

**Energy Savings Performance Contracts**  
**AGENCY GENERAL COUNSEL CONTRACT CHECKLIST**

State Agency/Owner: \_\_\_\_\_

ESCO/Contractor \_\_\_\_\_

Contract Name/Number: \_\_\_\_\_

Date of Review: \_\_\_\_\_

1. Energy Savings Performance Contract<sup>1</sup>. Is there a legally valid agreement between the state agency and the Energy Savings Performance Contractor (Contractor) that:

Yes      No

- a) Specifically identifies the Utility Cost Reduction Measures (UCRMs) that are authorized by the statute to be installed and that adequately identifies the types and amounts of equipment to be installed?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Yes      No

- b) Adequately identifies the total contractual payment obligation incurred by the state agency under the contract?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Yes      No

- c) Adequately identifies the time period for performing the installation of the UCRMs, the payments to the Contractor, and the time period covered by the financial guarantee?

UCRM installation:

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Contractor payment:

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Guarantee:

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

<sup>1</sup> Tex. Gov't Code §2166.406(a).

Yes      No  
       d) Requires that each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations?  
Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

2. Financial Guarantee<sup>2</sup>. Does the contract or accompanying documents guarantee the amount of the savings to be realized by the state agency under the contract which identifies:

Yes      No  
       a) The amount of the guarantee that covers the total costs related to the contract incurred by the state agency for the term of the contract?  
Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Yes      No  
       b) An agreed method for determining the amount of actual savings achieved by the UCRMs including the time period for determining the savings?  
Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

Yes      No  
       c) A specified time for payment of any difference between the guarantee and the actual savings?  
Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

3. Bond for Guarantee<sup>3</sup>.

Yes      No  
       a) Is the agency exercising its statutory authority to require the contractor to file a separate bond to cover the value of the guaranteed savings on the contract?  
Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

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<sup>2</sup> Tex. Gov't Code §2166.406(a) & (h).

<sup>3</sup> Tex. Gov't Code §2166.406(e).

4. Performance Bond<sup>4</sup>.

Yes No

- a) Has the contractor submitted a performance bond to the agency?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

OR

Yes No

- b) Is the contractor contractually required to submit to the state agency a legally adequate performance bond that meets the requirements of checklist items C, D, and E below prior to the contractor securing a contractual right to commence work compensable under the contract?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

If a performance bond has been submitted, does it provide that it is:

Yes No

- C) Solely for the protection of the state agency?

Document: \_\_\_\_\_  
Page reference(s): \_\_\_\_\_

Yes No

- D) In the amount of the cost of installing all the UCRMs under the contract?

Document: \_\_\_\_\_  
Page reference(s): \_\_\_\_\_

Yes No

- E) Conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents?

Document: \_\_\_\_\_  
Page reference(s): \_\_\_\_\_

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<sup>4</sup> Tex. Gov't Code §§2166.406(e); 2253.021(b).

5. Payment Bond<sup>5</sup>.

Yes No

- a) Has the contractor provided a payment bond to the agency?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

OR

Yes No

- b) Is the contractor contractually required to provide the state agency a legally adequate payment bond meeting the requirements of checklist items C and D below prior to the contractor securing the contractual right to commence work compensable under the contract?

Document: \_\_\_\_\_ Page reference(s): \_\_\_\_\_

If a payment bond has been provided, does it provide that it is:

Yes No

- C) Solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply work, labor, or material under the contract?

Document: \_\_\_\_\_  
Page reference(s): \_\_\_\_\_

Yes No

- D) In the amount of the cost of installing all the UCRMs under the contract?

Document: \_\_\_\_\_  
Page reference(s): \_\_\_\_\_

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<sup>5</sup> Tex. Gov't Code §§2166.406(e); 2253.021(c).

I have reviewed the above referenced contract in my capacity as legal counsel for the above referenced state agency. The answers I have provided on this four page General Counsel Checklist are to the best of my knowledge and in my best professional judgment.

\_\_\_\_\_  
*(signature)*

\_\_\_\_\_  
*(printed name)*

\_\_\_\_\_  
*(title or position)*

\_\_\_\_\_  
*(mailing address)*

\_\_\_\_\_  
*(street address)*

\_\_\_\_\_  
*(City, TX)*

\_\_\_\_\_  
*(office telephone number)*

\_\_\_\_\_  
*(email address)*

\_\_\_\_\_  
*(State Bar Number)*

**FOR SECO USE ONLY**

Date Received: \_\_\_\_\_

Approved By: \_\_\_\_\_

Date Approved: \_\_\_\_\_

OR

Date Returned to Agency: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_