Guide To
Energy Performance Contracting

Department of Business, Economic Development, & Tourism

Energy, Resources, & Technology Division

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LIST OF ABBREVIATIONS

CFC	Chlorofluorocarbons
DBEDT	Department of Business, Economic Development, and Tourism
EEM	Energy Efficiency Measure
ESCO	Energy Service Company
GP	General Provision (of the sample contract)
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
kWh	kilowatt-hour
RFP	Request for Proposals
SPB	Simple Pay-Back

1. INTRODUCTION

1.1 About This Guide

The Energy, Resources, and Technology Division of the Department of Business, Economic Development, and Tourism (DBEDT) has prepared this Guide to help State agencies improve their buildings using the money saved by reducing energy costs to pay for the improvements. A part of what is normally paid to the utility company is saved and this savings is used to pay for better equipment, better controls, better maintenance, etc. "Energy performance contracting," as this approach is commonly known, provides agencies with a way to fund energy-saving improvements even when budgets are tight.

In this Guide, DBEDT provides an introduction to energy performance contracting and a reference manual to help agencies through the process. Chapters 1, 2, and 3 introduce the outstanding features of performance contracting, a simple feasibility evaluation, and advice on getting a project started. Chapters 4, 5, and 6 discuss how to request proposals, select a contractor, and prepare a contract. Chapter 7 addresses in detail how to measure energy savings and Chapter 8 gives advice on project monitoring and management to insure a successful project.

1.2 What is Energy Performance Contracting?

Energy performance contracting is an innovative method for purchasing energy-saving improvements in buildings. Many State agencies face increasing energy costs and the need to replace worn-out equipment, but lack the funds to make building improvements. Energy performance contracting has three distinguishing features that address this and other common problems:

- A *single procurement* is used to purchase a complete package of services in which one contractor is accountable for design, purchase, installation, maintenance, and operation of the equipment to ensure optimum performance;

- The package of services includes financing of all the project costs, so *no up-front money is needed* ; and

- An energy performance contract is structured so that payments to the performance contractor are contingent on the actual level of savings achieved (or energy produced). Normally, the savings

produced by the project are greater than its cost. A performance contract pays for itself. Since payments to the contractor are contingent on the savings achieved, it is in the contractor's interest to maximize the energy savings. This translates into increased dollar savings for State agencies. In other words, the program is supported by *utility bill savings which are used to pay for the improvements.*

1.3 How is Energy Performance Contracting Different?

1.3.1 Conventional Contracting

A conventional process to purchase energy-efficiency improvements often requires four separate solicitations and contract awards. First, a facility solicits engineering services for an energy study. After reviewing the completed study, the facility selects the improvements to be implemented and solicits proposals for engineering design services. Once the designer completes a plan and specifications, the facility issues one or more invitations to bid to select contractors who will install the improvements. Finally, the facility invites bids to request preventive maintenance services for any equipment the facility is not maintaining with in-house staff.

1.3.2 Energy Performance Contracting

Energy performance contracts replace this cumbersome collection of solicitations and contracts with a single request for proposals covering all aspects of the project and one contract with the selected proposer. The process begins with an evaluation of a facility's potential for efficiency improvements by the facility staff. If the potential seems promising, the agency prepares a Request for Proposals (RFP). This RFP covers all engineering, construction, and maintenance services needed to complete the project. The agency awards the contract to a single contractor who is accountable for all services and guarantees a level of savings to the facility.

Once selected, the performance contractor performs a detailed study[1] of energy efficiency opportunities at the facility. The facility staff

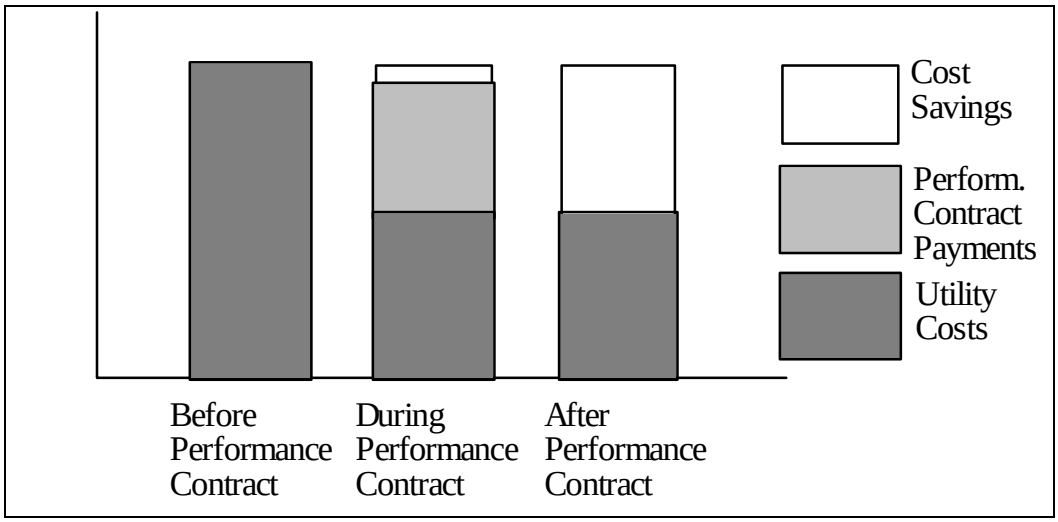
[1] The cost of the energy study is included in the work financed by the performance contractor. However, after the study is completed, the facility may choose to install the upgrades on its own or not to proceed at all. If the facility chooses not to use the performance contractor to complete the project, the facility may be obligated to pay for the preparation of the energy study.

reviews this study and approves a final list of efficiency improvements. The contractor then prepares plans and specifications that the facility staff also review and approve. After receiving notice to proceed, the contractor furnishes, installs, and commissions the efficiency improvements and begins performing maintenance and repairs which continue for the duration of the contract term. Facility staff monitor the day-to-day performance of the contractor during the construction process in the same manner that they would for a large repair and maintenance project. After construction is completed and accepted, facility staff monitor contractor performance concerning equipment maintenance and repair, standards of service and comfort, and level of energy savings achieved.

1.4 Benefits of Energy Performance Contracting

Energy performance contracting offers a number of important benefits. First and foremost, it allows agencies to go ahead with projects that tight budgets would otherwise prevent. The contractor finances all of the project costs, including up-front engineering, construction, and maintenance services, allowing projects to proceed without capital improvement or repair funds. The agency receives new and improved lighting, cooling, and other equipment and the cost of this equipment is offset by reduced utility bills. After the equipment cost has been paid off, the agency owns the equipment and retains all of the savings from reduced utility bills. Even if the payments to the performance contractor offset much of the energy savings in the short run, upgrading equipment allows all of the non-energy benefits, such as improved comfort and reliability, to be realized immediately.

Figure 1-1
Energy Performance Contract Cost Savings



Energy performance contracting streamlines the purchasing process for energy efficiency projects, reducing the cost and time required to bring energy-saving projects on line. A single company takes responsibility for designing, building, financing, and maintaining all necessary improvements. The performance contractor often employs a team of consultants and subcontractors to accomplish this but one company is still accountable for the ultimate success of the project. This single-source accountability makes the project easier to manage than a conventional construction project. Streamlining the procurement process in this way makes it possible for agencies to implement more comprehensive projects, reduces the time and cost to manage projects, and gives on-site facility staff and users the opportunity for more input into the project design and better control of the final product. As a result, efficiency improvements acquired through performance contracts often work better, last longer, and enjoy stronger long-term support from facility administrators, maintenance staff, and building users than other energy efficiency projects.

Energy performance contracting, as its name implies, shifts much of the risk associated with an energy efficiency project from the agency to the contractor. State law (HRS §36-41) enabling agencies to enter into performance contracts requires that total performance contract payments not exceed total savings. This is usually accomplished by having the contractor guarantee that savings will exceed payments. For example, if the contractor receives monthly lease payments, the agency receives a guarantee that energy cost savings will be equal to or more than the monthly payments. If energy cost savings are less, the contractor pays back the difference to the agency. Because the agreement transfers the risk of

project performance to the performance contractor, the contractor has a strong incentive for high quality design and construction, preventive maintenance, and ongoing monitoring for the duration of the contract.

1.5 What Kinds of Equipment and Services Can Be Purchased?

Energy-savings performance contracts are used to purchase a wide variety of building equipment and services. Energy-efficient lighting, air conditioning systems, energy management control systems, motor replacements, and variable-speed drives for pumps and fans are commonly implemented improvements. Generally, a performance contractor will include any improvement expected to recover its own cost (including maintenance and interest expense) in energy savings over the term of the agreement. This means that longer payback items, such as adding ceiling insulation or replacing windows, usually do not qualify unless they are bundled with fast payback items.

In addition to equipment installation, the performance contractor may propose various repair and maintenance services. Often contractors propose repairs to existing systems, such as re-installation of damaged or missing controls or repair of leaks in chilled water piping. Generally the contractor assumes responsibility for preventive maintenance and repairs to all new equipment installed. The contractor may also offer to take responsibility for maintenance and even operation of existing equipment. For example, the contractor may offer to provide remote monitoring and adjustment of temperature setpoints with a computerized temperature control system.

Because any equipment installed is ultimately owned by the facility, the contractor also provides documentation for all installed equipment, including as-built drawings and operating manuals. The contractor also trains the on-site facility staff to operate and maintain the equipment. In some cases, performance contractors even pay the costs to have facility personnel attend training programs provided by equipment manufacturers.

1.6 Energy Performance Contracting in Hawaii

Energy performance contracting is relatively new in Hawaii but public agencies throughout North America have used it for over fifteen years, funding hundreds of millions of dollars worth of energy savings. Many other states and the federal government actively promote energy performance contracting to improve energy efficiency. One federal project in Hawaii is a $10 million, fifteen-year contract at Aliamanu Army Family Housing, a military residential area in Honolulu.

In Hawaii, the Energy, Resources, and Technology Division of the Department of Business, Economic Development, and Tourism (DBEDT) provides assistance to state agencies to obtain the benefits of performance contracting. In 1987, the Energy, Resources, and Technology Division contracted with a private consulting firm to examine existing state procurement and contracting regulations and legislation to determine whether performance contracting could be pursued and to develop legislation if necessary. As a result of this analysis, DBEDT proposed legislation to amend HRS 36-41 to define performance contracting and to encourage State agencies to pursue this mechanism. The legislature adopted definitions and clarifying language in 1989, and extended the term of contracts from 10 to 15 years in 1997. As a result of DBEDT's performance contracting program, in 1995 the Office of Procurement, Property, and Risk Management of the **University** of Hawaii solicited proposals and awarded a large performance contract for the **University**'s Hilo campus, including Hawaii Community College. This project has been completed and has resulted in improvements worth over $2.9 million to the campus. The Hawaii Army National Guard, Judiciary, Department of Education, State Library System, County of Kauai, and County of Hawaii are also actively involved in energy performance contracting.

1.7 The Process

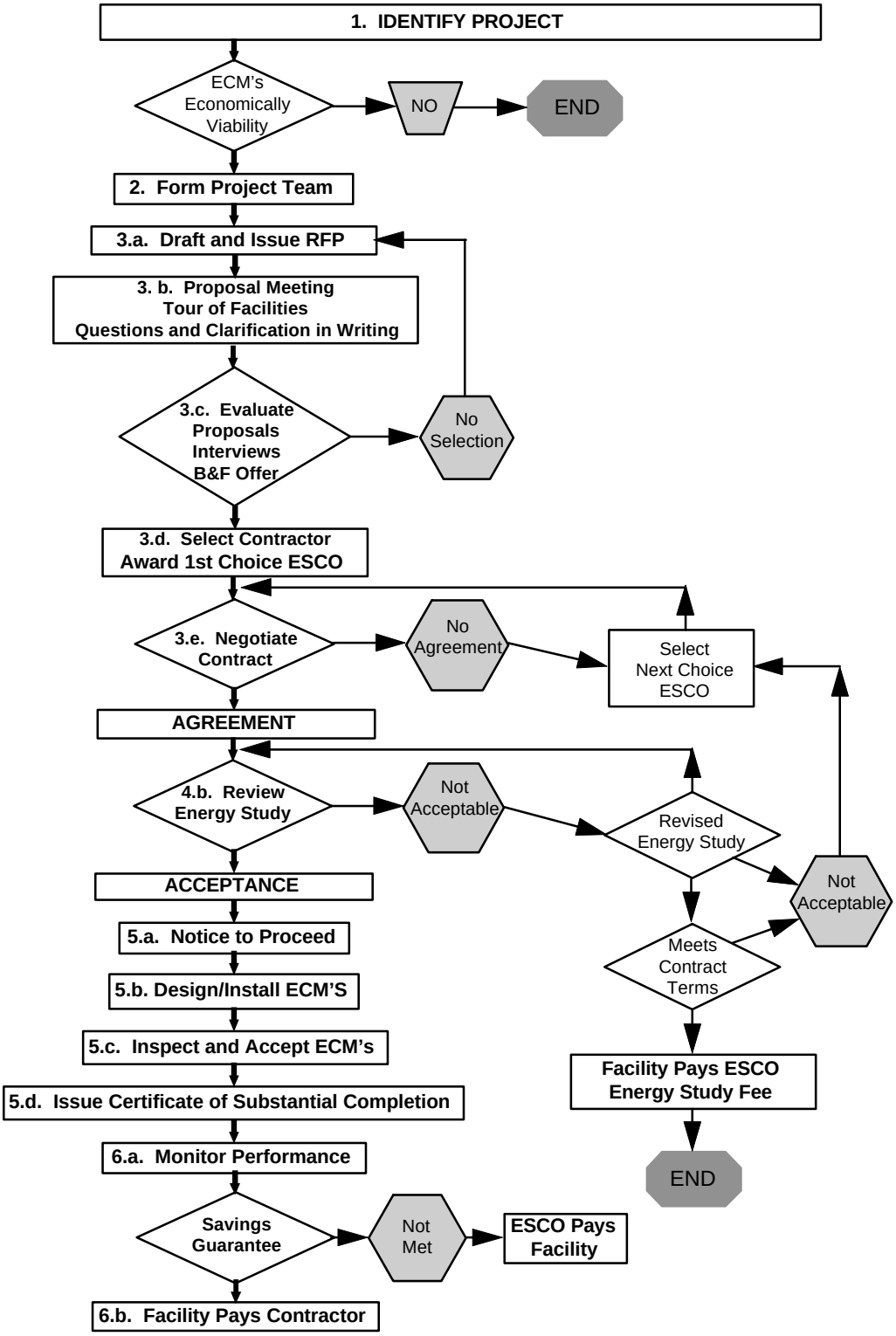
The following Figure 1-2, briefly outlines the phases of a performance contract under procedures followed in Hawaii State facilities. Figure 1-3, expands the step process.

Figure 1-2
Phases of Performance Contracting

Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
Identify Project	Form a Project Team	Draft and Issue RFP Preproposal Meeting and Site Visit Evaluate Proposal and Select Contractor Negotiate Contract	Review and Accept Energy Study	Issue Notice to Proceed Install EEM's Inspect and Accept EEM's	Monitor Performance Pay Private Company
1-3 months	1 month	7-12 months	6 months	8-24 months	10+ years

RFP – Request for Proposal
EEM – Energy Efficiency Measure

Figure 1-3
Performance Contracting Process



2. IS ENERGY PERFORMANCE CONTRACTING FOR YOU?

Facility managers usually consider energy performance contracting because they have an immediate problem but lack funds to solve it. Often the problem is simply that utility costs are rising faster than budgets. Sometimes the problem is that existing equipment is worn out and needs to be replaced but replacement funds are not available.

Before undertaking an energy performance contract, facility staff should assess their potential energy efficiency options. A feasibility evaluation can be as simple or sophisticated as a person wants to make it. This section outlines a very simple method based on common rules of thumb. Section 2.2 and Appendix B, Feasibility Analysis, describe a more sophisticated method, including available software tools.

2.1 A Simplified Feasibility Analysis

To determine the feasibility of an energy performance contract, a general rule of thumb is that a facility must have energy-saving opportunities meeting the following two conditions:

- The energy-saving opportunities must add up to a project investment of at least $50,000; and
- The opportunities must have a simple pay-back period of seven years or less for equipment. (Does not account for financing, ESCO fees, etc.)

If an energy study has already identified a project meeting these criteria, then no further evaluation is necessary. Table 2-1 can be used to evaluate feasibility based on readily available information and rules of thumb developed within the performance contracting industry. Facility managers who want to perform a more sophisticated analysis should refer to Appendix B, Feasibility Analysis.

Table 2-1
Performance Contracting Feasibility

		Yes	No
1.	Does your facility spend less than $100,000 a year on energy?		
2.	Has a large-scale lighting efficiency upgrade *already been completed* in your facility?		
3.	Is a significant part (more than 20%) of your facility scheduled for closure or major remodeling within the next five years?		
4.	Has a recent energy audit of your facility failed to identify any significant energy-saving opportunities?		

If you answer YES to any of these questions, your facility may not be a good candidate for performance contracting. In this case, several options are available.

If you answered YES to question number 1 (energy costs are less than $100,000 per year) consider combining several facilities to make a larger project. If you answered YES to question number 2, 3, or 4, consider contacting potential proposers directly, describe your facility, and ask whether they would make a proposal if an RFP is issued. You may also wish to contact DBEDT's Energy, Resources, and Technology Division for assistance.

2.2 In-Depth Feasibility Analysis

Performance contracts, like other large construction projects, require the support and participation of many people for successful completion. A more sophisticated evaluation helps win invaluable support for the project from maintenance staff, administrators, and building users. In addition, knowledge gained during a careful energy analysis can strengthen the facility's position in future discussions with proposers.

Performing an in-depth analysis of existing conditions and energy-saving opportunities at the facility offers the following benefits:

- Low- and no-cost energy saving opportunities are often discovered which can be implemented immediately;

- Facility staff will have a better understanding of existing conditions and be better prepared to negotiate the energy savings baseline;

- Facility staff will be better prepared to suggest possible energy-saving improvements to proposers; and

- Facility staff will be better prepared to evaluate proposed efficiency measures, technical approaches, and costs.

Due to the specialized technical expertise required for an in-depth study of cooling efficiency improvements, most facilities focus their attention on lighting energy savings first. Software for lighting efficiency analysis is available which makes sophisticated analysis of lighting opportunities relatively easy. Appendix B provides further directions for an in-depth feasibility analysis, including information on software tools.

2.3 Cream Skimming

Sometimes, promoters of energy savings projects are interested only in the fastest payback measures. These provide immediate returns to the facility but "skim the cream" and prevent other opportunities of achieving energy savings from occurring. For example, if a performance contract focuses only on lighting, a measure with a short payback period, this may eliminate the opportunity to achieve savings through combining lighting with longer term payback items. By bundling several types of measures together, the quick payback items are leveraged to pay for longer term payback items. This bundling is important in Hawaii where there is a statutory limit on the term of the performance contract.

Another type of "cream skimming" may occur when utility rebates are used to install quick payback measures, such as lighting, skimming savings off the top and thus removing the opportunity to utilize more comprehensive performance contracts to maximize savings. The longer payback measures eliminated may never be implemented.

3. GETTING STARTED

3.1 Organize a Project Team

Managing an energy performance contract requires the participation of experts from several departments, including facilities planning, procurement, budget and finance, maintenance, and legal. To meet this need, we recommend forming a project team early in the process. The project team will need diverse kinds of expertise, including:

- Technical expertise to evaluate energy efficiency potential, establish maintenance requirements, develop a scope of work, evaluate contractor proposals, and energy studies;
- Procurement expertise to ensure that the process follows applicable procurement rules during the Request for Proposals and contract award;
- Knowledge of budget and finance procedures to establish a method to budget and make payments for the duration of the contract[2]; and
- Legal expertise to review all contract terms and (possibly) assist in negotiations after a contractor has been selected.

To organize a project team, first identify a project manager who will have overall responsibility for coordinating the team members and overseeing the work performed by the contractor. Most agencies choose their Director of Administrative Services (i.e. facility manager) to be the project manager.

The project manager should recruit people expert in each of the areas listed above early in the development of the project. During the early stages of the project, it may be appropriate to simply provide team members with general information about energy performance contracting and the project status. Holding an introductory briefing and providing copies of this Guide to all team members makes a good beginning. The purpose of this introductory meeting is to:

[2] One important issue to discuss and resolve is how to establish a mechanism for continuing to make utility and performance contract payments. Gross utility payments may decrease with a performance contract and the savings need to be retained, from a budgeting standpoint, to meet obligations under the performance contract.

- Explain the concept of energy performance contracting to all project team members;

- Build support for the project by describing facility needs that energy performance contracting will meet and the benefits expected to result from the project; and

- Describe the process and the intended schedule for each step so that the team members know what to expect.

The project team members should also serve on the evaluation committee when the project reaches the point of contractor selection, and throughout the project as an oversight group. Table 3-1 outlines roles for representatives of the different areas of expertise during each phase of the project.

Table 3-1
Roles of Project Team Members

	Facilities Planning & Management	Procurement	Budget	Legal
Evaluate Project Feasibility	X	*	*	*
Prepare Solicitation	I	X	*	I
Select Contractor (incl. Discussions w/Contractors	I	X	I	I
Manage Contractor Performance	X	I	*	*

Key: X - Lead responsibility I - Provide input * - Keep informed

3.2 Win Management Support

Winning management support is another activity that must begin as early as possible in the performance contracting process. In order to win support, you will need to persuade key administrators of the value that performance contracting offers the facility. In addition to explaining how an energy performance contract works, questions that you can answer to help win support include:

- What facility needs will a performance contract meet? Needs might include replacing worn-out equipment, reducing energy costs, or improving comfort;

- Is it likely that improvements will be made without an energy performance contract? What funds will be used?

- Could these funds be used for other projects?

Many public officials work hard to win the support of facility users as well as managers. Educating facility users about a project's benefits makes them more willing to cooperate during the installation process and means fewer headaches for administrators and facility personnel.

3.3 Gathering Facility Information

If you haven't already done it as part of your feasibility analysis (see Chapter 2), another step in getting started is to gather information about your facility. Appendix A lists information to collect which you will need to prepare a Request for Proposals.

4. REQUESTING PROPOSALS

4.1 Overview

The goal of the Request for Proposals (RFP) is to receive three or more responsive proposals with enough information to select the one that is best for the State. Usually, construction projects are purchased through competitive sealed *bids*, but energy performance contracts are purchased through *competitive sealed proposals* for several reasons.

First, the precise plans and specifications of the improvements are not known when the solicitation is prepared. Developing such detailed plans is part of the work for which a contractor is being chosen. Second, selection of performance contractors is based on comparing "the relative abilities of proposers to perform, including degrees of technical or professional experience or expertise." In these circumstances competitive sealed bidding is not practicable and competitive sealed proposals are preferred. State law authorizing performance contracting establishes competitive sealed proposals as the appropriate procurement method (see section 4.2).

4.2 Hawaii Revised Statutes for Performance Contracting

Hawaii Revised Statutes (HRS) section 36-41, "Energy performance contracting for public facilities," permits state and county government departments to enter into energy performance contracts "for the purpose of undertaking or implementing energy conservation or alternative energy measures in a facility." HRS 36-41 allows a wide variety of contract forms, including leasing, shared-savings' plans, or energy service contracts. However, all energy performance contracts are subject to certain limitations as follows:

- The term of energy performance contracts is limited to fifteen years;
- Total payments for an energy performance contract shall not exceed total savings;
- All contracts must include an annual allocation dependency clause making the continuation of the contract contingent on the appropriation of funds; and
- The agency shall receive title to the energy system being financed under the contract.

HRS 36-41 also addresses the process of soliciting proposals and selecting a contractor. This process includes the following provisions:

- "The agency that is responsible for a particular facility shall review and approve energy performance contract arrangements" for the facility;
- "The agency shall issue a public request for proposals"; and
- "The agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate."

4.3 Developing a Request for Proposals

A Request for Proposals (RFP) requires the following elements:

- A scope of work and description for goods and services to be provided;
- Contractual terms and conditions that will apply to the project;
- Instructions for proposal submission and information for Proposers (including a facility description); and
- A description of the evaluation criteria that will be used as the basis for selection.

Each of these elements is discussed below. The Request for Proposals Worksheet in Appendix C will help you identify and document decisions needed to prepare the RFP.

