

Annex X

Performance Contracting

1. Introduction & Definitions

(a) Introductory remarks

Energy service contracting, or performance contracting, is, in some countries, an established mechanism for promoting the installation of energy efficient building equipment and systems. Facility owners and energy service contractors, (ESCOs), enter into contract arrangements to perform retrofit installations of equipment that can save money on building operations. The savings in *energy* bills due to the more efficient equipment are shared between the facility owner and the ESCO under the terms of the contract. Most importantly, the ESCO takes on the project's performance risk by guaranteeing a specified level of *energy savings*. The criteria are defined in functional terms and payment to a contractor is dependent upon the actual performance in operation compared to the contracted criteria. The financing can either be by the ESCO, by the suppliers of the system, or its components, by an outside third-party company, or by a combination thereof. ESCOs can also employ other financial options and services in support of their clients.

The performance criteria will always include the measuring of energy use, but can also include many other commodities and services. Energy was the main concern at the start of ESCO activities. In the future, with liberalization of the energy market and more competitive markets, the inclusion of other services could raise interest and open new possibilities for business activities. It would then be in the general interest to influence development in a more energy-efficient direction.

During the Task Definition Phase April – October 2000 drafts of Work Plan, Task Budget and Task Information Plan have been worked out.

(b) Definitions

Performance Contracting Arrangements

(this definition and other definitions related to the scope of work and activities for this Task will be further analysed during the coming work)

All business-to-business legal arrangements between a property owner and an energy service company in which the investments in more efficient and better performing systems are financed totally or partly by another organisation than the owner and paid back during a period of years after the commissioning of the systems in relation to the actual performance of the systems or the whole new or refurbished building.

Energy Service Company (ESCO)

In this Task, the term *Energy Service Company, or ESCO* is used to refer to a member of the Energy Services Industry – e.g., an ESCO is a company engaged in developing, installing and financing comprehensive, performance-based facility improvement projects, typically 7-10 years in duration, centered around improving the energy efficiency and reducing maintenance costs for facilities owned or operated by customers. (The Energy Efficiency Project Manual, NAESCO, 1997).

Task Experts

The Task Experts are designated by each Participant. The Task Experts are expected to contribute their knowledge to the progress of the Task. Each Participant may nominate one or more Task Experts with different knowledge. One Task Expert should be designated as national co-ordinator.

2. Objective

This Task is a business-to-business Task, limited to efforts involving the performance contracting arrangements and other ESCO-related financial options and services between client, businesses and all types of companies offering these services.

The overall objective is to facilitate the greater use of performance arrangements and other ESCO financial options and services in the Participants' countries. Definitions of different concepts in this area will be one topic for the future collaborative work.

3. Means

The work of the Task will be managed under four Subtasks:

Subtask A: Initial Workshop

Subtask B: Country Reports

Subtask C: Interactive Workshop comparing Country Reports and Ideas

Subtask D: Country Plans and Lessons Learned

The Task will encourage the development of an exchange of successfully functioning performance contracting and other third-party financing models.

Subtask A

Initial Workshop

This Initial Workshop/Experts Meeting will be used to complete work already started during the Task Definition Phase with the Task Work Plan, the Task Budget, the Task Information Plan and will include definitions of the concept.

Subtask B

Country Reports

The Participants' countries will prepare reports from their perspectives regarding establishment and utilization of the performance contracting industry. Countries with mature performance contracting industries will provide information in their reports about model contracts, problems/hindrances, case studies and market size.

Subtask C

Interactive Workshop comparing Country Reports and Ideas

This second Workshop will be used as a forum for each Participants' country to share the results of its research on the performance contracting industry and the conclusions in its country reports with other Participants' countries and with other interested parties.

Subtask D

Country Plans and Lessons Learned

Each Participant's country will develop individual implementation plans for increasing the viability of performance contracting in its country. These plans should be initiated during the Interactive Workshop (Subtask C). Analyses of case studies, collected models for processes and contracts, and early experiences of demonstration projects will form the background for the formulation of lessons learned and principles for future processes and contract models.

4. Information and Intellectual Property

In addition to the intellectual property provisions contained in Article 7 of the Agreement, the following provisions shall apply to this Annex. In the case of a conflict, the following rules still prevail: Inventions made or conceived in the course of or under activities referred to in paragraph 3 above shall be owned in all countries by the inventing Participant. Information regarding inventions on which patent protection is to be obtained by the Participant shall not be publicly disclosed by the other Participants until a patent application has been filed, however, this restriction on publication or disclosure shall not extend beyond six months from the date of receipt of such information.

It shall be the responsibility of the inventing Participant to appropriately mark reports, which disclose inventions that have not been appropriately protected by filing a patent application. Each Participant agrees to license all arising inventions and all pre-existing inventions necessary for and used in the activities under paragraph 3 above to the other Participants, their Governments and the nationals of their respective countries designated by them, on reasonable terms and conditions for use in all countries.

