

Disclaimer:

The State Energy Office of North Carolina would like to thank the National Energy Services Coalition for allowing the use of this resource for USI participants. A great deal of work went into compiling this information into a single location. As you go through this program and/or have additional questions, please contact Reid Conway reid.conway@ncdenr.gov.



GESPC-U Lesson #106:

Final RFP and Beginning IGA: The Recipe to Success

FYI: Terms and Acronyms can be found on the last page

Summary: Completion of the RFP phase and an introduction to the IGA.

Prior to beginning the IGA and as the final work of the RFP phase, the owner will want to make sure that the ESCO has agreed to the language found within the IGA Contract, IGA Schedules and the ESA. There is no need to go down the road with any project if both sides cannot agree to the terms of the contracts up front. While the ESCOs say that they agree to all the terms of the contracts, we still see from time-to-time ESCOs that want to add or take out language. When this happens, it is often about risk or moving risk. This could cause the governmental unit to assume more risk than necessary and thus this risk is moved on the taxpayers. Not a good thing. If more risk is on the taxpayer, then less is on the ESCO. Again, not a good thing.

Since to this point the ESCOs have not been paid for any work, time, or effort until the IGA is signed. Remember the governmental unit is not obliged to move forward at this time. But the project will not be done via performance contracting and the governmental unit will have to go back through this whole process again at a later date. And will probably have fewer ESCOs interested in spending money a second time with no results. If getting things fixed is the goal, then this is the perfect time to resolve issues.

If the governmental unit and their legal folks like the contracts, then I would not allow the ESCO to change anything. Again, you are in control. Take control of the contracts. As discussed in the last Lesson, you can move down the list to the next ESCO if the one doesn't agree to the terms of the contracts. Again, you have leverage. Use it as necessary. Don't be bullied by some national corporation. If you let the ESCOs know up front that these are our contracts and you either accept them or walk away. 99.9 times out of 100 they will accept these contracts and move forward.

You will need approval from SEO for any changes or alterations to the template contract language for all contract documents. During the IGA, SEO is required to attend meetings and is required to review all documentation created as part of the IGA.

For all governmental units this is the first signed contract that requires the GU to pay a cost for the IGA. Again, this is a negotiated cost and so is the scope. If for some reason the governmental unit does not want to move forward into construction, then the ESCO is paid for the work performed as part of the agreed to scope of the IGA. Note: See contract language for the GU terms not to pay for ESCO failure.

As for this agreement, the GU and the ESCO will work together to determine the scope of the audit. Note: If the GU does not have expertise on staff, then SEO recommends hiring a qualified 3rd party to help during the IGA. Remember that the ESCOs during the RFP only spent a very limited amount of time (often less than an hour) in your facilities. During the IGA, the ESCOs will spend weeks combing through utility data, prints, mechanical and electrical rooms looking for energy saving and projects. The GU will need to devote time to help in this effort because the GU staff will know what is broken and what needs to be done and, in many cases, what is planned to be done in the future. All of this is important information to the ESCO and this project.

Let's talk about cost or what makes up the costs of the IGA. The ESCO is using this time to engineer, design and calculate not only costs for installation, but the amount of energy to be saved by each ECM. As the owner you will want to use the IGA Scope as a narrowing tool. What we don't want is for the ESCO to spend time and money on ECMs that will not cashflow within this project. Knowing that early on is key to keeping the cost of the IGA lower.

For NC, the GU cannot add buildings at this time. Only the buildings included in the RFP can be part of the IGA scope. The GU can take out buildings if for some reason they are not longer viable. The GU can add or take away ECMs to be investigated within in the scope as well.

The IGA is the first of a two contracts set between the end-user and the ESCO specific to the project. In a later lesson we'll discuss the Guaranteed Energy Saving Performance Contract, the implementation agreement which is the second of the two.

So, let's discuss the two documents that make up the IGA. First, we have the IGA contract which will describe exactly what to do – all the conditions that must be fulfilled and guide the ESCO to analyze and propose the work specific to the project. To be clear about this -- there are no exceptions! Neither the owner nor the ESCO should be allowed to skip a step in the IGA contract “just because it’s convenient, or you don’t think it fits your project.” As just one example, no one excuses the owner from providing insights into future plans for their facilities, or disclosing existing unresolved system challenges and no one excuses the ESCO from providing a complete description of facilities or a detailed load inventory reconciled to the utility bill. If the contract requires it – then the work must be fulfilled. What each party needs to realize – each article, statement, effort of work is in black and white for

a reason – not only is it to get done what is agreed to -- but each requirement is also a way to mitigate any potential dispute.

Second is the IGA Schedules and Exhibits. This is part of a detailed process where the ESCO puts the information gathered into distinct categories/schedules. These Schedules become part of the Energy Services Agreement as the project moves into construction. Here are the Schedules to be completed by the ESCO as part of the IGA.