4.3.1 Scope of Work

A clear scope of work is a key element of any Request for Proposals. For a performance contract, the scope of work is defined by three items:

- The extent of the various services required (e.g. feasibility evaluation and recommendation of measures, design, construction, financing, operations and maintenance, training , measurement and verification);

- The buildings included in the project; and
- The technologies or end-uses included.

Definition of Required Services:

Ordinarily, a performance contract calls for a comprehensive package of services, including a technical study of efficiency potential; design, procurement, and construction of efficiency improvements; and maintenance and repair of contractor-furnished equipment. However, there is still flexibility within this generic structure, particularly in the area of maintenance services.

If a facility has already identified desired efficiency improvements, a technical study of efficiency potential could be included as a reference document. Maintenance and repair services can also be flexible. The facility may want the contractor to perform only repairs and warranty service. Or, the facility may want the contractor to provide comprehensive preventive maintenance, repairs, and operate certain equipment.

As in any contract for services, the scope of work should be as detailed and specific as possible. For example, the model RFP provides a detailed list of items to be addressed in the energy study report prepared by the contractor (see Appendix F). It is also important to keep the scope of work focused on results, rather than on methods. Since performance contractors guarantee the results of their work they generally insist on being allowed to determine their own methods. Their track record using their methods is a key factor in the selection.

Building List

The scope of work should clearly identify the buildings and equipment (including facilities such as water wells and sewer pump stations) which are to be part of the project. There may be buildings or building areas that will be excluded due to special operating requirements, security issues, or other reasons. (See the Energy Survey Worksheet in Appendix A, for a building list format.)

Technologies

The facility may wish to include or exclude certain technologies or end-uses. Specific technologies or end-uses are usually requested because existing equipment is obsolete or at the end of its useful life. For example, a facility may wish to replace an obsolete existing chiller

to improve reliability and efficiency and eliminate the need for CFC refrigerants.

A facility may wish to exclude certain technologies or end-uses because efficiency measures have recently been implemented, because a reliable baseline cannot be established, or because an existing service contract would interfere with the work of a performance contractor. A comprehensive project, treating all energy-using equipment, will allow the greatest overall capital investment and energy savings, because fast payback items (e.g. lighting) can be used to subsidize slower payback items. However, a facility wishing to maximize its immediate net cost savings may do better with a smaller project installing only the fastest payback items (usually lighting).

If efficiency measures are already completed or planned for one end-use, such as space cooling, a performance contract may still be pursued for another area, such as lighting. The facility should indicate any improvements it specifically wants to implement under the performance contract as well as any improvements it will not consider.

4.3.2 Contractual Terms and Conditions

The RFP must include all contractual terms and conditions that will apply to any contract ultimately awarded. These will include requirements relating to the performance of engineering and construction services, insurance, payment of prevailing wages, etc. Often, boilerplate Standard Conditions are attached to address these issues. Another contractual item is the preferred term (i.e. duration) of the contract and any provisions for a purchase option or early termination. For more information, see Chapter 6 of this Guide relating to contractual issues in performance contracting.

4.3.3 Instructions and Information to Proposers

The RFP must clearly instruct prospective proposers in what information to provide, how to organize it, and when submittals are due. The RFP should also present descriptive information to proposers about the facility.

Preparing Facility Information

Because preparing a proposal can be expensive, often costing tens of thousands of dollars, an ESCO may perform its own evaluation of a facility's potential before deciding whether or not to submit a proposal for a project. Providing clear, complete information about the facility

in the RFP should reduce the number of questions which must be answered later and demonstrate to prospective proposers that the facility is well-organized. Providing detailed information about the facility in the RFP increases the chance of receiving responsive proposals that gives the agency more choices.

The energy survey worksheet (Appendix A) lists descriptive information that proposers may request. We recommend locating all of the listed information such as a list of buildings, energy use information for the most recent two or three years, operating schedules, a list of major energy consuming equipment and the principal uses of the facility and attaching it to the RFP. Collecting information at one time is more efficient and less disruptive than collecting it piecemeal . Also, if any of the indicated information is unavailable, this can be determined early in the process.

4.3.4 Description of the Evaluation Criteria

The RFP must identify the specific criteria that will be used to evaluate proposals. Since criteria that are not identified in the RFP may not be considered, be sure to include all relevant criteria in the RFP. Relevant criteria include proposer qualifications, technical approach, management plan, cost, and financial benefits.

A numerical rating system may be used for proposal evaluation but is not required. If a numerical rating system is used, the relative priority of each evaluation factor must be set out in the Request for Proposals. Refer to the RFP attached in Appendix D, for sample evaluation criteria.

4.4 Issuing the RFP and Administering the Solicitation

Hawaii Administrative Rules outline various requirements for the administration of competitive sealed proposals. These include provisions for:

- Receipt of proposals and modifications;
- Opening of proposals;
- Preparation of a register of proposals for public inspection after contract award;
- Proposer requests for non-disclosure of proprietary or confidential data; and

- Public inspection of proposals after the contract is signed by all parties.

The Hawaii Administrative Rules relating to competitive sealed proposals (Subchapter 6) are updated on a regular basis. Facilities should obtain copies from their procurement offices and regularly check to ensure that they are using the most current version.

4.4.1 Pre Proposal and Site Visit Meeting

It is recommended that a pre-proposal meeting and site visit be scheduled for all interested proposers. The purpose of this pre-proposal conference and site visit is to answer any questions regarding the RFP, proposal procedures, administrative matters and to clarify technical matters.

This gives the proposers the option to satisfy themselves as to any local or other conditions which might offset the cost of the project. In order to make the meeting as productive as possible, procurement officers are urged to request questions in writing before the date of the meeting. In addition all information presented at the meeting must be sent to all offerors indicating an intent to propose. Appendix D, paragraph 7, provides for this pre-proposal meeting and site visit.

5. SELECTING A CONTRACTOR

5.1 Overview

The goal of the evaluation process is to identify among the responsive proposals, the one that offers the greatest benefit to the facility. The Hawaii Administrative Rules (HAR) for Competitive Sealed Proposals (§3-122-41 to §3-122-61) establish rules for the use of competitive sealed proposals including rules affecting proposal evaluation. These rules leave many details of the evaluation process up to the discretion of the procurement officer. The process described in this chapter is based on lessons learned in many performance contracting solicitations. It is intended to address the unique circumstances of a performance contracting solicitation as well as comply with all the requirements of the HAR in effect at the date of this publication. Procurement officers should review the current HAR to verify that this process is still in accordance with the applicable rules.

Several factors complicate the task of identifying the best proposal. First, competing goals must be balanced against one another. For example, the need for immediate energy cost savings must be weighed against the need for expanded maintenance services or more investment in equipment. Second, many proposal characteristics can be judged only subjectively. The qualifications and expertise of a proposer often lie in the eye of the evaluator.

5.2 The Evaluation Committee

The HAR provide that the procurement officer, or an evaluation committee selected by the procurement officer, shall evaluate proposals. We strongly recommend use of an evaluation committee.

Proposal evaluation requires knowledge and expertise in diverse areas, including energy-efficient design, finance, and facility management. Effective evaluation requires first-hand knowledge of the facility's needs and operations. A committee approach allows individuals with knowledge in each of these areas to be included in the evaluation. As mentioned above, proposal evaluation often requires competing goals to be considered and balanced against one another. A committee approach creates a forum for these issues to be debated and helps ensure that the pros and cons of different proposals are fully considered.

Certain proposal attributes are difficult to judge without experience gained from previous performance contracting projects. Using a committee allows

the evaluation to benefit not only from the on-site knowledge of facility staff but also from the performance contracting experience of other agency personnel. A committee also reduces the potential for the appearance of favoritism in a selection.

5.2.1 Make-up of the Committee

The evaluation committee should include:

- The procurement officer;
- Facility operations and maintenance staff;
- The facility's administrator;
- Finance and legal representatives;
- Facility planning staff; and
- A representative of DBEDT's Energy, Resources, and Technology Division.

In addition, project managers may wish to include a facility user . For example, the evaluation committee for a performance contract at the University of Hawaii at Hilo included the procurement officer, the Vice Chancellor for Administration, the auxiliary services officer in charge of maintenance, a project engineer from the campus planning office, the director of the community colleges facility planning office, a representative of DBEDT's Energy, Resources, and Technology Division, an economics faculty member, and a vocational training faculty member.

Facility maintenance and planning staff should always be included as evaluators. These people bring essential knowledge of on-site conditions. They will also work with the selected contractor during the implementation of the project. Including them in the selection process strengthens their commitment to the project's success. Committee members with experience in engineering and financial analysis are also essential.

5.3 The Evaluation Process

Contractor selection proceeds in six steps:

1) Proposal opening;

2) Initial screening;

3) Ranking;

4) Discussions;

5) Best and final offers; and

6) Contract award.

5.3.1 Proposal Receipt and Opening

The HAR establish requirements for the receipt, opening, and registration of proposals. For example, "proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date." Other requirements address procedures for proposal opening, preparing a register of proposals, and public inspection of the register and proposals. See HAR §3-122-51 and §3-122-58 for more information.

5.3.2 Initial Proposal Screening

Before the evaluation committee receives copies of the proposals, it is useful for the procurement officer to screen them to identify any which are clearly non-responsive as to content or form. In addition, the procurement officer should evaluate whether the proposers are responsible and meet the minimum qualifications stated in the RFP. Experience shows the value of evaluating proposers' financial condition by ratio analysis or another generally accepted method (see Appendix E for further suggestions). This step ensures the evaluation committee does not waste time evaluating non-responsive proposals.

5.3.3 Proposal Ranking

Once responsive proposals have been identified, the evaluation committee members must evaluate and rank them. A numerical rating system may be used but is not required. If a numerical system is not used, each member of the evaluation committee will have to explain his or her ranking determination in writing. Numerical rating systems are discussed in detail in part 5.4.

5.3.4 Discussions with Offerors

The HAR for competitive sealed proposals permit discussions with competing offerors and changes in their proposals, including price.

Discussions are optional. Contract award may be made without any discussions whatever.

HAR §3-122-54 describes the purpose of discussions with offerors as to:

- "Promote understanding of a state agency's requirements and priority-listed offerors' proposals"; and
- "Facilitate arriving at a contract that will be most advantageous to the State…."

Before conducting discussions with proposers, a "priority list" must be generated by the evaluation committee. In order to develop a priority list, proposals must be classified initially as acceptable, potentially acceptable, or unacceptable. If numerous acceptable and potentially acceptable proposals have been submitted, the evaluation committee may rank the proposals and limit the priority list to at least three proposers who submitted the highest-ranked proposals.

The procurement officer establishes procedures and schedules for conducting discussions. Certain conditions apply to all discussions. Basically, these conditions are intended to ensure that discussions are conducted in a manner that is fair and equal to all priority-listed offerors. The contents of one proposal may not be disclosed to any competing offeror during the discussion and negotiation process. Other conditions which are established in HAR include the following:

- Any substantial oral clarification of a proposal must be put in writing by the priority-listed offeror; and
- If during discussions there is a need for any substantial clarification or change in the request for proposal, the request for proposal must be amended by an addendum to incorporate such clarification or change.

Such addenda, if any, are only distributed to the priority-listed offerors. The priority-listed offerors are permitted to submit new proposals or amend those previously submitted.

5.3.5 Best and Final Offers

Discussions and negotiations are concluded when the procurement officer sets a date and time for the priority-listed offerors to submit their best and final offers. Ordinarily, best and final offers may be

submitted only once (see HAR §3-122-55) and no discussion or changes are allowed after they are submitted. After best and final offers are received, final evaluations are conducted for an award.

5.3.6 Contract Award

After determination of the highest-ranked proposer by the evaluation committee, the procurement officer awards the contract. Use the following checklist as a reminder of contractor submittals and other administrative matters that should be addressed at contract award.

Contract Award Checklist

- Submittals Required Before Award:
  Certificates of Insurance as required by GP 18, Insurance

- Submittals After Award, Before Notice to Proceed with Design:
  Certificate of Insurance for Builder's Risk Insurance (GP 18.6)
  Contract Security (Payment and Performance Bonds)
  (NOTE: These items are not required at award because the amounts of coverage cannot be determined until the final list of Energy Efficiency Measures (EEMs) is known.)

- Contract File
  The contract file must contain:

  - The proposal register;
  - A listing of all vendors to whom the RFP was distributed;
  - Name of the successful offeror and dollar amount of offer;
  - The basis on which the award was made;
  - A copy of the request for proposals;
  - A copy of the successful proposer's proposal; and
  - A copy of the unsuccessful proposer(s) proposal.

- Kick-off Meeting
  The letter or other notice of contract award should propose a date for a kick-off meeting to discuss the following issues:

  - Plan for energy study

- Site access and administrative procedures
  (See chapter 8 for additional information)

5.4 Evaluation of Proposals

5.4.1 Proposal Scoring

HAR's allow substantial discretion in the scoring of proposals. Numerical rating systems may be used, but are not required. However, experience shows that most public officials prefer structured comparisons of proposals that use numerical scoring. Sample evaluation forms outlining a structured, numerical scoring system are provided in the Appendix. If a numerical rating system is not used, each member of the evaluation committee must explain his or her rank determination in writing.

Evaluation committee members often have questions about how to score certain evaluation factors. In particular, evaluators may ask about appropriate benchmarks against which to compare proposals. For example, if an evaluator is trying to score a proposal's management plan, to what should it be compared in order to determine whether it is "clear and complete" including a realistic milestone schedule?

The most useful comparison is among the competing proposals. Any responsive and responsible proposer is presumed able to complete the project successfully. The goal of the evaluation is to find the most advantageous proposal among those submitted. So the most appropriate benchmark for comparison is the other proposals themselves.

In the case mentioned above – scoring the proposals' management plans – the evaluator should review each of the plans to determine how well they answer the specific items listed for consideration in the RFP. For each plan, the evaluator should ask: Is responsibility for each project task clearly assigned to a specific individual? How comprehensive are the management, maintenance, and monitoring services offered? How responsive is the plan to specific goals identified in the RFP? What methods are described to minimize disruption of facility operations? Each proposal should be judged against each of the specific criteria listed in the RFP.

Considering these questions, the evaluator should identify the management plan that is, in his or her judgement, the best. The best plan should be assigned an arbitrary score (e.g. 10 points) and the other proposals should be assigned points relative to the best proposal. The full range (from zero to 10) does not have to be used. Appendix E includes evaluation forms which use a numeric scoring system. Evaluators should make an effort to identify meaningful differences between the proposals and assign scores across the widest reasonable range.

If an independent basis for comparison to the proposals exists evaluators should use it as appropriate. For example, if a previously completed energy study of the facility provides an estimate of potential savings and construction costs, proposers' submittals may be compared to the study findings. If an evaluator cannot find any basis to score a certain attribute, discussion with other members of the evaluation committee may be helpful. The HAR specifically allow meetings by an evaluation committee to discuss the request for proposals, the evaluation process, the weighing of evaluation factors, and proposals received, before evaluation.

5.4.2 Determining Proposal Rank

After scoring all responsive proposals, each evaluator determines his or her rank (first, second, third, etc.) for each proposal. The rank values determined by committee members are provided to the procurement officer. The committee may want to determine overall rank for each proposal by consensus or using a structured numerical method.

Table 5-2 shows a structured method for determining overall rank from the scores reached by individual committee members. This method may be used for the initial determination of the priority list as well as in a final evaluation for award.[3] This method assigns points to each proposer based on the evaluation committee members' individual rankings. First, second, and third place ranks are assigned points equal to their rank. Rankings of fourth place and lower (i.e. fifth, sixth, etc.) receive 4 points. The points assigned to each proposal are totaled and the lowest overall score is the highest-ranked proposal.

[3] Tie breakers work as follows. If two proposers have the same total, the one with the most "firsts" is selected. If they have equal "firsts", the one with the most "seconds" is selected.

Table 5-2
Sample Determination of Overall Rank

	Proposer A	Proposer B	Proposer C	Proposer D	Proposer E
Evaluator 1	1st (1)	2nd (2)	3rd (3)	4th (4)	5th (5)
Evaluator 2	1st (1)	3rd (3)	2nd (2)	5th (4)	4th (4)
Evaluator 3	2nd (2)	3rd (3)	1st (1)	5th (4)	4th (4)
Evaluator 4	5th (4)	1st (1)	4th (4)	2nd (2)	3rd (3)
Total Points	8	9	10	14	15
Overall Rank	1st	2nd	3rd	4th	5th

Note: Numbers in parentheses after the rank indicate the points assigned for each rank (see text above).

In this case, Proposer A, with two firsts, a second, and a fifth has the lowest total value (1 + 1 + 2 + 4 = 8) and the best overall score.

5.4.3 Requests for Clarifications

Proposer-supplied information may be incomplete or unclear. The RFP provides that additional information may be requested from proposers. Information requests should conform with the following guidelines:

- The number of requests should be as small as possible. Clarification requests from committee members should be coordinated by the procurement office who has the responsibility to communicate with the proposer.

- All proposers should be given an equal amount of time to respond to a clarification request.

Clarification requests are most likely to be needed to establish that a proposer meets minimum qualifications or to answer questions raised by evaluation committee members. Once proposals have been distributed to individual evaluators, a deadline should be set for evaluators to submit clarification requests to the procurement officer. These questions should be screened for duplicates. Once a final set of questions is prepared, they should all be sent at one time. We recommend ten business days as an appropriate response time to require for these information requests. As soon as proposer clarification responses are received the procurement officer should distribute copies to all evaluators.

5.4.4 Evaluation Factors

Specific evaluation criteria must be set out in the request for proposals. Refer to the sample RFP in Appendix D, for an example of evaluation criteria. Evaluation factors not specified in the request for proposals may not be considered. The HAR requires consideration of certain evaluation factors, including whether the offeror qualifies for any procurement preferences under chapter 3-124 and, when applicable, cost.

Cost

The HAR states, "When applicable, cost shall be an evaluation factor." Evaluating cost for a performance contract is complicated because the precise scope of the improvements is not known and so a fixed price cannot be provided. Using open book pricing facilitates cost evaluation, because contractor's overhead, financing expenses, and project margins can be directly compared. To make consideration of cost easier, the sample RFP in Appendix D includes a Price Formula Worksheet. The Price Formula Worksheet requires proposers to describe the total price for the project, based on the actual installation costs. Once the contract has been awarded, the agency and contractor can work together to cut installation costs knowing what impact these cuts will have on the contractor's price.

According to the HAR, the proposal with the lowest cost factor must receive the highest available rating allocated to cost. If a numerical rating system is used to evaluate the cost factor, the points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price (HAR §3-122-52d).

Some services, such as the energy study cost, are ordinarily proposed as a fixed price. For these items, consideration of cost is simple. However, other costs usually depend on the final size and scope of the project, which is not known until after the agency awards the contract. To overcome this obstacle, the evaluation committee may assume a hypothetical project size for evaluation purposes and use each proposer's price formula to calculate the a total project price for the hypothetical project. Then the committee may use these total (hypothetical) project prices to allocate ratings for cost according to the formula described above.

Procurement Preferences

An evaluation factor must be included which takes into consideration whether an offeror qualifies for any procurement preference pursuant to Chapter 3-124 (HAR §3-122-52e). See the sample RFP in Appendix D, and Hawaii Administrative Rules for further information.

6. PREPARING A CONTRACT

THIS CHAPTER DESCRIBES GENERIC TERMS AND PROVIDES SAMPLE MATERIALS RELATING TO ENERGY PERFORMANCE CONTRACTS. BECAUSE SPECIFIC PROJECT AND AGENCY REQUIREMENTS MAY VARY SIGNIFICANTLY, THESE MATERIALS SHOULD NOT BE INTERPRETED AS LEGAL ADVICE RELATING TO ANY SPECIFIC SOLICITATION OR PROJECT. EACH PUBLIC AGENCY SHOULD CONSULT ITS OWN LEGAL ADVISORS BEFORE SOLICITING OR ENTERING INTO ANY ENERGY PERFORMANCE CONTRACT.

Performance contracts usually affect capital equipment essential to the facility's mission and can easily involve total investments in the millions. The contract establishes a long-term relationship between the facility and contractor, and agencies should develop terms to address potential issues with great care. The ultimate goal of the contracting process is to reach an agreement which is equitable to both parties, protects the interests of the facility, and is so clear that any third parties reading it will interpret it the same way.

6.1 Types of Energy Performance Contracts

HRS §36-41, Energy performance contracting for public facilities, lists options including "leasing, joint ventures, shared savings plans, or energy service contracts" as possible types of performance contracts. The preferred form of contracting for State-owned facilities in Hawaii is the contract for services with a guaranteed energy savings provision. The services provided under the contract may be for financing, design, installation, repair, maintenance, management, technical advice and/or training. In this type of arrangement, the ESCO guarantees that energy costs, plus all costs of EEM's and/or services provided, will be less than the facility's normal costs for fuel and utilities. If the guaranteed level of savings is not met, then the ESCO pays the facility the difference.

Shared savings' agreements have not been used in the State of Hawaii. These agreements call for payment to an ESCO being made from a pre-determined percentage of energy cost savings.

"Municipal leasing has developed as a tool to finance public improvements in a manner that meets the basic objective of debt--spreading the cost of financing over the life of an asset--while avoiding constitutional or statutory limitations on the issuance of public debt that exists in most

jurisdictions." [4] Municipal leasing has been used by Hawaii and Kauai Counties to finance performance contracts; prior approval was obtained from each County Councils. Tax exempt financing is allowed under State statute. Agencies should determine whether or not they are eligible for this type of financing before beginning the performance contracting process.

One advantage of a municipal lease is that it is tax exempt. This reduces the interest rate associated with the financing by a substantial amount over a commercial lease. In one recent Hawaii solicitation, the proposed tax-exempt financing rate averaged 7.5%, while non-tax-exempt financing proposals were offered at nearly 12%.

6.2 Terms Required by Statute

HRS §36-41 establishes the following requirements for all performance contracts entered into by public agencies:

- "The term of any energy performance contract entered into pursuant to this section shall not exceed fifteen years;

- "Any contract entered into shall contain the following annual allocation dependency clause:

  > The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made; and

- "Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract."

These terms are included in the sample contract in Appendix F.

[4] Moody's on Leases, Moody's Investors Services, 1995, page 1.

6.3 Key Issues to Address in a Performance Contract

The following paragraphs list key issues to consider in developing a performance contract with references to where they are addressed in the sample contract attached in Appendix F.

6.3.1 Contractor's Services (Scope of Work)

As in any contract, the scope of work that the contractor is responsible to complete must be described clearly and completely. In a performance contract, the contractor may be performing services in several different areas. Common services include:

- A detailed energy study to identify existing conditions and propose improvements;
- Engineering and design services;
- Construction services (including any licenses and permits required);
- Operations and maintenance services (including preventive maintenance, repairs, and emergency service); and
- Training services (to ensure facility staff can operate equipment).

Ordinarily, the contractor is responsible for all equipment repair and scheduled maintenance. In some cases using on-site facility personnel to perform some maintenance may reduce costs. Usually the on-site personnel retain most operating responsibilities.

In the sample contract, contractor's services are addressed in Article 3 of the contract and in General Provisions 6, 7, 8, 9, 10, 11, and 19.

6.3.2 Facility Responsibilities

Generally, the efficiency improvements installed by the contractor depend on certain actions by the facility in order to achieve savings. The facility must make sure that the contract describes its obligations very clearly. This ensures that the facility understands its commitment and prevents the contractor from unreasonably claiming that savings were not achieved due to omissions by the facility. Facility

responsibilities may include operating or maintaining existing equipment in a way that helps the contractor's improvements to achieve savings. For example, if the contractor proposes energy management controls for an existing air conditioning system, the contractor may ask the facility to maintain the system to an agreed standard.

In the sample contract, facility responsibilities (other than payment) are addressed in Article 4 of the contract and in General Provisions 2, 5, and 7.

6.3.3 Compensation

The contract must establish what price will be paid for the contractor's services, the timing of payments, and how payments will be calculated. This is more complicated in a performance contract because the contract is awarded before the improvements are known and a total price can be determined. To allow for this, the contractor submits a price formula in the proposal which establishes the price based on the project scope. The Energy Study Report includes a calculation of the final price, payment schedule, and termination value, based on the approved project scope and this price formula.

Compensation is addressed in Article 5 of the sample contract.

