Document

This document was developed by the Arkansas Economic Development Commission – Energy Office to describe the procedures and standards of the Arkansas Energy Performance Contracting Program. This document will be updated regularly and available on the AEO website.

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- *The Arkansas Energy Performance Contracting Stakeholders Group*
- *The Arkansas Chapter of the Advanced Energy Economy*
- *The Program Managers of Energy Performance Contracting programs in the states of Georgia, Colorado, Mississippi, Washington, and several others.*
- *The Energy Services Coalition*

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1. Arkansas Energy Performance Contracting Program (AEPC Program)

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

1.1 What is Energy Performance Contracting?

Many facility owners are not able to complete efficiency improvements due to a lack of time, budget or expertise. Energy performance contracting (EPC) brings all these together in one process.

EPC is a service offered by Energy Service Companies (ESCOs) as a practical way for entities to finance energy and utility saving projects for their facilities. EPC can provide the resources to finance needed capital equipment to improve energy efficiency and comfort in public buildings. The majority of states, the Federal government, and now Arkansas have enacted legislation that authorizes state agencies to use EPCs for implementing facility improvement projects.

EPC is rapidly achieving widespread use by government agencies because it offers a means for overcoming the problems of limited capital budgets, aging and inefficient buildings and equipment, and limited maintenance staff resources. In Arkansas, one of the most attractive and distinguishing features of EPC is that guaranteed energy cost savings create the opportunity for agencies to finance all associated project costs over the life of the contract.

By allowing the energy cost savings to cover project and financing costs, EPC provides agencies with the ability to purchase comprehensive energy improvements (e.g., lighting, heating, air conditioning, and system controls, etc.) and services from Pre-qualified ESCOs.

1.2 What is an ESCO?

An ESCO, or Energy Services Company, is a business that develops, installs, and arranges financing for projects designed to improve the energy efficiency and maintenance costs for facilities for a period of up to twenty years. ESCOs generally act as project developers for a wide range of tasks and assume the technical and performance risk associated with the project. Typically, they offer the following services:

- develop, design, and help identify or arrange financing for energy efficiency projects;
- install and commission the energy efficient equipment involved;
- measure, monitor, and verify the project's energy savings; and
- assume the risk that the project will save the amount of energy guaranteed.

These services are bundled into the project's cost and are repaid through the dollar savings generated. EPC projects are comprehensive, which means that the ESCO employs a wide array of cost effective measures to achieve energy savings. These measures often include the following: high efficiency lighting, high efficiency heating and air conditioning, efficient motors and variable speed drives, and centralized energy management systems.

What sets ESCOs apart from other firms that offer energy efficiency, like consulting firms and equipment contractors, is the concept of performance-based contracting. When an ESCO undertakes a project, the company's compensation, and often the project's financing, is directly linked to the amount of energy that is actually saved.

1.3 Definitions

ABA **Arkansas Building Authority**	Arkansas Building Authority (ABA) has the responsibility for the review of design plans, bidding and awarding of capital improvement contracts for Agencies and some higher education institutions, as well as accessibility review of new construction for K-12 schools. ABA is the leasing agency for Agency, boards and commissions and reviews several Agency transfers of properties. ABA owns several facilities located in Pulaski and Sebastian counties.
AEO **Arkansas Economic Development Commission - Energy Office**	A division of the Arkansas Economic Development Commission and administrator of the Arkansas Energy Performance Contracting Program.
AEPC **Arkansas Energy Performance Contracting Program**	Which includes: Program Rules, Guidelines, Standards, and Standard Documents in this Manual to be used by Agencies and Qualified Providers under Act 554 of 2013, The Guaranteed Energy Cost Savings Act, as amended. Agency includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54.
Agency	Means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state of Arkansas supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of 19-11-203.
Debt Service	The financing instrument(s), (i.e. bond, lease-purchase, capital lease, state revolving loan fund, or combination thereof, etc.) that is used to finance the costs associated with the development and installation of the energy efficiency project through the use of an EPC. Arkansas state legislation allows up to a 20-year finance period.
ECM **Energy Cost Savings Measure**	1. A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that; a) Do not degrade the level of service or working conditions b) Are measurable and verifiable under the International Performance and Verification Protocol, as adopted by the Arkansas Energy Office in the rules required under 19-11-1207; and c) Are measured and verified by an audit performed by a qualified provider. 2. An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivision 1(A)(i)(a) and (b) of 19-11-1202.

