



Agency's Memorandum of Understanding

for participation in the
Arkansas Energy Performance Contracting
Program

Version 1.1
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Arkansas Economic Development Commission – Energy Office
900 West Capitol Avenue
Little Rock, Arkansas 72113
501-682-6103
www.arkansasenergy.org

Agency's Memorandum of Understanding for participation in the Arkansas Energy Performance Contracting Program

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made this day of _____ in the year 20__ between the State of Arkansas, acting by and through the Arkansas Economic Development Commission - Energy Office, hereinafter called AEO, and _____ hereinafter called the Agency.

WHEREAS, in 2013 the 89th General Assembly of the State of Arkansas amended the Guaranteed Energy Cost Savings Act, A.C.A. § 19-11-1201, with Act 554 that required the AEO to establish rules that set standards and govern the process in which state agencies engage Energy Service Companies (ESCOs) who pursue guaranteed energy cost savings contracts, also known as energy performance contracts (EPCs).

WHEREAS, AEO used a state-approved process to certify Qualified Providers (Pre-qualified ESCOs) to provide energy performance contracting services for AEPC Program participants; and

WHEREAS, AEO is authorized to establish and collect a reasonable fee to cover the costs of administering the AEPC Program (Arkansas Code 19-11-1207.2); and

NOW, THEREFORE, it is agreed that:

- 1. Purpose of MOU.** The purpose of this MOU is to provide the Agency access to the services and support provided under the AEPC Program to assist in the development and implementation of EPC projects and to encourage the Agency to follow, adhere to, and benefit from the guidelines of the program.
- 2. Term of MOU.** This MOU becomes effective on the date which both the Director or authorized designee of AEO and the Director, or authorized representative, for the Agency have signed it.
- 3. Consideration.** In consideration for the services rendered by the AEO under this MOU, the Agency shall engage in a good faith effort to reduce its energy and water consumption through participation in the AEPC Program and follow and generally adhere to its guidelines, rules, and provisions, herein.
- 4. Responsibilities of Agency.** The responsibilities of the Agency include, but are not necessarily limited to:
 - a. Agree to program participation by executing this MOU and engage the AEPC Program for assistance in project development;
 - b. Comply with the procedures, rules and responsibilities outlined in the AEPC Program Manual;
 - c. Select an Energy Service Company (ESCO) from the AEPC Pre-Qualified ESCOs list, using a secondary selection process that fulfills all applicable procurement laws, rules and policies;
 - d. Use/execute the AEPC contracts with the selected ESCO;
 - e. Assign members to the Agency's project team which may include operations, maintenance, financial and upper management personnel;
 - f. Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed;
 - g. Provide access and escort to buildings under reasonable conditions;
 - h. Provide information as needed for a feasibility study, if performed, the Investment Grade Audit, and other project development activities;
 - i. Work with selected ESCO to develop/refine project parameters;
 - j. Review/approve the ESCO's proposals, designs, and reports in a timely manner;

- k. Ensure recommendations of the AEPC Program during reviews are addressed to the extent that such recommendations are reasonable;
- l. 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,
- m. Provide project management, as necessary;
- n. Make payments for ESCO services per contract terms;
- o. 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; and
- p. Provide information to AEO as needed for project results tracking.

5. Responsibilities of AEO. The responsibilities of the AEO, and its designees, include, but are not necessarily limited to:

- a. Actively promote the program and educate potential participants about the benefits and implementation of energy performance contracts;
- b. Work with Agencies to become program participants and to commit to an Agency Memorandum of Understanding;
- c. Help Agency procure services of an ESCO from the pre-qualified list;
- d. Provide information on the AEPC Program website of currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO's website for more detailed information;
- e. Help Agency develop and initiate an energy performance contracting project;
- f. Facilitate the performance contracting process to help ensure commitments are met by both the Agency and the ESCO,
- g. Provide technical guidance to the Agency and attend on-site meetings between the Agency and ESCO, as needed and subject to availability;
- h. Review Agency's audits, proposals, calculations, contracts, and measurement and verification reports;
- i. Monitor project implementation; and
- j. Identify solutions to mediate any conflicts between Agency and ESCO.

6. This MOU is not intended to create, nor will this MOU ever be construed or interpreted as creating, a binding and legally enforceable contract between the parties. There will be no legal or equitable remedies available to either party in the event either party fails to fully comply with the provisions of this MOU. The sole remedy for the failure of a party to fully comply with the provisions of this MOU will be termination of this MOU. The agency acknowledges and agrees that AEO's services may include advice and recommendations, but all decisions in connection with the Agency's EPC participation shall be the responsibility of and made by the Agency, its agents and contractors.

7. Signatures. In witness thereof, the parties to this MOU, either personally or through their duly authorized representatives, have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU.

STATE OF ARKANSAS

Acting by and through the Arkansas Economic Development Commission – Energy Office

Name (print)

Signature

Date

AGENCY

Name (print)

Signature

Date

AEPC Program – Contact Information Sheet

Primary Contact at Agency

Name: _____
Title: _____
E-mail: _____
Phone: _____
Address: _____

Project Information

Type of buildings/facilities included in your project:

Have you selected an ESCO? Yes _____ No _____

Selected ESCO:

Please list any immediate needs you have related to your performance contract.