



CIRCULAR DEQ 14

**STANDARDS FOR
ENERGY PERFORMANCE CONTRACTING**

April 5, 2017 Draft Edition

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1 FOREWORD

The Department of Environmental Quality of the State of Montana as authorized by 90-4-1110(1)(e), MCA, hereby adopts the following program documents for Energy Performance Contracting (EPC).

The term "Department" as used in these documents refers to the Montana Department of Environmental Quality or its authorized agents. The terms "shall" and "must" are used to indicate Department's Energy Performance Contracting Program (EPCP) requirements; documents related to these terms serve as requirements of the Energy Service Provider (ESP). The terms "should," "recommended," "encouraged" and "preferred" are used to indicate desirable procedures or methods and are non-mandatory items and serve as EPCP guidelines available to the ESP and governmental entity (Entity).

The documents provided in this circular are based on model documents provided by the US Department of Energy through the Office of Energy Efficiency and Renewable Energy and the Energy Services Coalition, a public private partnership for energy performance contracting. Other sources include energy performance contracting documents from several state energy offices. The documents were modified to reflect statute requirements for Montana as well as desired program operation by DEQ.

The EPCP documents provided in this circular shall and must be used to exhibit sufficiently standardized practices to permit specific delineation of Department requirements. Use of these mandatory documents serves as a checklist for the Department. A separate document provides policy statements and guidelines concerning EPCP design, practice and standards. These policy statements recommend an approach to the EPC processes and direct the ESP to additional program documents that may be used as supplemental guidelines when providing EPC services.

2 PURPOSE OF CIRCULAR

The purpose of this Circular is to augment rules under § 90-4-1110, MCA, and more specifically to provide the ESP with instructions for using the mandatory EPCP documents. The Department lists the following mandatory EPCP documents:

- 1) Agreement for Qualified Energy Service Provider to Provide Energy Performance Contracting Services in Montana (Base Agreement).
- 2) Cost and Pricing Tool;
- 3) Request for Proposal Energy Performance Contracting Services;
- 4) IGA Contract;
- 5) EPC Project Proposal Summary;
- 6) EPC Contract;
- 7) EPC Contract Schedules;
- 8) Measurement and Verification Plan;
- 9) Post-Installation Report;

- 10) Annual Measurement and Verification Report;
- 11) EPC Contract Exhibits; and
- 12) EPC Project Summary Report;

Deviations from any of these required documents may be permissible by the Department; permissible deviations are described in Circular Section **3 DEVIATIONS FROM PROGRAM DOCUMENT TEMPLATES**. Deviations for the individual documents are included in Sections 4 and 5.

3 DEVIATIONS FROM PROGRAM DOCUMENT TEMPLATES

The Department may review EPCP documents on a case-by-case basis for specific projects and may at its discretion allow deviations from the mandatory requirements of these documents. In general deviations are categorized as permissible and non-permissible.

Permissible deviations are generally characterized as those required for identifying the parties entering the project contract(s), details of the specific project and to provide specific information or agreements mutually agreed upon by the ESP and the Entity. Non-permissible deviations are generally characterized as those that alter the intent of EPC procurement, or that impose an apparent potential liability to the Entity, that cause a violation of a statute or of an administrative rule. The Department shall indicate program document sections where language subject to non-permissible deviations are located; however it shall be understood that contract deviations that are additions to contract language may be deemed as non-permissible at the discretion of the Department.

Sections 4 and 5 have specific information regarding deviations for each document.

3.1 GENERAL DEVIATION PROCEDURE

- 1) Permissible deviations may be made by either the ESP or the Entity. All documents having a deviation shall be accompanied with a synopsis list characterizing the nature of the deviation and identifying the specific section of the deviation. Adequate justification for the deviation must be provided. "Engineering judgment" or "professional opinion" without supporting data is not considered adequate justification.
- 2) Upon request from the Department, the ESP shall submit documents to the Department in native electronic format.
- 3) The above general deviation procedures apply globally to all Department EPCP documents. Specific deviation requirements that apply to documents presented in Section 2 items 1 through 13 are provided in Section 4 below.