EPC **Energy Performance Contract**	Also known as a Guaranteed Energy Cost Savings Contract. A contract for the implementation of one (1) or more energy cost savings measures and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term. Key Provisions for EPC for Arkansas Agencies (Act 554): Before entering into an EPC, the Agency shall require: The ESCO to file with the Agency a payment and performance bond, or similar assurance as provided under 19-11-235. A guarantee by the ESCO that the energy cost savings and operational cost savings to be realized over the term of the EPC meet or exceed the costs of the project. A guarantee from the ESCO that if the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measures as required by the EPC, the ESCO shall reimburse the Agency for any shortfall of guaranteed savings over the contract term of the EPC. A statement that the Agency shall maintain and operate the energy cost savings measures as defined in the EPC.
EPC Contract Term	An EPC contract may not exceed 20 years from the completion date of the installed project.
IGA **Investment Grade Audit or Energy Audit (also known as an "energy audit")**	The process by which an ESCO evaluates, analyzes, develops and recommends various ECMs for an Agency's facilities. The IGA provides the financial and technical basis for an EPC between the Agency and the ESCO.
IGA Contract **IGA and Project Development Contract**	A contract between the selected ESCO and the Agency for the audit, analysis, and development of a package of ECMs for the Agency to consider implementing under an EPC with the ESCO.
IPMVP **International Performance Measurement and Verification Protocol**	The Energy Efficiency industry's standard guidelines for the periodic measurement and verification (M&V) of energy savings resulting from the installation of energy conservation measures.
M&V **Measurement and Verification**	The methodology, measurements, inspections and mathematical calculations used to determine pre-ECM/Project baseline energy consumption and post-ECM/Project installation energy consumption of an ECM; partial and/or whole facility energy conservation project.
O&M Appropriations **Operations and Maintenance Appropriations**	Agency may utilize operations and maintenance appropriations for the payment (debt service) of equipment and energy cost savings measures required by an EPC.

OSP **Office of State Procurement**	A division of the Arkansas Department of Finance and Administration has the primary responsibility and oversight for the state wide procurement of commodities, technical and professional services for all agencies, boards and commissions and colleges and universities.
Pre-qualified ESCO **Qualified Provider of energy performance contracting services**	An ESCO that has been pre-qualified and certified by the AEO; meeting the requirements set forth in Act 554 and the AEPC program guidelines. Referred to as a Pre-qualified ESCO in the AEPC. Qualified Provider is defined in Act 554 as: A person or business, including all subcontractors and employees of that person or business and third party financing company that: Is properly licensed in the State of Arkansas; Has been reviewed and certified by the Arkansas Energy Office as a qualified provider (ESCO) under this subchapter; Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures; Has at least 5 years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements; and Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors.
RFQ **Request for Qualifications**	The process by which the AEO shall solicit statements of qualifications from firms interested in being pre-qualified and certified by the AEO to provide energy performance contracting services to Arkansas Agencies.
Secondary Selection Process	The process by which the Agency shall conduct oral interviews, evaluate, and select an ESCO from the list of Pre-Qualified ESCOs.
Short-List	The process by which the Agency shall choose no less than three (3) AEO-certified ESCOs for an oral interview prior to making a formal ESCO selection.
SOQ **Statement of Qualifications**	Qualifications to be provided by an ESCO in response to the AEO's RFQ for companies interested in becoming Pre-qualified ESCOs in the AEPC program.

1.4 How the AEPC Program Works

1.4.1 Program Rules and Documents

The AEPC Program includes the following rules and documents:

- AEPC Manual: This document establishes the standards, guidelines and processes for Agencies and ESCOs to follow. The manual provides step-by-step guidance for Agencies and ESCOs to easily navigate the program.
- AEPC Program Documents: This includes standard documents for selecting an ESCO, but is not limited to the ESCO RFQ, Invitation to Interview, and a standard IGA contract, and EPC contract, etc. These documents are required for use on every EPC project for Arkansas State Agencies.
- AEPC List of Pre-Qualified ESCOs

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

1.4.2 AEPC Document List

The current AEPC documents are as follows.

AEPC MAN:	Program Manual
AEPC PQ:	Request for Qualifications to Certify Qualified Providers
AEPC ESCOS:	List of Currently Pre-Qualified ESCOs
AEPC MOU:	Agency's Memorandum of Understanding for Participation (MOU)
AEPC INV:	Agency Invitation to Interview and ESCO for EPC Services
AEPC IGA:	Investment Grade Audit and Project Development Contract (IGA Contract)
AEPC EPC:	Energy Performance Contract (EPC Contract)
AEPC CX:	Commissioning Guidelines
AEPC MV:	Measurement and Verification Guidelines (M&V Guidelines)

1.4.3 AEO Oversight and Administration

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

The AEO's responsibilities include:

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

1.4.4 AEO Administration Fee

Per Act 554, the AEO may collect a reasonable fee for administration of the AEPC Program. This amount will be paid directly by the ESCO. This fee is a cost to the project and is eligible to be financed as part of the total project costs. The ESCO will provide the fee to the AEO within 30 days of receipt of the ESCO's initial or mobilization fee from the Agency.

This pre-determined fee amount and payment structure will be calculated and specified in the EPC Contract in Schedule U.

1.4.5 Key Provisions of the AEPC Program

Key provisions of the AEPC Program are summarized below for easy reference. Refer to other sections in this guide and to the contracts and guidelines for more details.

AEPC Program Key Provisions - At a Glance

- Provides an effective way for Agencies to improve facilities, reduce energy use, with guaranteed cost savings.
- Meets the Arkansas Guaranteed Energy Cost Savings Act, A.C.A. § 19-11-1201
- Applicable to: All Arkansas State Agencies, including Higher Education
- All AEPC projects must use the standard contracts and agreements of the AEPC Program.
- Selection process for Pre-qualified ESCOs: Every five years or more often, AEO will request qualifications from firms. Pre-qualified ESCOs will be certified. Qualifications statements will be posted on AEO website and firms included on the AEPC Pre-qualified ESCO list. Pre-qualified ESCOs agree to use the standard contracts and agreements, adhere to the AEPC Program Manual, and are expected to be reviewed annually.
- Agency selection of an ESCO: Agency develops a short list of three of more Pre-qualified ESCOs, holds a walkthrough and meeting, then interviews and selects one.
- Investment Grade Audit pricing for all AEPC projects uses the fixed per-square-foot prices in the current IGA Contract, but can be negotiated for non-standard facilities.
- The AEPC Program is administered by AEO, which collects a fee for services as specified in the EPC Contract, Schedule U.
- Maximum contract term: 20 years
- Required Measurement & Verification Term: equal to term of EPC Contract.
- Excess savings from one year cannot be applied to make up a shortfall in following years.