The Participants shall extend the same principles to all entities (persons, companies and organizations) involved in procurement activities.

5. Results

The major results of this Task will be an increased awareness of the well-functioning models for performance contracting work to be used in the Participants' countries.

The specific results of the Task will be:

- (a) Organizing two Workshops – one Initial Workshop and one Interactive Workshop – and documentation for these Workshops as web reports. The documentation will initially be produced on a secure web site, with passwords furnished to the Participants’ countries;
- (b) A Final Management Report, including lessons learned and models for processing contracts.
- (c) Shared knowledge of different models of performance contracting.
- (d) A collaborative international approach which can accelerate the wider acceptance and use of performance contracting concepts.

Each Participants’ country will:

- (a) Learn how to use performance contracting and other ESCO financial options and services to a larger extent in different areas, types of buildings and different ownership;
- (b) Establish a background for the development of an improved process for partnering work between owners, suppliers/installers, and financing institutions;
- (c) Contribute to better dissemination of working models for performance contracting and other ESCO financial options and services and identify which stake-holders have the most interest in using these forms;
- (d) Promote further the use of performance contracting and other ESCO financial options and services, and the increase thereof in its country, promote further the development of new international markets and the benefits of the resulting energy-efficiency improvements.

6. Time Schedule

This Annex will enter into force on 1st December, 2000, and shall remain in force until 31st December, 2002. Within the limits of the term of the Agreement, this Annex may be extended by two or more Participants, acting in the Executive Committee, and shall thereafter apply only to those Participants.

7. Responsibilities of the Operating Agent

In addition to the obligations enumerated in Article 5 of this Agreement, the Operating Agent shall:

- (a) In consultation with the National Experts and other Participants, prepare a detailed Programme of Work for approval by the Executive Committee;
- (b) Provide semi-annual reports to the Executive Committee on the progress and results of the work performed under the Programme of Work;
- (c) Provide to the Executive Committee within three months after completion of all work under the Task, a Final Management Report for its approval;
- (d) Co-ordinate the work of the Subtasks and the different National Experts, and in co-ordination with the Participants, use its best efforts to avoid duplication with activities of other related programmes and projects implemented by, or under the auspices of the Agency or by other bodies;
- (e) Market and disseminate information on the Task to raise and maintain interest and understanding.

8. Responsibilities of the Task Experts

The Task Experts will:

- (a) Participate actively in the Experts Meetings and Workshops;
- (b) Submit Country Reports in accordance with the guidelines agreed upon;
- (c) Analyse and comment on draft versions of the other Participants' countries' reports, Task Status Reports and the Final Management Report;
- (d) Initiate Country Plans and present them to the other Participants;
- (e) Identify interesting cases and initiate demonstration projects during the Task to test models and benefit from lessons learned;
- (f) Actively suggest and in a memorandum formulate lessons learned from their respective country's activities, case studies, demonstration projects and potential models for processes and contracts.

9. Meetings

There will be Experts Meetings of the Task at intervals of approximately 6 months. When appropriate, these Experts Meetings will be combined with Workshops. Attendance at the Experts Meetings of the Task will be mandatory.

10. Funding

Each country will bear the costs of its own participation in the Task, including necessary travel costs. Each country will also contribute the amount agreed upon by the Participants acting by unanimity, for financing the Operating Agents costs for travel, printing and other expenses and Workshop arrangements and 50 % of the cost of the Operating Agent's time for accomplishing its obligations as Operating Agent. The contribution for the Operating Agent's costs will be 15,000 USD per country per year. The remaining costs for the Operating Agent's time, up to 50 %, will be funded by the country of the Operating Agent.

11. Level of Effort

Participation in this Task requires an effort of at least six person months per year and country. Aside from providing the resources required for performing the work of the Subtasks in which they are participating, all Participants are required to commit the resources necessary for activities which are specifically collaborative in nature and which would not be part of a national programme, for example: preparation for and participation in Task Meetings, co-ordination with different Subtasks and contribution to the documentation and dissemination of the work.

In addition the country of the Operating Agent will fund up to 50 % of the costs of the Operating Agent's time.

12. Operating Agent

The Swedish National Energy Administration is designated as Operating Agent.

13. Contracting parties which are Participants

The contracting parties in this Task are the following:

Austria

The National Technology Agency of Finland (TEKES)

Le Ministère de l' Industrie, des Postes et Télécommunications et du Commerce Extérieur
(France)

ENEL SpA (Italy)

The New Energy and Industrial Technology Development Organization (NEDO), Japan

The Netherlands Agency for Energy and the Environment (NOVEM)

The Swedish National Energy Administration (STEM)

The Government of the United States of America.