6.3.4 Term

The contract must state the term of the agreement and under what circumstances it may be terminated. Possible reasons for early termination include failure to agree on the content of the Energy Study Report (including what measures to install or the total price), failure to appropriate sufficient funds for the continuation of the contract, or default. Article 6 of the sample contract addresses term and termination.

6.3.5 Ownership of Equipment

The contract should make clear who owns the equipment installed by the contractor at all times during the contract. Equipment ownership may be important to the contractor for purposes of securing financing or for the tax treatment of the contractor's revenues under the contract. General Provision 1 establishes that all equipment installed by the contractor remains the property of the contractor during the term and ownership transfers to the agency at the expiration of the contract.

In cases where the contractor's equipment includes software, the agency should ensure that it receives a license, both during the contract term and perpetually afterwards, to use the software to the extent necessary to operate facility equipment.

6.3.6 Standards of Service and Comfort

One inappropriate way a contractor could increase savings might be to reduce the amount of cooling or lighting below the levels customarily provided in the facility. In order to prevent this, the contract must establish what levels of cooling and lighting are considered acceptable and require the contractor to design, install, and maintain equipment to provide these levels. General Provision 16 addresses standards of service and comfort, including space temperature, humidity, outside air ventilation, and light levels. Facilities should carefully consider any special service standards (e.g. computer rooms, laboratories) and ensure that they are included in general or special provisions.

6.3.7 Savings Measurement

In a performance contract, savings measurement is a vital issue. Generally, the improvements to be installed must be known before the most appropriate savings measurement method can be selected. Therefore, the contract requires the contractor to provide a detailed savings measurement plan, including the method for establishing the energy baseline, in the Energy Study Report. Facilities should scrutinize the measurement plan with great care before accepting the Study Report for incorporation into the contract.

Savings measurement issues are further discussed in part 7.

Material Changes and Baseline Modifications

An issue related to savings measurement is what to do if the operation or equipment of the facility changes, making the original energy baseline unrepresentative of the actual operation. Generally, contracts provide that when the facility changes in a way that affects the project energy savings significantly, the baseline may be modified. This issue is addressed in General Provision 17.

6.3.8 Risk Management

The contract should include typical language to protect the agency from any damages or liability that may arise due to the contractor's performance or non-performance under the contract. The ESCO

should be required to provide a performance bond with proposal submission. Should the ESCO fail to perform through no fault of the State, the bond will cover the completion of performance. A payment bond should also be provided to cover the prompt payment to all others for all labor and materials furnished in the work. Performance and Payment bonds are covered in General Requirement 11 of the RFP.

Other typical requirements include bodily injury and property insurance coverage to be carried by the contractor (General Provision 18) and a general indemnification by the contractor (General Provision 30). A hazardous waste disposal plan should be included in the Energy Study, as well as consideration of Indoor Air Quality (IAQ).

Another type of insurance policy to consider is for a guarantee of energy savings. If the energy savings are to be bonded, the contract should state that this bond is for a one-year period renewable annually on request by the facility in an amount reduced by the energy savings realized in previous years. The surety company may have other requirements for this type of bond.

Indemnification Clause

The indemnification clause transfers the financial cost of a loss to the contractor to the facility. No government agency should accept any dislaimer saying that the ESCO shall not be responsible for any indirect, incidental, or consequential damages arising from the work. Language recommended to be incorporated into the contract in lieu of an indemnification clause follows:

"The **University** of Hawaii shall be responsible for damages or injury caused by the **University**'s agents, officers, and employees in the course of their employment to the extent that the **University**'s liability for such damage or injury has been determined by a court or otherwise agreed to by the **University**, and the **University** shall pay for such damages and injury to the extent permitted by law and approved by the Hawaii Legislature."

7. MEASURING ENERGY SAVINGS

7.1 Establishing a Baseline

Energy savings can be estimated, but cannot be directly measured. Savings are always a calculated difference between (1) what was actually used and (2) what would have been used if improvements had not been made. The second half of this difference is the energy baseline: "a calculation or measure of each type of energy consumed in existing facilities, prior to the installation of energy conservation measures."[5]

Energy baselines can be calculated in different ways depending on what energy efficiency measures are being evaluated. A baseline may be created from historical utility billing data, or special purpose metering of existing equipment. The simplest energy baseline is a previous year's utility bills. This is illustrated in Figure 7-1. In this simple example, savings would be calculated simply by the difference between the future usage and the usage in the baseline year. See Figure 7-2.

There are several problems with this type of simplified analysis. In any particular year, various influences will make energy use increase or decrease in unpredictable ways. These irregularities, if incorporated into the baseline, will over- or under-estimate the true savings. This is sometimes addressed by using the average of two or more years to establish the baseline.

Averaging over several years helps reduce random year-to-year variations in the baseline, but will not address long-term trends. For example, if a facility is increasing its hours of use and adding new equipment, a more accurate forecast of future use might show a steady increase. In this case, using a particular year or average of previous years will underestimate the savings. If energy use has been tending to decline (e.g. due to reduced enrollment, hours of operation, or other efficiency improvements), a historical baseline will over-estimate savings.

[5] Definition of the energy baseline from the model contract.

Figure 7-1
A 12-Month Energy Baseline

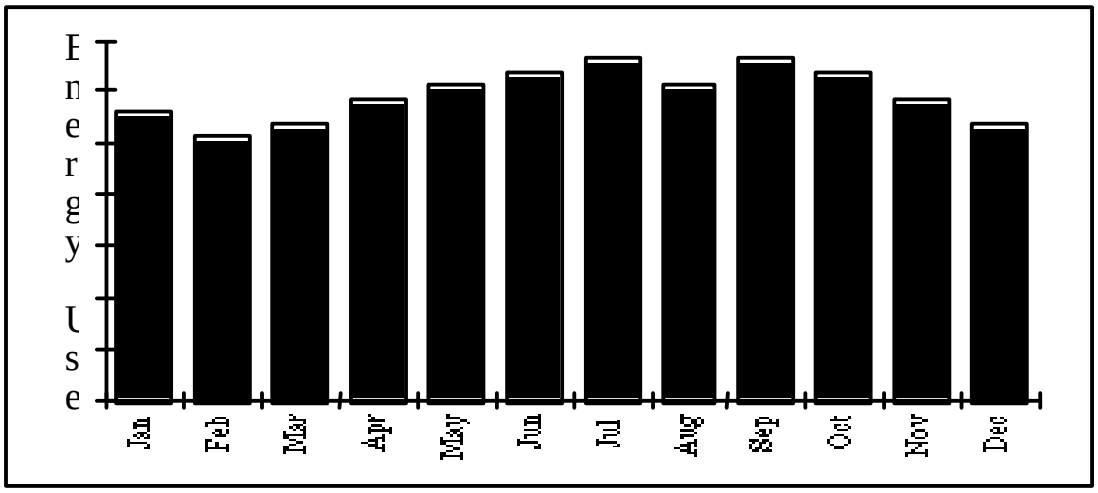
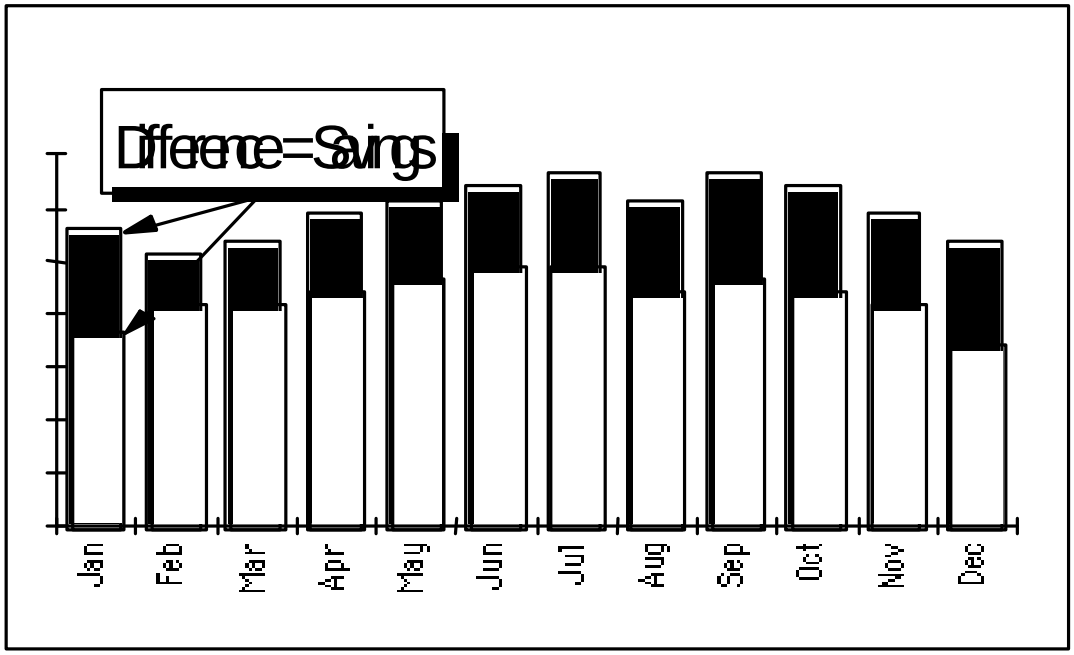


Figure 7-2
Savings Calculated by The Difference
Between A Baseline and A Subsequent Year



The fundamental disadvantage of using billing data to measure savings is that it reflects not just the impact of the energy efficiency equipment, but the impact of all changes that have an effect on building energy usage. These include weather, changes in occupancy, addition or removal of equipment, and many others. In order to reliably use billing data as a baseline, we must establish that these other factors have small impacts

compared to the efficiency measures or determine a method to adjust for their effect.

One common method to adjust for the impacts of other factors is to develop a computer model of the facility's energy use. The inputs to this model are adjusted until the predicted energy use agrees closely with the historical use. This "calibration" is intended to ensure that the model is a valid representation of the facility's energy performance. Then, usually once a year, data on weather, schedule, connected loads, and building area are entered into the model in order to calculate the baseline energy use based on that year's actual operating and weather conditions. One of the major disadvantages of this method is that because of the opportunity (and incentive) for the contractor to change the model in its favor, the facility staff must become equally knowledgeable about the computer model and its sensitivity to different data inputs. Annually re-computing the baseline creates a regular opportunity for major disputes to arise.

A common alternative approach to overcome these disadvantages is to use end-use or equipment-level metering to establish a baseline. For example, savings from lighting upgrades can be accurately determined by measuring the connected load (in watts or kilowatts) of the existing lighting and the new, upgraded lighting and the operating hours of the lighting after the upgrade. The calculation of baseline energy use is then simply the pre-upgrade kilowatts multiplied by the hours of use after the upgrade. This is shown in the equation below:

Baseline energy use (kilowatt-hours) = kilowattspre x hours of use

The energy use after the retrofit ("post-retrofit") is the new kilowatts multiplied by the hours of use. The equation for the energy use of the new lighting system is:

Post-retrofit energy use (kilowatt-hours) = kilowattspost x hours of use

Since the energy savings is the post-retrofit energy use subtracted from the baseline energy use, the equation for the energy savings can be simplified to:

Energy savings = (kilowattspre - kilowattspost) x hours of use

In other words, the energy savings is the difference between post-retrofit and "baseline" lighting wattage, multiplied by the light fixtures' hours of use after the retrofit. If usage declines after the lighting upgrade, calculated energy savings will also decline.

In practice, of course, calculation of energy baselines based on equipment metering may be more complex. Only for simple lighting fixture replacements is it this simple. The baseline calculation for other devices, such as air conditioning chillers, fan motors, or chilled water pumps, is fundamentally the same as in this example. In the case of cooling equipment, other variables, such as weather and indoor temperature, may also need to be accounted for. Nevertheless an energy baseline can still be developed based on measurement of the equipment demand under various conditions, and appropriate measurement of operating hours under similar conditions. In most cases involving air conditioning systems, an understanding of the engineering principles basic to refrigeration and fluid dynamics is necessary to fully evaluate the appropriateness of an energy baseline calculation based on equipment metering.

Each of these alternate approaches has advantages and disadvantages. Establishing an energy baseline using billing data is low cost, because the metering and data collection are already being performed. Billing data reflects all the changes in energy use at a facility, so if many different improvements are implemented in a comprehensive project, a single measurement evaluates the impact of all of them together, including all of the possible interactions between the improvements. If there are significant changes in energy use that are unrelated to the efficiency improvements, then this all-inclusive feature is also a disadvantage.

Equipment metering has the potential advantage of observing only the change in energy use accomplished by the efficiency improvement. This is usually true for lighting and motor efficiency upgrades. However, for cooling improvements, other influences, such as weather effects and thermostat setpoints, also affect the energy used and must be adjusted for in the baseline calculation. Because metering must be especially installed, read, and calibrated for the duration of the contract, it is more expensive than analysis of utility billing data. Interactive effects between improvements (e.g. lighting improvements reduce the amount of cooling required) may be impossible to measure. Contractors will often propose that an estimate of interactive savings be added to the amount measured, but this can result in double-counting.

Table 7-1
Advantages and Disadvantages of
Alternate Energy Baseline Calculation Methods

Method	Advantages	Disadvantages
Utility Billing History	• Low cost • Data already available • Independent data • Represents effects of all EEMs • Accounts for interactive effects	• Effects of weather, occupancy, other changes may mask savings • May be unreliable unless savings are large compared to normal bill variations
Equipment Metering	• Isolates effect of EEM • Very accurate for lighting measures • Results are more predictable (i.e. lower risk)	• Higher cost • Misses interactive effects

The selection of the appropriate method to calculate the energy baseline depends partially on what energy efficiency measures are finally adopted. Generally, the improvements to be adopted are not known at the time of the solicitation. Instead, the first task of the contractor is an energy study to identify and propose these improvements. Because of this, we believe it is most efficient for the facility to require the contractor to propose the method to calculate the energy baseline in its Energy Study Report. The facility has an opportunity to review and approve or reject the contractor's proposed method in its review of the Report.

7.2 Modifying the Baseline

As mentioned in part 6.3.7, the use, equipment, or buildings of a facility may change in a manner that makes the previous energy use baseline unrepresentative of the facility. To take an extreme example, reducing a building's operating hours from 60 to 40 hours a week would obviously reduce energy usage significantly. This reduction would not be energy "savings" under the performance contract because the reduction did not result from equipment installed by the contractor, but from unrelated changes in usage. If the utility bills from a previous year were the baseline for measuring savings, the savings measurement would include not only the actual savings but the savings from reduced operating hours as well. This would be considered a "material change" and should result in a modification of the baseline.

Because conditions change regularly in most facilities, only certain changes should trigger a baseline modification. Changes which are likely to have

little or no impact on energy use should be ignored as far as the baseline is concerned. A standard should be established in the contract to clearly define what changes will be considered "material." The standard used in the sample contract is any change "which may reasonably be expected to change the energy consumption of the facility by more than ten percent of the total energy savings." In such an event, the contractor and agency mutually agree on an appropriate modification. If they cannot agree, General Provision 37, "Disputes" would apply.

If "material changes" are listed in the contract, they could include:

- Changes in occupied square footage;
- Changes in operating hours of the facility;
- Changes in the facility's energy equipment or operating parameters other than the ESCO equipment;
- Changes in weather between the base year and guarantee year as measured by daily degree-day comparisons;
- Energy equipment other than ESCO equipment malfunctions, or is repaired or replaced in a manner that increases or decreases energy consumption;
- Other actions taken by facility that may reduce or increase energy use; and
- Discovery of an error in the original baseline; in that case the change would be retroactive.

Changes in the baseline are always made by mutual agreement between the facility and the ESCO.

8. MONITORING AND MANAGING A PERFORMANCE CONTRACT

8.1 Project Meetings and Reports

Chapter 3, *Organizing a Project Team*, describes the need for a multi-disciplinary approach (involving facilities management and planning, procurement, budget, and legal) during project development and contractor selection. After the contract award, the on-site facility administrators are primarily responsible for the day to day oversight of the contractor.

After contract award, a project proceeds in three phases: the energy study, construction and commissioning, and operation. The key to managing the project is to ensure timely and complete communication between the contractor and facility staff. Meetings held at major project milestones establish a pattern of communication and mutually agreed benchmarks that can then be used to monitor and control the progress of the project. Table 8-1 summarizes major milestones and topics that need to be discussed at each one. Once the contract is awarded, it is easy for the facility staff to turn their attention to their regular responsibilities and for the contractor to focus on the current task and forget to keep the facility staff informed. A schedule of regular project meetings helps prevent surprises and keeps the contractor on track.

8.1.1 Post Award Meeting

Immediately after the execution of the contract, a project meeting should be held to plan the contractor's first major task, the energy study. This meeting should include a facility presentation on measures it would like to see evaluated and procedures such as security, site check-in and check-out, parking, identification, access to occupied spaces, etc. The contractor should describe its plan for the energy study, particularly on-site activities and intermediate submittals for review. The parties should review Appendix B, Form of Energy Study Report, as a reminder of the contract requirements for contents of the energy study report. Notes from this meeting will document mutually-accepted procedures and a plan to complete the energy study within the 90-day period provided in the standard contract (Article 3). Facility representatives should make sure that meetings such as these are not used by the contractor as opportunities to renegotiate deadlines or any other requirements of the contract.

Table 8-1
Milestone Meetings

Energy Study Phase

Energy study meetings

- Present energy study updates
- Present Energy Study

Construction and Commissioning Phase

Pre-design meeting

- Execute energy study report acceptance form
- Notice to proceed with design

Installation plans meeting

- Present installation plans (G.P. 6.1)

Commissioning, testing, and training meeting

- Notice of Completion (Article 3.3)
- Plan for acceptance testing of work (Article 3.3)
- Plan for facility personnel training (G.P. 11)
- Plan for installation documentation (G.P. 6.13)
- Schedule for first-year preventive maintenance
- Schedule for first-year measurement activities

Annual Monitoring of Savings & Standards of Service

Annual project review meeting

- Annual monitoring of savings and standards of service
- Calculation of energy savings and baseline reconciliation modifications
- Schedule for next year's measurement activities
- Schedule for preventive maintenance and training
- Occupant complaints, standards of service, etc.
- Outstanding issues

8.1.2 Energy Study Phase

During the energy study phase, we recommend project meetings between the contractor's project manager and the facility's management and planning staff at least once a month. In many cases, meetings every other week will be preferable. The primary purpose of these meetings is for regular updates and discussion of the existing conditions and energy efficiency measures on which the contractor is focusing. The staff can use these meetings to ensure the contractor is basing the analysis on realistic assumptions and is evaluating the improvements they prefer.

8.1.3 Construction and Commissioning Phase

The construction and commissioning phase of the project requires the most coordination and interaction between the contractor and facility. This phase begins with the approval of the final Energy Study Report and notice to proceed with design of the project.

During this phase, weekly project meetings should be held for the contractor to make status reports. The sample contract requires the contractor to submit design and installation plans for approval before beginning construction. The sample contract (GP 6) also requires contractor submittal of work schedules and notices of utility interruption in advance. These matters would be regularly updated in the weekly meetings.

Management of the design and construction phase of the performance contract is essentially the same as the management of a large design/build retrofit or repair and maintenance project. However, performance contracts incorporate several other elements that are not associated with conventional retrofits. These include training staff, maintaining equipment, monitoring standards of service and comfort, and verifying savings. Unlike construction management, which is completed once the installation has been accepted, these other activities must be monitored for the duration of the contract (often ten years) in order to receive full value from the project.

8.2 Annual Monitoring of Savings and Standards of Service

The contractor is required to document in its energy study report "the method of determining energy savings and compliance with Standards of Service annually throughout the contract term." This method should be referred to and checked against a schedule of first year measurement activities which the contractor submits for approval at the commissioning meeting (see Table 8-1). This schedule should include a joint annual inspection of all of the contractor-installed equipment to verify that equipment is being operated and maintained as designed. The annual meeting should review the calculation of energy savings for the previous year, including any material changes or modifications of the baseline. At each annual meeting the schedule of measurement activities for the following year should be reviewed and approved.

These annual meetings are not a substitute for ongoing monitoring of maintenance activities or standards of service and comfort or regular auditing of energy-savings' estimates included in contractor-submitted

invoices. They supplement these ongoing activities and provide an opportunity for a comprehensive review of the performance of the project on a facility-wide basis. Because they are not in response to an immediate problem, they make it easier to observe trends and longer term facility changes. They also serve as an annual opportunity for facility staff to ask questions and offer suggestions to the contractor regarding how to optimize system performance.

8.3 Maintenance Monitoring

One of the benefits of performance contracting is that the contractor has a strong financial interest in ensuring that maintenance is properly performed. Poor maintenance can reduce savings or cause standards of service and comfort to deteriorate below contract requirements. Both of these results are potentially costly to the contractor. A schedule for regular maintenance activities should be established and monitored and comfort complaints should be used as a warning that closer attention may be needed.

Since maintenance responsibilities may be split between the contractor and the agency (see sample contract, GP 8) equipment for which the contractor has maintenance responsibility should be clearly and prominently marked. This helps prevent inadvertent "takeover" of contractor responsibilities by the facility staff.

GLOSSARY

End-Use	A general category of energy use within buildings, e.g. lighting, space cooling, water heating, etc.
Energy Baseline	A calculation or measurement of each type of energy that would have been consumed in existing facilities or technologies, if the contractor had not installed energy efficiency measures. The baseline is used in the measurement of energy savings from the project.
Energy Efficiency Measure (EEM)	The installation of new equipment, modification of existing equipment, or revised operations or maintenance procedures to reduce energy costs by improving efficiency of use.
Energy Performance Contract	An agreement for the provision of energy services and equipment, including but not limited to building energy conservation enhancing retrofits and alternate energy technologies, in which a private company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of energy cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings or energy production. (HRS 36-41(b)(1)(d)).
Energy Service Company (ESCO)	A private company providing energy management equipment and services including feasibility studies, design, installation, maintenance, and financing.
Guaranteed Savings	A type of performance contract under which the facility pays a lump sum price (usually in monthly installments) for the energy-saving improvements and the contractor guarantees that energy cost savings will equal or exceed this payment.

Municipal Lease	A contract granting use of property during a specified period in exchange for a specified rent. When a public agency is the user of the property, the income from the lease is exempt from income taxes. These tax savings are passed on to the agency by a reduced interest rate.
Priority-Listed Proposer	Those responsive and responsible proposers who are selected for the priority list when numerous proposals are submitted.
Shared Savings	A type of performance contract in which the facility and contractor agree to share the measured energy savings on a pre-determined basis. Under a shared savings contract, the agreement to share savings may be for a fixed time period or until a fixed amount has been paid. Shared savings contracts are not recommended by the State of Hawaii.
Simple Pay-Back or Pay-Back Period	A measure of project economic effectiveness. The pay-back period is calculated by dividing the initial project cost by the annual project savings.

Appendix A

ENERGY SURVEY WORKSHEET

Appendix A

Energy Survey Worksheet

Use this worksheet to document basic information needed to evaluate potential for performance contracting and describe the project to proposers. Fill out a copy of the worksheet for each project site (e.g. one worksheet for each elementary, intermediate, or high school).

1. Building List

On the attached form titled "Building List" (Table A-1) fill in the information shown below for each building included in the project.

Department / Agency _____ Date of survey _____

Contact person _____ Title _____

Address _____ Phone _____
_____ Fax _____
_____ E-mail _____

Facility / Site name _____ Ownership: State _____
Address _____ Federal _____
_____ Leased _____

_____ Use (office, school, etc.) _____

Facility contact person _____ Phone _____

2. Building Operating Schedule / Building Data

Number of buildings _____ Total sq. footage _____

Building Operating Schedule. Describe the facility's normal operating schedule (for example: "September through June, the facility is partially occupied from 7 a.m. to 9 a.m., and fully occupied from 9 a.m. to 5 p.m., weekdays and partially occupied on Saturday mornings. July through August, the facility is partially occupied (offices only) from 7 a.m. to 9 a.m., weekdays.")

_____
_____

_____
_____
_____

Annual energy use $_____ Mbtu _____ Utility _____

Buildings separately metered? Yes _____ No _____ (See Table A-2).

Method of tracking energy use / cost _____

Person managing energy use _____ Phone _____

Is there a facility energy management plan? Yes _____ No _____ (Attach copy).

Has facility received energy audit? Yes _____ No _____ (Attach copy).