2. *Pre-Qualifying ESCOs for the AEPC Program*

Arkansas State Law requires the certification of ESCOs to ensure consistency, quality and protection for Agencies using EPC. This section describes the process of pre-qualifying firms for this program.

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

2.1 Pre-Qualification Process

Figure 1 presents an overview of the process that AEO will use for qualifying and selecting a pool of ESCOs to provide these services to Agencies in the AEPC. AEO will re-qualify providers at a minimum of every five (5) years from the date that the initial RFQ is issued.

Figure 1 – ESCO – Pre-Qualification & Certification Process

2.2 AEPC Program Documents for the ESCO Pre-Qualification Process

The two AEPC Program documents used in this process are:

- *Request for Qualifications (RFQ) to Certify Qualified Providers*
- *List of Pre-Qualified ESCOs*

2.3 Annual ESCO Review Process

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

2.4 ESCO Reporting Requirements

As detailed in this document in **Section 4.3**, ESCOs that participate in the AEPC program are required to provide regular reporting to AEO on the performance of all AEPC projects. This includes submitting signed copies of contracts and reports in a timely manner and regular reporting of performance metrics. The success of the AEPC program hinges on accountability, and thus, ESCOs that fail to comply with the reporting requirements may not be renewed in the program. ESCOs are required to use the eProject Builder tool available at epb-test.lbl.gov. Contact AEO for assistance.

3. Step-by-Step Procedure for AEPC Projects

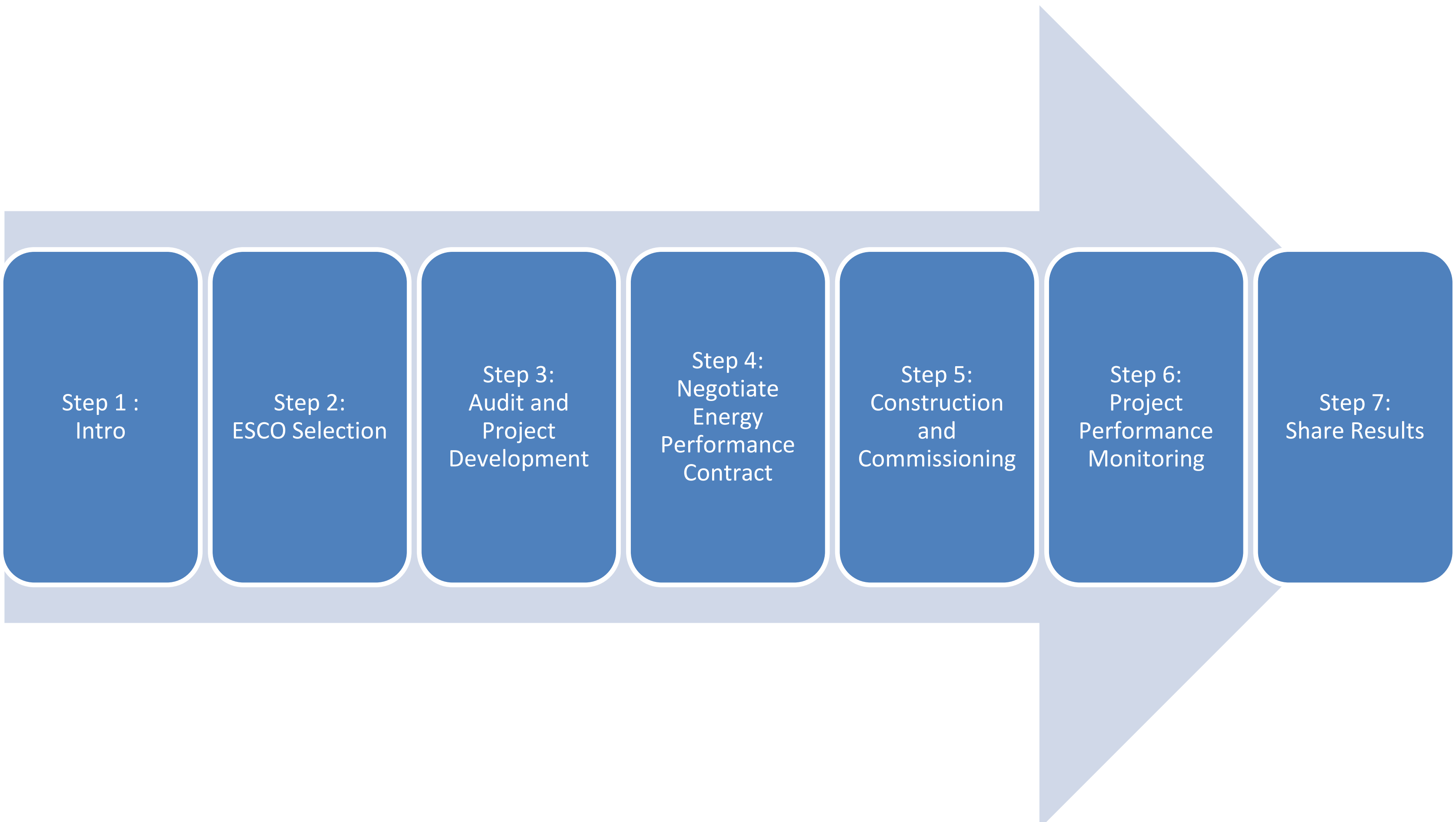
The AEPC Program provides detailed steps and procedures for Agencies to use for developing and implementing an EPC project. This process has been designed to provide a way for Agencies to complete EPC projects successfully, within the framework established by the Guaranteed Energy Cost Savings Act (A.C.A. 19-11-1201 *et seq.).*