Schedule A	Existing known conditions, systems and hazardous materials inventory
Schedule B	Current and Known Future Capital Projects at the Premises
Schedule C	Baseline Energy Consumption
Schedule D	Standards of Comfort
Schedule E	ECM Cost and Savings estimates, and Equipment to be installed by the ESCO
Schedule F	Guarantee Period Savings Measurement & Verification Calculation Formulae
Schedule G	Energy Use Adjustment Methods During Guarantee Period for Material Changes
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Construction and Installation Including Schedule
Schedule J	ESCO and ISSUER Training Responsibilities
Schedule K	Warranties (including Equipment)
Schedule L	Maintenance Checklist and ISSUER & ESCO responsibilities
Schedule M	Proposed Final Project Cost & Final Project Cash Flow Analysis
Schedule N	Energy Savings Guarantee including form of Security
Schedule O	Compensation to the ESCO
Schedule P	Insurance and Bonds
Schedule Q	Financing Agreement
Schedule R	Loan Amortization

Exhibits:

Exhibit 1	Certificate of Acceptance – Investment Grade Audit Report
Exhibit 2	Individual ECM Acceptance
Exhibit 3	Certificate of Beneficial Use and Acceptance / Certificate of Occupancy (issued by Authority Having Jurisdiction)
Exhibit 4	Certificate of Final Project Acceptance (issued by Issuer after Certificate of Beneficial Use and Acceptance / Certificate of Occupancy is issued by AHJ)
Exhibit 5	Certificate of ISSUER accepting responsibility for Maintenance Costs

Note: The Exhibits will be filled out as part of the construction phase.

Reflecting the results of these tasks, the IGA report should then present not only the details of these tasks, but present to the owner a complete

and easily understandable written description of how the results and proposed scope of work, combined with their financial analyses will result in a paid from cost savings performance contract.

However, the IGA report presents additional important and required information. The detailed and transparent pricing of all the work that's envisioned over the full term of the future energy savings performance contract, a construction plan and schedule, a commissioning plan, a maintenance, and operations plan and a measurement and verification plan. At the end of the day, based on final agreed upon project scope and cost saving numbers, the IGA report will define what the performance contracting project will look like and the assurance it will perform as proposed.

So, the IGA should be what its name describes, a process that results in a final audit report that fulfills mutual expectations. It should include a detailed scope of work that can be completed with the confidence that the utilities and cost savings it will generate, are guaranteed to generate a paid for by cost savings project. It should be able to stand up to the sort of analysis that would inspire a financial provider to invest in the project -- hence the title "Investment Grade Audit."

If ever there is a difference of opinion, whether during construction, or in performance, it always comes back to the work of the IGA. Great IGAs are the ultimate characterization of the preconstruction state of affairs and may turn out to be paramount in sorting out if the guaranteed savings have been negatively influenced by either party. This is why we can't emphasize enough the importance of these contracting documents and that they be followed to the letter. After all they are the pathway to success.

What you're building in the IGA is the contractual fabric of the work of the project. The devil is in the details. Without oversight and someone

really enforcing the required parts and pieces – issues can arise. If we have done anything in this lesson – hopefully it was to inform our readers of the importance of the IGA, all the IGA – all of the steps of the IGA.

Bottomline: The Investment Grade Audit Contract is really the recipe to success. And we all know – when you get the recipe right, baking a cake is a whole lot easier.

So, let's talk about the owners responsible within the IGA and IGA Schedules. As noted in the Schedules there are quite a few that will require the governmental unit to have expertise of energy engineering practices and theories. This would certainly be required for Schedule C (Baseline), Schedule F (Measurement and Verification), Schedule G (Adjustments and Material Changes) just to name a few. For all State Government GESPCs in NC, there is a statutory requirement for the State GU to have a 3rd party engineer or architect working during the IGA on the owner's behalf. For all local governmental units in NC this is not a requirement. However, if the LGU does not have expertise on staff, the LGU can hire the services of a 3rd party. This cost can be paid out of the guaranteed savings. I cannot emphasize this enough; how critical it is to have a knowledgeable 3rd party working for the owner and not the ESCO.

By statute, SEO is required to review and comment on the IGA prior to approval.

Once you feel comfortable with the information above, please scroll down and complete the quiz below. Email your answers to Reid Conway at reid.conway@ncdenr.gov. If you have additional questions, feel free to include them as well.

Lesson 6 Quiz

1. When is a good time to negotiate?
2. What are the two documents that make up the IGA?
3. Who can I ask for help during the IGA?
4. What is being agreed to as part of Schedule D?
5. How does the owner get the best cost of the IGA?
6. Who determines the scope of the IGA?

Terms and Acronyms

3 rd Party	3 rd Party Engineer
COS	Council of State
DOA	NC Department of Administration
DPI	NC Department of Public Instruction
ECM	Energy Conservation Measure
ESA	Energy Services Agreement
ESC	Energy Services Coalition
ESCO	Energy Service Company could be interchangeable with QP
ESPC	Energy Saving Performance Contracting
GEPC	Guaranteed Energy Performance Contracting
GESPC	Guaranteed Energy Saving Performance Contracting
GS	General Statute
GU	Governmental Unit
IGA	Investment Grade Audit
IPMVP	International Performance Measurement and Verification Protocol
LGC	Local Government Commission (Housed in the Treasurer's Office)
LGU	Local Governmental Unit
M and V	Measurement and Verification
OR	Owner's Representative
OSBM	NC Office of State Budget and Management
PC	Performance Contracting
Pre-Bid	Meeting held prior to the bid opening
QP	Qualified Provider could be interchangeable with ESCO
QR	Qualified Reviewer
RFP	Request for Proposal
SEO	State Energy Office
UNC	Refers to the UNC System
USI	Utility Savings Initiative