

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 #121:

Final Approval

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

Summary: Final Approval. We will look at the process necessary for you to get final approval within your local governmental unit and at the state level for your GESPC projects.

Here at the end of the IGA is not the time to worrying about getting your GESPC project approved. In all cases within a governmental unit, there was probably a requirement to discuss the initial release of the RFP with whoever is going to finally sign the Energy Services Agreement to move this project into construction. This could be the county board of commissioners, school board, college board of trustees, etc. someone from the top had to know about this project and provide appropriate approval to move from step one to where we are now. This kind of a project is not taken lightly and must be approved as required within your organization. With the size of any normal GESPC, it is not made without a lot of people knowing what is going on and how much this project is going to cost.

After the RFP release there would have been a discussion about the ranking of ESCOs during the RFP and Oral Interviews as well as a discussion about the initial cost of the IGA. Especially since the signing of the IGA was the first time you as the owner were responsible for a cost incurred as part of the GESPC process. That internal discussion probably included some form of approval from the bodies identified

earlier. In earlier lessons we talked about the importance of having a diverse team as part of the review committee and during the final IGA having team members from finance, maintenance, legal, or even board members that have been part of the entire project is key. Because at this point, they are all going to have a say. Not having them on board early will not only slow the project down, but in some instances kill the project all together at this late stage. This could end up leaving the cost of the IGA to be paid and no work completed. Not to mention a lot of wasted hours and the potential for someone to possibly lose a job.

We have talked about the importance of communication. This cannot be emphasized more as we get down to the end of the IGA and final reviews. Remember that only at the end of the IGA do we know four (4) things, the project scope of work, the cost of the project, the true interest rate, and the guaranteed savings.

So, let's work through a scenario for a K12 school that is wanting to do a PC and we pick it up during the IGA. As the ESCO is finalizing the scope of work normally the Project Director from the school is communicating with the Superintendent and the school board on the IGA process and the discussing the project to date and the size. The Project Director or the Superintendent should be in communication with the County Manager discussing the project and the requirements for the resolution. Leaving it to the County Manager to keep the County Board of Commissioners on a need-to-know basis since at the end of the IGA the K12 is going to need a resolution signed by the county board that states that the county will not reduce utility bill allowance for the life of this GESPC project to the K12 system. Note: The K12s and the NC Community Colleges all get their operational and maintenance budgets funded from the county of residence. This includes funds to pay for utility bills. Not to mention that someone probably the Chairman/Chairwoman of the School Board will have to sign the ESA to move this project into the construction and that same

person will sign the financial agreement to secure debt for the K12 for this project as well. In NC, performance contracting is the only procurement method that allows a K12 to borrow money.

In any official board meeting for any governmental unit where performance contracting is voted on or approval confirmed. Those meeting minutes will need to be accounted for and provided as part of the package needed for LGC approval. This would include an advertisement in the local paper stating date and location of any signing of contracts including the release of the RFP. SEO will be helpful and letting you know exactly what to do and when. And so will the ESCO.

And let's not forget the final local governmental authority in NC and that is the Local Government Commission. Normally referred to as LGC. LGC has final authority for all performance contracting in NC and without LGC approval no local governmental unit can enter into an Energy Services Agreement. Rest assured that all of this is not on the governmental unit by itself. The ESCO has plenty of reasons to be helping with all communications with these approving bodies. The State Energy Office is available for many of these conversations and required attendance at many of these events. There will be plenty of folks available to help communicate what is being accomplished and the benefits associated with doing a performance contract.

When a local governmental unit is finalizing the IGA, we must set up a preliminary meeting with LGC. This is called the All-Hands meeting. This meeting allows LGC staff to become familiar with the project details and financials prior to the Final IGA Packet being delivered to LGC for Commission Approval. There will be specific IGA schedules and financials that LGC will want to see during this All-Hands meeting. These will be prepared by the ESCO with help from the Owner. This meeting is normally set up by the State Energy Office. The attendance

normally includes only primary persons from the Owner and ESCO staffs, owners legal, if necessary, SEO, and any 3rd party hired by the owner. LGC will be asking questions related to the length of the contract, procurement, interest rate, banking information, etc. The owner will need to be prepared to discuss funding issues that have led the governmental unit to choose this funding method for getting ECMs completed.