Figure 2 illustrates the basic steps of an EPC project in the program. The steps allow an Agency to find out if EPC is a good solution, research options via an audit, negotiate contract scope, schedule and details, finance and construct, and ensure savings are being met.

The EPC process has been widely used for decades. The step-by-step approach allows the Agency and ESCO to investigate and move one step at a time, in a logical way, with decision points along the way.

Refer to **Chapter 4** for a detailed outline of responsibilities of AEO, Agency and ESCO.

Figure 2. The Basic Steps of an EPC Project in the AEPC Program



AEPC Project: Step 1 - Introduction

1a. Pre-screening
Agency does preliminary internal exploration to determine if project is a good fit for EPC based on project size, annual utility bills, comfort or maintenance problems, equipment age, other funding possibilities, and future plans for renovation or retention. AEO assists, as necessary.

1b. Agency signs MOU
Agency signs an *AEPC Agency's Memorandum of Understanding for participation in the Arkansas Energy Performance Contracting Program* (AEPC MOU). The MOU clearly specifies roles and responsibilities of Agency and AEO for cooperation, in a non-legal, non-binding agreement.

1c. AEO signs MOU
AEO signs MOU and begins supporting Agency in the EPC process. AEO forwards applicable MOUs to ABA to provide notice to ABA of future plans and specification submittals. Agencies under ABA's capital improvement oversight shall submit all plans and specifications for review.

1d: Agency explores project potential and learns about EPC
Agency discusses the EPC process and project potential with internal staff, Pre-qualified ESCOs, industry experts, peers, Arkansas Building Authority and/or AEPC Program team.

AEPC Project: Step 2 – Agency selects an ESCO

2a: Agency develops an Invitation to Interview
Agency gathers and organizes information about the facility and proposed project to complete the Facility Information section of the Invitation to Interview. Agency provides thorough utility use and cost history; completed upgrades; plans for renovations or changes; comfort and maintenance issues; capital needs or funds available; desired outcome; and other pertinent details about the proposed project. Agency uses the *AEPC INV: Agency Invitation to Interview an ESCO for EPC Services* (Invitation to Interview).

2b: Agency submits Invitation to Interview to AEO for pre-approval
Agency submits Invitation to Interview to AEO for approval prior to issuing.

2c: Agency develops a short list of ESCOs
Agency reviews qualifications statements of Pre-qualified ESCOs, as posted on the AEO website. Agency forms a Selection Panel to choose three or more Pre-qualified ESCOs to interview.

2d: Agency issues Invitation to Interview to ESCO shortlist
Agency issues AEO-approved Invitation to Interview to the short list of ESCOs.

2e: Agency hosts informational meeting and conducts walkthrough
Agency describes proposed project, reviews the information contained in the Invitation to Interview, conducts walkthrough of appropriate buildings and answers questions.

2f: Agency interviews and evaluates shortlisted ESCOs.
Agency schedules interviews of interested, shortlisted ESCOs. ESCO's interview team must consist of the individuals that will be assigned to this project. ESCOs should be prepared to

present in detail, the following which will be evaluated according to the Arkansas rules and legislation:

(1) Whether the ESCO meets the objectives of the solicitation, including without limitation a reduction in the state agency's energy consumption or operating costs resulting from an EPC with the pre-qualified ESCO;

(2) The qualifications and experience of the ESCO;

a) Provide brief overall company qualifications highlighting length and breadth of experience.

b) Provide project histories and savings results for up to five (5) similar completed EPC projects that have been completed by your firm. All projects must have at least one full year of repayment history.

c) Provide the qualifications and experience of the individuals to be assigned to this project including a clear description of the roles and responsibilities each individual will have for this project if your company is selected.

(3) The technical approach to the energy cost savings measures;

(4) The financial aspects of the energy cost savings measures;

(5) The overall benefit to the state agency; and

(6) Any other relevant factors.

2g: Agency Decision Point! Agency chooses an ESCO or rejects the responses.

After evaluation the interviewees, Agency may:

(1) Agency can decline if none of the proposals are acceptable – no cost to agency; or

(2) Agency selects an ESCO.

2h: Agency negotiates IGA Contract with selected ESCO.

Agency uses the *AEPC Investment Grade Audit and Project Development Contract* (IGA Contract) and negotiates with selected ESCO. All projects in the AEPC program will use the AEPC predefined pricing for Investment Grade Audits, as specified in the current AEPC IGA Contract. Agency and ESCO agree on project scope, including buildings to be audited, total square footage and audit price.

2i: Agency gets AEO approval, prior to signing IGA Contract.

Agency submits IGA Contract to AEO for approval.

2j: Agency and ESCO sign AEO-approved IGA Contract, and submit copy to AEO.