3.2 QUALIFYING DOCUMENTS

The Request for Qualifications (RFQ) and Base Agreement are documents issued by the Department to the ESP. The Department issues the RFQ to solicit responses from energy service providers interested in providing

performance contracting services in Montana.

The qualification process requires that the ESP sign the Base Agreement for the ESP to be listed by the Department as qualified to provide EPC services in Montana. Upon signature, the Department lists the ESP as qualified on the Department's EPC website.

These qualifying documents are modified only by the Department.

3.3 PROGRAM DOCUMENTS

The program documents provided in this Circular are mandatory documents developed by the Department and issued by the Department, Entity, or ESP during the EPC process.

4 QUALIFICATION AND LISTING OF ENERGY SERVICE PROVIDERS

Qualification and listing of the qualified energy service providers is a two-step process. The process includes a submittal from the ESP responding to the RFQ issued by the Department. Providers that meet the requirements of the RFQ shall be notified by the Department and must sign the Base Agreement to be included on the pre-qualified list. The ESP will be listed as a qualified energy service provider by the Department upon receipt of the signed Base Agreement. The Entity shall use the list to solicit proposals from at least three qualified ESPs for their EPC project. Only qualified providers may provide EPC services for governmental entities in Montana. The following documents are developed and issued by the Department and shall be mandatory in their entirety.

4.1 BASE AGREEMENT

The Base Agreement is issued by the Department and defines the obligations and responsibilities of the ESP and the Department for providing services for the EPCP.

4.2 COST AND PRICING TOOL

The Cost and Pricing Tool is a document provided by the Department and completed by the ESP at various stages of the EPC process. The ESP shall complete the columns as required for each stage of the EPC process. The ESP shall enter data for all data fields, except calculated fields, for projects that complete the EPC process.

5 PROGRAM DOCUMENTS

The following documents are program documents related to the procurement, contracts, and reporting requirements of the Montana Energy Performance Contracting Program.

5.1 REQUEST FOR PROPOSAL – ENERGY PERFORMANCE CONTRACTING SERVICES

The Request for Proposal (RFP) document is issued by the Entity to solicit proposals from ESPs from the Department's list of qualified energy service providers. This document is expected to be modified by the Entity for the specific project. Highlighted portions are to be replaced by the appropriate terms. Instructions and comments are to be deleted in the final form for the RFP. The Entity may also have specific requirements for the ESP, such as insurance and bonding levels, which may be included with this document. The Entity is strongly encouraged to conduct a review of the RFP with their legal counsel to ensure all requirements of the Entity are included in the RFP.

The Entity shall complete Attachment A: Technical Facility Profile, providing information necessary for the ESP to complete its proposal. The profile must identify all buildings or facilities to be included in the project. Buildings or facilities may be deleted from the project scope during negotiations. Adding buildings or facilities to the list after proposals are received for the RFP is not permitted. A new RFP will be required for the additional buildings or facilities.

Non-permissible deviations from the Department's Request for Proposal document include the following document sections:

Section 1 General Information with the exception of highlighted text.

Section 4 Apparent Award

Section 5 Pricing

Attachment B: Cost and Pricing Tool

5.2 INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT

The Investment Grade Audit and Project Proposal Contract is a template provided by the Department to be modified for the specific project by the ESP and the Entity. Highlighted portions are to be replaced by appropriate terms. Instructions and comments are to be deleted in the final contract form.

Information for Attachment A Section 1 is recommended and is to be provided by the Entity and included by the ESP as part of the contract. Exhibit C is provided for informational purposes and is to be completed by the Entity upon acceptance of the final IGA report.

All Articles are to be included in the contract without deviation, unless otherwise noted. Attachment A is also to be included without deviation, unless otherwise noted.

