

## AT-A-GLANCE

### Performance Contracting Documents

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Nevada Governor's  
Office of Energy

Each of the contract documents begin with a Purpose and Disclaimer followed by a Description as repeated below. Throughout each document, shaded text provides details to:

- a) Highlight where customization is needed
- b) Describe the contract clause in lay terms for clear understanding
- c) Point out possible negotiating items
- d) Reference the statute that establishes a requirement, or
- e) Share typical or best practice.

#### **PURPOSE AND DISCLAIMER**

This document is part of a collection of model procurement and contracting documents developed over decades by states and refined by the U.S. Department of Energy. They represent best practices for performance contracting projects. They can be easily customized to meet the needs of any project. These documents are provided as samples for adaptation to the laws and regulations of the user, not as legal advice or opinion, and do not attempt to identify or address all circumstances or conditions users may encounter or desire. Legal counsel is advised.

#### **DESCRIPTION**

##### **1. Financial Grade Operational Audit and Project Development**

This Contract for Financial Grade Operational Audit and Project Development is the first of two contracts with the selected ESCO. The ESCO will complete a Financial Grade Operational Audit that will include an analysis of each proposed project with projected savings and itemized project costs. The ESCO will present a project proposal that includes recommended measures, financing term and projected annual cash-flow analysis. These results form the basis for negotiating a subsequent Performance Contract for Operating Cost-Saving Measures.

##### **2. Financing Solicitation**

The financing agreement is a stand-alone document, separate from the performance contract, between the Owner and a financial organization. It is signed by the Owner at the same time as the performance contract, (Model Document #3). The financing agreement and the performance contract are linked through the payment schedules and the ESCO's guarantee that the annual guaranteed savings meet the annual debt service (plus any other related expenses imposed by the performance contract such as monitoring and verification).

Financing is often provided by a financial organization which specializes, or has experience, in performance contracting projects. The financing agreement is typically a tax-exempt, municipal lease-purchase agreement as this approach typically delivers the lowest finance rates.

This Financing Solicitation can be used by the Owner to competitively select a financing company. Alternatively, the solicitation can be used by the ESCO to competitively select a financing company on behalf of the Owner.

When used by the ESCO, this document enables and authorizes the ESCO to seek competitive financing on behalf of the Owner. The ESCO can provide the necessary information to solicit competitive rates, evaluate the full package of rates and services, and recommend the best package for the Owner's consideration and final decision. This eliminates the Owner's need to issue a separate RFP for financing, and positions the financing as an integral part of the performance contracting approach. Note that federal regulations may restrict ESCOs to provide this service only in an advisory role.

### **3. Performance Contract for Operating Cost-Savings**

This Performance Contract for Operating Cost-Savings is for design, construction, guarantee, and follow-up measurement and verification of energy-saving projects. A Financial Grade Operational Audit was previously completed that identified the costs and savings of each project. The Financial Grade Operational Audit provides the basis to develop and negotiate this Performance Contract for Operating Cost-Savings. Schedules attached to the contract present details on every aspect of the project (guarantee, standards of comfort, equipment to be installed, ESCO training, etc.).