Agency and ESCO sign the IGA Contract. ESCO sends an electronic copy of the fully executed contract to AEO.

AEPC Project: Step 3 – Investment Grade Audit and Project Development

3a: ESCO begins Investment Grade Audit (IGA).

ESCO identifies efficiency opportunities, develops baseline and cost and savings estimates. ESCO and Agency pursue utility rebates, grants, loans and other financing sources.

3b: ESCO presents preliminary findings.

3c: Agency Decision Point! Agency may: Continue or stop here.

Refer to IGA Contract for details.

3d: ESCO completes IGA.
Agency reviews IGA.

3e: Agency submits IGA to AEO for approval prior to acceptance.
Agency submits IGA to AEO.

3f: Agency accepts AEO-approved IGA.
Agency signs the Notice of Acceptance. ESCO submits an electronic copy of the IGA Approval and the final IGA to AEO.

3g: Agency Decision Point!
In most cases, Agency will move to next step to begin implementation of measures identified in the IGA. If an Agency decides to terminate the process, the Agency is responsible for paying the ESCO for the IGA (under the terms specified in the IGA Contract.)

AEPC Project: Step 4 – Negotiate Energy Performance Contract

4a: Agency and ESCO negotiate an Energy Performance Contract
Once the IGA is completed and final scope is developed, ESCO will provide true costs for which each category must fall within the proposed percentage range provided in the AEPC Investment Grade Audit and Project Development Contract. Using the *AEPC Energy Performance Contract* (EPC Contract), Agency and ESCO negotiate the contract.

4b: Project financing
ESCO helps agency arrange or procure financing.

4c: Agency submits EPC to AEO prior to signing.
Prior to signing, Agency submits EPC Contract to AEO for review. AEO forwards to Arkansas Building Authority.

4d: Agency and ESCO sign EPC Contract.
Agency and ESCO sign EPC Contract. ESCO sends an electronic copy of the executed contract to AEO.

4e: ESCO submits project profile to AEO.
ESCO works with Agency to develop a marketing overview of the project, for sharing in AEO marketing efforts.

AEPC Project: Step 5 – Construction and Commissioning

Refer to the signed EPC and the current Commissioning Guidelines for the AEPC Program for additional requirements.

5a: ESCO completes design of retrofit work and obtains approval from agency.
Note: Agency must obtain AEO review and approval prior to accepting project completion from ESCO.

5b: ESCO installs and commissions measures, per the EPC and AEPC Commissioning Guidelines.

5c: Agency requests review of construction completion by AEO.
Agency is required to have AEO approval prior to accepting construction completion.

5e. Agency signs notice of acceptance.
Agency signs Notice of Final Acceptance (Exhibit III, iii), and sends an executed electronic copy to AEO. Performance period begins.

5f: ESCO submits Post-Installation Report.
ESCO updates counts, runtime and other assumptions to match installed conditions and issues a *Post-Installation Report*. This **required** report provides the final, as-built cost and savings figures. AEO review is required before final acceptance of report. Final report is sent electronically to AEO.

5g. Payment
Applications for payment may be made according to the terms in the EPC between the Agency and the ESCO.

AEPC Project: Step 6 – Project Performance Monitoring

Refer to the signed EPC and the current Measurement and Verification Guidelines for the AEPC Program (M&V Guidelines) for additional requirements.

6a: ESCO performs ongoing project monitoring (recommended quarterly during the first year) and notifies Agency of any problems.

6b: Agency informs ESCO of any significant changes in operation that could affect the savings calculations.

At the end of each performance year, for which M&V is included, follow this procedure:

6c: ESCO submits annual draft Measurement and Verification report via electronic copy to Agency and AEO.

6d: Agency and AEO review report.
Agency and AEO review and provide comments to ESCO.

6e: ESCO finalizes report
ESCO addresses Agency and AEO comments, finalizes report and sends an electronic copy to Agency and AEO.

AEPC Project: Step 7 – Share Results

7a: ESCO submits AEPC Case Story to AEO
ESCO works with Agency to develop a complete marketing overview of the project including photos and quotes, for sharing in AEO marketing efforts.

4. *Roles and Responsibilities of AEO, Agency and ESCO*

The previous section provided the outline of the procedure in a step-by-step layout. This section summarizes the responsibilities of the AEO, the Agency and the ESCO, including ongoing responsibilities.

4.1 Responsibilities of AEO

AEO is the AEPC Program administrator and has responsibility for overall program management and implementation. Responsibilities of the AEO may be fulfilled by AEO staff or its representatives. The fee for services is paid by the ESCO as specified in Schedule U of the EPC Contract.

The responsibilities of the AEO include, but are not necessarily limited to, the following:

- Actively promote the program and educate potential participants about the benefits and implementation of energy performance contracts.
- Certify firms to become Pre-qualified ESCOs.
- Develop and update program rules and materials.
- Provide a list of currently Pre-qualified on the AEPC Program, including a link to the ESCO’s website for more detailed information.
- Post Statements of Qualifications on AEPC Program website for currently Pre-qualifies ESCOs.
- Work with Agencies to become program participants and to commit to an Agency Memorandum of Understanding.
- Help Agency develop and initiate an energy performance contracting project.
- Help Agency procure services of an ESCO from the pre-qualified list.
- Facilitate the performance contracting process to help ensure commitments are met by both the Agency and the ESCO.
- Provide technical guidance to the Agency and attend on-site meetings between the Agency and ESCO, as needed and subject to availability.
- Review Agency’s audits, proposals, calculations, contracts, and measurement and verification reports.
- Monitor project implementation.
- Identify solutions to mediate any conflicts between Agency and ESCO.
- Coordinate with other state departments, including ABA, OSP and others to facilitate projects and continuously improve AEPC program.