Permissible deviations from the Department's IGA Contract include the following document sections:

Highlighted text in Articles 2, 3, 4, and 7

Article 7 may be modified to incorporate Entity's insurance requirements

Attachment A, Section 3.5

Attachment A, Section 6 where text is highlighted
Exhibits A and B are to be completed by the ESP and included in the contract

5.3 EPC PROJECT PROPOSAL SUMMARY

The EPC Project Proposal Summary is an Excel Spreadsheet provided by the Department to the ESP. The ESP shall complete the information requested in the three tabs of the document. The shaded or highlighted fields are calculated fields. The ESP shall add rows to tables for the CSM and O&M tabs as necessary.

5.4 ENERGY PERFORMANCE CONTRACT

The Energy Performance Contract is a template provided by the Department to be modified for the specific project by the ESP and approved by the Entity. Highlighted portions are to be replaced by appropriate terms. Instructions and comments are to be deleted in the final contract form.

All Articles are to be included in the contract.

Non-permissible deviations from the Department's Energy Performance Contract include the following:

Articles are to be provided in their entirety with the following exceptions:

- highlighted portions are to be replaced with appropriate text
- Article 2 Section 2.1 Paragraph 1 may be deleted if no equipment installed for the project is leased

5.5 ENERGY PERFORMANCE CONTRACT SCHEDULES

The Energy Performance Contract Schedules is a template provided by the Department to be modified for the specific project by the ESP and approved by the Entity. This template becomes part of the overall EPC contract.

All schedules, including parts thereof, in this document are required as part of the contract. Comments and instructions are provided as guidelines for creating each schedule or part thereof. Schedule B Part 1 Risk, Responsibility and Performance Matrix is recommended and is to be completed by the ESP. The M&V Plan, Post-Installation Report, and Annual Measurement and Verification Report may be created as documents separate from other text and tables in Schedule B provided that each document:

- follows the format specified in this part, and
- is referenced as a part of the contract

Refer to Sections 5.6, 5.7, and 5.8 below for more information regarding the M&V Plan, Post-Installation Report and Annual M&V Report.

Optional schedules are to be included only if they are to be part of the contract. Each of the optional schedules will be identified sequentially starting with Schedule K.

5.6 MEASUREMENT AND VERIFICATION PLAN

The Measurement and Verification Plan is a template provided by the Department and modified by the ESP for the specific project. Requirements for this document are defined in the EPC Schedules document and shall comply with the current adopted version of FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts.

The ESP shall provide all required information that is applicable to the project as indicated in the document. The report outline shall be followed to maintain consistency within the EPCP and to accommodate the review process. The tables shall be completed by the ESP. For Option D, the ESP shall provide to the Department input and output files in native electronic format.

Permissible deviations from the Department's Measurement and Verification Plan include:

- Units for water savings and use as these should reflect units from utility bills;
- Table 3 Schedule of Verification Reporting Activities
- Sections identified as optional or if applicable

Non-permissible deviations from the Department's Measurement and Verification Plan include the following:

- Outline format;
- Content requirements, except those identified as optional; and
- Data requirements of tables;

5.7 POST-INSTALLATION REPORT

The Post-Installation Report Outline is a template provided by the Department and modified by the ESP for the specific project. Requirements for this document are defined in Schedule B of the EPC Schedules document and shall comply with the current adopted version of the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts.

The ESP shall use the format and tables included in this report outline. The outline defines the requirements for each section of the report. The ESP shall provide all data as required in the report outline including:

- Changes between final proposal and as-built conditions;
- Measured data;
- Calculation data; and
- Savings calculations

Permissible deviations from the Post-Installation Report include:

- Units for water savings and use as these should reflect units from utility bills;

Non-permissible deviations from the Department's Post-Installation Report include the following:

- Outline format;
- Content requirements, except those identified as optional; and
- Data requirements of tables;

5.8 ANNUAL MEASUREMENT AND VERIFICATION REPORT

The Annual Measurement and Verification Report Outline is a template provided by the Department and modified by the ESP for the specific project. Requirements of this report are defined in Schedule B of the EPC Schedules document and shall comply with the requirements of FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts.

