

Guaranteed Energy Savings Contracts Best Practice Thoughts

Disclaimer

This document has been developed based on public and private input regarding best practice recommendation derived from actual experience developing and implementing Guaranteed Energy savings projects within the state of West Virginia and elsewhere. It should be noted that this document does not constitute legal advice or legal opinion but is provided as guidance for school districts looking to implement a Guaranteed Energy Savings project.

The West Virginia Energy Services Coalition strongly advises all potential users of this document to seek competent legal and technical guidance as they make final decisions regarding Guaranteed Energy Savings Contract(s)

Procurement

1. Guaranteed Energy Savings contracts are not quickly understood. Having as many influential stakeholders invest time and energy in the Energy Services Company (ESCO) selection process will create more buy in and understanding. Start early in investing in the development of organizational and community support.
2. The school district should appoint a diverse evaluation team to select the ESCO that best serves the school district's interests. Members might include, but not limited to; superintendent, assistant superintendent/operations director, facilities director, maintenance director, maintenance employees, treasurer, board member, administrative staff, community stakeholders, and other persons that may lend relevant expertise to the selection process.
3. An explicit discussion of how to apply any utility rebates, government grants and/or incentives from other potential programs that may be available must occur. Determination of whether the money should go to the school district, the ESCO, or should it strengthen the guaranteed energy savings project must be mutually agreed upon prior to moving forward. The school district should expect the ESCO to complete the administrative work associated with the rebates and incentives.
4. The School District should ask the prospective ESCO's if they will guarantee no change orders for the project unless scope modifications are directed by the school district. This should occur as part of the selection process and provide extra weight toward ESCO's that will guarantee no change orders. This needs verified in the review of the final contract language.
5. Preference should be given to ESCO's that agree to utilize local WV based subcontractors and suppliers.

6. Preference should be given to ESCO's that are accredited by the National Association of Energy Services Companies (NAESCO) not just NAESCO members.
7. Preference should be given to ESCO's that release financial information in order to demonstrate financial stability, long term viability, and ability to financially back the savings guarantee.
8. The West Virginia Code requires that an ESCO be competitively selected. There are multiple methods of acceptable practices for selection of an ESCO. Examples of these methodologies include, but are not limited to:
 - a. Expression of Interest
 - b. Qualifications based – Request for Qualifications (RFQ)
 - c. Qualifications plus pricing considerations – Request for Proposal (RFP)

Successful projects have been based on all of these procurement methods. For more information on these methodologies please review the Energy Services Coalition National Chapter (www.energyservicescoalition.org), NAESCO (www.naesco.org), or the Department of Energy (DOE) (www.energy.gov). It is recommended to use a search for performance contracting on the DOE website main page.

9. Through the competitive selection process, the school district may choose to include a pricing component for comparison purposes. This can include a fee based comparison, open book pricing model comparison, or a lump sum pricing model comparison, but this is not required by the WV Code. This is only one part of the selection process and should not be the only basis for selection. Other considerations should include ESCO qualification, project experience, project team expertise, overall financial strength of the ESCO, and documentation of actual energy savings results. Preference may be given to ESCO's with specific West Virginia based project experience. The RFQ sample included on the WV Energy Services Coalition website can provide additional considerations for the selection process.

Development

1. An explicit discussion regarding the parameters of Investment Grade Audit (IGA) process must occur and should be mutually agreed up between the school district and the selected ESCO.
2. All financial and engineering calculations must be auditable. Third party expertise is available should the school district choose. This must be funded either by Energy Conservation Measures or paid for by dollars from the school district. This cost and process must be established at the beginning of the project.
3. The school district should focus on savings that can be achieved through reductions in consumption and guaranteed by the ESCO. Operational savings can be considered, however they should be documentable savings and mutually agreed upon by both parties.

4. Operational changes via scheduling or behavioral changes of users that are expected to generate savings should not be part of any calculated expected savings. These can be quantified to help assist the school district in understanding additional potential benefits the program may bring.
5. It is important that the school district provides an accurate schedule of operation for each building so that the base line calculation will be accurate. The ESCO partner may suggest changes in operation of the equipment or schedule of operation for the building, but the school system is not bound by those suggestions unless mutually agreed upon.
6. The Energy Conservation Measures (ECM) along with the corresponding measurement and verification (M&V) requirements for the ECMs need a precise definition with the exact type of equipment clearly defined in the scope of work.
7. The school district should involve their current maintenance and building staff in the discussion on the details of the definitions of the ECM's. Their insight and buy in will serve the school district well. They can also help in monitoring the implementation of the ECM's.
8. Specifications for equipment control systems, material, vendors, etc. that the school district views as non-negotiable or an essential part of the contract should be explicitly defined in the scope of work. Unified DDC systems versus varied systems and vendors, a specific type of roof top unit, a specific type of heating and cooling are examples. Keep in mind that as the ESCO negotiates with vendors to provide materials and services it may be wise to keep these preferences known only to the ESCO and the school district. This will preserve their ability to negotiate competitive pricing.
9. The school district can be included in the final selection of all subcontractors and equipment.
10. The school district may want to ask the ESCO to clearly define any installation services they intend to self-perform. It is within the districts rights to require the ESCO to obtain competitive pricing for any installations services that they intend to perform.

Delivery

1. The school district should establish a contingency budget to cover any unanticipated expenses. This can be funded independently by the client, funded through the project as an owner controlled contingency, or a combination of both.
2. The ESCO should guarantee that no disruption to normal daily operations will occur unless mutually agreed upon by both parties. The implementation of the ECM's and construction schedule must have a time limit. Complete and specific discussions should occur regarding construction schedules and potential consequences for not meeting construction schedules up to and including potential liquidated damages.
3. All work that is done to implement the ECM's must not compromise any other building systems or cause the owner to incur any expense in repairs or mitigating damages from implementing the ECM's.

4. The school district and the ESCO should take careful consideration into the development of the construction schedule and potential impacts. Being too aggressive with implementation can overwhelm your capacity to respond to the inevitable problems that will come with new equipment.

Measurement & Verification (M&V)

1. The WV State Department of Education Policy 8200 does not allow school systems to pay for anything before the services are rendered. Therefore, measurement and verification costs cannot be capitalized as part of the project financing and should be paid for on an annual basis. The measurement and verification costs should be delineated in the cash flow to insure that the annual costs are covered by the savings.
2. The school district should have the option to end the M&V services without financial penalty after a period of time. The school district needs to understand that if they choose to end the measurement and verification services, that action will likely release the ESCO from the savings guarantee.
3. Even though a school district can choose to cancel measurement and verification (M&V) services at any time, it is recommended that the M&V services should be retained for a sufficient period of time to establish reliable trends. 3-5 years should be a minimum.
4. A clear definition of the M&V services anticipated for each ECM needs to be documented. The school districts should balance between the level of savings and the cost of verification. The International Performance Measurement & Verification Protocol (IPMVP) standards should be followed.

Other Consideration

1. Be cautious in the establishment of expectations regarding comfort. Even ASHRAE recognizes that 80% satisfaction is likely the best that can be expected from a comfort standpoint once the systems have been fully commissioned. HVAC systems are complex. Often, in the best of circumstances these systems will require adjustment and fine tuning. These adjustments will occur throughout the first year of use as you transition from season to season.