

AT-A-GLANCE

Performance Contracting Statutes



Nevada Governor's
Office of Energy

Statutes for Performance Contracts for Operating Cost-Savings Measures

Following is a simplified reference to specific state statutes and does not constitute a legal opinion. Refer to the referenced statutes and consult your legal counsel.

STATUTE COMPARISON – STATE VS. LOCAL GOVERNMENT		
	STATE GOVERNMENT – NRS 333A	LOCAL GOVERNMENT - NRS 332
	http://www.leg.state.nv.us/NRS/NRS-333A.html	http://www.leg.state.nv.us/NRS/NRS-332.html
Performance Contract Defined	May be structured as: a) Contract that guarantees cost savings including design/installation of measures, where guaranteed annual savings meet total contract payments and agency may require verification; b) shared-savings contract with negotiated payments and stipulated max consumption level over contract life. Annual cost savings meet annual contract payment. Change order not approved unless more economically feasible. (NRS 333A.090)	Contract for evaluation, recommendation and implementation of operating cost-saving measures to reduce energy, water, waste disposal and related labor costs. (NRS 332.340, .360, .362)
Applicable Units of Government	Using Agencies: Publicly funded departments, institutions, boards, agencies, commissions within the Executive Department of the State; Nevada System of Higher Education; University of Nevada. Excludes Nevada Rural Housing Authority, local governments, conservation and irrigation districts. (NRS 333A.015(1), .070)	Political subdivisions including counties, cities, towns, school districts and other districts (NRS 332.015)
Approving Entity	Board - Nevada System of Higher Education or University of Nevada; State Board of Examiners - all others. (NRS 333A.015)	
Eligible Facilities	Buildings/facilities/structures, occupied/unoccupied, owned or operated by the state. (NRS 333A.020) <i>Note: There is no stated prohibition for new construction.</i>	Existing buildings/facilities/structures, occupied/unoccupied. Without limitation, other existing improvements owned by a local government that incur operating costs. Excludes new construction. (NRS 332.310, 330)

<p>Allowable Measures</p>	<p>Operating Cost-Savings Measures: Any improvement to reduce long-term operating costs, increase the operating efficiency, reduce utility use (energy, demand, water, waste disposal) and reduce contract labor costs. Includes without limitation: Energy-saving measures (lighting, HVAC, daylighting, window replacements, controls systems, energy recovery systems, steam trap improvements), water-saving measures (devices in buildings and for lawn irrigation), waste disposal saving measures (trash compaction, waste minimization), other savings measures (building operations programs, combined heat and power systems, renewables or alternate energy sources, improvements for indoor air quality, educational programs, procurement of low-cost energy supplies - electricity, natural gas, outsourcing electrical power, heating and cooling; occupational behavior programs. Excludes shift in personnel costs. (NRS 333A.030, .040)</p>	<p>Operating Cost-Saving Measures: Any improvement to reduce long-term operating costs, increase the operating efficiency, reduce utility use (energy, demand, water, waste disposal) and reduce contract labor costs. Including, without limitation: Energy-saving measures (lighting, HVAC, daylighting, windows or doors, automated controls systems, energy recovery systems, ground source heating and cooling, etc.), water-saving measures (including irrigation), waste disposal saving measures (trash compaction, waste minimization, etc.), operating saving measures (building operation programs to reduce operating costs, training programs), maintenance labor cost savings measures (reduction of required maintenance or operating tasks, routine maintenance – replacing filters and lighting products), other savings measures; power generation (combined heat and power systems, renewables, alternative energy, etc.); other building improvements (indoor air quality). Excluding new construction or additions. (NRS 332.330, .340, .360)</p>
<p>Funding Sources</p>	<p>Operating cost savings (expenses eliminated or avoided) from energy, electrical demand, water, waste disposal, operations, contract labor, maintenance contracts, maintenance labor savings, other operating costs; excluding shift in personnel costs. (NRS 333A.030, .040)</p>	<p>Operating cost savings including savings from energy, energy demand, water, waste disposal, operations, contract labor, maintenance contracts; excluding shift in personnel costs. (NRS 332.320, .330, .360(1))</p>
<p>Guarantee, Costs and Payments</p>	<p>Savings meet or exceed annual contract payments, including financing costs, over the life of the contract. Change order is not allowed, if not covered by savings, unless more economically feasible than terminating the measure. Change orders may not be approved and cannot reduce operating cost savings. Financial mechanism is required by State Treasurer to guarantee cost savings are realized in the case of a shortfall. (NRS 33A.090, .150)</p>	<p>Guaranteed annual savings will meet or exceed annual contract payments, including financing costs, over the life of the contract. Contract includes \$ and % reductions. Financial mechanism, determined by treasurer, is required to guarantee cost savings are realized in the case of a shortfall. (NRS 332.370 (2), .371, .440)</p>
<p>Excess Savings</p>	<p>Annual savings are required to meet annual payment obligations. (Therefore, excess savings in one year cannot be applied to another year.) (NRS 33A.090)</p>	<p>Government may re-invest into other allowable measures. (NRS 332.410)</p>