The ESP shall provide all required information that is applicable to the project as indicated in the document. The report outline shall be followed to maintain consistency within the EPCP and to accommodate the review process. The tables shall be completed by the ESP. For Option D, the ESP shall provide to the Department input and output files in native electronic format.

Permissible deviations from the Department's Annual Measurement and Verification Report include:

- Units for water savings and use as these should reflect units from utility bills;

Non-permissible deviations from the Department's Annual Measurement and Verification Report include:

- Outline format;
- Content requirements, except those identified as optional;
- Data requirements of tables;
- Measured data;
- Baseline adjustment factors and calculations;
- Calculation data; and
- Savings calculations

5.9 ENERGY PERFORMANCE CONTRACT EXHIBITS

The Energy Performance Contract Exhibits is a template provided by the Department to be modified for the specific project by the ESP and the Entity. This template becomes part of the overall EPC contract.

Exhibit A Performance Bond and Exhibit B Labor & Material Payment Bond are sample forms. Actual forms are provided and completed by the Entity. Exhibit C is the Certificate of Acceptance for the Investment Grade Audit Report and the completed and signed form is included in the EPC contract as evidence that the IGA report has been accepted. Exhibit D is the Certificate of

Acceptance for the Implementation of Installed Equipment. This form is completed by the Entity signifying the completion of the EPC project. Exhibit E is completed by the ESP and includes all warranty information for installed equipment and any warranties provided by the ESP.

Non-permissible deviations from the Department's Energy Performance Contract Exhibits include the following:

- Exhibit C must be as provided at the acceptance of the IGA report

5.10 EPC PROJECT SUMMARY REPORT

The EPC Project Summary Report is an Excel spreadsheet that provides a summary of all information regarding the project. Column B indicates whether the information field is required or optional. All data entry shall be in Column F of the Summary tab. Rows starting with "CSM – Technology Category" must be completed for each cost-saving measure.

The Summary tab includes summary information identified as Project-level and CSM-level (one CSM only). The CSM tab is used to provide summary information for each additional CSM and must be duplicated for each corresponding CSM included in the project. All data entry shall be in Column F of the CSM tab.

6 GLOSSARY OF TERMS

The following terms as used in these standards are defined below:

- 1) "Department" refers to the Montana Department of Environmental Quality or its authorized agents;
- 2) "ASHRAE" refers to the American Society of Heating, Refrigerating and Air-Conditioning Engineers;
- 3) "COA" refers to Certificate of Acceptance;
- 4) "CSM" refers to Cost Savings Measure;
- 5) "Entity" refers to the governmental entity as defined in 90-4-1102(6), MCA;
- 6) "EPC" refers to Energy Performance Contract;
- 7) "EPCP" refers to Energy Performance Contract Program;
- 8) "ESP" refers to Energy Service Provider;
- 9) "QESP" refers to Qualified Energy Service Provider;
- 10) "IGA" refers to Investment Grade Audit;
- 11) "M&V" refers to Measurement and Verification; and
- 12) "O&M" refers to Operation and Maintenance.

7 ATTACHMENTS

NOTE: The following attachments are currently provided as separate documents for the review process. The final versions of these documents will be included in the Circular.

- 7.1 Base Agreement**
- 7.2 Cost and Pricing Tool**
- 7.3 Request for Proposal Energy Performance Contracting Services**
- 7.4 IGA Contract**
- 7.5 EPC Project Proposal Summary**
- 7.6 EPC Contract**
- 7.7 EPC Contract Schedules**
- 7.8 Measurement and Verification Plan**
- 7.9 Post-Installation Report**
- 7.10 Annual Measurement and Verification Report**
- 7.11 EPC Contract Exhibits**
- 7.12 EPC Project Summary Report**