4.2 Responsibilities of Agency

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

- Agree to program participation by executing the MOU and engage the AEPC Program for assistance in project development;
- Comply with the procedures, rule and responsibilities outlined in the AEPC Program Manual;
- Select an ESCO from the AEPC Pre-qualified ESCOs list, using a secondary selection process that fulfills all applicable procurement laws, rules and policies;
- Use/execute the AEPC contracts with the selected ESCO;
- Assign members to the Agency's project team which may include operations, maintenance, financial and upper management personnel;
- Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed;
- Provide access and escort to buildings under reasonable conditions;
- Provide information as needed for a feasibility study, if performed, the Investment Grade Audit, and other project development activities;
- Work with selected ESCO to develop/refine project parameters;
- Review/approve the ESCO's proposals, designs, and reports in a timely manner;
- Ensure that the recommendations from the AEO reviews are addressed to the extent that such recommendations are reasonable;
- Make arrangements for project funding/financing, as necessary, and with the assistance and upon the advice of legal counsel, execute appropriate financing and EPC contracts,
- Provide project management, as necessary;
- Make payments for ESCO services per contract terms;
- Authorize payment of the AEO Administration Fee. This fee may be financed as part of the project costs and is payable by the ESCO after EPC contract signing, per the AEPC Program Manual and AEPC EPC Schedule U;
- Provide information to AEO as needed for project results tracking; and
- Assist ESCO in the development of an AEPC Case Story for the project for marketing purposes.

4.3 Responsibilities of Pre-qualified ESCO

The success of the AEPC program relies in large part on the efforts, effectiveness, and reputation of the pre-qualified ESCOs and on good, multi-year relationships. Refer to Section 2.4 for information about AEO's review, renewal and termination policies.

Responsibilities of a pre-qualified ESCO shall include, but are not limited to the tasks below:

4.3.1 Communication and Reputation Requirements

- Practice and uphold the highest levels of ethical and industry standards in all matters under this program, thereby establishing the positive reputation of the program.
- Commit to proactively maintaining good working relationships with AEO and Agencies to build a successful program.
- Work to minimize conflict and misunderstandings by actively communicating with AEO if/when problems arise.

4.3.2 ESCO Information Requirements

- Provide a dedicated webpage for the AEPC Program participants (e.g., www.ESCONAME.com/AEPC), where Agencies that seek ESCO services can gain access to the full proposal and any updated information. The AEO website will provide a link to the ESCO website for this purpose;
- Provide a completed "ESCO at a Glance" matrix which will be posted on the AEO website as a resource for Agencies;

4.3.3 Activity Requirements

- Initiate meetings with at least four (4) Agencies as potential clients in the previous 365 days.
- Have at least one (1) active contract through the AEPC program in the previous 365 days. An active Contract is defined as a signed IGA Contract, a signed EPC, or ESCO was in the first year of the measurement and verification phase for a project.
- Be invited to interview with at least two (2) Agencies in the previous 365 days.
- Provide documentation to prove activity levels annually or at time of renewal review.

4.3.4 Document Use Requirements

- Use all of the most recent AEPC documentation, as posted on the AEO website.
- Permission to use older documents may be granted, for projects initiated or underway with previous documents.

4.3.5 Project Task Requirements

<u>Step 1: Introduction</u>

- In discussions with an Agency as a potential EPC client, promote the AEPC Program at the first meeting.
- Engage the AEO prior to the Agency signing the AEPC Memorandum of Understanding.
- Perform an initial evaluation of project potential and discuss with Agency.

<u>Step 2: ESCO Selection</u>

Immediately notify AEO of your selection by an Agency for an EPC project.

Step 3: Investment Grade Audit and Project Development

- Use the standard AEPC Investment Grade Audit and Project Development Contract to develop a contract between ESCO and Agency.
- ESCO shall not modify the contract documents unless directed by the Agency. All modification shall require approval of AEO. Modifications of the contract are generally not accepted.
- Provide AEO an electronic copy of the IGA contract and all supporting documents for review prior to signatures. Plan on a two week review period.
- Provide the AEO with an electronic copy of the fully executed final IGA contract and all supporting documents.
- Comply with all requirements of the Investment Grade Audit and Project Proposal Contract (Attachment F-1 or F-2), including but not limited to: conduct an Investment Grade Audit, prepare a detailed technical and project proposal for the project, help arrange for or procure financing, and develop a measurement and verification plan.
- Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support.
- Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- Address issues, recommendations and requests from AEO in support of the AEO independent technical review and facilitation process.
- Adhere to the limitations on cost, markups, and fees outlined in EXHIBIT 1: Cost and Pricing Elements of this Contract.
- ESCO shall secure on behalf of the Agency all available energy/demand/water saving and renewable energy utility incentives available to each project,
- Before owner accepts the IGA Project Proposal, AEO shall review and submit a final Record of Reviews document. Plan for a two week review period.