Once this All-Hands meeting is complete, the ESCO will prepare the final IGA for final review by the owner, SEO and 3rd party (if involved). Having SEO involved throughout the IGA helps speed this review up and is required by the contract language. SEO will be required to provide two (2) letters confirming the review of the RFP responses and review of the IGA. 1 letter confirming that the RFP responses were reviewed by a Qualified Reviewer is required. If used, the 3rd party is required to stamp a review/opinion of the IGA. The owners legal will also have to provide an opinion of the contracts. All these letters will be part of the information required for the final package to LGC. Not to mention the meeting minutes and any advertisements posted in the local paper.

Let's talk about timing. As we get to the end of the IGA, the Owner and the ESCO will need to begin to work backwards from the date that they are trying to secure LGC approval. LGC meets the first Tuesday of each month and the LGC package must be sent to LGC 30 days prior. So, as you can see if you miss a date, then the whole process for approval gets pushed back by a month. Remember, rushing to make certain dates can create problems. Pushing to get finished can lead to sloppiness of the IGA report, incomplete documents, issues missed, and mistakes made. These are contract documents that will be around for the length of the contract that could be 20 years. Missing a month or two at the end of the IGA to get everything right is should not be looked at as a big deal.

As we talk about timing and schedules, let's discuss internal approvals. Each governmental unit will be different, and those approvals are different as well. Will there be a need to seek pre-approval for the project if the approval committee only meets quarterly or bi-monthly? Will the full board be required to approve or just a select committee? What happens if there is not a quorum and does that push the approval back? All these things need to be working in harmony as we get to the end of the IGA. Again, looking at the end and working backwards seems to work the best. Knowing the dates and times for meeting and getting information in for approval is key.

We have talked through local governmental units, now let's look at State governmental units. Much of this is the same, except for the final approval. We will still have an All-Hands meeting, but LGC will not be involved. The Treasurer's office will however and the same staff from LGC will be asking similar questions as we covered before but have less authority. There is a requirement for all state project to be sent to the Office of State Construction for approval. Normally this approval takes about 30 days. Once SCO has approval, then we can get on the agenda for approval of from the UNC Board of Governors for a UNC System project and then on to the Council of State. For state agency project after SCO approval, we will finish with Council of State as well.

Why all the rushing to get to final approval. Many times, the rush is due to the interest rate and how long the bank can hold that rate. While normally this is limited to 45 days, it is not hard to get the bank to hold it for 90 days. Again, communication with the bank is important as these final details are being worked out. And knowing when to release the Financial RFP is important as well. Until you have a final secured interest rate, the ESCO cannot provide a final IGA with final cost numbers to include the guarantee.

Also, part of the rush is from the ESCO to get this project approval. In most cases, the ESCO has not been reimbursed for any work to date. So, from the RFP through the IGA, the awarded ESCO has been working for free. Waiting for the ESA to be signed so that the ESCO can receive that first construction draw. Again, I will state that the owner should negotiate all the costs associated with the project anytime and all the time. There is no sense in not questioning the charges by the ESCO for this project. This goes beyond performance contracting and being good stewards of taxpayer resources. At times even the owner is pushing to get the project approved to be able to get the project started at the right time when say school is out for the summer or over Christmas break.

With any performance contract in NC, there will be two contracts that will be signed. One will be the Energy Services Agreement and the other is the Financial Agreement. These are both inclusive and separate documents. Inclusive because money borrowed is paying for the improvements and the ESCO to install them. Separate because the owner is responsible for paying back the loan to the bank. Inclusive again because the ESCO has guaranteed the amount of savings available to the owner to pay back the loan. Separate because it is up to the owner to properly budget for additional things within the utility account used to pay off the loan. If the electric company increases rates, then as the owner you will need to make sure additional funds are available to cover those additional costs. It would be the same way if a K12 built a new school. Those additional costs would need to be budgeted for to cover that additional cost. If the owner does not properly budget as additional costs arise, then the real funds available to repay the loan will not be in the account. Savings will be achieved but will more commonly be called avoided costs if not properly budgeted. Leaving the owner looking for other avenues/funds to repay the loan.

At the end of the day, the GESPC process in NC is somewhat complicated and time consuming. SEO is working to help streamline the process. Just know that as you get to the end of any project, timing of the approvals will be critical. As the owner you will need to know what your internal process is and the ESCO and SEO will help you navigate the state process. You are not alone in this process.

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 21 Quiz

1. What are the 4 things that you know at the end of the IGA?
2. Why is it important to have a diverse team as part of the GESPC project?
3. Who has final approval for all local governmental GESPCs?
4. Who attends the All-Hands Meeting?
5. List some reasons for rushing the IGA through the approval process.
6. List some reasons for **not** rushing the IGA through the approval process.

7. What are the two contracts that make up the final GESPC and how do they work together or apart?

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