



**Metropolitan Area Planning Commission  
Energy Performance Contracting Request for Qualifications (RFQ)**

**FREQUENTLY ASKED QUESTIONS  
Developed in collaboration with Peregrine Energy Group  
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**General Information**

**Q: What is “Energy Performance Contracting”?**

A: Energy Performance Contracting is a special procurement tool that allows Massachusetts cities, towns, school districts, and other public agencies to purchase a bundle of energy management services through a one-time offer from qualified energy vendors. These agreements are called “performance contracts” because the selected energy vendor guaranties that implemented projects will result in specified, measurable savings. Examples of energy management services include engineering, design, construction, commissioning, and savings measurement and verification for energy and water related capital investment projects. Energy performance contracting is often used for “big ticket” asset modernization projects with long paybacks, but will typically also address a range of end uses, building systems, and equipment. Qualified energy vendors, called Energy Services Companies or ESCOs, are secured through competitive solicitations.

**Q: How does this work?**

A: Energy performance contract engagements are phased, beginning with preliminary assessments that determine the range of opportunities with costs and savings and followed by detailed investment grade engineering and ultimately project construction. Contracts are also



phased, with the contracting parties working through the details of potential projects and come to agreement about a final scope or potentially disengage under terms specified in the initial energy audit contract if a construction agreement is not executed.

**Q: Is this a good deal for my community?**

A: It depends on whether you think you could do these projects on your own, politically and in terms of time/capital. The alternative would be to replace equipment as it fails, or as capital budgets have room for it.

**Q: Will we need an Owner's Agent to represent our interests in this process?**

A: MAPC recommends that participating communities give serious consideration to engaging an independent owner's agent with prior performance contracting experience to assist them. While an owner's agent's services may not be necessary if a community has the technical capabilities and staff resources available to protect its interests and provide project oversight, independent expert support can help ensure that there is someone knowledgeable sitting on the community's side of the table at critical decision points such as finalizing contract language, selecting projects, specifying equipment requirements, confirming proper installation and operation, and verifying savings.

MAPC has made provision for participating communities to engage Peregrine Energy Group, Inc. in the Owner's Agent role under MAPC's competitively secured consulting services agreement and at our negotiated rates. Alternatively, communities can secure these services independently through standard procurement procedures.

## **Regional Procurement of a Single ESCO**

**Q: What is MAPC proposing to do?**

A: As part of its ongoing commitment to providing regional services that offer economies to members, MAPC has agreed to issue a regional solicitation for energy management services on behalf of MAPC municipalities. Participating parties will then be able to enter into contracts with the selected vendor if they choose to do so and be assured that they have met the Commonwealth's competitive bidding requirements.

Similar Massachusetts initiatives have been successfully undertaken on a regional basis in the Pioneer Valley, Franklin County, and Merrimack Valley.



**Q: What ongoing assistance will MAPC provide?**

MAPC will provide ongoing support to participating communities as needed, including: collecting facility and utility information for the RFQ, distributing responses to the RFQ, scheduling and providing guidance at meetings of the ESCO Selection Committee, answering questions about the performance contracting process, and creating template agreements after the ESCO has been chosen.

**Q: Is there any obligation incurred if a municipality or agency is listed as a participant in the MAPC solicitation?**

A: No. Being listed in the RFQ does not mandate that a listed participant executes a contract with the ESCO that is selected. That said, we suggest that participating parties treat their involvement seriously from the earliest stages and seek guidance from decision makers for their respective organizations as to whether such an approach is viable and attractive.

**Q: Is this process geared towards choosing a big ESCO? Does a small company have a chance?**

A: Yes, there is a bias towards larger companies.

**Q: Is it possible to select multiple ESCOs? Wouldn't this result in better quality of projects? Are you going to get inferior staff with a single ESCO as they will be spread thin?**

A: Having multiple ESCOs defeats the purpose of doing a single regional project (i.e. getting lots of bids and competitive pricing because everyone wants the work). If you have multiple ESCOs, they have to compete with each other, and municipalities end up competing to get the ESCO they perceive to be "better."

The ability of a single ESCO to do this many projects will be considered during the selection process. Remember, most of the work is done by subcontractors anyway, so the same pressure will be put on subcontractor community regardless of whether the projects are being managed by one ESCO or multiple ESCOs. ESCOs are really just project management/construction management providers.

