AEPC Policies and Procedures

Authority

In 2013, the 89th General Assembly of the State of Arkansas amended the Guaranteed Energy Cost Savings Act, A.C.A.§ 19-11-1201, with Act 554. Act 554 requires the Arkansas Division of Environmental Quality – Office of Energy (AEO) to govern the process by which state agencies execute guaranteed energy cost savings contracts, also known as Energy Performance Contracts (EPCs). To that end, AEO has developed the Arkansas Energy Performance Contracting (AEPC) Program, to meet the intent of the law, as needed. Further, through A.C.A. § 14-164-821 and A.C.A. § 6-20-405, municipalities, counties and school districts have been granted the right to opt into the AEPC program by resolution. The AEO has issued the following policies and procedures to allow for the following:

1. Administration of the AEPC Program, generally.
2. Certifying pre-qualified providers into the program.
3. Determining the standards for measurement and verification of energy cost savings measures (ECMs).
4. Establishing and collecting a reasonable fee to cover the costs of administering the AEPC Program.

Definitions

AEO shall mean the Arkansas Division of Environmental Quality – Office of Energy.
ADFA shall mean the Arkansas Department of Finance Authority.
AEPC shall mean the Arkansas Energy Performance Contracting Program
County shall mean a county in the state of Arkansas.
DBA shall mean Division of Building Authority, an Office of the Arkansas Department of Finance and Administration.
ECM shall mean an Energy Cost Savings Measure. An ECM is either:

1. A new facility that is designed to reduce consumption of energy or natural resources or operating costs as a result of changes that;
    a. Do not degrade the level of service or working conditions;
    b. Are measurable and verifiable under the International Performance Measurement and Verification Protocol (IPMVP), as adopted by AEO; and
    c. Are measured and verified by an Investment Grade Audit (IGA) performed by a qualified provider.
2. An existing facility alteration that is designed to reduce the consumption of energy, natural resources, or operating costs as a result of changes that do not degrade the level of service or working conditions and are measurable and verifiable under the IPMVP.

Capital Cost Avoidance shall mean future replacement expenditures avoided as a result of new equipment installed or services provided.
EPC shall mean an Energy Performance Contract. An EPC is a contract for the implementation of one (1) or more ECMs and services provided by a qualified provider in which the energy and

cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term. The following is required by an EPC:

1. A statement that the participating public entity shall maintain and operate the ECMs as defined in the EPC; and
2. A guarantee by the qualified provider that:
    a. The allowable savings to be realized over the term of the EPC meet or exceed the cost of the installed ECMs.
    b. If the annual allowable savings fail to meet or exceed the annual costs of the debt service of the installed ECMs as required by the EPC, the qualified provider shall reimburse the participating public entity of any shortfall in allowable savings within ninety (90) days of the delivery of the year-end Measurement and Verification (M&V) report.
    c. Surplus savings from prior years shall not be used to reimburse a participating public entity in the event of a shortfall in annual allowable savings for a given year.
3. The qualified provider must file a payment and performance bond or similar assurance with the participating public entity as provided under §19-11-235.

Allowable Savings shall mean either:

1. Savings resulting from an installed Energy Cost Savings Measure (ECM).
2. Savings resulting from Capital Cost Avoidance.
3. Savings resulting from operation and maintenance savings.

Debt Service shall mean the financing instrument(s) used to finance the costs associated with the development and installation of an Energy Performance Contract (EPC).

IPMVP shall mean the International Performance Measurement and Verification Protocol. The IPMVP shall be used by qualified providers to measure and verify savings resulting from an installed ECM.

IGA shall mean an Investment Grade Audit.

O&M Savings shall mean operational and maintenance savings resulting from direct expenses eliminated as a result of new equipment installed or services performed.

Public Entity shall mean a state agency, city, county, or school district eligible to participate in the AEPC program pursuant to A.C.A.§19-11-1207(a), 14-164-821, or 6-20-405(f), respectively.

Municipality shall mean a city or incorporated town in the state of Arkansas.

State Agency shall mean any agency, institution, authority, department, board, commission, bureau, council, or any other agency of the state supported by the appropriation of state or federal funds, except an exempt agency pursuant to A.C.A. 19-11-203(13), unless the exempt agency is procuring items subject to Amendment 54 of the Arkansas Constitution.

Qualified Provider shall mean a person or business, including all subcontractors and employees of that person or business and third-party financing company that has been reviewed and certified by AEO through a qualifications process.

AEPC Program Documents - The AEPC Program consists of the following documents developed by AEO with stakeholder input:

1. AEPC Policies and Procedures
2. AEPC Standing Request for Qualifications for Qualified Providers
3. AEPC Memorandum of Understanding (AEPC-MOU)
4. AEPC IGA Contract (AEPC-IGA)
5. AEPC EPC Contract (AEPC-EPC)
6. AEPC Manual

These documents, as well as a current list of qualified providers, will be posted on the AEO website. Program materials will be updated periodically, as needed.