Energy manager / Engineer / Technical staff on-site? Yes _____ No _____

Name _____

Person responsible for facility maintenance _____ Phone _____

Is maintenance performed / scheduled on a regular basis? Yes _____ No _____

Describe _____
_____

Describe energy efficiency projects implemented _____
_____

Describe energy efficiency projects planned for future implementation _____
_____

Describe energy efficiency projects you believe may exist _____
_____

Describe major changes to the facility's operation, equipment or buildings in the past three years that may have significantly affected energy use _____
_____
_____
_____

Describe planned changes to the facility's operation, equipment or buildings. Identify any equipment scheduled for replacement. Identify any building areas

scheduled for remodeling, renovation, or abandonment. (Complete Table A-3).
_____
_____
_____

Is the following facility data available, organized and up-to-date?

Historical Energy Use Yes _____ No _____

Utility Rate Schedules Yes _____ No _____

Floor Plans Yes _____ No _____

As-Built Drawings Yes _____ No _____

Equipment Specifications Yes _____ No _____

Maintenance Records Yes _____ No _____

Past Energy Audits Yes _____ No _____

Other _____

3. Financing Options

Is utility assistance available? Yes _____ No _____ Describe _____
_____
_____

Are capital funds available? Yes _____ No _____ Describe _____
_____
_____

What are the financing options? (Utility, agency, esco, lease, etc.) _____
_____
_____

4. Systems Data

Building construction type (steel, masonry, wood frame, single or double window glazing, insulation) _____

Hot water system type _____

Cooling system type (central electric, chillers, window units, rooftop packaged units, heat pumps) _____

Ventilation system type (ducted single zone, multizone, VAV, dual duct, through the wall, no mechanical ventilation) _____

Controls (ability to shut equipment off or setback temperatures when unoccupied, energy management system, etc.) _____

Lighting systems (fluorescent T12 or T8, ballast type, incandescent, controls, etc.)

Renewables in use (solar, wind, geothermal, etc.) _____

Hazardous materials present (asbestos, pcb ballasts, etc.) _____

Other relevant building information _____

Constraints (physical, financial, personnel, lack of interest, etc.) to implementing energy efficiency measures _____

5. Energy Efficiency Opportunities

Describe the potential for energy efficiency measures, including renewables, the availability of financial assistance and other pertinent information which may effect the successful implementation of energy efficiency measures at the facility.

_____
_____
_____
_____
_____

Table A-1
Building List

Building Name	Year Built	Gross Floor Area	Air-Conditioned (Y or N)	Notes (Principal use and special concerns)

Building Name — Small storage or utility buildings do not need to be included.

Year Built — If a building has additions of different ages, show the year for the portion which is largest.

Gross Floor Area
Air Conditioned — In the "Gross Floor Area" column show the total building area. In the "Air Conditioned" column, indicate "Y" or "N" (for yes or no) or put in a percentage to show the percentage of the building that is air conditioned.

Notes	Use this space to describe the use of the building (e.g. offices, classrooms, library, etc.) and to describe any special needs or problems relating to lighting or air conditioning.

Table A-2
Energy Use Information

Period	Facility Name Electric Utility Account Meter No. Electricity Consumption			Fuel 1 Supplier Account Meter No. Fuel 1 Consumption Show Units Below (e.g., gallons, therms)		Fuel 2 Supplier Account Meter No. Fuel 2 Consumption	
End Date MM/DD/YY	Usage kWh	Usage kW	Cost $$	Usage	Cost $$	Usage	Cost $$
Jan							
Feb							
Mar							
Apr							
May							
Jun							
Jul							
Aug							
Sep							
Oct							
Nov							
Dec							
Total Year 1							
Jan							
Feb							
Mar							
Apr							
May							
Jun							
Jul							
Aug							
Sep							
Oct							
Nov							
Dec							
Total Year 2							

Table A-3
Planned Changes in Buildings, Operation, or Equipment

List planned changes to the facility's operation, equipment, or buildings. Identify any equipment scheduled for replacement. Identify any building areas scheduled for remodeling, renovation, or abandonment.

_____
_____
_____
_____
_____

Appendix B

FEASIBILITY ANALYSIS WORKSHEET

Appendix B

Feasibility Analysis Worksheet

Energy savings performance contracts can be used to finance a wide variety of projects and services. However, not all projects or facilities have the right combination of needs and opportunities. Operational or technical barriers may make a performance contract difficult to implement.

Stability of usage is very important to the economics of performance contracts. If past usage is highly variable, developing a baseline is more difficult and savings may be hard to measure. If future usage is uncertain, the projected savings of the energy efficiency measures may be too unreliable to qualify for financing. For example, the possibility of a partial or complete facility closure before the expected end of the contract will make project financing difficult.

Two simple rules of thumb may be used to evaluate whether a facility has adequate potential to attract proposals for a performance contract. (1) Projects with a total cost of less than $50,000 may not be feasible as a performance contract, because the administrative and other fixed costs involved in financing cannot be recovered in a reasonable period of time. (2) The simple payback (SPB) of the project should be 7.5 years or less. The simple payback is the project's construction cost divided by its first year savings.

Use this Worksheet to identify potential obstacles and opportunities. Remember to consult with other personnel, particularly with respect to plans for future changes. Including representatives of the following functions may be useful:

- Upper management / administration;
- Facility operation and maintenance;
- Facilities planning;
- Building users (e.g. in a school, consult faculty members);
- Budget and finance; and
- Legal.

1. Stability Of Occupancy And Use

1-1 What changes in facility use, schedule, or occupancy may have significantly changed energy use in the past two years? _____

1-2 Have energy saving measures been installed in the last two years? If yes, list them. _____

1-3 Have any equipment replacement, remodeling, or construction projects been started in the last two years? If yes, describe briefly. _____

2. Planned Changes

2-1 Are any near-term (next two years) changes in facility use, schedule, or occupancy planned which may significantly affect energy use? _____

2-2 Are any energy efficiency projects currently planned? If yes, please describe. _____

3. Historical Electricity Usage

3-1 Does facility electricity use show a consistent pattern from year to year? Yes_____ No _____ Notes:_____

To decide whether use is consistent, consider the following: Does the total annual use change by less than 15% from year to year? Does the maximum monthly use occur in the same season from year to year? If yes, these are indicators of stable usage. Using a computer spreadsheet program to chart use for different years is a good way to visually check whether use is consistent.

4. Evaluate Likelihood of Facility Closure

What is the likelihood that some or all of the facility will be closed within the next five years? The next ten years?

Next five years	Next ten years
__ impossible	__ impossible
__ extremely unlikely	__ extremely unlikely
__ not very likely	__ not very likely
__ likely	__ likely
__ certain	__ certain

If you answered "likely" or "certain", what percentage of the facility will be affected? _____%

5. Evaluate Facility Condition

5-1 What is the condition of major energy-using equipment at your facility? This includes lighting and air conditioning equipment. _____

5-2 Has an asbestos survey been completed? Is asbestos present in the facility? If so, where and how extensively? _____

5-3 Are other hazardous materials present (e.g. PCBs in fluorescent ballasts)? _____

5-4 Are there significant comfort or reliability problems due to deferred maintenance, equipment age, etc.? _____

6. Evaluate Management Support

6-1 Is the concept of performance contracting familiar to personnel who will be involved in or affected by a project? _____

6-2 Who has authority to sign a performance contract? Is this person aware of the possibility of a project and the potential benefits? _____

6-3 What kinds of assistance or expertise to complete a performance contract at your facility may require outside assistance? _____

Compare your responses to the previous questions to the list of favorable characteristics shown in Table B-1.

Table B-1
Favorable Characteristics for Performance Contracting

- Building occupancy and energy use have been stable in recent years.
- Buildings are occupied 3,000 hours per year or more.
- Annual energy costs for the facility (one or more buildings) exceed $100,000 per year.
- No large changes in occupancy, schedule, or major equipment are anticipated in the near future.
- The facility is unlikely to close or reduce its size or operating hours substantially in the next ten years.
- The facility is in good repair and hazardous materials such as asbestos are not likely to be disturbed by efficiency improvements.
- Facility administrators understand performance contracting and support its use at the facility.

Buildings do not need to have all these characteristics in order to be acceptable candidates. However, if a facility does not have four or more of these characteristics it is a good idea to contact potential proposers directly, describe the project, and ask whether they would be likely to propose if an RFP is issued.

From the proposers' point of view, the administrative costs to prepare a proposal, organize a project team, and arrange financing are almost the same for a small project as for a large one. As a result, proposers generally have a minimum threshold for the size of a project. Evaluating technical potential helps to ensure that the project potential is large enough to attract responsive proposals. Based on discussions with ESCOs and widely-accepted rules of thumb, we believe a project construction cost of $50,000 is the minimum that will attract proposals in Hawaii.

Before beginning a new evaluation of technical potential, review information already on hand regarding energy efficiency opportunities. If energy audits or studies have been completed then an acceptable evaluation of the facility's technical potential may already be available. Review any prior energy studies to make sure that the underlying assumptions about facility occupancy, schedule, structure, and equipment are still valid. Utility rates and construction cost estimates may need to be updated to current levels.

7. Review Previous Energy Studies

Collect any previous energy study reports for the facility.

7-1 Review the assumptions (for example occupancy and schedule) of any completed studies. Are they still realistic? _____

7-2 Do the studies furnish estimates of implementation costs and energy cost savings? _____

7-3 Have any of the recommended efficiency improvements already been implemented? If so, please list. _____

7-4 List any other efficiency opportunities documented by other sources (for example vendor proposals). _____

If the previously completed energy studies (or other sources) document energy savings opportunities (not yet implemented) with a construction cost of $50,000 or more and an overall simple payback of 5 years or less, then performance contracting is likely to be a feasible approach.

If previous energy studies are not available, are out of date, or do not document sufficient potential, the next logical step is to evaluate lighting efficiency opportunities. Lighting improvements are relatively easy to evaluate using a spreadsheet or lighting upgrade analysis program such as *ProjectKalc*.

8. Evaluate Lighting Efficiency Opportunities

A complete description of how to evaluate lighting efficiency opportunities is beyond the scope of this Guide. There are many excellent manuals addressing energy-efficient lighting. One of these is the EPA's lighting efficiency analysis software, *ProjectKalc*. *ProjectKalc* is a very sophisticated lighting analysis program. Among other features, it allows the user to compare the energy use and light output of lighting systems fixture by fixture, room by room, or facility-wide. The ProjectKalc program and documentation is available through DBEDT's Energy, Resources, and Technology Division.

9. Evaluate Project Size and Simple Payback

9-1 Is the total construction cost greater than $50,000? _____

9-2 Is the overall project simple payback less than 5 years? _____

9-3 If the answer to 1-2 is NO, can any individual measures be removed in order to make a project for which the answers to 1-1 and 1-2 are both YES? _____

In order for a project to be considered feasible, responses to questions 9-1 and 9-2 above must both be YES. If the project is not large enough, consider "bundling" additional buildings into the project to increase its overall size. If the simple payback is too long, individual measures with longer paybacks can be eliminated, or the facility could investigate the possibility of matching funds, either from utility energy efficiency rebates or from regular construction budgets.

Appendix C

REQUEST FOR PROPOSALS WORKSHEET

Appendix C

Request for Proposals Worksheet

1. Scope of Work

1-1 Scope of Services - What services should be included in the performance contract?

- Energy Study ___
- Design __
- Furnish and Install Measures __
- Repairs and Warranty Service __
- Preventive Maintenance __
- Equipment Operation __
- Maintenance of Existing Equipment __
- Training
- Measurement and Verification

Notes: _____

1-2 Building List - What buildings are included in the project?

Use the building list prepared in Appendix A to identify all buildings included in the project.

1-3 Technologies List - List any technologies which will be REQUIRED in this project.

2. Instructions for Proposers

The following table lists items normally included in the Instructions to Proposers in the RFP.

2-1	Delivery Address -	_____ _____ _____
2-2	Proposal Submittal - List instructions for packaging, labeling, number of copies, etc.	_____ _____ _____
2-3	Official Contact Person - Normally the contracting officer in charge of the RFP.	_____ _____ _____
2-4	Technical Representative - Often a Facilities Planning or Maintenance person is named to field technical or facility-related questions.	_____ _____ _____
2-5	Solicitation Schedule - See the "Significant Dates" section of the model RFP for a sample schedule.	Hawaii Administrative Rules require thirty days between the last legal advertisement and the date set for receipt of proposals.
2-6	Pre-Proposal Submittals - Will a Notice of Intent to Propose or other submittal will be required?	A Notice of Intent is often used to check proposer interest and assist in planning for the Pre-Proposal Meeting.
2-7	Pre-Proposal Meeting - This meeting is to respond to bidder questions and efficiently conduct a site tour.	Meeting may be optional or required. An alternate approach is to instruct bidders to individually arrange site visits with the Technical Representative.

2-8	Proposal Content and Format - Providing specific instructions makes proposals more consistent and therefore easier to evaluate.	See the attached sample RFP (Appendix D) for an example.

3. Information for Proposers

The Energy Survey Worksheet (Appendix A) lists facility information to collect. Information which should be attached to the RFP includes:

- A narrative description of the facility,
- A building list (see Appendix A),
- An energy use history (see Appendix A), and
- A list of other documents and information available for review by prospective proposers at the site or elsewhere.

If available, the following information should be collected for review by proposers:

- A detailed lighting inventory,
- A detailed inventory of cooling and other equipment,
- A detailed operating schedule for buildings and major equipment,
- A set of building floor plans on 8-1/2 by 11 inch paper (this may be kept at the site and given out when prospective proposers make site visits.

Appendix D

SAMPLE REQUEST FOR PROPOSALS

AND

RESPONSE FORMS

Appendix D

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TABLES

Sample Request for Proposals

Notice to Proposers

PROPOSAL FORMS for Request for Proposals (RFP) No. [**RFP number**] for Performance Contracting for _____, will be available from and received in the **OFFICE OF PROCUREMENT, PROPERTY AND RISK MANAGEMENT (OPPRM), UNIVERSITY OF HAWAII, 1400 LOWER CAMPUS ROAD, ROOM 15, HONOLULU, HAWAII 96822**. Proposals must be submitted no later than 2:30 p.m., on the date listed below. Proposals received after the time and date fixed for opening will not be considered.

[**Facility Name**] [**Date**]

Proposers are invited to attend a Pre-Proposal information session to be held on [**date**] at [**time**] at [**location** - give room number as well as building address - if possible provide a map and directions in the attached facility data].

Written notices of intent to propose are due in the **OPPRM** no later than 2:30 p.m. on [**date**].

Notice of intent to propose via FAX to (808) [**fax number**] is acceptable.

Direct all questions to [**contact name**], (808) [**phone number**].

Advertised: Honolulu Advertiser

Issue of: [**date**]

Request for Proposals

The **University** of Hawaii ("**University**") invites proposals for performance contracting services to improve energy efficiency at [**facility name and address**].

Proposals are due on or before 2:30 p.m. (Hawaii Standard Time) on the date shown in Section "E," Significant Dates. Send proposals to:

University of Hawaii
Office of Procurement, Property and Risk Management
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

Reference: Performance Contracting - _____[facility name]_____

1. Purpose

This Request for Proposals ("RFP") is being issued to select a contractor, to implement energy-saving improvements in buildings at [**facility name**]. The contractor will perform a detailed energy study of energy cost-saving opportunities, design, furnish, and install improvements selected by the **University**, maintain and repair these improvements, and finance the project such that the payment to the contractor is contingent on the level of savings achieved (or energy produced). The primary objection of this RFP is to realize maximum energy efficiency improvements.

2. Background Information

Hawaii is the nation's most oil-dependent state and consumers face energy costs that are among the highest in the country. Performance contracting is an arrangement in which a private company finances and installs building improvements for a payment that depends on future energy savings resulting from the improvements. In Hawaii, performance contracting in public buildings can be a significant tool to leverage tax dollars and enhance energy efficiency.

In 1987, the Energy, Resources, and Technology Division of the Department of Business, Economic Development, and Tourism (DBEDT) concluded that performance contracting could be a significant tool to enhance energy efficiency in the State. DBEDT examined existing state procurement and contracting regulations/legislation to determine if performance contracting could be pursued. As a result of this analysis, legislation to provide a definition of performance contracting and encourage state agencies to pursue this mechanism was proposed to the Legislature and adopted in 1989. DBEDT will provide

technical assistance to the **University** during project development, monitoring, and verification of savings.

3. Scope of Work and Minimum Qualifications

a. Scope of Work. The **University** invites Proposals to provide performance contracting services for energy costs savings measures at _____under which the selected Contractor shall:

1) Perform a detailed study of energy cost savings measures and renewable energy opportunities at the **University** at contractor's sole expense. The energy study shall identify all feasible energy conservation, load management, and renewable resource options with benefits exceeding costs over the contract term. The study shall document existing conditions and an Energy Baseline. Contractor shall furnish a written report of its findings. See Article 3.1 (a) and (b) and Appendix 2 of the attached Performance Contract for Energy Services.

2) Design, furnish, and install energy efficiency improvements identified in the Energy Study accepted by the **University**. The Contractor shall be responsible for quality control during the installation of all Energy Efficiency Measures (EEM). Contractor shall inspect and test all work performed to insure compliance with Contract requirements.

3) Provide repairs, maintenance, and training for Contractor-installed equipment for the term of the agreement. Contractor, at its sole expense, shall be responsible for periodic inspections, tests, adjustments, and repairs required to sustain and/or restore energy systems to as-designed performance and performance requirements of this contract. Contractor shall provide operations and maintenance training and manuals for **University** staff. The Contractor may also propose to provide repairs and maintenance for **University**-owned energy equipment.

4) Finance all of the equipment and services provided on terms such that the level of payments by the **University** is contingent on the measured energy cost savings (or energy production). This means that the total payments by the **University** for utilities, fuel and the energy performance contract do not exceed the amount that the **University** would pay for fuel and utilities without a performance contract. Continuation of the contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. Financing approaches must comply with all State laws, including, but not

limited to Act 119 SLH 1996, relating to municipal leases. Proposers are advised that specific policies and procedures to implement Act 119 remain unclear and in flux.

5) The term of any energy performance contract shall not exceed fifteen years. After selection of a Contractor, an award letter is written and the Contractor directed to begin the Energy Study. Following acceptance of the Energy Study and completion of all other requirements a Notice to Proceed with construction is issued. The term of the contract begins on the date of the Notice to Proceed with Construction. The **University** prefers an agreement term that will maximize the energy-savings and maintenance services that can be provided under the contract. The contract will provide that the **University** shall receive title to the energy-saving measures being financed.

6) Proposers shall identify proposed improvements to be made to the Facility. However, the **University** recognizes that the scope of improvements are subject to change based on the Energy Study to be performed by the Contractor. If the proposed improvements offered in the Energy Study are materially less advantageous to the **University** than the terms supplied in the Proposal, the **University** will have no obligation to compensate the Contractor for preparation of the Energy Study. See the attached Performance Contract for Energy Services, Article 5.1. If the **University** elects not to continue with the implementation of the energy efficiency or renewable energy improvements proposed by the Contractor after the Study has been accepted, the **University** will pay the fee indicated as set forth in "Energy Study Cost," (see RFP part 5-6, page 24) provided the proposed contract terms offered by the Contractor comply with all the requirements set forth in this RFP.

7) The Proposer to whom the contract is awarded shall pay support service fees to the Energy, Resources, and Technology Division of the Department of Business, Economic Development, and Tourism (DBEDT) to defray administrative costs of support services for performance contracting. The Contractor shall pay a project development fee equal to two percent (2%) of the project construction cost within 30 days after the Substantial Completion Date. The Contractor shall pay an operations monitoring fee equal to one and one-half (1.5%) of the actual gross annual energy savings within 30 days after each of the first and second anniversaries of the Substantial Completion Date.

b. Minimum Qualifications for Prospective Proposers. A Proposer who is interested in responding to this RFP must meet the following minimum qualifications. Joint ventures or combinations of firms responding to this RFP will be evaluated with respect to the minimum qualifications based on their combined qualifications.

1) Have three (3) years of experience providing performance contracting services for commercial or institutional facilities.

2) Have principally completed at least five separate performance contracts through construction of which at least two must have construction values of $100,000 or more.

3) Have the credit worthiness and sufficient financial resources to complete the project lien free.

4) At the time the **University** determines to make award on the project, the Proposer shall possess a valid State of Hawaii contractor's license in accordance with Chapter 444, Hawaii Revised Statutes. If the Proposer is a joint venture, all parties to the joint venture must be individually licensed or the joint venture must be licensed. If the **University** determines that the Proposer does not possess a valid license at the time of award, its proposal will not be considered.

5) Be able to provide security for the payment and performance of the Contractor's obligation to complete the construction of the project lien free as required in provision H.11. "Requirement of Performance and Payment Bonds."

4. Official Contact Person

The official contact for all communications regarding this Request for Proposals is:

[Contact name]
[Address]
Honolulu, Hawaii 96822
Telephone: (808) ___-____ Fax: (808) ___-____

All questions concerning this RFP should be directed, in writing, to the official contact.

Questions concerning technical aspects of the project or the facility may be addressed, in writing, to the Technical representative of the contracting officer. The technical representative is:

Mr. Maynard Young
Director, Facilities Planning
Community Colleges
33 South King Street, Suite 206
Honolulu, Hawaii 96813
(808) 587-2663 Fax (808) 587-2666

5. Significant Dates

The **University** prefers to implement this project as quickly as possible. The planned schedule for the solicitation, selection, and negotiation process is outlined below.

EVENT AND DATE	
Advertising and Issuance of RFP	**To be determined**
Pre-Proposal Information Session and Site Visit	**To be determined**
Notice of Intention to Propose Deadline	**To be determined**
Deadline for Submittal of Written Questions	**To be determined**
Proposal Due	**To be determined**
Notification of Priority List	**To be determined**
Priority-Listed Proposer Interviews	**To be determined**
Contractor Selection	**To be determined**

6. Notice of Intent to Propose

In order to receive updates to the RFP and responses to inquiries, prospective Proposers must submit a written Notice of Intention to Propose to the **Office of Procurement, Property and Risk Management**, 1400 Lower Campus Road, Room 15, **University** of Hawaii, Honolulu, Hawaii 96822, by 2:30 p.m. on the date specified in the "Significant Dates" section. The Notice of Intention to Propose must be actually received, not simply postmarked, by that date. The official time shall be that recorded on the time stamp clock of the **University**'s **Office of Procurement, Property and Risk Management**. Notice of Intent to Propose may be submitted by facsimile. The facsimile number is (808) 956-2093.

A Notice of Intent to Propose form is attached (D-20). Failure to submit a Notice of Intent to Propose by the time specified above shall disqualify a Proposer from proposing on the project.

7. Pre-Proposal Meeting and Site Visits

A pre-proposal meeting will be held at [**time**] on the date specified in the "Significant Dates" section at [**location** - give room number as well as building address - if possible provide a map and directions in the attached facility data]. The purpose of this meeting is to respond to Proposer's questions regarding the RFP, proposal procedures, or other administrative matters. ATTENDANCE AT THIS MEETING, WHILE NOT MANDATORY, IS STRONGLY ENCOURAGED FOR THE SUBMISSION OF A PROPOSAL IN RESPONSE TO THIS RFP. A tour of the facility will be conducted at this time as proposers may make separate arrangements with the technical representative.

Prospective Proposers may schedule site visits for the purpose of information gathering by calling the technical representatives of the contracting officer listed in part D "Official Contacts" prior to the submittal deadline.

8. General Requirements for the Submission of Proposals

a. Definition of Terms.

The words defined in this Section shall have the meanings set forth below whenever they appear in this contract unless:

1) The context in which they are used clearly required a different meaning; or

2) A different definition is prescribed for a particular provision.

Amendment: A written document which may be issued by the Contracting Officer after issuance of a Request for Proposals (RFP), but before the time for opening of proposals, to make changes in quantity, specifications, delivery schedule, opening dates, etc., or to correct a defective or ambiguous RFP.

Advertisement: A public announcement inviting proposals for goods, services, and construction to be performed or furnished.

Calendar Day: Any day including Saturdays, Sundays and State-recognized legal holidays, beginning at midnight and ending at

midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

Contract Bond: The performance and payment bond. This is the approved form of security furnished by the contractor and his/her Surety to guarantee the completion of the work in accordance with the terms of the contract, and to guarantee full payment of all claims for labor, materials and supplies used or incorporated in the work.

