

STEP-BY-STEP PROCESS FOR IMPLEMENTING
A PERFORMANCE CONTRACT PROJECT

1. Upon determination of the entity to reduce energy costs by implementing a Performance Contract project, the entity shall notify the Mississippi Development Authority – Energy Division (MDA-ED) in writing it's intent to issue a Request for Qualifications (RFQ).
2. The MDA-ED will respond in writing to the entity's request to issue a RFQ. The entity may request the MDA-ED review its RFQ as well as provide technical assistance throughout the Performance Contract process.
3. An entity must advertise the availability of the RFQ and its intent to implement a Performance Contract project once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such entity is located.
4. During the Energy Service Company (ESCO) selection process,
 - a. it is recommended that a committee be selected to review the RFQ submittals;
 - b. it is recommended that oral interviews be conducted with each of the ESCOs.
5. Upon selection of the ESCO,
 - a. the ESCO begins its detailed Technical Energy Analysis (TEA);
 - b. ESCO and entity meet to discuss the TEA results and develop a scope of work; and
 - c. a final scope is developed and the final contract is negotiated.
6. MDA-ED shall review each contract pursuant to code 31-7-14 (4) (b) and approve if the contract is in compliance with the code and policy guidelines.
 - a. Documents to be submitted include: the final contract, TEA, and the measurement and verification plan.
 - b. Within thirty (30) days of receipt of all project documents, the MDA-ED engineer will review the documents and issue a letter with questions and comments concerning the project.
 - c. The entity will respond in writing to the questions and comments of the MDA-ED. Question and response activities will continue until all issues have been resolved to the satisfaction of MDA-ED.
 - d. If a resolution to any outstanding issues cannot be reached, the entity has the option to request a meeting with MDA-ED and the MDA executive staff to discuss the outstanding issues. No Performance Contract project will be valid until written approval has been issued by MDA-ED.
7. Within seven (7) days of all questions being answered to the satisfaction of the MDA-ED, the MDA-ED will submit the project to MDA's executive staff for review. Within seven (7) days of receiving approval by the MDA executive staff, MDA-ED will issue a letter of compliance to the entity.

Mississippi Development Authority
Energy Division
Policy and Procedures
Energy Performance Contracting
Code Section: 31-7-14

The Mississippi Development Authority promulgates the following policy and procedures in accordance with Section 31-7-14 of the Mississippi Code of 1972 (as amended) to provide for the approval of energy performance contracts between public entities and performance contractors wherein net energy savings are guaranteed over a period of time not to exceed 15 years by the performance contractors.

1. Any state agency or local governing authority (entity), as defined in Section 31-7-1 subparagraphs (a) and (b) respectively of the Mississippi Code of 1972 (as amended), may contract on a shared savings or performance contract basis for:
 - energy efficiency equipment;
 - services relating to the installation, operation or maintenance of equipment;
 - and improvements reasonably required to existing equipment and existing improvements.

2. An Energy Performance Contract means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency. The energy savings and directly related operation and maintenance savings are guaranteed by the performance contractor and can be used to repay the cost of the project. The guaranteed savings must be more than sufficient to pay the total costs of the project over the guarantee period. The terms of any shared savings or performance contract entered into must contain a guarantee of savings clause from the performance contractor.

3. Energy efficiency equipment, services relating to the installation, operation and maintenance of equipment, and improvements reasonably required to existing equipment and existing improvements mean:
 - heating, ventilation, and air conditioning systems,
 - lighting,
 - windows,
 - insulation,
 - energy management controls, and
 - other equipment, services and improvements providing scientifically quantifiable and measurable energy efficiency.

4. Shared savings contract means an agreement where the contractor and the entity each receive a pre-agreed percentage or dollar value of the energy costs savings over the life of the contract.

5. Any entity desiring to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment, or improvements reasonably

required to existing equipment and existing improvements on a savings basis or performance-contracting basis, shall issue a Request for Qualifications in the manner prescribed in Section 31-7-14 (1)(b) of the Mississippi Code of 1972 (as amended). At its option, the entity may use the Request for Qualifications template located on the MDA website.

6. The entity shall notify the MDA-Energy Division in writing upon its determination to issue a Request for Qualifications to develop a performance contract.
7. The entity may request, at its discretion, that the MDA-Energy Division review its Request for Qualifications.
8. Any entity intending to contract for a shared savings or performance contract for services must advertise once each week for two (2) consecutive weeks in a regular newspaper published in the country or municipality in which such entity is located.
9. The energy savings achieved by the installed energy efficiency measures (EEM's) plus any operation and maintenance savings (O&M's) directly tied to the energy savings need to be sufficient to cover all project costs including annual maintenance and monitoring fees for the duration of the contract term.
10. Operation and Maintenance savings (O&M's) are encouraged but not required. These savings cannot be used to offset project costs unless directly tied to the energy savings and guaranteed by the contractor.
11. The terms of any performance contract for efficiency services and/or equipment entered into under this section may not exceed fifteen (15) years. The 15 years include the implementation period plus the term of financing. As an example, if implementation is one year, then the length of finance can be only up to 14 years.
12. The simple payback must be less than 15 years or less than the expected useful life of the equipment, whichever is less. The simple payback is defined as the implementation cost of the energy efficiency measure divided by the annual energy savings produced by the energy efficiency measure.
13. All contracts must contain the following annual allocation dependency clause:
The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirement of the contract by the Legislature or other budgeting authority. If the Legislature or other budgeting authority fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which appropriations were made. The termination shall be without penalty or expense to the entity of any kind whatsoever, except as to the portions of payments for which funds were appropriated.
14. All contracts must contain a provision for termination of the contract.

15. All contracts may contain a provision for termination for convenience by the entity.
16. The MDA-Energy Division shall review each contract pursuant to code 31-7-14 (4) (b) and approve those it determines to be in compliance with the code, this policy, and these guidelines.
17. No Energy Performance Contract shall be valid until approved by the MDA-Energy Division in writing.
18. The MDA-Energy Division will not approve any Energy Performance Contracts that do not generate quantifiable and measurable energy savings. Energy savings do not include savings from water conservation, except where the conservation is directly tied to the energy savings as an O&M savings.
19. Project documentation must be submitted to the MDA- Energy Division for review and comment. The documents to be submitted include the Technical Energy Analysis, the proposed final contract, and the Measurement and Verification (M & V) plan. Periodic energy savings reports must be submitted to the MDA-Energy Division within 60 days of the date such reports are received by the entity.
20. The Technical Energy Analysis must be signed and stamped by a registered professional engineer.
21. The entity will be provided in writing any questions and comments raised by the MDA-Energy Division during its review process. The entity will be requested to respond to these questions and comments in writing. No contract will be approved until the entity has responded.
22. Upon completion of the contract review process by the MDA-Energy Division, the division shall request final authority to approve or disapprove the contract from the Executive Director of the Mississippi Development Authority or his designated deputy.
23. A compliance letter, signed by the Energy Division Director, will be issued to the entity upon final approval. A denial letter will be issued to the entity upon disapproval.