

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](mailto:reid.conway@ncdenr.gov).



## **GESPC-U Lesson #104: Pre-RFP. Gathering Information to Make the Right Decision**

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

**Summary:** Taking the preliminary steps necessary to releasing an RFP for a performance contract.

What does it mean when we say, “states that have a performance contracting program?” And how does that advantage you as the owner and the ESCO?

State programs are usually developed around their specific performance contracting “enabling” legislation. State developed and supported programs provide an increased confidence and credibility level to performance contracting, and also streamline the process of developing and building comprehensive and effective GESPC projects. These states have rallied around this concept and built consensus in their finance, legal, procurement and landlord authorities. From there,

these leader states have developed standardized contract documents that align with their enabling legislation, developed a set of rules for projects, some even provide project oversight.

And in most of these states, the state has created a pool of providers; prequalified ESCOs, that are certified by the state to provide performance contracting services under the state's program.

For NC this is all true. The State Energy Office by statute has the responsibility to pre-qualify all ESCOs who want to work in NC. These ESCOs are called Qualified Providers and have gone through the process for evaluation, interview and have been determined to have the ability to both perform the work necessary, but also have the financial wherewithal to provide the long term guarantee. In NC this financial evaluation is done by the Office of State Treasurer. As required by the Administrative Code of NC, SEO has developed template documents for the entire process that are available for use by all governmental units and SEO is required to recertify the ESCOs every 3 years.

By reaching out at this step to SEO, SEO can help determine whether you are a candidate for a performance contract and begin to educate you and your team on the process and other relevant requirements. As mentioned earlier, there is a list of these qualified providers on the SEO website. SEOs work with any governmental unit is at no cost. SEO as mentioned provides oversight and is working on the side of the governmental unit making sure the governmental unit understands the process and contractual obligations.

It is most certainly an advantage to be working in a state with a pre-qualified provider list, and here's just a few reasons why:

- The state procurement office, state energy office, and maybe even other authorities have taken the time to vet the companies eligible to do the work in the state.
- ESCOs are vetted for their expertise, experience, reputation and financial wherewithal – and these ESCOs have agreed to follow all of the state’s program rules. Bottomline: What you get from a state program’s prequalification process, is a list of companies capable of doing the job and dedicated to following the states process and procedures and have entered into a base contract binding that commitment. This benefits both you and the ESCOs by speeding up the selection process.

By creating a base contract and pre-qualifying providers, the state is basically saying they have earned their spot on the list -- and if an ESCO doesn’t perform, they can also be removed from the list. For every owner, whether a state agency or local unit of government project owner, this prequalification and binding agreement to abide by the enabling statute and program guidance is a giant step forward in helping to ensure a successful project.

The main intent of a state’s program is to provide trust in the concept and the process so that owners can more confidently consider performance contracting as a serious option for their needs. The ESCOs on the list have all made a commitment to the state’s program through their base contract. But the very same commitment extends to you as well through the rules and provisions in their base contract -- they must provide you their performance contracting services under strict guidance of the state’s program. By having a state program that is overseen by the SEO, you can be confident that the process has been vetted. But most importantly, through SEO you have free expert

technical assistance throughout the process. This is not the case in all state programs.

While NC has template documents for performance contracting, it is up to the governmental unit to read, understand and follow the language found within. Failure on the part of the governmental unit to not understand the contracts is not an option for success. It should be noted that these NC template documents are just that and the governmental unit through their legal teams can tweak these documents as need to allow for better protection.

Prior to releasing an RFP for a performance contract, the owner should take time to talk to some of the qualified providers and to get an introduction to these companies and staffs. The ESCOs are willing takers of any information that they can obtain. While the ESCOs will want utility information and the like, it is recommended that specific detailed information such as the last 3 years of utility bills for all facilities not be given out. The ESCOs can still know from the basic information as to total Gross Square Footage and total utility spend what the potential is for a project. It is okay for these ESCOs to walk some of your buildings to gain information as to types of ECMs that might be needed. I would caution owners to not talk to just one ESCO. You should get to know several ESCOs as part of this preliminary process.