Contracting Officer: The **Director, Office of Procurement, Property and Risk Management,** or any person who has been delegated authority by the **Board of Regents** to enter into acquisition contracts for the **University**.

Contractor: Any individual, partnership, firm, corporation or joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the **University**, and acting directly or through his/her, their, or its agents, employees or subcontractors.

Dispute: A claim of the Contractor for the payment of money, adjustment or interpretation of the contract terms, or other relief, arising under or related to the contract.

Holidays: The days of each year that are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes (HRS).

May: Means permissive

Offer: A Proposal submitted in response to a Request for Proposals.

Proposal: The offer of a Proposer, submitted in the prescribed manner, to perform at the prices quoted for the work required within the time prescribed for performance.

Proposer: Any individual, partnership, or corporation submitting or proposing, directly or through a duly authorized representative or agent, a proposal to supply the goods specified and/or to perform the services as indicated.

Responsible Proposer: A Proposer who: (1) has adequate financial resources, or the ability to obtain such resources as required for contract performance; (2) is able to comply with required delivery of performance schedule, taking into consideration all existing business commitments; (3) has a satisfactory record of performance; and (4) has

a satisfactory record of integrity, and is otherwise qualified and eligible to receive an award under applicable laws. When the situation warrants, special standards of responsibility applicable to a particular procurement may be developed to insure the existence of unusual expertise or other factors necessary for adequate contract performance.

Responsive Proposer: A Proposer whose Proposal complies with the specifications and terms set forth in the Request for Proposal as determined by the **University**.

Shall: Means mandatory.

Special Provisions: The specific clauses setting forth conditions or requirements peculiar to the individual project under consideration that are not thoroughly or satisfactorily stipulated in the General Provisions.

Subcontractor: An individual, partnership, firm, corporation, joint venture or other legal entity that enters into an agreement with the prime contractor to perform a portion of the work for the Contractor.

State: State of Hawaii.

Surety: The individual, firm or corporation that is bound by the contract bond with and for the Contractor to insure his/her acceptable performance of the contract.

Technical Representative of the Contracting Officer ("TRCO"): The person identified and designated by the Contracting Officer to address only technical matters regarding the project, who is without contractual authority.

University: **University** of Hawaii.

Working Day: A calendar day, exclusive of Saturdays, Sundays, and State-recognized legal holidays.

b. Disqualification of Proposers.

Any one or more of the following causes shall be considered as sufficient for the disqualification of a Proposer:

1) Evidence of collusion among Proposers.

2) Lack of responsibility (see definition of Responsible Proposer), including, but not limited to, arrearages on existing contracts in litigation with the State of Hawaii, or defaults on a previous contract.

3) Delivery of proposals after the deadline. (See definition of Responsive Proposer.)

4) Proposal not signed by an authorized individual.

5) Failure to follow directions and instructions in the RFP.

6) Placing conditions, limitations, or restrictions on the proposal.

7) If the proposal shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditional or incomplete offer, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to meaning.

c. Certification of Independent Price Determination

By submission of this proposal, each Proposer certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

1) The prices in this proposal have been arrived at independently, without any consultation, communication, or agreement, with any other Proposer or competitor for the purpose of restricting competition, relating to (i) such prices, (ii) the intention to submit a proposal, or (iii) the methods or factors used to calculate the prices offered.

2) Unless otherwise required by law, the prices submitted in this proposal have not been knowingly disclosed by the Proposer to any other Proposer or competitor and will not knowingly be disclosed by the Proposer to any other Proposer or competitor prior to opening of proposals.

d. Examination of Request for Proposals (RFP) and Contract Forms.

The Proposer shall examine carefully the Request for Proposals and contract forms. By submitting a proposal, the Proposer certifies an understanding as to the conditions to be encountered, as to the character, quality and quantities of work to be performed, and labor,

material, and equipment to be furnished, and as to the requirements of the contract. No additional compensation will be granted because of the lack of knowledge or misunderstanding of all the requirements of the work to be accomplished.

e. Conditions at Site.

Each Proposer shall visit the site and examine the conditions of same and be aware or satisfied as to the character and amount of work to be performed as called for by the RFP. No additional allowance will be granted because of lack of knowledge of such conditions. Proposers shall arrange for an appointment by calling the Technical Representative on any normal working day, Monday through Friday, after 9:00 a.m., but not later than 4:00 p.m.

f. Written Inquiries.

Written Inquiries concerning this RFP shall be submitted to the **University** of Hawaii, **Office of Procurement, Property and Risk Management, 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822**, no later than 2:30 p.m. on the date 21 days before the deadline for receipt of the Proposal to which the questions relate. Written inquiries must actually be received by that date, not simply postmarked. The official time shall be that recorded on the time stamp clock of the **University**'s **Office of Procurement, Property and Risk Management**. Written inquiries must be clearly marked "Performance Contracting for _____ [insert name]_____" and identified as "RFP No. [**RFP number**]". All inquiries must refer to the page and applicable RFP section to which the question relates. Any written inquiries submitted in accordance with this section shall be answered in writing by the **University** within 12 working days. The **University** reserves the right to decline to answer specific questions.

g. Preparation of Proposals.

The Proposer's offer shall be submitted on the forms and/or in the format furnished by the **University**. All information required in the proposal shall be filled in, in accordance with the instructions thereon. The Proposer shall sign the proposal in the spaces provided (must be an original signature). If the proposal is made by an individual, his/her name and post office address must be shown. If made by a corporation, the proposal must show the name of the state under the laws of which the corporation was chartered and the names, titles, and business addresses of the president, vice-president, and secretary, as

well as evidence showing the authority of the Proposer to enter on behalf of said corporation into a contract with the **University**. If made by a joint venture, the name and post office address of each member of the individual firm, partnership, or corporation comprising the joint venture must be shown with other pertinent information required of firms, partnerships or corporations, as the case may be.

Proposal prices shall be in U.S. dollars.

When proposals are signed by an agent, other than the officer or officers of a corporation, authorized to sign the proposal on its behalf, or a member of a co-partnership, a power of attorney must be on file with the **University** of Hawaii prior to opening of proposals, or it shall be submitted with the proposal; otherwise, the proposal will be rejected as irregular and unauthorized. Telegraphic and facsimile (FAX) proposals and mailgrams are not acceptable; however, proposals may be withdrawn by written, telegraphic, or FAX notice if such notice is received at the place and by the time specified in the Notice to Proposers.

Proposals for each campus must address each of the buildings listed in Appendix A for that campus.

h. Tax Requirements

In accordance with Section 103-53, HRS, all companies shall obtain and provide a tax clearance from the State Department of Taxation and the Internal Revenue Service as a prerequisite to entering into a public contract of $10,000 or more and prior to final contract payment.

Proposers shall enter the Hawaii General Excise Tax license number in the appropriate space under Part 1. Identification of Proposer. Additional information can be obtained from the Department of Taxation, Taxpayer Services Branch, P.O. Box 259, 830 Punchbowl Street, Honolulu, Hawaii 96809-5045, telephone number (808) 587-1455.

i. Cost of Proposal Preparation.

Costs for developing proposals are solely the responsibility of the Proposers, whether or not any award results from this solicitation. The **University** or the State of Hawaii will provide no reimbursement for such costs. Any costs associated with any oral presentations to the **University** will be the responsibility of the Proposer and will in no way be billable to the **University** or State.

j. Withdrawal of Proposals.

Any Proposer may withdraw its proposal, either personally or by written request, at any time before opening of the proposals, provided that such notification is received before the date of the opening of the proposals. Negligence on the part of the Proposer in preparing its proposal confers no right of withdrawal or modification of the proposal after such proposal has been opened.

k. Cancellation of RFP.

The **University** reserves the right to cancel any Request for Proposals before the contract is awarded on behalf of the **University**. Any and all proposals may be rejected in whole or in part when it is in the best interest of the State or of the **University**.

l. Requirement of Performance and Payment Bonds.

The Proposer to whom the contract is awarded shall file as guaranty for the full and faithful performance of this contract, and also for the prompt payment to all others for all labor and materials furnished in the prosecution of the work, good and sufficient contract performance and payment bonds, each in the amount of ONE HUNDRED PER CENT (100%) of the total construction cost of proposed energy efficiency measures. Acceptable contract performance and payment bonds shall be limited to:

1) Surety bond underwritten by a company licensed to issue bonds in this State in a form satisfactory to the State in a form satisfactory to the State;

2) Legal tender; or

3) A certificate of deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by or a certified check accepted by, and payable on demand to the **University** of Hawaii by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

    a) These instruments may be utilized only to a maximum of $100,000.

b) If the required security or bond amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted.

The bonds and any justification hereto shall conform to the provisions of Sections 78-20 and 103D-324, HRS and 3-122-221, 3-122-222, and 3-122-224 to 3-122-228, HAR.

m. Standards of Conduct - Section 84-15, HRS state:

1) A state agency shall not enter into any contract with a legislator or employee or with a business in which a legislator or employee has a controlling interest, involving services or property of a value in excess of $25,000, unless the contract has been awarded through an open, public process. A state agency may, however, enter into such contract without resort to a competitive bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding; provided that written justification for the non-competitive award of such contract shall be made a matter of public record and shall be filed with the state ethics commission at least ten days before such contract is entered into. With respect to members of boards, commissions, and committees, this subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a state agency which has jurisdiction over the board, commission, or committee to which he is appointed.

2) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

All proposers should be certain that their proposal is not in violation of this law.

n. Failure to Execute the Contract.

If the Proposer to whom a contract is awarded shall fail to enter into the contract and furnish satisfactory security as required by Sections 103D-324, HRS, within TEN (10) days after such award or within such further time as the Contracting Officer may allow, the **University** may

thereupon award the contract to the next ranked responsive and responsible Proposer, or may call for new proposals, whichever method it may deem to be in the best interest of the **University**.

9. Facility Information

Appendix A provides building descriptions, including information on building size, age, operating schedules major energy using equipment, historical energy use and energy costs. Proposals must address each of the buildings listed in Appendix A.

Monthly utility bills are available for inspection by prospective Proposers at the **Office of Procurement, Property and Risk Management**.

10. Statutes

The Contractor's attention is directed to the following statutes in Hawaii Revised Statutes:

Section 104-2	Rate of wages for laborers and mechanics; contract and specification provisions
Section 103-45.5	In state contractor’s preference
Section 103-57	Only citizens employed, exception
Section 386-121	Security for payment of compensation; misdemeanor
Chapter 444	Contractors
Chapter 396	Occupational Safety and Health

By submitting a proposal the Proposer certifies that the statutes have been read and are understood. If applicable, the Proposer shall comply with the provisions and acknowledges any rights the **University** has under these laws.

11. Procedure for Proposal Evaluation and Contractor Selection

The procedure for proposal evaluation will be as follows:

a. A committee will evaluate all responsive and responsible proposals. The **University** will review the applicant information and proposal submitted by each Proposer.

b. After evaluating proposals, the committee may require additional written information from, or conduct discussions with Proposers in

order to promote understanding of the **University**'s requirements and Proposers' offers, and to facilitate arriving at a contract that will be most advantageous to the **University**, taking into consideration the evaluation factors set forth in the RFP. Any costs associated with discussions or provision of additional information will be borne by the Proposer. Proposals may be accepted on evaluation without such discussion.

c. Before conducting discussions, a "priority list" will be generated by the evaluation committee. If numerous acceptable and potentially acceptable proposals have been submitted, the evaluation committee may rank the proposals and limit the priority list to at least three responsive and responsible Proposers who submitted the highest-ranked proposals. Discussions will be limited to only the "priority-listed Proposers." The contents of any proposal will not be disclosed so as to be available to competing Proposers during the discussion and negotiation process.

d. The procurement officer may establish a date and time for the priority -listed Proposers to submit best and final offers. If priority-listed Proposers do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

e. After best and final proposals are received, the evaluation committee will recommend a contract award that will be most advantageous to the **University**, taking into consideration the evaluation factors set forth in the RFP.

12. Developer Selection Criteria

Each proposal will be evaluated using the following factors and relative priorities:

a. Proposer Qualifications and Resources (Possible Score: 25 Points)

The **University** prefers proposals that demonstrate that the Proposer has the qualifications, experience, and resources to complete the proposed project on schedule and deliver proposed energy savings reliably over a fifteen-year agreement term. In evaluating this factor, the **University** will consider:

1) Documentation of relevant projects including: performance contracts successfully developed by the person(s) responsible for this project's management and/or design, performance contracts

developed for public agencies, and projects using similar technologies to those proposed for this project.

2) Documentation of projected and actual energy savings in completed performance contracts;

3) Education, experience, and qualifications of key personnel proposed for the project;

4) Experience of key personnel designing and constructing energy efficiency projects in Hawaii;

5) Availability of resources and staff needed to complete the project on schedule and lien free;

6) Documentation of the Proposer's experience in financing or arranging financing for performance contracts for the public agencies on advantageous terms; and

7) Completeness and quality of submitted financial information.

b. Technical Approach (Possible Score: 20 Points)

The **University** prefers proposals that demonstrate a superior technical approach to achieving energy cost savings. In evaluating this factor, the **University** will look for proposals that:

1) Clearly and specifically describe the proposed energy saving measures, including what existing systems will be modified and how the proposed modification will achieve energy savings;

2) Demonstrate knowledge and understanding of the existing systems and operating constraints and propose appropriate measures;

3) Employ technologies that have been successfully implemented before by the Proposer and for which local maintenance, repair, and training support are readily available;

4) Are responsive to any specific equipment-related goals identified in this RFP; and

5) Clearly demonstrate the quality of the energy savings measurement methodology, including the method to establish baseline usage. Because total payments to the selected proposer

must be demonstrated to be less than measured energy cost savings, the proposed method to measure savings must be described clearly and completely. The **University** prefers savings measurement methods which (1) use established and proven techniques for which the Proposer can provide samples and project references, (2) verify savings through measurements made over the term of the agreement, (3) use data that are independently verifiable and (4) are consistent with the December 1997 International Performance Measurement and Verification Protocol. Measurement methods that derive savings principally from engineering estimates are unacceptable.

c. Management Plan (Possible Score: 20 Points)

The **University** prefers proposals that include a clear and complete plan for the project, including a realistic milestone schedule. This plan should demonstrate the Proposer's understanding of performance contracting and energy efficiency construction projects in general and the constraints of the participating facility in particular. In evaluating management plans, the **University** will consider:

1) Comprehensiveness of management, maintenance, and monitoring services offered and responsiveness to specific goals identified in the RFP;

2) Methods to ensure minimum disruption of campus operations;

3) Provisions for response and repair in event of emergency;

4) Quality of communications between Proposer, facility staff, and the **University**, including written submittals, clarifications, and interviews; and

5) Provisions to allow for facility staff input to equipment design, selection, operation, and maintenance on an ongoing basis.

d. Financial Benefits (Possible Score: 20 Points)

The **University** prefers proposals that responsibly maximize financial benefits to the **University**. In evaluating financial benefits, the **University** will consider:

1) The projected net financial benefits to the **University** over the life of the measures (the **University** may include benefits from

avoided equipment replacement or maintenance cost savings when calculating net financial benefits);

2) The gross energy savings over the agreement term;

3) Terms of the guarantee of the project's energy savings and/or financial performance; and

4) Proposed methods to minimize project risks, including contract terms to accommodate changes in building use, provisions for early termination, or other provisions to accommodate needs of the facility.

e. Cost (Possible Score: 15 Points)

The **University** prefers proposals that provide services at the lowest possible cost. In evaluating cost, the **University** will consider

1) The price information provided in the Table 7-1 (Price Formula);

2) The proposed fee for the energy study in the event the **University** elects not to proceed; and

3) The cost of the proposal financing (i.e. proposal interest rate and fees).

For those benefit and price attributes that are directly quantifiable, the points allocated to higher price or lower benefit proposals will be equal to the lowest price (or greatest benefit) multiplied by the maximum points available, divided by the higher proposal price (or lower proposal benefit). If necessary to achieve a consistent basis to compare proposals, the **University** may apply its own assumptions or conventions for the purpose of estimating proposal benefits and prices. In accordance with HAR 3-124, the **University** will adjust proposal prices for all applicable procurement preferences for the purposes of evaluating proposal prices. (Complete Table 6-3: In-State Contractors Preference)

Evaluation Factor	Possible Score
Proposer's Qualifications	25
Technical Approach	20
Management Plan	20
Financial Benefits	20
Cost	15
TOTAL	100

13. Instructions for Submitting Proposals.

Proposers should submit an original and eight copies of their proposal, one copy to be clearly marked as ORIGINAL and the others as COPY ____ OF 8 COPIES, the original to be signed by a person with the authority to commit the Proposer. **NOTE: Submit only TWO (2) sets of Financial Data as required by Part l. Identification of Proposer, Paragraphs 1-4, Financial Information in a separate envelope.** The outer container for the proposal must be clearly marked "PERFORMANCE CONTRACTING FOR _____[insert name]_____ , RFP NO. [**RFP number**]." Proposals must be received on or before 2:30 p.m. (Hawaii Standard Time) on the date shown in the "Significant Dates" section at the following address:

University of Hawaii
Office of Procurement, Property and Risk Management
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

Proposals received earlier will be held unopened; late proposals will be rejected. Proposals that do not comply with these requirements shall not be considered. The official time shall be that recorded in the time stamp clock of the **University's Office of Procurement, Property and Risk Management**. No proposal will be received after the specified time. All these conditions apply regardless of whether a proposal is mailed or hand delivered.

14. Information Required in Proposals and Instruction for Packaging.

Proposals must provide the information described in the attached outline. Major sections of the proposal (that is, parts 1 - 9) should be identified by "tabs." In addition to sections corresponding to parts 1 - 9 attached in the following pages, Proposers may attach other exhibits as the final section of the proposal. All items listed in the proposal outline shall be completed. If an item does not apply to your organization or submittal, so indicate with the symbol "N/A" (not applicable). Failure to provide requested information may be grounds for a proposal to be disqualified from consideration. Attach pages as needed (8-1/2" x 11") and clearly indicate to which item number (e.g., 1-1, 1-2, etc.) the information corresponds.

Unnecessarily elaborate or bulky proposals are discouraged. The **University** prefers proposals that are complete and thorough but which are also concise and limited to relevant material. Any proposal determined to be materially unresponsive as to proposal content or form may be eliminated from further consideration.

15. Standard Contract Terms and Conditions (T&C).

Standard T&C the **University** intends to use for this contract are attached.

16. Response Forms

Required Forms are provided. Forms in this section are mandatory.

Response Forms

Notice Of Intention To Propose

DATE:_____

Office of Procurement, Property and Risk Management
1400 Lower Campus Road, Room 15
University of Hawaii
Honolulu, Hawaii 96822

Gentlemen:

Subject: Notice of Intention to Propose under RFP No._____

Project: _____

_____

_____

Proposal Opening Date: _____

I intend to submit a proposal for the above-named RFP.

My Contractor's License Number and Classification of License(s) are as follows:

License No.:_____

Classification of License(s):_____

_____

_____

I certify that the information provided above is true and correct to the best of my knowledge.

Name of Firm:_____

Address:_____

Telephone No.: _____

By:_____

Title: _____

Response Form

1. Identification of Proposer

Identify the Proposer and provide the information listed below.

1-1 General Information

_____	_____
Name of Proposer	Person to Contact / Title
_____	_____
Proposer's Address	Contact Person's Address
_____	_____
City, State, Zip Code	City, State, Zip Code
_____	_____
Proposer's Telephone No.	Contact Person's Telephone No.
_____	_____
Proposer's Facsimile No.	Contact Person's Facsimile No.
_____	Firm Incorporated? Yes___ No___
Proposer's Taxpayer I.D. No.	

Hawaii State Contractor's License No(s). _____Type(s)_____

1-2 List corporate officers and directors or individuals, partners, joint venturers or owners, including name, mailing address, and telephone number.

1-3 List corporate shareholders holding 25% or more of the outstanding shares with name, mailing address, and telephone number.

1-4 Financial Information

Note: Financial information submitted to the **University** shall be kept confidential and shall not be considered as a public record as defined in Chapters 92 and 92F, HRS. Financial information shall not be released without the express written consent of the applicant. **Failure to submit the required financial information may result in one's proposal being considered non-responsive.**

Submit the following financial information for the Proposer:

- Two years of audited fiscal year-end balance sheets, income statements, and cashflow statements. If these data are unaudited, copies of filed tax returns must be provided;
- If the fiscal year-end financial statements which are listed above are over nine months old, submit current interim balance sheets, income statements, and cashflow statements;
- If applicable, current (less than three months old) financial statement(s) and file copy of tax return(s) of any personal guarantor;
- If applicable, a certified copy of the Articles of Incorporation;
- If applicable, a certified copy of the Corporate Resolution which authorizes the borrowing or guaranty;
- If applicable, a certified copy of the Partnership Certificate or the Joint Venture Agreement; and
- Attach a description of any financial default, modification of terms and conditions of financing to avoid default, or legal actions taken or pending against the Proposer and its principals.

2. Identification of Project Team

In compliance with Section 3-122-21 (a)(5)(A) and (B), Hawaii Administrative Rules, all Proposers shall include name and nature of scope of work to be performed by each person or firm to be engaged by the Proposer as a Joint Contractor or Subcontractor in the performance of the contract.

Describe the role of each organization involved in the proposed project and the relationships among the project team members, subcontractors, and Proposer. Identify the aspects of the project for which the Proposer and each team member will have responsibility. Identify the organization(s) performing architectural, engineering, or financial consulting services for the project:

Provide name, address, Contractor's license number and classification code, telephone number, and facsimile number for each organization. List separately and identify specific project responsibility (scope of work) for:

- Professional Consultants;
- General Contractor and Subcontractors;
- Organization(s) providing financing-related services for the project; and

- Organization providing the required contract security for the project.

3. Project References

3-1 Narrative Summary

Provide a narrative summary of the project team's experience as it relates to the proposed project. Describe prior experience working with the specific subcontractors identified for this project. Describe prior experience in performance contracting. Highlight any experience with buildings similar to those of this project and in Hawaii.

3-2 History of Completed Projects.

Fill in the blanks below to show the number of energy efficiency projects completed by the Proposer in recent years:

Contract Value	1992	1993	1994	1995
less than $100,000				
$100,000 - $500,000				
$500,000 - $1,000,000				
$1,000,000 - $3,000,000				
more than $3,000,000				

3-3 Sample Projects

On separate sheets, provide the information shown below for up to ten energy performance contracts that the Proposer has managed. Number and format the information as follows:

3-3.1 Project

3-3.2 Client, Client Contact, and Contact Telephone Number

3-3.3 Facility Description

3-3.4 Description of Energy Efficiency Measures (EEM) Installed

3-3.5 Project Construction Cost

3-3.6 Type of Financing/Contract (for example shared savings, guaranteed savings, lease, etc.)

3-3.7 Source of Financing and Interest Rate

3-3.8 Start and End Dates/Current Project Status

3-3.9 Projected and Achieved Energy Savings

3-3.10 Identify Project Team (individuals if employees, company names if subcontractor; use Table 3-3.10)

Table 3-3.10

Service	Performed by	
	Proposer	Subcontractor
Energy Audit		
Engineering Design		
Installation		
Financing		
Monitoring		
Service and Maintenance		

4. Personnel Qualifications

4-1 Key Personnel

Identify key personnel and their responsibilities in the project. Describe the qualification and experience of these personnel and estimate their time commitment to this proposed project. Experience in facilities and institutions similar to those involved in this project should be highlighted as well as experience with the specific technologies anticipated for this project.

4-2 Personnel Resumes

Attach resumes of the individuals responsible for project management, energy studies, engineering design (mechanical and/or electrical), financing, construction supervision, maintenance and service, and training.

5. Project Plan

5-1 Summary

Summarize your plan for this project, including the services offered and the specific benefits to the **University** under your approach.

5-2 Proposed Approach

Describe your team's capabilities and proposed approach to this project in each of the following areas:

- Evaluating and selecting efficiency measures;
- Designing and specifying efficiency measures;
- Construction and construction management;
- Measurement and verification;
- Repair and maintenance; and
- Training facility staff.

For each of these areas, indicate at what points the **University** will have an opportunity to review and approve Contractor submittals.

