



Office of Management and Budget

Energy Performance Contracting Policy and Procedures

Policy # 19-01	
Effective Date: February 1, 2019	Supersedes: N/A
Application: Executive Branch Agencies, School Districts and Higher Education ¹	Merit Rule: N/A
Authority: 29 Del. C. §6976(b)	

1. Background

In accordance with 29 Del. C. §§6971-6976 (the “Energy Performance Contracting Act”) agencies may enter into guaranteed energy performance contracts completed in conjunction with the Delaware Sustainable Energy Utility, Inc. (SEU). Pursuant to 29 Del. C. §6976(b), the Director of the Office of Management and Budget is responsible for approving an agency’s guaranteed energy performance contract. In an effort to optimize guaranteed energy performance contracting opportunities, OMB has developed this policy which will provide guidance in the evaluation and selection of such contracts.

2. Definitions and Acronyms

Agency, for the purpose of this policy, is defined as an Executive Branch Agency, School District, or Higher Education¹.

ECM means energy conservation measure as defined in 29 Del. C. §6972.

Guaranteed energy performance contract is defined in 29 Del. C. §§6971-6976 (the “Energy Performance Contracting Act”) as a contract between the agency and a qualified provider for the evaluation, recommendation, and implementation of energy conservation measures, which, at minimum, shall include: a. The design and installation of equipment to implement 1 or more of such measures and, if applicable, operation and maintenance of such measures; b. That the amount of guaranteed actual savings must meet or exceed the total annual contract payments made by the contracting agency for the guaranteed performance contract; and c. The finance charges incurred by the agency over the life of the contract.

Payback period means the amount of time it takes to recover the total annual contract payments and fees through lower energy costs.

¹ Pursuant to state procurement definitions in 29 Del. C. §6902, “agency” includes Delaware Technical Community College and Delaware State University, but does not include University of Delaware.

Project is the installation of certain energy and water saving equipment and providing other services designed to save energy and water for the Agency’s property and buildings. When accepted by the Agency the project is incorporated in the guaranteed energy performance contract.

Return on Investment (ROI) is the dollar savings captured after the project is implemented.

Sustainable Energy Utility, Inc. (SEU) is a non-profit corporation that was created by the State of Delaware pursuant to the Delaware Energy Act, in 29 Del. C. §8059(c), to carry out the governmental purposes of the State of Delaware by, among other things, developing end-user markets for energy efficiency services and customer-sited renewable energy, and facilitating private sector implementation of SEU’s market development plans. The SEU has established a program to facilitate the implementation and financing of energy conservation measures (ECMs) by “agencies” as defined in the Energy Performance Contracting Act.

3. Selection of Projects

To optimize the impact of the funding, ideal candidates are those agencies where the most comprehensive opportunity for energy saving capital improvement exists. Only buildings having a remaining operational use exceeding 20 years may be considered for guaranteed energy performance contracts. The below criteria should also be considered when selecting projects:

1. Combined ECMs where energy savings will exceed financing costs by at least 10%.
2. Combined ECMs with an average payback period not to exceed 20 years.
3. Buildings that have a relatively high utility cost per square foot and can expect to see energy savings approach 20%.
4. Buildings that are already programmed for capital improvements where ECMs can be combined with the planned work.
5. Buildings having significant deferred maintenance and/or equipment nearing end of life.

4. Return on Investment (ROI) Requirement

Projects will be valued based on a sliding scale requirement for the annual return on investment (ROI).² Projects below \$750,000 will not be considered for financing. Projects above \$750,000 must meet the below annual ROI requirements. Projects over \$10,000,000 will have a negotiable annual ROI.

Total Project Value	Minimum ROI
\$0-\$750,000	Not applicable
\$750,001-\$4,999,999	10%
\$5,000,000-\$7,999,99	9%
\$8,000,000-\$9,999,999	8%
\$10,000,000+	Negotiable

² The annual ROI requirements in this policy supersede the 10% annual net savings requirement in the 2016 SEU Energy Performance Contracting Program Guidebook.

5. Negotiable ROI for Projects over \$10 Million

The annual ROI will be negotiable for projects over \$10,000,000. The ROI for these projects will be evaluated by OMB based on the following criteria:

Evaluation Criteria

Feasibility

- Buildings have a remaining operational use exceeding 20 years

Financial

- Project's total cost
- Project's return on investment (ROI)
- Includes energy saving capital improvements

Technical

- Number of facilities impacted
- Number of ECMs

Environmental

- Energy reductions
- Includes ECMs that improve indoor air quality or results in other measureable environmental benefits

6. Procedures for Requesting an Energy Performance Contract

- The selection and approval procedures are outlined in the 2016 SEU Energy Performance Contracting Program Guidebook found here:
<https://mymarketplace.delaware.gov/agency-forms.shtml>
- Attachment 1 of the Guidebook contains a flow diagram of the procedures.

7. Form(s) associated with this policy

The rating form for Energy Performance Contracting Projects can be found here:

- <https://dfm.delaware.gov/energy/conservation.shtml>
- <https://mymarketplace.delaware.gov/agency-forms.shtml>