Step 4: Negotiate Energy Performance Contract

- Develop an EPC Contract with the Agency based upon results of the Investment Grade Audit and Project Proposal. ESCO shall not modify the contract documents unless directed by the Agency. All modifications shall require approval of AEO. Modifications of the contract are generally not accepted.
- Provide AEO an electronic copy of the EPC contract and all supporting documents for review prior to signatures. Plan on a two week review period.
- Provide the AEO with an electronic copy of the fully executed final EPC contract and all supporting schedules, exhibits, financial documents, and any other requested and relevant documents. Include signed addendums as necessary.
- Pay the AEO Administration Fee for projects which reach the stage of fully executed final EPC contract. This fee is a cost to the project and is eligible to be financed as part of the total project costs. The amount and payment of the fee is specified in Schedule U of the EPC contract.

Step 5: Construction and Commissioning

- Comply with all requirements of the AEPC Energy Performance Contract.
- Adhere to the limitations on cost, markups, and fees agreed to in IGA Contract and EPC.
- Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.

- Address issues, recommendations and requests from AEO in support of the AEO independent technical review and facilitation process.
- Provide the AEO with addendums or additional phases to EPC contract.
- Provide AEO electronic copy of fully executed EPC Exhibit III (iii) Notice of Final Acceptance (Local) or Notice of Final Acceptance (SBP-6.27) (State).
- Provide a Post-Installation Report to Agency and AEO. To fulfill requirements of the Energy Performance Contract, ESCO must provide a post-installation report to facility owner clearly showing all changes and revisions that occurred during the construction phase, including equipment, cost, and energy and cost savings changes.

Step 6: Project Performance Monitoring

- Comply with all requirements of the EPC, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- Provide the Agency and the AEO with the minimum of annual reports on project cost, status, savings achieved, and square footage impacted by the project as given in Exhibit 3. Update the appropriate EPC schedules to indicate final scope of work (facilities, energy/water savings, guarantee, installed equipment, etc),
- Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- Address issues, recommendations and requests from the AEO in support of the AEO independent technical review and facilitation process.

Step 7: Share Results

- At the end of the first year of the performance period, develop an AEPC Case Story for the project for marketing purposes. Include high-resolution photos, quotes, benefits, costs and savings for print, presentation and online marketing purposes.

4.3.6 Project Metrics and Marketing Reporting Requirements:

- Submit an *AEPC Project Metrics and Marketing Report*:
  - as data is initially available and
  - updated when:
    - contracts are signed,
    - when amendments are signed,
    - at the acceptance of the EPC work,
    - during the measurement and verification work, and
    - at the end of each reporting period if information is requested by AEO.

  Submission of this report is a minimum requirement for annual renewal as a Pre-qualified ESCO. ESCOs are also required to use the eProject Builder tool available at epb-test.lbl.gov to provide information for each project electronically once entering into the IGA phase of the project. Contact AEO for assistance.

The *Project Metrics and Marketing Report* shall include, but not limited to, the following:

- Project name

- Agency contact, including: name, title, email address, and phone number
- ESCO contact, including: name, title, email address, and phone number
- Project description: One or two-paragraph engaging overview of the project for marketing purposes
- High resolution photos with title and captions for marketing purposes
- Project status (In initial discussions, IGA signed/started, EPC signed/design started, EPC-in construction, EPC-M&V phase, project closed)
- Total square footage and number of buildings in IGA
- IGA cost
- Date IGA and Project Development Contract signed*
- Date IGA and Project Proposal completed*
- Date EPC signed*
- Total square footage and number of buildings in EPC
- Date of amendments*
- Construction cost (initial and revised as necessary)
- Total project cost (initial and revised as necessary)
- Date of Notice of Final Acceptance*
- Date of Post-Installation Report completion*
- Dates of any Measurement and Verification reports completed*
- List of energy conservation measures
- Length of financing term or length of time needed to payback EPC if self-funded.
- Amounts and descriptions of all funding and financing sources, including: grants, utility incentives, financing, bond, and capital contributions. (Note: the sum of all funding and financing sources must equal the total cost of the project.)
- Baseline energy use and cost data, including: electrical energy use as kWh and kW, electrical energy cost for kWh and kW, fuel type, fuel use and cost, water use and cost, and operation and maintenance costs
- Guaranteed energy use and cost data post-EPC, including: electrical energy use as kWh and kW, electrical energy cost for kWh and kW, fuel type, fuel use and cost, water use and cost, and operation and maintenance costs.
- Verified energy use and cost data, including: electrical energy use as kWh and kW, electrical energy cost for kWh and kW, fuel type, fuel use and cost, water use and cost, and operation and maintenance costs
- Projected and actual energy savings in energy use and cost values, as above.
- Other information may be identified and required by the AEO in order to meet the requirements of State agencies, Executive Orders, legislation, and other initiatives.

* ESCO is required to submit electronic copies of these items to AEO.

5. *Appendix A: Guaranteed Energy Cost Savings Act*

19-11-1201. Title.
This subchapter shall be known and may be cited as the "Guaranteed Energy Cost Savings Act".

19-11-1202. Definitions.
As used in this subchapter:
(1)
(A) "Energy cost savings measure" means:
(i) A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that:
(a) Do not degrade the level of service or working conditions;
(b) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, as adopted by the Arkansas Energy Office in the rules required under § 19-11-1207; and
(c) Are measured and verified by an audit performed by a qualified provider; or

(ii) An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivisions (1)(A)(i)(a) and (b) of this section.