AEPC Program Process

The AEO has developed the AEPC Program to provide a user-friendly, efficient, and flexible experience for participating public entities. Following are the minimum steps that AEO, participating public entities, and qualified providers shall take when pursuing an EPC through the AEPC program:

1. Public entity and AEO shall execute AEPC-Memorandum of Understanding.
    a. AEPC-MOU will be a non-binding agreement between participating public entity and AEO which enrolls public entity in program, details current facility needs, and may be terminated before execution of AEPC-IGA Contract for convenience without penalties.
2. AEO shall administer selection by assisting participating public entities with the solicitation of proposals from qualified providers in a manner consistent with both A.C.A. §19-11-204 and any relevant statutory requirements specific to the public entity.
    a. AEO and participating public entity will collaborate on a Request for Proposals detailing the proposed AEPC project and selection criteria. Once complete, the public entity will issue the Request for Proposals and AEO will deliver notice electronically to qualified providers via the designated contacts currently listed on AEO Website. It is the responsibility of qualified providers to maintain current contacts. Once announced, qualified providers will have at least ten (10) business days to respond to a Request for Proposals with sealed responses.
    b. The public entity will then evaluate qualified provider's sealed responses. AEO will provide technical assistance during the evaluation, but will not assist in the evaluation or selection. The public entity will either make a selection at this time or choose to interview certain qualified providers for further evaluation.
    c. If a participating public entity opts to interview qualified providers, AEO will coordinate selection interviews at a time of mutual convenience for all parties. AEO will attend all selection interviews conducted through the AEPC Program, but again will have no role in the public entity's selection and/or scoring of qualified providers for a project opportunity.

        i. Interviews will be no less than one (1) hour per short-listed qualified provider, though the public entity may extend this time if they so choose.
        ii. Public entities participating in the AEPC selection process shall have forty-five (45) business days to select a qualified provider and begin negotiating an audit contract. AEO has developed an AEPC-IGA contract template that must be used for AEPC projects unless permission is granted in writing by AEO.
    d. No selection criteria will be mandated by AEO for public entities to follow, though sample documents will be provided.
3. Once a selection has been made, AEO will notify all respondents and public entity and selected qualified provider will negotiate and execute an AEPC-IGA Contract, in which both parties agree on buildings to be audited, timeline, measures of key interest, and audit fee.
    a. The AEPC-IGA Contract will include negotiated pricing using AEO's predefined $/sq foot and other relevant variables specific to the project.
    b. The executed AEPC-IGA contract must be submitted to AEO.
    c. The IGA contract shall be executed by an employee of the public entity with the authority to contractually bind the participating public entity and an employee of the qualified provider with similar authority.
    d. The negotiated cost of the AEPC-IGA Contract must be incorporated into the final EPC cost should the public entity elect to move forward with an EPC Contract.
    e. Upon completion of the IGA, the qualified provider must provide one (1) copy of the IGA to AEO for review and feedback. AEO will engage in a comprehensive review of the proposed project scope and provide feedback to both the qualified provider and public entity in no more than fifteen (15) business days.
    f. After evaluating both the completed IGA Report and AEO's comprehensive feedback to the proposal a public agency may either:
        i. Reject the proposal; or
        ii. Proceed with the negotiation and execution of an AEPC-EPC.
    g. If a public entity elects not to execute an AEPC-EPC Contract, the IGA fee is due and payable to the qualified provider within thirty (30) days of invoicing by the qualified provider.
4. Upon mutual agreement, public entity and qualified provider will execute an EPC for the implementation of ECMs for the public entity's benefit. If the public entity desires, multiple EPC project phases may be successively pursued by a public entity with a selected qualified provider by executing an amendment to the AEPC-IGA contract or AEPC-EPC contract via change order for a period of seven (7) years from the execution of the initial AEPC-IGA contract. Notice of such an amendment shall be provided to AEO upon execution. AEO has developed a standard contract template that must be used for AEPC projects unless permission is granted in writing by AEO. Further, all EPC

contracts executed through the AEPC program must include the following provisions and conditions:

a. Standard terms and conditions.
b. The names and addresses of the parties to the contract.
c. The EPC price, stated in guaranteed maximum or fixed cost terms as defined by the American Institute of Architects.
d. Detailed descriptions of both existing conditions at and the ECMs to be installed on the premises of the public agency.
e. The total term of the contract (stated in years or months).
    i. The maximum term of an AEPC-EPC is twenty (20) years unless the installed ECMs on a project have either an active warranty or weighted useful life exceeding twenty (20) years in accordance with A.C.A.§19-11-1256(b). Such extensions require the approval of AEO.
f. The dollar amount of guaranteed savings (annually and total), provided by the EPC.
g. Full accounting for all associated costs related to the EPC, including interest, measurement and verification services, financing costs, and administrative services.
h. The responsibilities of the public entity and the qualified provider under the EPC.
i. Contract execution by employees of the public entity and qualified provider with the authority to contractually bind their respective organizations.
j. An active measurement and verification plan for all installed ECMs as defined, by the IPMVP. The plan must include the following:
    i. A one (1) year term for M&V post-installation, with an option for the public entity to renew in subsequent years at their convenience.
    ii. IPMVP options used for each installed ECM.
    iii. Responsibilities of the qualified provider regarding measurement and verification, including frequency and method of reporting.
        A. It is the responsibility of the qualified provider to provide measurement and verification reports to both the public entity and AEO within thirty (30) days of the reporting schedule.
k. The assessment of an administration fee to AEO for the purposes of overseeing and maintaining the AEPC program.
    i. The AEO fee for the AEPC program is a flat rate of three-tenths of a percent (.3%) per project phase, with a minimum of ($7,500) and a maximum of thirty thousand dollars ($30,000) for any single executed AEPC project phase. However, projects that are executed without debt issuance (beyond IGA and M&V costs) for the participating public entity shall have a flat fee of four thousand dollars ($4,000) for a project phase.

5. Projects involving non-institutional state agencies will be required to coordinate with ADFA and DBA to secure financing and design approval, respectively. AEO will assist state agencies with coordination between these agencies.