So, let's talk about what the ESCO is trying to do. I will caution you now on the fact that these ESCOs are looking for any advantage and you will need to be diligent in your efforts. While it might be nice for them to make a presentation to the board to talk about this process or a potential project, this provides them an advantage. If education is needed, SEO is the best to deliver both sides of this program.

Remember this is a competitive process and part of the job of SEO is to make sure that it is. As the owner of the final project, it behooves you to get as many bidders as possible for your project. That is why talking to more than one ESCO is important. Once the RFP is advertised all communication with the ESCOs is cut off, except in writing and only to the RFP Issuing Officer.

As the owner you need to use this time before the solicitation to get to know the ESCOs. This provides you the opportunity to gather information about each company and other similar projects within NC that each has completed. This provides a list of folks to contact for references before the RFP is released.

Through this preliminary process you should be asking the ESCOs just two questions. **1. Do I have a project** and **2. Will you bid.**

NC has a successful program and here is the link to a wealth of information. <https://deq.nc.gov/conservation/energy-efficiency-resources/utility-savings-initiative/performance-contracting>

Other things to be aware of.

It seems that some local contractors, both general and subcontractors everywhere think they can do this work. And they probably can do some part of the work – the key is whether they can do all the work required to act in the role of an ESCO. Most importantly can they provide a long-term guarantee and are financially capable for the life of these contracts? The answer is no. Remember that the ESCO is responsible for all ECMs to work together to generate the most savings. Often with different contractors, energy savings or the interaction of ECMs is of no concern or are they being held accountable for that interaction or operation. While local contractors cannot be ESCOs in

most cases, doesn't mean that the selected ESCO will not use local contractors as part of the project. Almost always the ESCO will want to work with local contractors who are most familiar with your facilities and have a good working relationship with the owner.

But this isn't like choosing a doctor or an architect who have degrees that authenticate a level of mastery in a professional field. A performance contract requires; engineering, professional services, construction services, commissioning, a guarantee of performance, and expertise and experience to deliver measurement and verification. There just is no real degreed program for these qualifications.

And before an owner starts thinking about preparing a solicitation – they should really consider getting some experienced help. SEO will provide all the template documents and work with you to make sure you completely understand your contractual requirements. While it may be the ESCOs choice that you get all your education and guidance from the ESCO that first knocked on your door, it is highly recommended that owners consider engaging an experienced third-party advisor who can provide knowledgeable guidance. If the owner doesn't have this expertise on staff, these services can be paid for out of the contract savings. A small price to pay for your protection.

But in the end, it may feel a little like learning how to drive a car, play golf or swim– from reading a book. -- Can you imagine learning to swim by reading a book? You might quickly find yourself literally – over your head. It has often been said and bears repeating again here: If you are an engineer with a law degree, trained in the rules of procurement, construction management and negotiation, with a minor in finance and accounting, this will be a cinch!!

As you think about hiring a 3<sup>rd</sup> party for assistance, please be aware that during the review process for the RFP, there is a requirement for all RFP responses to be evaluated by a NC licensed engineer or architect. That licensed Qualified Reviewer must stamp that review. In almost all cases this is hired out and is paid for by the project savings once the ESA is signed. SEO can provide a list of folks that have performed this service in the past for other projects.

At the website link above you will find all the critical information. You will want to open each one up and get familiar with the information contained. The General Statutes are the basis for GESPC in NC. The Better Practices for Performance Contracting is a must read for anyone considering doing a GESPC in NC. This will walk you through the process and provides key insights into the process, rules, and regulations.

Now that we have talked about all the preliminary interactions, in Lesson 105 we will talk about releasing the RFP.

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](mailto:reid.conway@ncdenr.gov). If you have additional questions, feel free to include them as well.

## Quiz Lesson 104

1. Name the characteristics of a well-developed state GESPC program?
2. What are some key attributes of a state GESPC program?
3. Who in NC can an end user turn to for guidance when exploring or considering a GESPC project?
4. What are some of the advantages of having a list of prequalified ESCOs/providers?
5. What are the two questions that an ESCO visiting your site need to be asked prior to the RFP being posted?
6. Why would hiring a 3<sup>rd</sup> party be a good idea?
7. Why does the ESCO want to get to know you and your facilities?

## Terms and Acronyms

3 <sup>rd</sup> Party	3 <sup>rd</sup> 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