5-3 Proposed Measures

Describe the energy efficiency measures the Contractor proposes to implement, including each measure's location, maintenance requirements, and special construction or operating requirements (if any). This list is subject to change based on the detailed Energy Study to be performed but should indicate the Contractor's best estimate. Complete Table 5-3 for the proposed measures.

Table 5-3
Summary of Proposed Efficiency Measures

Measure I.D.	Annual Savings			Installation Cost
	kWh	kW	$$	$$
Totals				

5-4 Operation, Maintenance, and Training Services

Describe any ongoing services including training, preventive maintenance, and emergency response offered by the Proposer. Indicate whether the **University** will be charged separately for any of these services. The description should be specific regarding the nature, scope, and timing of services to be provided. Identify who will provide these services.

Do any measures have special operating requirements or depend on maintenance the Proposer intends the **University** to provide? If so, list each measure, describe special requirements, and indicate what responsibility is proposed for **University**.

5-5 Savings Measurement

Describe all procedures, formulas, and methods including any metering or equipment you will use to measure savings from the project including:

- Determination of baseline energy use;
- Reasons for and calculation of adjustments to the energy baseline; and
- Method to determine dollar value of energy savings.

5-6 Energy Study Cost

In the blank space below, provide a fixed price for the detailed Energy Study:

If the **University** elects not to proceed after accepting the Contractor's Energy Study Report, or if the **University** and the Contractor cannot agree on the contents or manner of incorporation of the Energy Study within ninety (90) days after submission of the Energy Study Report, then the **University** shall pay Contractor the sum of _____ ($_____.__) as compensation for the preparation of the Energy Study Report, unless:

a. The Contractor's Energy Study Report does not comply with the terms of the Request for Proposals in any material respect, including, but not limited to, failure to offer to finance all of the services provided on terms such that the total payments by the **University** for fuel, utilities, and the energy performance contract do not exceed the amount the **University** would pay for fuel and utilities without a performance contract; or

b. The total energy savings set forth in the Energy Study Report are less than seventy-five percent (75%) of the total energy savings proposed by Contractor in its proposal; or

c. *The total investment in air conditioning systems set forth in the Energy Study Report is less than seventy-five percent (75%) of the total investment proposed by Contractor in its proposal. (Optional)*

In these events, the **University** shall have no obligation to reimburse Contractor for the cost of preparing the Energy Study Report, and may

use any information contained in the report or implement any of its recommendations with no cost or obligation to Contractor.

5-7 Proposed Schedule

Provide a schedule of the major steps in development of the project. Include at least the following milestones: (1) completion of the energy study, (2) completion of design and pre-construction activities, and (3) completion of construction. Indicate at what points **University** has the opportunity to review and approve and what response times are allowed for any required approvals from the **University**.

5-8 Proposed Project Financing

Describe the proposed method to finance this project. Identify the proposed project financing source for this project. Describe how you propose to guarantee the timely availability of sufficient funds to complete all capital improvements anticipated for this project. **University** expects the Contractor to finance the project. Project financing source should be identified and letter of commitment to Proposer, starting interest rate, terms and providing a sample financing document should be provided.

6. Projected Cost Savings and Payments

Complete Tables 6-1 through 6-5 for the proposed project.

Table 6-1
Calculation of Not To Exceed Project Cost
(Same as Table 12-2 Energy Study)

Not to Exceed (NTE) Installed Measure Cost	_____	From Table 5-3 RFP
Energy Study Fee	_____	From Table 7-1.1
Design Services	_____	From Table 7-1.2
Construction / Project Management Services	_____	From Table 7-1.3
General Contractor Overhead and Profit	_____	From Table 7-1.4
Commissioning and Initial Training	_____	From Table 7-1.5
Interest During Construction	_____	From Table 7-1.6
Bond Fees	_____	From Table 7-1.7
Miscellaneous Fees and Permits	_____	From Table 7-1.8
Project Development Fee	_____	2% of Installed Measure Cost
Other	_____	Specify
Pre-Tax Subtotal	_____	
Hawaii General Excise Tax	_____	
Other Taxes	_____	
Subtotal (NTE) Project	_____	
Less Utility Rebate	_____	
TOTAL (NTE) Project	_____	

Table 6-2
Calculation of Cost Savings
(Same as Table 12-3 in the Energy Study)

Year	Annual Energy Cost Savings {A}	Maintenance Cost Savings {B}	Other Cost Savings{ C}	Gross Savings {D}={A}+{B}+{C}	Total Payments (from Table 12-4) {E}	Net Savings {F}={D}-{E}
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
TOTAL						

Notes: Include utility rebates in "Other Cost Savings" if they will be included as part of the project.

Table 6-3
Payment Schedule and Termination Value
(same as Table 12-4 in the Energy Study)

		Payment Summary			
Year	**Contract Payments {A}**	**Maintenance Services Fee {B}**	**Operations Monitoring Fee {C}**	**Other (Specify) {D}**	**Total Payments {E}={A}+{B}+{C}**
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
TOTAL					

Notes: Operations Monitoring Fee equals 1.5% of Gross Annual Energy Cost Savings. Maintenance service fee is for other than contractor-installed equipment.

Payment Schedule and Termination Value

Year	Termination Value	Total Payments From Above	Payment Number		Payment Number		Payment Number		Payment Number	
			Date	Amount	Date	Amount	Date	Amount	Date	Amount
1										
2										
3										
4										
5										
6										
7										
8										

9										
10										
TOTAL										

Notes: Enter the date and amount of each payment. Show additional payments on another sheet if necessary. "Termination Value" is the lump sum payment required to buy out of the contract and receive title to all equipment in each year. If this option is not proposed in any year(s), indicate by "NA."

Table 6-4
In-State Contractors Preference

It is understood that a FIVE PERCENT (5%) preference shall be given to qualified in-state contractors when awarding a contract for "Public Works" projects to promote use of in-state contractors pursuant to Section 103-45.5, Hawaii Revised Statutes (HRS). To qualify for the preference, Contractors must provide proof that they have filed State of Hawaii Unemployment, General Excise, and Income Tax returns and have paid all amounts owing on such returns for the TWO (2) successive years immediately prior to submitting the bid when the amount of their proposal is $5,000,000 or less, and for the FOUR (4) successive years immediately prior to submitting the proposal when the amount of their proposal is more than $5,000,000. Therefore, in accordance with Section 3-124-43, Hawaii Administrative Rules, any Contractor desiring an In-State Contractor Preference shall complete an application for a tax clearance and submit to the Department of Taxation for a tax clearance certificate. The Contractor shall indicate on the application, on line "3h Others," that the tax clearance is required for a "State / **University** Bid." Multiple copies of the tax clearance certificate may be requested on the application form.

The Department of Taxation will issue a tax clearance certificate to the applicant upon its determination that the applicant has filed State Unemployment, General Excise and Income Tax returns, and has paid all amounts owing on such returns, in accordance with Section 103-45.5, HRS.

The Bidder shall indicate if he wishes to be considered for this preference or not:

[ ] Yes, I wish to be considered for the In-State Contractor's Preference. **(Tax Clearance Certificate must be included with one's proposal submittal. Copies of an original tax clearance certificate will be acceptable for submission with the Proposal. However, the certificate must show all taxes due the State being current within NINETY (90) days of the bid opening date. Failure to submit the tax clearance certificate automatically voids the selection of the In-State Contractor Preference.)**

[ ] No. I do not wish to be considered for the In-State Contractor's Preference.

If neither of the above is checked, it will be assumed that In-State Contractor's Preference is not requested. CAUTION: The In-State Contractor's Preference may not be used in combination with any other preference otherwise available under state or federal law. (Section 103-45.5, HRS)

Whenever any Proposer selects and qualifies for an In-State Contractor Preference, all original proposals (Total Project Cost) from Proposers who do not select or qualify for the In-State Contractor Preference shall be increased by FIVE PERCENT (5%) for evaluation purposes.

Table 6-5
Wage Certificate

The terms and conditions contained therein are mandatory for an accepted proposal. Failure to submit the Wage Certificate may result in one's proposal being considered non-responsive.

Description of Project: **RFP No. 95-002** Performance Contracting for _____

Pursuant to Section 103-55 HRS, I hereby certify that if awarded the contract, any maintenance services to be performed will be performed under the following conditions:

1. The maintenance services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.

2. All applicable laws of the Federal and State governments relating to workmen's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

Proposers are advised that the following are the positions, position classifications and wages paid to State employees for the period July 1, 1994 to present, which perform maintenance services of air conditioning and lighting systems:

	Class	Hourly Rates
Air Conditioning Mechanic I	**BC-10**	**$13.44**
Electrician I	**BC-10**	**$13.44**

Contractor shall be obliged to notify its employees performing work under this contract of the provisions of Section 103-55 HRS, and the current wage rate for public employees performing similar work. The Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of business accessible to all employees, or the contractor may include such notice with each paycheck or pay envelope furnished to the employee

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55 HRS.

Proposer: _____

Signature: _____

Title: _____

Date: _____

7. Contract Terms

7-1 Complete Table 7-1. Address each of the following:

Payments

Describe the basis for payments. Describe the method for calculating payments and describe the linkage between price and measured energy savings. Provide a sample price calculation based on the improvements and estimated energy savings in the proposal. Describe all payments expected including any special fees for optional services. (Table 6-3).

7-2 Escalation Factors, Fuel Price Adjustments, etc.

Describe how energy savings will be valued for the purpose of calculation of cost savings (whether for payment or guarantee calculations). List any escalation factors and the impact of changing energy prices on the valuation of savings.

7-3 Contract Duration (maximum term is fifteen years)

Indicate the Proposer's preferred duration of the performance contract. If various contract terms are available, indicate the effect on pricing of longer or shorter terms. Also indicate if longer or shorter terms will increase the improvements that can be financed.

7-4 Savings Guarantees

Describe any guarantee of energy or cost savings offered by the Proposer. Describe the timing of comparisons between actual and guaranteed savings, and the method of payment. Excess savings in one period may not be carried over against shortfalls in other periods; savings during construction may not be included in first year savings. Provide a sample calculation illustrating the method.

7-5 Changes Requested to Standard Terms and Conditions

List any items in the attached standard terms and conditions that the Proposer prefers to modify or believes are inapplicable or inconsistent with the Proposal.

7-6 Purchase Options

Describe the purchase options available and the cost of exercising these options. Transfer of equipment title to the **University** at the end of the contract term is a threshold requirement.

7-7 Financing Documents

Attach samples of any and all documents which may be required to complete financing of the project.

Table 7-1
Price Formula
(Same as Table 12-1 in the Energy Study)

7-1.1	Energy Study Fee	$_____.___
Estimated Cost to Prepare Energy Study (if different from price above)		$_____.___
7.1.2	Design Services	$_____.___ or _____% of Construction Cost
7-1.3	Construction / Project / Management Services	$_____.___ or _____% of Construction Cost
7.1.4	General Contractor Overhead and Profit	Overhead _____% of Construction Cost Profit _____% of Construction Cost
7-1.5	Commissioning and Initial Training	$_____.___ or _____% of Construction Cost
7-1.6	Interest During Construction	$_____.___ at _____%
7-1.7	Bond Fees	$_____.___ or _____% of Construction Cost
7-1.8	Miscellaneous Fees and Permits	$_____.___ or _____% of Construction Cost
7-1.9	Term Financing Interest Rate	_____% of Principal (APR)
7-1.10	Monitoring, Verification, and Savings Guarantee	$_____.___ or _____% of Energy Savings
7-1.11	Maintenance Services Overhead and Profit	Overhead _____% of Construction Cost Profit _____% of Construction Cost

8. Proposal Signature Block

Include the following text and an original signature in the Proposal:

The undersigned represents and warrants that the information provided is true and complete and that the **University** of Hawaii may consider the information as continuing to be true and correct until a written notice of a change is given to the **University** by the undersigned. The undersigned agrees to provide any other information that the **University** deems necessary to determine the qualifications of the applicant.

_____
Name of Company

By_____
Signature

By_____
Title

Date _____

Address _____

_____

Phone No. _____

Facsimile No. _____

9. Proposal Checklist

Use the following checklist to review the project proposal for completeness. Please indicate the pages addressing each item.

Form	Page Numbers
1. Notice of Intention to Propose	_____
2. Identification of Proposer	_____
3. Identification of Project Team	_____
4. Project References	_____
5. Personnel Qualifications	_____
6. Project Plan	_____
7. Projected Cost Savings and Payments; Preference (w / Tax Clearance)	_____
8. Proposed Contract Terms	_____
9. Proposal Signature Block	_____
10. Proposal Checklist	_____
Tables	
3-2 History of Completed Projects	_____
3-3.10 Project Team	_____
5.3 Summary of Proposed EEM's	_____
6.1 Calculation of Not to Exceed	

Project Cost

_____

6.2 Calculation of Cost Savings

_____

6.3 Payment Schedule and Termination Value

_____

6.4 In-State Contractor's Preference

_____

6.5 Wage Certificate

_____

7.1 Price Formula

_____

Exhibit A

Information To Be Prepared By Facility And Attached To RFP's For Energy Performance Contracting

(In addition to General Conditions and other documents)

1. Brief description of the principal functions for which the buildings are used and their operating schedules.

2. Building List (See Table A-1)

3. Typical operating schedule and any operational requirements that may affect installation work, such as high security areas.

4. Any major changes (e.g. remodeling or renovation), recent (last 3 years) or planned (next 3 years) in the building's equipment or operation;

5. Energy efficiency opportunities already known or which are desirable to implement;

6. Energy use information should be included. This could be compiled on Table A-2. Alternatively, if this information is too voluminous to include with the RFP then copies of monthly electrical bills should be available for Proposers to review at some central location (facilities office);

7. A site map should be included or be available to show the location of each building;

8. Reduced size floor plans (8.5" x 11" or similar) and other drawings would be useful to include in the RFP. If these plans are not readily available in this size, then the RFP should state where these plans can be reviewed (facilities' office) or where they can be purchased.

NOTE: It is important that buildings be identified by both their formal names and their common names to avoid confusion. For example, Leiopapa A. Kamehameha Building (State Office Tower) or State Office Tower (Leiopapa A. Kamehameha Building).

An example of a Facilities Description follows:

Sample Facility Information

Buildings Included, Locations, and Principal Functions

The buildings included in this RFP are located on the campus of [Sample] Community College (XCC) in Puhi, Kauai, Hawaii. XCC is part of the **University** of Hawaii Community College system. XCC provides classroom instruction, vocational training, and other education-related activities. The campus includes a large theater for performing arts, shop facilities, library, kitchen and cafeteria, and administrative office. There are no dormitories on the campus. There are 17 building on the campus with a total of 300,000 square feet. Table A-1 lists the buildings with their size and age.

Typical Operating Schedule

The campus operates on a regular academic schedule and for special classes and activities during non-academic periods, so that buildings are used year-round. Buildings on campus are typically occupied from 8 a.m. until 5 p.m. Some classrooms, the student center, and the library are occupied at a reduced level until 9 p.m. During the summer months (mid-May through August) the campus is occupied at a reduced level and evening hours are eliminated.

Special Operational Requirements

XCC does not have any special operational requirements other than a comfortable and quiet environment, suitable for lecture and study activities.

Major Changes in Building Equipment or Operations

The last major energy efficiency projects were completed in 1984-1992. These included installation of chilled water pumps, a chiller load modulator, an energy management control system, and high efficiency outdoor lighting. The cooling modifications and energy management controls installed in these projects are no longer operational. A recent study of the campus air conditioning system is available for inspection at the Facilities Planning for Community Colleges, 33 South King St., Suite 206, Honolulu, Hawaii.

In 1995, XCC completed construction and began use of its performing arts theater. A list of planned building additions is attached (Table A-3).

Energy Efficiency Opportunities and Requested Projects

Energy efficiency opportunities in these buildings and throughout the campus include conversion of existing fluorescent and mercury vapor lighting to T-8 lamps and electronic ballasts, chiller replacement, and control improvements. If possible, XCC wants to replace its existing central chiller plant through this project.

Attachments

Table A-1 Building List
Table A-2 Energy Use Information
Table A-3 Planned Changes in Buildings, Operations, or Equipment

Site Map
Floor Plans

Table A-1
Building List

Building Name	Year Built	Gross Floor Area	Air-Conditioned (Y or N)	Notes (Principal use and special concerns)

Building Name	Small storage or utility buildings do not need to be included.
Year Built	If a building has additions of different ages, show the year for the portion which is largest.
Gross Floor Area Air Conditioned	In the "Gross Floor Area" column show the total building area. In the "Air Conditioned" column, indicate "Y" or "N" (for yes or no) or put in a percentage to show the percentage of the building that is air conditioned.

Notes	Use this space to describe the use of the building (e.g. offices, classrooms, library, etc.) and to describe any special needs or problems relating to lighting or air conditioning.

Table A-2
Energy Use Information

Period	Facility Name Electric Utility Account Meter No. Electricity Consumption			Fuel 1 Supplier Account Meter No. Fuel 1 Consumption Show Units Below (e.g., gallons, therms)		Fuel 2 Supplier Account Meter No. Fuel 2 Consumption	
End Date MM/DD/YY	Usage kWh	Usage kW	Cost $$	Usage	Cost $$	Usage	Cost $$
Jan							
Feb							
Mar							
Apr							
May							
Jun							
Jul							
Aug							
Sep							
Oct							
Nov							
Dec							
Total Year 1							
Jan							
Feb							
Mar							
Apr							
May							
Jun							
Jul							
Aug							
Sep							
Oct							
Nov							
Dec							
Total Year 2							

Table A-3
Planned Changes in Buildings, Operation, or Equipment

List planned changes to the facility's operation, equipment, or buildings. Identify any equipment scheduled for replacement. Identify any building areas scheduled for remodeling, renovation, or abandonment.

_____
_____
_____
_____
_____

Appendix E

PROPOSAL EVALUATION WORKSHEETS

Appendix E

Proposal Evaluation Worksheets

1. Initial Proposal Screening

The contract officer should evaluate the proposals to determine whether any are non-responsive or are submitted by proposers who are not responsible or do not meet the minimum qualifications. In the sample RFP, minimum qualifications are shown in paragraph 3.B.

Minimum Qualifications	Proposer Meets	Does Not Meet
Proposal follows RFP instructions for content and form in all material respects		
Performance Contracting Experience		
Contractor's License (Note: A valid license is required before the contract is awarded.)		
Creditworthiness and sufficient financial resources		

Financial ratio analysis, as shown below, may be used to evaluate creditworthiness and financial resources. A full discussion of financial analysis is beyond the scope of this Guide. Contracting officers are encouraged to refer to other sources (listed in Appendix H) or contact DBEDT's Energy Division if questions arise.

1-1 Determine each proposer's *current ratio:*

$$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabities}}$$

The higher the ratio, the greater the firm's abilities to meet its current obligations. A ratio less than 1 indicates a cash flow problem in the short term.[6]

2. Reference Interviews

Interviewing client references is a valuable source of information regarding proposers, especially when a proposer has not previously done business within the state or for a particular institution. Client reference interviews establish independent support for claims made by the proposer and provide valuable insight into the proposer's strengths and weaknesses, based on past performance.

We recommend reference checks of the four highest–ranking proposers after preliminary scores have been determined by evaluators. One member of the evaluation committee should be selected to make all reference calls to maintain consistency. Often this person will be the Contracting Officer, Technology Advisor, or the Finance Advisor. The results of the reference checks should be distributed to all evaluators so that they can re-evaluate their scores before assigning a final rank.

The following outline and questions are suggested for reference interviews.

2-1 Briefly introduce yourself and describe the project for which the proposer is being considered. Ask for the client reference's title and description of responsibility if they are not already known. Find out how the reference was involved in the project done by the proposer. It may be helpful to state that the entire interview will be kept in confidence and will not be shared or discussed with the proposer.

2-2 Ask the reference to describe the project completed by the proposer. Which of the following services were included?

___ energy audit / feasibility study

___ detail design of efficiency projects

___ construction / installation

___ project financing

[6] Contractor's Business Handbook, R.S. Means Company, Inc., page 72.

___ savings guarantees

___ maintenance and repair services

2-3 Ask for comments on the quality of the energy audit. Did the project deliver the level of energy savings promised in the proposal?

2-4 Ask for comments on the quality of design documents prepared by the proposer. Did the reference or someone representing the client review and approve design submittals? Were they prepared by a licensed engineer?

2-5 Ask for comments on the construction process. How did the proposer handle the scheduling and coordination of work? Was construction completed on schedule?

2-6 Ask how the project was financed.

2-7 Ask whether the level of energy savings was guaranteed. Have savings exceeded the guaranteed amount? Has the proposer made guarantee payments in a timely manner if applicable? Does the reference still agree with the savings measurement method being used?

2-8 Ask whether maintenance and repair services are included. How have they performed in terms of responsiveness?

2-9 Ask whether there have been any disputes under the contract, e.g. regarding actual energy savings accomplished.

2-10 Ask the reference if they could change one thing in their work with the proposer, what would they change?

2-11 Ask the reference for an overall appraisal of the proposer's performance.

___ "one of a kind" excellent

___ better than average

___ average

___ below average

2-12 Ask if the reference has any advice to offer before we begin this project.

3. Evaluation Scoresheets (see Appendix D, paragraph 12, Request for Proposals

3-1 Qualifications, Experience, and Resources (Possible Score: 25 Pts)

Evaluate each proposer's qualifications, experience, and resources available for the project. In evaluating this factor, evaluators should consider:

a. Documentation of relevant projects, including: performance contracts successfully developed by the person(s) responsible for this project's management and/or design, performance contracts developed for public agencies, and projects using similar technologies to those proposed for this project;

b. Documentation of projected and actual energy savings in completed performance contracts;

c. Education, experience, and qualifications of key personnel proposed for the project;

d. Experience of key personnel designing and constructing energy efficiency projects in Hawaii;

e. Availability of resources and staff needed to complete the project on schedule;

f. Documentation of the proposer's experience in financing or arranging financing for performance contracts for public agencies on advantageous terms; and

g. Completeness and quality of submitted financial information.

Based on your evaluation of experience, qualifications, and resources, assign each proposer a score on a scale from 1 to 10 (with 10 as the best and 1 the worst score).

Qualifications, Experience, and Resources (Possible Score: 25 Pts)

Proposer	[1] Raw Score (1 to 10)	[2] Raw Score ÷ 10	[3] Points [2] x 25
1. Acme ESCo	8	0.8	20

2. Superior Services	10	1.0	25
3.			
4.			
5.			
6.			
7.			
8.			

3-2 Technical Approach (Possible Score: 20 Pts)

This factor gives credit to proposals which demonstrate a superior technical approach to achieving energy cost savings. In evaluating this factor, evaluators should look for proposals that:

a. Clearly and specifically describe the proposed energy saving measures, including what existing systems will be modified and how the proposed modification will achieve energy savings;

b. Demonstrate knowledge and understanding of the existing systems and operating constraints and propose appropriate measures;

c. Employ technologies that have been successfully implemented before by the proposer and for which local maintenance, repair, and training support are readily available;

d. Respond to any specific equipment-related goals identified in this RFP;

e. Clearly demonstrate the quality of the energy savings measurement methodology, including the method to establish baseline usage. Because total payments to the winning proposer must be demonstrated to be less than measured energy cost savings, the proposed method to measure savings must be described clearly and completely. The **University** prefers savings measurement methods which: 1) use established and proven techniques for which the proposer can provide samples and project

references, 2) verify savings through measurements made over the term of the agreement, and 3) use data that are independently verified measurement methods that derive savings principally from engineering estimates are unacceptable.

Based on your evaluation of technical approach, assign each proposer a score on a scale from 1 to 10 (with 10 as the best and 1 the worst score).

Technical Approach (Possible Score: 20 Pts)

Proposer	[1] Raw Score (1 to 10)	[2] Raw Score ÷ 10	[3] Points [2] x 20
1. Acme ESCo	7	0.7	14
2. Superior Services	8	0.8	16
3.			
4.			
5.			
6.			
7.			
8.			

