



NASEO-ESC-NAESCO State ESPC Program and Project Principles 2019

Energy Savings Performance Contracts¹ (ESPC) delivered by Energy Service Companies (ESCOs) have enabled states and local public and institutional organizations (sometimes termed the “MUSH” market as an acronym for “municipalities, universities, schools, and hospitals”) to make more than \$50 billion of needed, cost-effective energy-related infrastructure upgrades to their facilities during the last three decades.² Historically, ESPC has been the largest and most successful Public-Private Partnership (P3) program in the United States because ESPCs re-purpose the money currently spent on wasted energy, water and the maintenance of obsolete equipment to pay for projects, including their financing, without the need for customers to tap into their own capital budgets.

A recent report prepared for the U.S. Department of Energy by the Lawrence Berkeley National Laboratory estimates that the potential for additional ESPC work could be more than \$300 billion.³ To reach this full potential, we need to more than triple the annual volume of ESPC projects, which will require a dedicated effort from state governments as well as public and institutional facility managers to identify and remove barriers. The reward for this effort is a budget-neutral means to make capital improvements to facilities and catch up on deferred maintenance while reducing energy costs and delivering water savings, operations and maintenance improvements, and enhanced facility comfort and function.

ESPC can be unfamiliar and seem complex (relative to traditional construction procurement processes) to agency, municipal, or institutional financial managers, purchasing managers, and facility operators. State legislation authorizing ESPCs generally creates an exception to traditional construction project procurement processes predicated on contractually guaranteed energy savings being sufficient to pay for the projects. But as with any other widely-used contracting method, some ESPC project contracts have been poorly structured. Some customers did not understand their contracts or related documents (such as measurement and verification [M&V] reports) and/or M&V and documentation of savings was inadequate. These deficiencies have led to questioning of the projects and the ESPC mechanism by legislators, taxpayers and executive branch policymakers.

¹ Sometimes referred to as Guaranteed Energy Savings Performance Contracts (GESPC) or Energy Performance Contracts (EPC).

² See: https://emp.lbl.gov/sites/default/files/esco_recent_market_trends_30sep2016_1.pdf

³ See: <https://emp.lbl.gov/publications/updated-estimates-remaining-market>

There is a need for well-defined customer understanding of ESPCs. ESCOs, state ESPC program managers, third party consultants, and public-sector and institutional customers all have responsibilities to enhance the clarity and transparency of contract provisions, pricing, long-term responsibilities and accountability, M&V reporting, and other documentation and tracking of performance.

In most states, the State Energy Office plays an important role for facilitating ESPCs. For MUSH market ESPCs, state roles depend on authorization and funding, and can range from minimal provision of information to formal ESPC program oversight, project facilitation, and provision of technical assistance, model or standardized contracts and documents.

The National Association of State Energy Officials (NASEO), the Energy Services Coalition (ESC), and the National Association of Energy Service Companies (NAESCO) work cooperatively with State Energy Offices and other state and local agencies and the ESCO industry to advance public-private approaches to expand the use of ESPC. ESC has developed, and NASEO and NAESCO strongly support, a list of Key Attributes for Guaranteed Energy Savings Performance Contracting Program Readiness that are hallmarks of successful ESPC programs. The attributes include such issues as gubernatorial support, standardized documents, and technical support (see <http://www.energyservicescoalition.org/10-key-attributes>).

To better inform states, NASEO, ESC, and NAESCO have developed a set of principles to support greater understanding and confidence in ESPCs and growth in its use to achieve benefits. The principles that follow are aimed at both state-led ESPC programs which serve state (and potentially local) facility operators and owners, as well as agencies and MUSH market entities utilizing ESPC for a single project.