Remember: these subcontractors are used to working weird hours (for lighting retrofits, etc) – not too hard to get the construction done.

In terms of staff: you will always have junior engineers doing work. But since this is a performance contract, their work will generally be overseen by senior staff – good results are in their own interest.



Also note: projects will end up being staggered anyway due at least to the Town Meeting/City Council distinction. We did confine the selection process to 14 communities.

**Q: If at the end of the process, a community does not like the Regional ESCO selected, can they opt out?**

A: Yes. A community can opt out at any time up until signing an Energy Services Agreement, and go out to bid under Chapter 25A on their own.

## **Costs & Financial Obligations**

**Q: What local approvals and financial commitments are necessary?**

A: Engaging an ESCO will require that participating communities enter into one or more binding contracts for specified services, each with financial obligations.

The first contract is for an Investment Grade Audit (IGA). This contract authorizes the ESCO to complete an investment grade audit of assets that the community is considering including in the performance contract. The Investment Grade Audit agreement specifies the fee that the community must pay the ESCO if the community elects to not proceed with construction with the ESCO. The community will need to follow established community approval and payment procedures to ensure that the potential audit fee is properly obligated and reserved before signing the Investment Grade Audit agreement.

The second contract is an Energy Services Agreement (ESA). This contract authorizes the ESCO to begin the design and construction process for a locally approved set of energy efficiency measures described in the community specific IGA. This agreement is the heart of the performance contracting process. It includes savings guarantees from the ESCO, measurement and verification of savings methodologies, owner and ESCO obligations for building and equipment operations and maintenance, and procedures for sign-offs on measure completion, among other provisions.

To execute an ESA, the community must have secured the capital funds needed to pay for to be installed equipment and related services. Different ESCOs have different payment procedures, but generally, the ESCO will prefer that the community makes incremental progress payments to the ESCO during construction, with final payment due after the measures are commissioned and when they begin to get useful benefit from the installation(s). The community will need to follow



established community approval and payment procedures to ensure that vendor payments will be properly obligated and will be available before it can sign an Energy Services Agreement.

**Q: Does the city/town pay for the IGA?**

A: Yes.

**Q: Is the cost of the IGA rolled into the total cost of the project?**

A: Yes. IGA rate is about 4-10 cents per sf and is not seen as profit for the company. Cost for 1,000,000 sf would be approximately \$40-100k, which city must appropriate. It's rolled into construction costs and can't exceed debt services.

**Q: Does the city/town pay for the projects?**

A: Yes.

**Q: What is the contract duration and dollar investment that participating parties should expect from an eventual Energy Management Services contract with the energy services company?**

A: These are expensive, long-term agreements that should be considered carefully and entered into with all due diligence. Contracts for the most recent 15 energy performance contracts recorded by MA DOER ranged from \$0.1 million to \$39.0 million with a median cost of about \$10.0 million. The Term of guaranteed savings contracts ranged from 5 years to 20 years, with a median of about 15 years.

**Q: Do the ESCOs finance these projects or do participants need to supply their own financing?**

A: Participating communities must be able to finance and pay for the performance contract. Securing access to financing is a critical component of the overall process. Most, if not all, ESCOs understand the financial options available to public entities and many have pre-established relationships with financing firms that specialize in energy performance contracts.

Public entities can choose to have the ESCO facilitate the energy project financing, or they can pursue and secure financing themselves, perhaps using their bonding authority. The funding sources and options for public projects can include utility rebates, lease arrangements, municipal bonds, capital funds, operating funds, grants, and renewable energy grant funds<sup>1</sup>.

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<sup>1</sup> MA DOER, "XI: FREQUENTLY ASKED QUESTIONS"



**Q: Who gets utility rebates?**

A: They are passed on to the city.

**Q: Who gets savings in excess of the guarantee?**

A: They should be passed on to the city. This is something that should be negotiated during the contracting stage.

## **Subcontractors**

**Q: Do subcontractors have to reveal their markup in responses to the RFQ?**

A: No. What happens first is a design process to identify ECMs and potential savings. Once the whole project is confirmed, the ESCO will come back with fixed costs and savings based on competitively bidding out the project to sub contractors. This is done as part of the IGA process (also understood to be an ASHRAE Level 3 Audit).