3-3 Management Plan (Possible Score: 20 Pts)

Proposals which include a clear and complete plan for the project, including a realistic milestone schedule should receive higher scores. This plan should demonstrate the proposer's understanding of performance contracting and energy efficiency construction projects in general and the constraints of the participating facility in particular. In evaluating management plans, evaluators should consider:

a. Clear assignment of responsibility for each project task to a specific individual;

b. Comprehensiveness of management, maintenance, and monitoring services offered and responsiveness to specific goals identified in the RFP;

c. Methods to ensure minimum disruption of campus operations;

d. Ability to coordinate project construction with local utilities, subcontractors, suppliers, and facility personnel;

e. Provisions for response and repair in event of emergency;

f. Quality of communications between the proposer, facility staff, and the **University**, including written submittals (such as the proposal), clarifications, and interviews; and

g. Flexibility to modify the proposal and allow for facility staff input to equipment design, selection, operation, and maintenance on an ongoing basis.

Based on your evaluation of the management plans, assign each proposer a score on a scale from 1 to 10 (with 10 as the best and 1 the worst score).

Management Plan (Possible: 20 Pts)

Proposer	[1] Raw Score (1 to 10)	[2] Raw Score ÷ 10	[3] Points [2] x 20
1. Acme ESCo	8	0.8	16
2. Superior Services	7	0.7	14
3.			
4.			
5.			
6.			
7.			
8.			

3-4 Financial Benefits (Possible Score: 20 Pts)

The agency will prefer proposals which responsibly maximize financial benefits. In evaluating financial benefits, evaluators should consider:

a. The projected net financial benefits to the agency over the life of the measures (the agency may include benefits from avoided equipment replacement or maintenance cost savings when calculating net financial benefits);

b. The gross energy savings over the agreement term;

c. Terms of the guarantee of the project's energy savings and/or financial performance; and

d. Proposed methods to minimize project risks, including contract terms to accommodate changes in building use, early termination, or other needs of the facility.

For those financial benefit attributes which are directly quantifiable, such as numbers 1 and 2 above, the points allocated to lower benefit proposals will be equal to the greatest benefit multiplied by the maximum points available, divided by the lower proposal benefit. If necessary to achieve a consistent basis to compare proposals, the agency may apply its own assumptions or conventions for the purpose of estimating proposal benefits.

Financial Benefits (Possible Score: 20 Pts)

Proposer	[1] Raw Score (1 to 10)	[2] Raw Score ÷ 10	[3] Points [2] x 20
1. Acme ESCo	10	1.0	20
2. Superior Services	9	0.9	18
3.			
4.			
5.			
6.			
7.			
8.			

3-5 Cost (Possible Score: 15 Pts)

The agency prefers proposals which provide services at the lowest possible cost. In evaluating cost, the agency will consider the price information provided in Table 7-1 (Price Formula), the proposed fee for the energy study, and the cost of proposal financing (proposal interest rate and fees).

The points allocated to higher cost proposals will be equal to the lowest cost multiplied by the maximum points available, divided by the higher proposal cost. If necessary to achieve a consistent basis to compare proposals, the agency may apply its own assumptions or conventions for the purpose of estimating proposal prices. In accordance with HAR 3-124, the **University** will adjust proposal prices for all applicable procurement preferences for the purposes of evaluating proposal prices. (Complete Table 6-3: In-State Contractors Preference)

For example, assume that Acme ESCo and Superior Services price formulas are applied to a hypothetical construction cost of $1,000,000.

A single assumed construction cost is used to allow a common basis for cost comparison. Superior Services cost (using their proposed price formula) is $1,600,000 and Acme ESCo's is $2,000,000. Superior Services receives the maximum points available because they proposed the lowest cost. Acme ESCo's score is calculated by $1,600,000 divided by $2,000,000 multiplied by the maximum points available.

Cost (Possible Score: 15 Pts)

Proposer	[1] Raw Score (1 to 10)	[2] Raw Score ÷ 10	[3] Points [2] x 15
1. Acme ESCo	8	0.8	12
2. Superior Services	10	1.0	15
3.			
4.			
5.			
6.			
7.			
8.			

4. Summary Scoresheet

Transfer scores from part 2 to the summary scoresheet below.

Proposer	Exper., Qualif., & Resources (max. 25)	Technical Approach (max. 20)	Mgmt. Plan (max. 20)	Financial Benefits (max. 20)	Cost (max. 15)	Total (max. 100)
1. Acme ESCo	20	17.5	16	20	12	85.5
2. Superior Services	25	20	14	18	15	92
3.						
4.						
5.						
6.						
7.						
8.						

5. Summary Scoresheet

Refer to the Criteria for Evaluation of Proposals in the RFP for items to consider when determining each proposer's score for the following evaluation criteria:

Selection Criterion	Proposer A	Proposer B	Proposer C	Proposer D
Experience, Qualifications, and Resources Possible Points = 25 Score (0 to 10) Weight Points (=Score x Weight)	_____ 2.5 _____	_____ 2.5 _____	_____ 2.5 _____	_____ 2.5 _____
Technical Approach Possible Points = 20 Score (0 to 10) Weight Points (=Score x Weight)	_____ 3.0 _____	_____ 3.0 _____	_____ 3.0 _____	_____ 3.0 _____
Management Plan Possible Points = 20 Score (0 to 10) Weight Points (=Score x Weight)	_____ 2.0 _____	_____ 2.0 _____	_____ 2.0 _____	_____ 2.0 _____
Financial Benefits Possible Points = 20 Score (0 to 10) Weight Points (=Score x Weight)	_____ 2.0 _____	_____ 2.0 _____	_____ 2.0 _____	_____ 2.0 _____
Cost Possible Points = 15 Score (0 to 10) Weight Points (=Score x Weight)	_____ 0.5 _____	_____ 0.5 _____	_____ 0.5 _____	_____ 0.5 _____

Total Score Total Possible = 100	_____	_____	_____	_____

The following pages provide more detailed information on scoring each item.

Oral Presentation Scoring

Oral presentations by the short-listed proposers are the last stage in the selection process. Each of the short-listed proposers makes a 40 minute presentation, followed by a 40 minute question and answer session.

When short-listed proposers are notified of the date, time, and location of the oral interviews, they also receive an outline for their presentation. This outline is a simplified version of the scoring attributes listed in the RFP, as shown below.

Points Possible	Attribute	Points
10.5	Project Team Qualifications	_____
10.5	Ability to Finance Project	_____
14.0	Relevant Projects	_____
10.0	Management Plan	_____
15.0	Technical Approach	_____
15.0	Proposed Measures	_____
25.0	Proposed Financial Terms	_____
	Total	_____

Proposers should be instructed to follow this outline when preparing their presentation, since the evaluation committee will be using this outline to prepare their scores. Each topic is further described below.

“Project team qualifications” refers to the experience, training, and commitment of the key personnel in the project team.

“Ability to finance project” means the proposer’s ability to demonstrate financial resources are available to complete the project and the cost and other terms of this financing are attractive.

“Relevant projects” refers to the proposer’s ability to show it has successfully completed the same type of project many times before.

"Management plan" refers to the proposed plan for efficiently organizing all members of the project team and communicating and coordinating with facility personnel.

"Technical approach" means the methods the proposer will use to ensure that energy savings recommendations are complete, designed and installed properly, and take maximum advantage of the facility's energy savings potential.

"Proposed measures" means the specific measures the proposer recommends, their estimated cost and savings, and the quality assurance procedures that will be used to ensure the quality and durability of all equipment installed.

"Proposed financial terms" refers to the contract terms proposed for the project, including the facility's share of energy savings benefits.

Evaluation committee members will score each short-listed proposer based on their oral presentation and responses to questions put by committee members. For each attribute, evaluators score the three proposers relative to one another. When all short-listed proposer interviews are complete, each evaluator determines the rank (first, second, or third) of each proposer, based on the evaluator's interview scores. The rank values of committee members are added to determine an overall total for each proposer. The proposer with the lowest total value (i.e. the highest overall rank) is selected.[7] A sample scoring is shown below:

	Proposer A Rank	Proposer B Rank	Proposer C Rank
Evaluator 1	1st	2nd	3rd
Evaluator 2	1st	3rd	2nd
Evaluator 3	2nd	3rd	1st
Evaluator 4	3rd	1st	2nd
Total	7	9	8

[7] Tie breakers work as follows. If two proposers have the same total, the one with the most "firsts" is selected. If they have equal "firsts", the one with the most "seconds" is selected.

In this case, Proposer A, with two firsts, a second, and a third has the lowest total value (1 + 1 + 2 + 3 = 7) and is the selected proposer.

Minimum Proposer Qualifications

This form provides space to document if a proposer passes or fails each minimum qualification. The explanation section should indicate the basis or supporting material for passing or failing a qualification. If any qualification is marked "unable to score" a clarification question may be sent to the proposer for supplemental information needed for scoring.

1. Three years of experience.

"Proposer must have three years of experience providing performance contracting services for commercial or institutional facilities."

_____Pass _____ Fail _____ Unable to score

Explanation: _____
_____
_____

2. Completed five performance contracts.

"Proposer must have principally completed at least five separate performance contracts of which at least two must have construction values of $100,000 or more."

_____Pass _____ Fail _____ Unable to score

Explanation: _____
_____
_____

3. Creditworthiness and financial resources.

"Proposer must have the creditworthiness and financial resources to complete the project lien free."

_____Pass _____ Fail _____ Unable to score

Explanation: _____
_____
_____

4. Able to provide security.

"Proposer must be able to provide security for the payment and performance of the Contractor's obligation to complete the construction of the project lien free as required in provision 'Requirement of Contract Bond'."

_____Pass _____ Fail _____ Unable to score

Explanation: _____
_____
_____

Developer Qualifications

Completed Contracts for Public Agencies

"The **University** will look for Proposers that have successfully developed performance contracts for public agencies." (Appendix D. 12. a. 1.)

Compare the information provided by each Proposer in Response Form, Paragraph 3 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has documented the successful completion (through construction) of five or more performance contracts for public agencies. The completed projects are recent and include facilities very similar to the Hilo campus (i.e. college or university campuses). The project construction costs are equal to or greater than the proposed project construction cost. The projects are comprehensive, including improvements in lighting and air conditioning systems.

Least Preferred (Lowest Score)

The Proposer has not documented successful completion of performance contracts for public agencies or can document only one or two. The completed projects do not include college or university campuses. The projects listed are much smaller than the proposed project or do not include as comprehensive a set of efficiency improvements.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Documented Actual versus Projected Savings

"The **University** will look for Proposers that can document actual versus projected energy savings in completed performance contracts." (Appendix D. 12. a. 2.)

Compare the information provided by each Proposer in Response Form 3 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has documented that actual savings equal or exceed projected energy savings in completed performance contracts. The documentation is clear, specific, and can be verified through references supplied by the Proposer.

Least Preferred (Lowest Score)

The Proposer has not documented actual savings in completed performance contracts or the documentation is unclear or cannot be verified through the project references provided.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Fully Identified Project Team

"The **University** will look for Proposers that have fully identified their project team." (Appendix D. 12. a.)

Compare the information provided by each Proposer in Response Form 2 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has identified all members of the project team, including the project manager and individuals who will perform the energy study, engineering design, construction, maintenance, and financing.

Least Preferred (Lowest Score)

The Proposer has not identified most members of the project team.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Adequate Staff and Resources

"The **University** will look for Proposers who can demonstrate adequate staff and resources to complete the project on schedule." (Appendix D. 12. a. 5.)

Compare the information provided by each Proposer in Response Form 2 and 4 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has documented that key staff and subcontractors are fully qualified and experienced in the proposed technologies and performance contracting methods and adequate hours of key staff time are committed to this project.

Least Preferred (Lowest Score)

The Proposer has not clearly documented the qualifications or availability of key staff or the staff effort committed is small compared to other Proposers.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Ability to Finance Project

"The **University** strongly prefers proposals which conclusively document the proposer's ability to finance the project as proposed and the source and cost of funds." (Appendix D. 12. a. 6.)

All Responsive Proposers must be able to provide guaranty for the full and faithful performance of the contract in an amount equal to 100% of their proposed project cost. This form gives additional points to proposers who document their ability to finance a larger than average project size or offer lower than average interest cost. The Contracting Officer (or designate) should calculate points for each Proposer for this attribute and provide them to other Evaluation Committee members. A worksheet is provided to make this calculation simpler.

(Refer to Response Form 7)

$$\text{Points} = \frac{\text{Proposer's Total Construction Cost}}{\text{Average Total Construction Cost}} \times 4.0 \text{ points}$$

plus

$$\frac{\text{Average Cost of Financing}}{\text{Proposer's Cost of Financing}} \times 3.0 \text{ points}$$

where Cost of Financing is calculated as the total interest cost (including any and all financing-related fees) divided by the total construction cost.

_____ **Enter score in space at left (10 point maximum) and in designated space on summary score worksheet.**

Technical Approach

Experience in Proposed Technologies

"The **University** strongly prefers a technical approach that demonstrates thorough knowledge and experience in design, intallation, and operation of energy efficient technologies in Hawaii's climate and building systems similar to those of the participating facilities." (Appendix D. 12. b.)

Compare the information provided by each Proposer in Response Form 6 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has documented thorough knowledge of and experience with the proposed technologies. The experience of the project team includes experience designing, installing and operating the proposed technologies in Hawaii and in building systems similar to the project's.

Least Preferred (lowest score)

The Proposer has not clearly documented the project team's experience and qualifications with the proposed technologies. The project team is designing, installing, and operating the proposed technologies for the first time.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Technologies Implemented Previously

"The **University** prefers technologies that have been successfully implemented before by the Proposer." (Appendix D. 12. b. 3.)

Compare the information provided by each Proposer in Response Forms 3 and 6 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has documented that it has implemented the proposed technologies many times before and in buildings and climates similar to the proposed project.

Least Preferred (lowest score)

The project team is designing, installing, or operating the proposed technologies for the first time.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Detailed Description

"The **University** prefers technologies that are described in sufficient detail to evaluate their feasibility from the standpoint of construction and operation." (Appendix D. 12. b. 2.)

Compare the information provided by each Proposer in Response Form 6 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has described the proposed efficiency improvements in sufficient detail to evaluate their feasibility for both construction and operation. In addition to a general description of the proposed improvements, building-specific details have been provided.

Least Preferred (lowest score)

The Proposer has provided only a generic description of the proposed efficiency improvements..

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Savings Verification Methodology

"The **University** prefers savings measurement methods using established and proven techniques for which the Proposer can provide samples and project references." (Appendix D. 12. b. 5.)

Compare the information provided by each Proposer in Response Form 6 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The proposed measurement plan is clear, complete, and tailored to the proposed project for all proposed efficiency improvements. The plan uses proven techniques and the proposer has provided a sample and project references including facilities similar to the proposed project. The plan verifies savings and performance for the term of the agreement.

Least Preferred (lowest score)

The proposed measurement plan is unclear, generic, or does not address all proposed improvements. The plan uses techniques which are not transparent or which cannot be verified and reproduced. The proposer has not provided a sample or any project references for its experience with theproposed methods.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Financial Benefits

Clear and Complete Plan

"The **University** prefers a proposal which includes a clear and complete plan for the project…this plan should demonstrate the proposer's understanding of performance contracting and energy efficiency construction projects in general and the constraints of the participating agencies and facilities in particular." (Appendix D. 12. d.)

Compare the information provided by each Proposer in Response Form 4 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The proposed management plan is complete, detailed, realistic, and tailored to the specific needs and constraints of this project. The plan demonstrates the Proposer has considered opportunities and constraints specific to the proposed project.

Least Preferred (lowest score)

The proposed management plan is unclear, incomplete, or generic.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Realistic Milestone Schedule

"The **University** prefers a proposal which includes … a realistic milestone schedule." (Appendix D. 12. c.)

Compare the information provided by each Proposer in Response Form 4 (and any relevant attachments). Score each Proposer according to the most preferred and least preferred criteria below. Assign a score from 0 to 10 (with 10 being the highest and 0 the lowest score).

Most Preferred (highest score):

The Proposer has provided a clear and detailed milestone schedule which considers the unique constraints of the proposed project.

Least Preferred (lowest score)

The proposed milestone schedule is unclear, incomplete, or generic.

Enter score (0 to 10) here and on summary score worksheet

Score: _____ Proposer: _____

Notes: _____

_____

_____

Gross Energy Savings

This form gives additional points to proposers who document their ability to provide larger than average gross energy savings according to a formula. The Finance Advisor should calculate points for each proposer for this attribute and provide them to other Evaluation Committee members.

(Refer to Response Form 6 and 7)

$$\text{Points} = \frac{\text{Proposer's Gross Energy Savings}}{\text{Average Gross Energy Savings}} \times 7.0 \text{ points (up to 10 points maximum)}$$

_____ **Enter score in space at left and in designated space on summary score worksheet.**

Notes:_____

_____

_____

NPV of University's Net Savings

This form gives additional points to proposers who document their ability to provide greater than average net cost savings according to a formula. The Finance Advisor should calculate points for each proposer for this attribute and provide them to other Evaluation Committee members.

(Refer to Response Form 7)

$$\text{Points} = \frac{\text{Proposer's NPV}}{\text{Average NPV}} \times 7 \text{ points (up to 10points maximum)}$$

_____ **Enter score in space at left and in designated space on summary score worksheet.**

Notes:_____

_____

_____

Summary Score Worksheet

Proposer: _____

Evaluation Section	(1) Possible Score	(2) Unscaled Score ÷ 10	(3) Actual Score =(1) x (2)
Developer's Qualifications			
Documentation of Relevant Projects	3.5		
Documented Actual vs. Projected Savings	3.5		
Qualifications of Key Personnel	3.5		
Experience in Design and Construction of Energy Efficiency Projects	3.5		
Adequate Staff and Resources	4.0		
Documented Ability to Finance Project	5.0		
Quality of Financial Information	2.0		
Developer's Qualifications Subtotal	25.0		
Technical Approach			
Proposed Energy Saving Measures	4.0		
Knowledge of Existing Systems, Operating Constraints, & Proposed Measures	4.0		
Technologies Implemented Previously	4.0		
Response to Equipment-Related Goals	4.0		
Quality of Energy Savings Measurement Methodology	4.0		
Technical Approach Subtotal	20.0		
Management Plan			
Services Offered & Response to Goals Identified	4.0		
Methods Used to Insure Minimum Disruption to Operations	4.0		
Emergency Provisions for Response & Repair	4.0		
Quality of Communications	4.0		
Provisions for Staff Input	4.0		
Management Plan Subtotal	20.0		
Financial Benefits			
Projected Net Financial Benefits	5.0		
Gross Energy Savings	5.0		
Terms of Guarantee of Energy Savings and / or Financial Performance	5.0		
Proposed Methods to Minimize Project Risks	5.0		

Financial Benefits Subtotal	20.0		
Cost			
Price Information	5.0		
Proposed Fee for Energy Study	5.0		
Cost of Proposal Financing	5.0		
Cost Subtotal	15.0		
GRAND TOTAL	100.0		

Summary Evaluation Form

Proposer: _____

Evaluation Section	Possible Score	Actual Score	Passing Score
Developer's Qualifications			
Documentation of Relevant Projects	3.5		
Documented Actual vs. Projected Savings	3.5		
Qualifications of Key Personnel	3.5		
Experience in Design and Construction of Energy Efficiency Projects	3.5		
Adequate Staff and Resources	4.0		
Documented Ability to Finance Project	5.0		
Quality of Financial Information	2.0		
Developer's Qualifications Subtotal	25.0		
Technical Approach			
Proposed Energy Saving Measures	4.0		
Knowledge of Existing Systems, Operating Constraints, & Proposed Measures	4.0		
Technologies Implemented Previously	4.0		
Response to Equipment-Related Goals	4.0		
Quality of Energy Savings Measurement Methodology	4.0		
Technical Approach Subtotal	20.0		
Management Plan			
Services Offered & Response to Goals Identified	4.0		
Methods Used to Insure Minimum Disruption to Operations	4.0		
Emergency Provisions for Response & Repair	4.0		
Quality of Communications	4.0		
Provisions for Staff Input	4.0		
Management Plan Subtotal	20.0		
Financial Benefits			
Projected Net Financial Benefits	5.0		
Gross Energy Savings	5.0		
Terms of Guarantee of Energy Savings and / or Financial Performance	5.0		
Proposed Methods to Minimize Project Risks	5.0		
Financial Benefits Subtotal	20.0		

Cost			
Price Information	5.0		
Proposed Fee for Energy Study	5.0		
Cost of Proposal Financing	5.0		
Cost Subtotal	15.0		
GRAND TOTAL	100.0		

Appendix F

SAMPLE CONTRACT

Appendix F

Sample Contract

Performance Contract for Energy Efficiency Services

THIS CONTRACT, made as of the _____ day of _____, 19___, by and between the **University** of Hawaii, hereinafter referred to as the "**University**," acting by and through its **Director, Office of Procurement, Property and Risk Management**, and _____ a _____ corporation having its principal offices at _____ hereinafter referred to as the "Contractor,"

WITNESSETH THAT:

WHEREAS, the **University** owns or leases the Facility;

WHEREAS, Contractor provides certain services and equipment to reduce energy consumption in buildings;

WHEREAS, Contractor has submitted a written proposal in response to the **University**'s request and has been selected by the **University** as the most qualified Proposer for the work herein described;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. Definition

Key terms used within this contract are defined as follows:

Energy Baseline - The energy baseline is a calculation or measure of each type of energy consumed in existing facilities, prior to the installation of energy efficiency measures. For purposes of this contract, electrical demand, measured in kilowatts (kW) will be considered a type of energy.

Energy Efficiency Measure (EEM) - An EEM is the installation of new equipment, modification or alteration of existing **University** equipment/facilities, or revised operations and maintenance procedures to reduce energy costs by improving efficiency of use.

Energy Savings - Energy savings is a reduction of energy consumption or electrical demand resulting from the Contractor's energy efficiency measures. Energy savings shall be determined by comparing the energy baseline with the energy consumed (or demand) after Contractor has implemented energy efficiency measures.

Substantial Completion Date - The date on which the Contractor warrants by written notice that the EEMs are substantially complete and are producing savings equal to or greater than the Guaranteed Savings.

Termination Value - The amount the **University** may pay to Contractor after the first anniversary of Substantial Completion Date to terminate this agreement for convenience. This amount shall be the total price shown in Article 5.2b, less any payments already made.

2. Contract Documents

2.1 Documents Included. It is understood and agreed that the following documents, and any amendments or addenda thereto, comprise this Contract and are as fully a part of this Contract as though attached hereto or set forth at length herein: (1) General Terms and Conditions for Goods and Services dated _____ (attached as Appendix 1-A); (2) General Requirements and Covenants (dated _____) (attached as Appendix 1-B); (3) Request for Proposal No. _____,including the offer, General Provisions, and specifications contained therein, and (4) the Energy Study Report to be executed by Contractor and the **University** (attached as Appendix 2).

2.2 Entire Agreement. This Contract is the entire agreement between the parties, and no alterations, changes or additions thereto shall be made, except in writing approved by the parties.

3. Contractor's Services

3.1 Energy Study

a. Contractor shall perform a detailed energy study of the Facility at its sole expense. The energy study shall identify all feasible energy conservation, load management, and renewable resource options with benefits exceeding costs over the contract term. The energy study shall also address the following options specifically identified by the **University**: _____. The study shall document existing conditions, including building physical conditions; hours of use or occupancy; area of conditioned space; inventory of energy consuming equipment or

systems; and energy consuming equipment operating conditions or loads. The Energy Study Report shall document an Energy Baseline and proposed methods to measure and verify Energy Savings. Contractor shall furnish a written report of its findings including all of the information listed in the form attached as Appendix 2.

b. Within ninety (90) days of the effective date of this Contract, the Contractor shall submit the study report to the **University** for review and acceptance prior to installation of any EEMs. **University** acceptance of the Energy Study Report establishes mutual agreement of the equipment Contractor will install, energy baseline, and other terms of the Contract. The final version of the Energy Study Report shall be attached as Appendix 2 once it has been reviewed, approved, and accepted on behalf of the **University** by the Contracting Officer. Agreement on the content and form of the Energy Study Report will be evidenced by executing the attached Energy Study Report acceptance form, whereupon the Energy Study Report will be incorporated as Appendix 2 and shall be a part of this Contract as though fully set forth herein.