- **Administrative Support** – Provide an ESPC *program* funding mechanism to support program administration, provision of technical and business/administrative assistance, updating and improvement of documents and guides, and tracking and reporting of ESPC performance at the program level. A small fee on ESPCs is one approach toward such funding.
- **Guidance on the Attributes of Services** – Provide guidance to help customers implement ESPCs by publishing on a state website a simple list of allowable measures, contract types, and financing methods, with references to statute or authorities, so that customers and ESCOs understand which offerings provide guaranteed savings and qualify as ESPCs in the customer’s jurisdiction and distinguish those from other non-ESPC offerings.
- **Guidance and a Process Roadmap** – Provide an ESPC guide or manual that describes (within a state’s own context) what ESPCs are, their financing, the contracting process, management and monitoring of projects, including project commissioning and M&V, and other pertinent matters, as well as providing appropriate documents and references to help agencies and jurisdictions to develop, procure, manage, monitor, and complete effective ESPC projects.⁴
- **Models and Standards** – Provide well-vetted state developed ESPC model contracts and related documents, policies, protocols, and guidance comporting with state requirements to help overcome legal and procurement hurdles, mitigate customer risk, and support delivery of well-implemented successful projects. Such materials may be made available to localities and other jurisdictions for their adoption and use.

⁴ A good example of such a guide is the Hawaii “Guide to Energy Performance Contracting (EPC), 2016 Revision.” https://energy.hawaii.gov/wp-content/uploads/2012/06/Hawaii_EPC_Guide.2016.pdf

- **Technical Assistance** – Make technical, business, and administrative assistance available to public sector ESPC customers. Ideally, a technical staff member or consultant (also known as a project facilitator or owner’s agent) representing the customer’s interests should review contracts and other materials and advise on technical, administrative, and business aspects of contract and project development and implementation (including M&V during the contract’s term). The technical consultant may be knowledgeable member of the customer’s staff or from a cognizant state agency or a third-party consultant drawn from a pre-qualified list of consultants developed by the State Energy Office, for example.
- **Standardized Measurement and Verification (M&V) Guidance** – Provide standardized methods and terms for measuring and verifying energy and cost savings to assure greater customer confidence in performance. Verify that the customer understands clearly the baselines against which energy and cost savings are measured. Clearly document terms relating to customer operation and maintenance requirements; adjustment of energy savings calculations for weather, usage, and other factors; utility rate escalation; and other factors affecting the calculation of savings and fulfillment of the savings guarantee. Include in the methods and terms how commissioning and post-installation M&V will be conducted and funded. Document and retain the agreement, including customer understanding of it, for staff training and future reference. The International Performance Measurement and Verification Protocol (IPMVP) and the Federal Energy Management Program M&V Guidelines are two well-known standards.
- **Project and Contract Management** – Confirm that M&V reports and other materials are reviewed by a technical consultant, whether from the customer’s organization, a cognizant state agency, or a third party, to assure that ESPC conditions, including guaranteed savings, are met. File and track M&V reports and related materials (ideally by the customer, the oversight agency, as well as maintained by the ESCO) for easy access and reporting to the State Energy Office or landlord/general services agency and to fulfill responses to legitimate requests (e.g., legislative inquiries and audits, freedom of information). This is crucial when internal staff changes.
- **Program Activity Tracking** – Track ESPC investments, savings, etc. at a program level and provide a “dashboard” or similar mechanism to allow ready access and sharing of program activity and performance. ESCO participation is key to successfully track individual projects within a program.
- **Standard Tracking Mechanism** – Gain ESCO assistance in maintaining transparent documentation and tracking of investments, measures undertaken, energy savings, cost savings, other benefits as appropriate (e.g., water and sewer unit and monetary savings), and other pertinent items by the customer and by the local or state jurisdiction. The *eProject Builder* platform is recommended. In addition, utilization of ENERGY STAR Portfolio Manager should be promoted to help identify priority buildings and facilities for retrofit.
- **Mechanisms for Customer Feedback** – Develop a means for soliciting and documenting customer satisfaction and suggestions on both the individual project and the process.