

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 #120:

Decision Time

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

Summary: The decision. Upon receipt of the IGA and Project Proposal the clock starts for the Owner to review and either approve or decline the proposal. This includes the process for reviewing and accepting all the final contracts and getting the financing in place before moving to final project implementation.

Having completed the Investment Grade Audit and Project Proposal, we direct our attention to the next steps in the overall performance contracting process. Some of our comments and suggestions in this lesson may sound familiar yet absolutely bear repeating for your consideration. Having received the completed IGA and Project Proposal, the Owner performs its thorough review and decides the next steps to occur, whether to accept and move forward, or not.

There are several variables that are impacted by time regarding the Project Proposal including price protection for goods and services and of course the interest rate upon which the project financials rely. Both are subject to change by market and economic conditions and likely are only good for a short period of time. It is of course our strong recommendation that at each decision point along the path of developing the project, the Owner and ESCO are in lock step agreement about what is ultimately presented in the final products. This includes

but should not be limited to the project's energy conservation measures, the methodologies by which savings projections have been made, all the assumptions and operating agreements that impact those savings projections and the methodology and engineering guiding the calculations and the Measurement and Verification plan to prove the guaranteed savings are achieved.

And we'd be remiss if we didn't remind you that there exists a small and growing number of experienced performances contracting third-party professionals who're ready, willing and able to assist you in the necessary detailed level of review of all the nuances that performance contracting entails. The Investment Grade Audit should be reviewed for accuracy, completeness, adherence to legislative and programmatic guidance, along with accepted engineering and applicable industry practices that align with what continues to result in great projects – that being Best Practices.

Next up! Its Decision time -- and options most definitely exist. While we of course always defer to the programs and contracts of your specific project, following the ESC model documents recommend that if for some reason the work of the IGA does NOT meet the documented requirements that the Owner and the ESCO agreed to in order to initiate the IGA, then to quote a colloquialism: all bets are off. By that we mean if the contractual terms of the IGA are not met, the parties, the Owner and the ESCO, simply part ways with no further action required, no money changes hands, the work product of the IGA and the project proposal now belongs to the Owner.

That situation has been known to happen, but fortunately, it's a rare occurrence. Far more typical, upon receipt of the IGA and Project

Proposal, the Owner performs a final review to ensure everything proposed is acceptable and as agreed to during the work of the IGA. If so, the model documents that we've consistently referenced, provide a requirement that a form be signed by the Owner, documenting acceptance of the IGA and Project Proposal. The Owner will execute the final acceptance form and request that the ESCO go about the work of completing the schedules, exhibits and appendices that make up the Guaranteed Energy Savings Performance Contract.

The cost for the ESCO to complete the IGA, as set in the IGA contract, is generally carried by the ESCO to the performance contract as a fee and is typically paid to the ESCO in their first project implementation invoice. In this fashion, even though the Owner may have encumbered or earmarked funds for the IGA, they now don't need to spend them "out of pocket." Instead the IGA fee is incorporated into the project financing and is paid for by the savings of the project. Another alternative exists as well. If for some reason the IGA and Project Proposal do illustrate a proposed project that meets all documented and contractual terms, but the Owner simply elects not to move ahead with project implementation, then the Owner is obligated to directly pay the IGA fee to the ESCO.

It is always helpful to keep in mind the big decision point options that exist in these contracts. For the most part, the formal acceptance of the IGA and Project Proposal and instruction to prepare the Performance Contract are the next steps of our overall process. The ESCO will now prepare the Schedules of the performance contract which are in effect specific sections of the work of the IGA formally separated into the GESPC contract schedules. Some care should be

exhibited here to ensure the language of the contract schedules aligns precisely and accurately with what was agreed to and presented in the IGA and Project Proposal. Ultimately while the IGA and Project Proposal, and the project RFP and its response become a part of the performance contract by reference, the Performance Contract, Schedules, Exhibits and Appendices generally take precedence in identifying each party's contractual obligations.

And at the same time, the Owner is now likely going to need to secure the final project financing agreement. In today's performance contracting state and local marketplaces, two significant legally binding instruments are prepared to be executed sequentially; first the final contract, complete with its schedules, exhibits and appendices, and for most projects, a separate third-party finance agreement. While this is generally a lease, a loan or bond funds, or it may be a combination of them, the performance contract is reliant on the funding being established and in place nearly immediately after the execution of the GESPC contract. For most projects, all or part of the funds of the financing agreement are then placed into a form of escrow account that the Owner draws from to pay the ESCO for work completed and appropriately invoiced and approved.

But as we have arrived at getting those final contract documents assembled, the financing in place and prepare for project implementation we must work within our organizational structure to get final approval from all involved. This is the next lesson.

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 20 Quiz

1. The review and acceptance of the IGA and Project Proposal includes a list of considerations. What are some of the considerations the Owner agrees to?
2. List the three most common pathways for a project after the IGA decision point.
3. What are the two instruments that must be prepared and executed to advance into the implementation phase of a GESPC Project?
4. True or False; when the project financing is secured, the full amount of the financing is paid to the ESCO who'll use the money at their own discretion to complete the implementation of the project. Why or why not?
5. What is the next step in the process and why is so important?

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