**Q: Are bids from the subcontractors transparent?**

A: This is something we ask for during the selection process. Keep in mind that the city bears that cost if anything changes/prices go up/etc. Generally you agree on the scope, not pricing.

**Q: What can we do if we don't like the subcontractors?**

A: If you are working with a controls company, they will obviously try to sell you their products. You can express if you've had bad experience with their controls service department and ask them to go out to bid for the services.

## **Post-Construction Process**

**Q: Who is responsible for equipment maintenance?**

A: O&M is generally on the town and procedures will be specified by the ESCO. They are responsible for training your staff to implement the O&M plan. You can elect to accept their maintenance services agreement, or do it yourself, or go out to bid. They will check in on you to make sure you are doing proper maintenance in some way or another, and can cancel agreement if you're not doing it the way you say you would (which would make savings different).

**Q: What happens if building use changes, altering energy consumption patterns?**

A: The ESCO will come up with a baseline algorithm for each building based on hours of occupancy, set points, etc. If you change building operating hours (opening a community center on

the weekends for meeting space, for example), you will work with the ESCO to adjust the baseline accordingly, so that savings can still be accurately demonstrated.

**Q: Should we issue performance bonds?**

A: Warrantees are your primary protection. Equipment generally comes with a 1-yr warrantee. You could require performance bonds if you wanted to, but it's an additional cost – remember the project can only get so big (limited by amount of savings).

## Legal Questions

**Q: How is this approach to contracting for Energy Management Services supported by state law?**

A: Under M.G.L. c. 25A, sec 11C and 11I, public agencies are permitted to solicit competitive bids from energy service companies for bundled energy audit, design, construction, maintenance, and monitoring and verification services. Otherwise, under normal Massachusetts bidding laws, these services must be procured unbundled with separate bids for each phase of construction. This special exception for energy projects under M.G.L. c. 25A procurement guidelines acknowledges the unique challenge that energy projects present – that they require a holistic approach to initial energy analysis, measure selection, installation, and long term monitoring and verification.

Under Section 11C, vendors respond to a Request for Proposals (RFP) for a specific set of pre-identified measures and provide a fixed price for the measures and guaranteed energy savings.

Under Section 11I, vendors respond to a Request for Qualifications (RFQ), offer a fixed price for energy audits (i.e. cents/S.F.), describe their approach and potential energy savings measures the firm will investigate, and propose markups above installation cost (in percent) for services the vendor will provide.

Since the passage of the Green Communities Act in 2008<sup>2</sup>, there has been an explosive growth in the use of this mechanism by Massachusetts communities.

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<sup>2</sup> The Green Communities Act included significant changes to the M.G.L. c. 25A RFQ procurement regulations and extended the Energy Management Service Agreement up to 20 years.



**Q: Who can respond to Chapter 25A procurement RFPs or RFQs?**

A: Only Energy Service Companies certified by the MA Department of Capital and Asset Management can submit a response to Chapter 25A procurement RFPs or RFQs. The ESCO will coordinate all of the activities of a performance contracting project, including: technical audits, design engineering, equipment installation, construction management, project financing, staff training, equipment maintenance and project monitoring.

There are many qualified ESCOs pursuing Energy Management Services Contracting projects in New England. Follow the link at [www.mass.gov/doer/Energy Management Services](http://www.mass.gov/doer/Energy%20Management%20Services) for a complete list of companies certified in Energy Management Services in Massachusetts<sup>3</sup>.

**Q: Is there a process proscribed by Chapter 25A that MAPC must follow?**

A: Cities and Towns need to follow five steps to procure Energy Management Services:

- a. Develop ESCO Request for Qualifications
- b. Publish RFQ and Select Vendor
- c. Negotiate and Sign Energy Audit Agreements
- d. Negotiate and Sign Energy Management Service Agreements
- e. Maintain Equipment and Monitor and Report Energy Performance

MAPC will take the lead with steps **a.** and **b.** for all communities who elect to participate in the collective RFQ bidding process with assistance from participating communities. The participating communities will be responsible for steps **c.**, **d.** and **e.** and sign individual Agreements with the selected ESCO.

**Q: Do we have to do reporting to the state?**

A: Yes, although it's mostly progress based/administrative rather than technical.

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<sup>3</sup> MA DOER, "XI: FREQUENTLY ASKED QUESTIONS"