(B) "Energy cost savings measure" includes:
(i) Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building;
(ii) 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;
(iii) Automated or computerized energy control systems, including computer software and technical data licenses;
(iv) Heating, ventilating, or air conditioning system modifications or replacements;
(v) 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 for the lighting system after the proposed modifications are made;
(vi) Indoor air quality improvements;
(vii) Energy recovery systems;
(viii) Electric system improvements;
(ix) Life safety measures that provide long-term, operating-cost reductions;
(x) Building operation programs that reduce operating costs;
(xi) Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy;
(xii) Water and other natural resources conservation; or
(xiii) An alteration or measure identified through a comprehensive audit or assessment of new or existing facilities;

(2)

(A) “Guaranteed energy cost savings contract” means a contract for the implementation of one (1) or more energy cost savings measures and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term.

(B) “Guaranteed energy cost savings contract” does not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply;

(3) “Operational cost savings” means expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed;

(4) “Public notice” means the same as "public notice" is defined in § 19-11-203;

(5) “Qualified provider” means a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

(A) Is properly licensed in the State of Arkansas;

(B) Has been reviewed and certified by the Arkansas Energy Office as a qualified provider under this subchapter;

(C) Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures;

(D) Has at least five (5) years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements;

(E) Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and

(F) Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors; and

(6) “State agency” means the same as “state agency” is defined in § 19-11-203.

19-11-1203. Energy cost savings measures authorized.

(a)

(1) A state agency may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this subchapter.

(2) A state agency or several state agencies together may enter into an installment payment contract or lease purchase agreement with a qualified provider for the purchase and installation of energy cost savings measures in accordance with this subchapter.

(b) All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations.

(c) The provisions of the Arkansas Procurement Law, § 19-11-201 et seq., shall control if there is any conflict with that law and the provisions of this subchapter.

19-11-1204. Method of solicitation.

Any solicitation of a guaranteed energy cost savings contract by a state agency shall be consistent with the Arkansas Procurement Law, § 19-11-201 et seq.

19-11-1205. Evaluation of responses to solicitations.

(a) In a state agency's evaluation of each qualified provider's response to a solicitation under § 19-11-1204, the state agency shall include an analysis of:

(1) Whether the qualified provider meets the objectives of the solicitation, including without limitation a reduction in the state agency's energy consumption or operating costs resulting from a guaranteed energy cost savings contract with the qualified provider;
(2) The qualifications and experience of the qualified provider;
(3) The technical approach to the energy cost savings measures;
(4) The financial aspects of the energy cost savings measures;
(5) The overall benefit to the state agency; and
(6) Any other relevant factors.

(b) After evaluating a response to a solicitation as required under subsection (a) of this section, a state agency may:

(1) Reject the response; or
(2) Award a contract to a qualified provider to conduct an energy audit to be used in developing the guaranteed energy cost savings contract.

19-11-1206. Guaranteed energy cost savings contract requirements.
(a) The following provisions are required in a guaranteed energy cost savings contract:

(1) A statement that the state agency shall maintain and operate the energy cost savings measures as defined in the guaranteed energy cost savings contract; and
(2) A guarantee by the qualified provider that:

(A) The energy cost savings and operational cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy cost savings measures; and
(B) If the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measure as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the state agency for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.

(b) The maximum term for a guaranteed energy cost savings contract is twenty (20) years after the implementation of the energy cost savings measures.

(c) Before entering into a guaranteed energy cost savings contract, the state agency shall require the qualified provider to file with the state agency a payment and performance bond or similar assurance as provided under § 19-11-235.

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19-11-1207. Administration of subchapter -- Fees.
The Arkansas Energy Office:

(1) Shall:

(A) Administer this subchapter; and

(B) Promulgate rules for the administration of this subchapter within nine (9) months of the effective date of this subchapter, including without limitation the following:

(i) Standards for measuring and verifying the performance of energy cost savings measures;

(ii) A standard contract form for use by a state agency in entering into a guaranteed energy cost savings contract; and

(iii) The adoption of the International Performance Measurement and Verification Protocol as it existed on a specific date; and

(2) May establish and collect a reasonable fee to cover the costs of administering this subchapter.

19-11-1208. Use of maintenance and operation appropriations.

(a) Notwithstanding any law to the contrary, a state agency may utilize maintenance and operations appropriations for the payment of equipment and energy cost savings measures required by a guaranteed energy cost savings contract.

(b) An energy cost savings measure shall be treated as an energy efficiency project under Arkansas Constitution, Amendment 89.

6. Appendix B: Standard Documents for the AEPC Program

In addition to the AEPC Program Manual, the following standard documents comprise the AEPC Program and are attached as appendices:

B1.	**AEPC PQ**	**AEO Request for Qualifications to Certify Qualified Providers**
B2.	**AEPC ESCOS**	**List of Pre-Qualified ESCOs (to be developed)**
B3.	**AEPC MOU**	**Agency's Memorandum of Understanding for Participation**
B4.	**AEPC INV**	**Agency Invitation to Interview an ESCO for EPC Services**
B5.	**AEPC IGA**	**Investment Grade Audit and Project Development Contract**
B6.	**AEPC EPC**	**Energy Performance Contract**
B7.	**AEPC CX**	**Commissioning Guidelines**
B8.	**AEPC MV**	**Measurement and Verification Guidelines**