Measurement and Verification	ESCO monitors consumption and cost savings from measures and provides report to document findings. Report required after construction is completed, after 1 st year and as Using Agency requires to demonstrate savings. Baseline modifications are defined (changes in weather, utility rates, building area, operating schedules/uses, etc.). ESCO M&V report is required during the contract term. (NRS 33A.090, .130)	M&V may be required annually or over sufficient time to demonstrate savings. A plan is required and the methodology is identified. A report is required at least annually over the term of the contract. Baseline modifications are defined (changes in weather, utility rates, building area, operating schedules/uses, etc.). (NRS 332.420, .370 (2))
Prevailing Wage	Prevailing wage is required for skilled, semi-skilled, unskilled workers. (NRS 333A.120) <i>Note: The prevailing wage was deleted for construction projects.</i>	A provision relating to prevailing wage is required as in NRS 338.020 to .090. (NRS 332.390) <i>Note: The prevailing wage was deleted for construction projects.</i>
Bonds		Bonds are required (as defined in NRS 339.025) for projects over \$100,000. (NRS 332.390(2))
Financing, Debt, Payments, Non-appropriation	3 rd party financing, installment-purchase, lease-purchase, with no competitive bidding, COPs, other agreements. All payments made over time. Installment contract, lease-purchase contract, 3 rd party financing, multi-year financing, shared savings. Financing period equals period of amortization. Payments are deferred until measures are installed. Payments do not create debt per Section 3, Article 9 of Constitution. In the event of non-appropriation, all obligations are extinguished at the end of each fiscal year. Property security interests are defined. Leased property rental payments can be included. Must be approved by the Board. (NRS 333A.090 - .092, .100, .110)	Payments are made over time, over multiple fiscal years, begin after installation and are in synch with savings. Installment payment contract, lease-purchase contract, 3 rd party financing, multi-year financing. Payments do not create debt. Rights due to insufficient appropriations are defined. (NRS 332.360, .370, .380, .400)
Financing Term	20 years maximum following completion date, extending beyond biennium (<i>Note: changed from 15 years in 2017 session</i>); Term reflects the useful life of measures and the amortization period for equipment. Period of payments equals period of amortization. (NRS 333A.100, .110)	25 years maximum (<i>Note: changed from 15 years in 2015 session</i>); Reflects the useful life of measures and the amortization period for equipment (NRS 332.380 (2))
ESCO Solicitation	State Public Works Board determines pre-qualification, with assistance from Office of Energy and State Purchasing, and compiles a list of qualified firms. State Purchasing aids in final selection. Proposal includes a comprehensive audit. Selected company conducts a	Pre-qualified by State Public Works or another local government; or application by ESCO is reviewed to determine qualifications. (NRS 332.351, .353, .360)

	Financial Grade Operational Audit. (NRS 333A.080, .082)	
ESCO Qualifications	Required licenses for design, engineering, construction. Established projects or demonstrated technical, operational, financial and managerial capabilities. Ability to secure financial measures to ensure guarantee. Evaluation Criteria: design, engineering, installation, maintenance, operating cost-savings projects, monitoring, data collection, overall experience/qualifications, management capability, ability to assess long-term financing, experience with projects of similar size and scope, other. (NRS 333A.060, .080, .082)	Qualified to bid, business license, contractor's license. Meets minimum criteria defined (ability to obtain bonding/insurance, successfully completed projects) and meets defined legal criteria. Pre-qualified by State Public Works or another local government. Or, ESCO application is reviewed to determine qualifications. (NRS 332.350 - .353)
Comprehensive Audit (for proposal, prior to Financial Grade Operational Audit)	Based on a review of historical usage and surveys/plans, this Includes: a) assessment of operating cost-saving measures, b) estimate of measure costs; c) comparison of energy/water consumption to similar building types, d) comparison of current and projected cost patterns (energy, water, waste, labor). (NRS 33A.084, .082)	Preliminary and comprehensive audit and assessment of all potential operating cost-savings measures that might be implemented within the buildings of the local government, including measures requested by the local government (NRS 332.360)
Financial Grade Operational Audit	After ESCO selection. Costs are covered in the performance contract. If not executed, payment for audit may be made, if funds were appropriated. (NRS 333A.082)	After ESCO selection. Costs are covered in the performance contract. If not executed, payment for audit is made if funds were appropriated. (NRS 332.360(5))
3rd Party Consultant	Required to assist using agency. Duties may include review of ESCO's proposed cost-saving measures, post-construction monitoring, construction oversight, etc. Funding may be paid through savings as negotiated with the ESCO. Consultant may not be paid by ESCO. Must be AEE Certified Energy Manager or comparable. (NRS 333A.086)	Required to assist in review of proposed cost-saving measures in audit. Funding may be paid through savings as negotiated with the Service Provider. Providers include the Nevada Governor's Office of Energy, Certified Energy Manager per Association of Energy Engineers, Required to be licensed by NRS 625. (NRS 332.360 (5-6)).
Fee for Office of Energy to provide services	N/A	Office of Energy may charge and collect a fee for requested support services. Fee can be included in the performance contract. (NRS 332.357, .360)
Reporting	ESCO reports project information to the Office of Energy. (NRS 333A.140)	ESCO reports project information to the Governor's Office of Energy; Local government reports annually to legislature. (NRS 332.430; .431)