3.2 Equipment Design and Construction.

a. Within thirty (30) days of **University** acceptance of the Energy Study Report, Contractor shall commence designing and obtaining EEMs. Contractor shall prepare and submit EEM installation plans to the **University** for review and approval prior to beginning EEM installation. Installation plans shall be certified by an engineer registered in the State of Hawaii to assure compliance with applicable building codes. Such certification shall be at the Contractor's sole expense.

b. The Contractor shall be responsible for quality control during the installation of all EEMs. Contractor shall inspect and test all work performed to insure compliance with Contract requirements. Contractor shall maintain records of inspections and tests, including any conducted by or for a utility or other regulatory agencies.

c. Contractor shall complete EEM installation by the date specified in Contractor's Energy Study Report.

3.3 Notice of Completion

The Contractor shall notify the **University** in writing when the EEMs are installed and substantially complete by submitting a Notice of Substantial Completion and a written request for inspection. The request shall identify the total construction cost (including change orders), location, description of EEMs, planned testing of EEMs to verify performance, and recommended dates for inspection. Whenever possible, both **University** and Contractor representatives will simultaneously inspect EEMs to facilitate mutual agreement on satisfactory Contract performance. The **University** shall provide written notification to Contractor of the scheduled date and time for **University** inspection within ten (10) days of receipt of inspection request. Following satisfactory inspection, the **University** shall issue a Certificate of Substantial Completion.

3.4 Maintenance and Repair of EEMs

Contractor, at its sole expense, shall be responsible for maintenance and repair of all EEMs installed unless **University** responsibility is expressly identified in the Energy Study Report and approved by the **University**. Maintenance includes all work and costs associated with periodic inspections, tests, calibrations, and adjustments required to sustain and/or restore energy system operational status to as-designed performance and performance requirements of this contract. Repair includes all labor, material, and equipment required to replace, rebuild, or restore to as-designed performance systems and equipment that have failed.

3.5 Operation and Maintenance Manuals and Training

a. Contractor shall furnish operation and maintenance manuals and recommended spare parts lists for operations and maintenance of the Contractor-installed EEMs and modified **University** equipment.

b. Within thirty (30) days of the installation completion, Contractor shall train **University** personnel as required to operate, maintain, and repair EEM equipment and systems in the event of emergencies.

c. The Contractor shall train **University** personnel or a designee to operate, maintain, and repair EEM equipment ninety (90) days prior to the end of the Contract term.

3.6 Support Services Fees

The Contractor shall pay support service fees to the Energy, Resources, and Technology Division of the Department of Business, Economic Development, and Tourism (DBEDT) to defray administrative costs of support services for performance contracting. The Contractor shall pay a project development fee equal to two percent (2%) of the project construction cost within thirty (30) days after the Substantial Completion Date. The Contractor shall pay an operations monitoring fee equal to one and one-half percent (1.5%) of the actual gross annual energy savings within thirty (30) days after each of the first and second anniversaries of the Substantial Completion Date.

4. Responsibilities of the **University**

4.1 Reviews and Approvals

The **University** shall review and reply to Contractor submitted materials (that is, Energy Study Report, EEM installation plans) within 30 days of receipt of the **University** unless a different period is explicitly stated elsewhere in this Contract. If the materials are approved, the **University** shall so indicate in writing. If the materials are not approved, the **University** shall so indicate by written notice listing exceptions to the materials for correction by the Contractor.

4.2 Equipment Location and Access

a. The **University** shall furnish mutually satisfactory rent-free space for the installation of the Contractor Equipment.

b. The **University** shall grant the Contractor access to facility premises at such times as are requested by Contractor and acceptable to the **University**, as needed to enable the Contractor to carry out its obligations under the Contract. The **University** shall not unreasonably withhold approvals for Contractor access to the premises.

4.3 Operation and Maintenance of Equipment

The **University** shall provide all necessary operation, maintenance, and repairs to the **University**'s pre-existing equipment provided the Contractor has identified its specific requirements for such procedures and provided training for **University** facilities' personnel as required in General Provisions 8.3 and 11.

5. Compensation

5.1 Energy Study Fee

If the **University** elects not to proceed after accepting the Contractor's Energy Study Report, or if the **University** and the Contractor cannot agree on the contents or manner of incorporation of the Energy Study within ninety (90) days after submission of the Energy Study Report, then this contract shall terminate and the **University** shall pay Contractor the sum of _____ ($_____.____) as compensation for the preparation of the Energy Study Report, unless:

a. The Contractor's Energy Study Report does not comply with the terms of the Request for Proposals in any material respect; or

b. The total energy savings set forth in the Energy Study Report are less than seventy-five percent (75%) of the total energy savings proposed by Contractor in its proposal; or

c. The net financial benefit set forth in the Energy Study Report is less than seventy-five percent (75%) of the net benefit proposed by Contractor in its proposal.

In these events, the **University** shall have no obligation to reimburse Contractor for the cost of preparing the Energy Study Report, and may use any information contained in the report or implement any of its recommendations with no cost or obligation to Contractor.

5.2 Payments.

a. Payment to Contractor shall begin the first calendar month after the Substantial Completion Date.

b. The **University** shall pay Contractor as specified in the Payment Schedule in the Energy Study Report. Such payment shall continue for a period not to exceed fifteen (15) years from the commencement date noted in the Notice to Proceed.

c. If the Contractor fails to achieve the Guaranteed Annual kWh and Cost savings specified in the Energy Study Report then the **University** may, at its option, (1) recover the shortfall by deductions from the Contractor's future invoice(s), and/or (2) demand payment of the shortfall, in whole or in part, from the Contractor. Such payment shall be due to the **University** within forty-five (45) days of its demand.

6. Term and Termination

6.1 Agreement Subject to Appropriation

The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the Contract, the Contract shall terminate on the last day of the fiscal year for which allocations were made.

6.2 Termination for Convenience

Any time after the first anniversary of Substantial Completion, the **University** may exercise an option to terminate this contract by giving ninety (90) days notice and paying the Termination Value.

6.3 Contract Term

This Contract shall be in full force and effect from the date of the Notice to Proceed with Construction through _____ (_____) unless earlier terminated under Article 5.1 (Energy Study Fee), Article 5.2b (Payments), Article 6.1a. (Agreement Subject to Appropriation), Article 6.2a. (Termination for Convenience) or for default.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

University of Hawaii

By_____

Its _____

Contractor:_____

By_____

Its_____

STATE OF _____)
_____COUNTY OF _____)

On this _____day of _____, 19 ____, before me personally appeared _____ and _____ to me personally known, who being by me duly sworn, did say that he/she/they is/are the _____ of_____,
the Contractor named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the Contractor, and acknowledged that he/she/they executed said instrument as the free act and deed of the Contractor.

_____
Notary Public, State of

(Notary Seal)

_____

My commission expires:

_____

Appendix 1

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Appendix 1

General Provisions

1. Ownership of Contractor-Installed Equipment

1.1 All Equipment installed by the Contractor is and remains the property of the Contractor during the contract term.

1.2 At the expiration of the contract term, all right, title, and interest in and to all improvements and equipment constructed or installed on the premises and additions, shall vest in the **University** at no additional cost free and clear of all and any liens and encumbrances created or caused by the Contractor. Contractor shall surrender possession of said premises and the improvements and equipment to the **University** in good repair and condition, reasonable wear and tear excepted.

1.3 If the contract is terminated for convenience or for default, all right, title, and interest in and to all improvements, additions, or equipment of all EEMs installed by the Contractor to which the **University** determines to take possession shall vest in the **University**. For those EEMs for which the **University** takes possession and thereby obtains title, the Contractor shall be compensated in accordance with General Provision 22 in case of default or Article 6.2 in case of termination for convenience by the **University**.

2. Protection of Lienholder's Interest

2.1 The **University** recognizes that project financing associated with Contractor performance on the contract may be accomplished using third party financing, and as such, may be secured by a security interest in this contract and the contractor equipment or facilities referred to herein. To protect any lienholder's interest, the Contractor may be required to assign to its lenders, some or all of its rights under this contract.

2.2 The **University** will consider:

2.2.1 Requests for assignments of moneys due or to become due under the Contract, provided the assignment complies with Section 40-58, HRS.

2.2.2 Requests by lenders or lienholders for copies of any cure or show cause notice issued to Contractor;

2.2.3 Requests by lenders or lienholders for extension of response time to cure or show cause notices;

2.2.4 A proposed takeover of contract performance in the event the Contractor defaults in performance. Requests for takeover of the Contract on substantially the same terms and conditions will be approved if the proposed substitute party is acceptable to the **University**.

3. Subcontracting

The Contractor shall not at any time subcontract, convey, transfer, or assign its obligations or services to be performed under this Contract, either in whole or in part, without the prior written consent of the Contracting Officer.

4. Responsibility for Contractor-Installed Equipment

The Contractor shall at all times during the term of the Contract have full ownership responsibilities of the Contractor-furnished systems and equipment. The Contractor may modify, replace, or change the systems and equipment during the Contract from that originally approved. However, any proposed modification, replacement, or change shall require notification and coordination with and approval of the Contracting Officer. Any such modification, replacement, or change of systems or equipment shall be performed by the Contractor at no cost to the **University** and shall not interfere with **University** operations.

5. Equipment Location and Access

5.1 The **University** shall provide mutually satisfactory rent-free space for the installation and operation of the Contractor-furnished equipment and shall protect such equipment in the same careful manner that the **University** protects its own property.

5.2 The **University** shall provide access to the premises for Contractor and its subcontractors during regular business hours, or such other hours as may be requested by Contractor and acceptable to the **University**, to install, adjust, inspect, maintain, and repair the equipment. Contractor's access to correct any emergency condition shall not be restricted by the **University**. The **University** shall keep

the area around the equipment reasonably clear so that the Contractor will have access to the equipment and so as not to limit or impair the ability of the Contractor to perform the services.

6. Installation of EEMs

6.1 EEM Installation Plans - The Contractor shall prepare and submit installation plans and specifications (the "Installation Plans") to the facility for review and approval before starting EEM installation. The Installation Plan shall include manufacturer's descriptive literature including performance and characteristics data and catalog cuts and shop drawings showing in detail the interface between EEM equipment and existing equipment and the location of EEM equipment on building floor plans. Installation Plans shall be certified by an engineer registered in the State of Hawaii to assure compliance with applicable building codes. Such certification shall be at Contractor's sole expense.

6.2 Notice to Proceed - A written notice from the Director of the **Office of Procurement, Property and Risk Management** shall be issued, advising the Contractor of the date on which installation of EEMs shall proceed.

6.3 Work Schedule and Existing Operations - The Contractor shall contact the **University** within ten (10) days after the **University**'s issuance of the Notice to Proceed to submit a schedule of work and proposed sequence of work to the **University** for approval. All work shall be scheduled with the **University** at least fourteen (14) calendar days in advance. During the contract period, the existing buildings and grounds will be occupied by the **University**. The Contractor shall perform all work with extreme care to avoid damage to existing construction and installations. The Contractor shall make all necessary provisions to keep interferences to a minimum as to the scheduling of work and storage of materials and shall confine its operations, materials, and equipment within the immediate vicinity of the new work. Contractor shall prearrange or schedule with the **University** for all disruptive noise-producing construction activities so as not to unreasonably obstruct or interfere with any activities of the **University**. The work shall be coordinated and planned in a manner that will permit operation of **University** facilities without interruptions.

6.4 Materials and Workmanship - Unless otherwise specifically provided for in the Installation Plans, all equipment, materials and

articles incorporated in the work covered by this contract are to be new and of the best grade of its respective kind for the purpose. All work to be executed shall be of the highest quality and performed by skilled mechanics in the best workmanlike manner. The **University** may require the Contractor to dismiss from the work such employee or

employees as the **University** deems incompetent, careless, insubordinate, or otherwise objectionable.

6.5 Superintendence - The Contractor shall provide a competent superintendent, satisfactory to the **University**, on the work site at all times during progress of the work with authority to act for the Contractor. The Contractor shall also provide an adequate staff to coordinate and expedite its work properly and shall at all times maintain competent supervision of its work and that of its subcontractors to ensure compliance with contract requirements.

6.6 Inspection of Work

6.6.1 An inspector, designated by the **University**, will make daily observation of the work at the site. The Contractor shall direct all inquiries, technical or administrative, to said inspector during construction.

6.6.2 All materials and workmanship shall be subject to inspection at any and all times during the period of installation. The **University** has the right to reject defective material and workmanship. Rejected material shall be promptly removed from the job site and satisfactorily replaced. Rejected workmanship shall be satisfactorily corrected.

6.7. Removal of Debris and Cleanup - The Contractor shall, as directed during the progress of the work, remove and properly dispose of resultant dirt and debris and keep the premises reasonably clear. Before the work shall be considered completed, all equipment and unused materials provided for the work shall be removed and building and premises will be in a neat and broom-clean condition.

6.8 Protection of Persons and Property - Contractor shall provide adequate, clearly marked and/or lighted barricades or warning signs at all open trenches, excavation and contract work areas for the protection of the work and safety of the public and students.

6.9 Protection of Property and Buildings - The Contractor shall take all necessary precautions during the progress of the work to protect the buildings as well as adjoining property, roadways, walkways, trees, lawns, landscape, and buildings from damage and injury and shall promptly repair any such damage to the satisfaction of the **University**, at no cost to the **University**.

6.10 Quality Control - The Contractor shall be responsible for quality control during installation of EEMs. The Contractor shall inspect and test all work performed during EEM installation to insure compliance with contract performance requirements. The contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for utility or other regulatory agencies.

6.11 Utilities

6.11.1 Water and Electricity - The Contractor will be allowed to use water and electricity for construction purposes without charge.

6.11.2 Interruption of Electrical Service - The Contractor will schedule interruption of electrical service so as to minimize such interruption to **University** operations. Interruptions shall be permitted only on Saturday afternoons, Sundays and holidays. The Contractor shall notify the **University**, in writing, at least fifteen (15) days in advance of any proposed interruption and shall obtain the approval of the **University** prior to the interruption. Scheduled interruptions of electrical service shall not exceed twelve (12) hours.

6.11.3 Sanitary Facilities - If existing sanitary facilities of the **University** are close to the contract work area, the Contractor is permitted to use same and shall maintain a sanitary condition at all times. If none is close by, Contractor shall install sanitary facilities at the job site and maintain same in a clean and sanitary condition for the use of the employees on the job site for the duration of the contract. The sanitary facilities shall conform to the requirements of the State Department of Health.

6.12 Changed or Unusual Conditions - If an unexpected condition at the work site is encountered, the Contractor shall promptly, before disturbing the condition, notify the **University**, in writing, of the subsurface, latent or unknown physical conditions of an unusual

nature at the site differing materially from those encountered and generally recognized as inherent in the work of the character provided for in the contract; the **University** shall promptly investigate the conditions, and if it finds such conditions do materially so differ and will cause an increase or decrease in the Contractor's costs of, or the time required for performance of the contract, the **University** may, in its discretion, without resort to formal advertising, as permitted in the exceptions outlined in Section 103D-102, Hawaii Revised Statutes (Act 178), issue a Modification and modify the scope of existing contract with the Contractor, including such equitable adjustment as may be agreed upon between the parties. Or the **University** may, in the alternative, negotiate with other Contractors to perform any additional work required by the changed or unusual conditions.

6.13 EEM Documentation - After installation completion and **University** acceptance of the installed EEMs, the Contractor shall submit as-built drawings and operation and maintenance manuals, including recommended spare parts lists, to the Contracting Officer or its designated representative.

6.14 Manufacturers' Warranties - The Contractor shall use its best efforts to keep in effect all manufacturers' or other third party warranties relating to the Contractor-installed equipment and ensure that any benefits due to such warranties are passed on to the **University** at the time the **University** becomes the owner of the equipment.

7. Operation of EEMs

If new operations work is required for Contractor-installed EEMs, is similar to an existing operations work requirement for **University**-owned equipment, and does not adversely affect **University** resources, the Contractor may request the **University** in its EEM description to perform operations work on Contractor-installed equipment. The **University** reserves the right not to accept operations work on installed EEMs.

8. Maintenance of EEMs

8.1 Maintenance work includes periodic equipment inspection, tests, and calibrations, preventive maintenance tasks, and corrective actions required to sustain and restore energy system operational status to achieve all facility and energy conservation performance requirements of this contract.

8.2 Except as provided below, the Contractor shall be responsible for maintenance of all EEMs installed. Installed EEMs shall include all Contractor-installed equipment and those portions of **University** equipment that have been modified or replaced to achieve proposed EEM performance.

8.2.1 If the maintenance work is similar to an existing maintenance work requirement (e.g., changing light bulbs) and does not adversely affect **University** resources, the Contractor may request the **University** to perform maintenance work on Contractor-installed equipment. If the **University** accepts EEM maintenance responsibility, the **University** reserves the

right to provide the maintenance work in accordance with its own schedule.

8.2.2 The Contractor may propose to assume responsibility for maintenance on **University**-owned equipment in order to achieve proposed EEM performance. Any maintenance work provided by the Contractor on **University**-owned equipment shall be at the Contractor's expense. If the Contractor has taken over repair as well as maintenance of **University**-owned equipment as part of an approved EEM, that EEM shall include a definition of repair responsibility.

8.3 If the performance of Contractor EEMs is dependent on certain **University**-owned facilities, systems, or equipment the Contractor may indicate specific requirements for **University** maintenance practices in the Energy Study Report. Such required maintenance practices will be performed by the **University** provided that they are described in full in the Energy Study Report attached as Appendix 2 and the Contractor has provided any training needed to enable **University** personnel to perform maintenance practices to Contractor's satisfaction. Contractor shall provide any such training at Contractor's sole expense.

8.4 The **University** will not move, turn off, or otherwise change any Contractor-owned equipment without the consent of the Contractor, unless such action is in accordance with the maintenance procedures provided by the Contractor; or if it is necessary in an emergency to prevent loss of life injury or damage to property, or severe discomfort to facility occupants.

9. Damage to or Failure of Equipment

9.1 When Contractor-owned equipment fails or is damaged or destroyed, the Contractor shall be responsible for repairs. The **University** will repair failed Contractor-owned equipment or reimburse the Contractor for such repairs, if the failure resulted from negligence or improper operation by **University** personnel.

9.2 When **University**-owned equipment fails or is damaged or destroyed, the **University** will be responsible for repairs within a reasonable time period. The Contractor shall provide repairs, at no expense to the **University**, if the **University**-owned equipment failure is a result of actions on the part of the Contractor, including, but not limited to the use of any materials, equipment or workmanship which is inferior, defective, or not in accordance with the terms of this contract. The Contractor shall make repairs within a reasonable period of time, or the **University** may repair or have the repairs made and charge the Contractor for such repair costs. If any such property cannot be satisfactorily repairs or restored, the Contractor shall replace it. If the Contractor elects to take over repair responsibilities of **University**-owned equipment as part of an EEM, the EEM shall include a listing of the types of repairs that will be the Contractor's responsibility.

10. Contractor Maintenance and Repair Response Time

10.1 The Contractor shall establish a point of contact (name and phone number) for use by the **University** in providing response to Contractor equipment failures. Initial telephone response to repair call messages shall be within 60 minutes. If a site visit is needed to repair equipment, repair personnel shall arrive on site within twenty-four hours of the initial telephone response for non-emergency repairs or within five hours for emergency repairs. Although normal Contractor access is during the hours of 8:00 a.m. to 4:00 p.m., the Contractor will have 24 hour per day access to the buildings for emergency work.

10.2 In the event that Contractor fails to respond as required above or in the event of an emergency, the **University** may perform emergency repairs to Contractor-owned equipment. The Contractor shall hold the **University** harmless in such cases where the Contractor fails to respond and in emergencies.

11. Training for EEMs

11.1 Thirty days prior to the installation completion, the Contractor shall

train **University** personnel as required to operate, maintain, and repair EEM equipment and systems in the event of emergencies.

11.2 The Contractor shall train **University** personnel to operate, maintain, and repair EEM equipment 90 days prior to the end of the contract term or within 90 days after notice by the **University** in the event of early termination.

11.3 The training program described in 11.1 and 11.2 shall provide instruction on operation, troubleshooting, maintenance, and repair of EEMs. Training shall include both classroom and a practical instruction. Course materials shall include Contractor-supplied operation and maintenance plans and manufacturer-supplied manuals. The program shall be conducted at the facilities where the EEMs are located.

12. Grounds

Parking on lawns, walkways and other landscaped / developed areas are strictly prohibited without prior approval. Where special permission is granted for these areas, Contractors shall be responsible for any damages and must return these areas to their full original condition as determined by the **University**.

13. University Projects

There shall be no restriction on **University** projects of any kind including those that may provide energy conservation equipment, the removal of existing energy consuming equipment, or the addition of new energy consuming equipment for facility mission needs.

14. Utility Rebates

The implementation of an EEM may result in the **University** being eligible for a rebate from the serving utility company. The Contractor shall be responsible for preparing any and all documentation required to apply for the rebate. The Contractor shall submit the rebate application and documentation to the Contracting Officer for the **University** submission to the serving utility. Utility rebates may be applied to the capital cost of the project.

15. Deleted

16. Standards of Service and Comfort

The following facility performance requirements must be maintained throughout the Contract term.

16.1 In conditioned areas, space temperatures between 70°F and 76°F dry bulb, and 30-70% relative humidity shall be maintained during periods scheduled for occupancy.

16.2 During unoccupied periods, the cooling system may be turned off. However, the system must be so designed that before any high temperatures or humidity conditions that could damage equipment in the spaces can occur, the cooling system will restart and control the temperature or humidity as required. In any case, temperatures must be restored to the 70°F -- 76°F range by the start of the next occupied period.

16.3 Outside air cannot be reduced below the quantities found in ASHRAE standard 62-89, "Ventilation for Acceptable Indoor Air Quality."

16.4 Minimum lighting levels shall be in accordance with applicable IES standards for each space (as of the time of EEM installation). If light levels at such IES standards are a reduction of more than 20% from existing levels, Contractor shall so indicate in the Energy Study Report for review and approval by the **University**.

17. Material Changes and Baseline Modifications

17.1 The Energy Baseline may change if the facility undergoes changes in operating hours, occupancy, energy consuming equipment, or structure. Any change in operating hours, occupancy, energy consuming equipment, or structure that may reasonably be expected to change the energy consumption of the facility by more than ten percent (10%) of the total energy savings proposed by Contractor shall be considered a material change.

17.2 The **University** shall notify the Contractor of any change in the facility's equipment or operating conditions that can reasonably be expected to constitute a material change within thirty (30) days of the time that the change becomes known to the **University**. If the notice is not timely made, the modifications allowed in Article 17.3 immediately below shall be retroactive to the time the change commenced.

17.3 In the event of a material change the Energy Baseline shall be modified by mutual consent of the **University** and the Contractor. Each party shall bear its own costs in this modification.

18. Insurance

18.1 Contractor shall maintain insurance acceptable to the **University** of Hawaii in full force and effect throughout the term of this contract. The policy or policies of insurance maintained by the Contractor shall provide Combined Single Limit Coverage (bodily injury and property damage) in the amount of $1,000,000 per occurrence.

18.1.1 Insurance shall be in force the first day of the term of this contract.

18.1.2 Each insurance policy required by this contract shall contain the following three clauses:

a. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after THIRTY (30) days written notice has been given to the **University** of Hawaii

Director **Office of Procurement, Property and Risk Management**."

b. "It is agreed that any insurance maintained by the **University** of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

c. "The **University** of Hawaii is added as an insured as respects operations performed for the **University** of Hawaii."

18.2 Contractor agrees to deposit with the **University** of Hawaii, on or before the effective date of this contract, certificates of insurance necessary to satisfy the **University** that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificates therefor on deposit with the **University** during the entire term of this contract.

18.3 The **University** of Hawaii shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the **University**, the insurance provisions in this contract do not provide adequate protection for the **University**, the **University** may require the Contractor to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The **University**'s requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks that exist at the time a change in insurance is required.

18.4 The **University** of Hawaii shall notify the Contractor in writing of changes in the insurance requirements; and if the Contractor does not deposit copies of acceptable insurance policies with the **University** incorporating such changes within SIXTY (60) days of receipt of such notice, this contract shall be in default and the **University** shall be entitled to all legal remedies.

18.5 The procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

18.6 The Contractor shall take out a policy of builder's risk insurance in the amount equivalent to the contract amount, with the **University** names as a loss payee under each policy, covering all work, labor, and materials furnished by such Contractor and its subcontractors against loss by fire, windstorm, lighting, explosion and other perils covered by the Extended Coverage Endorsement, and vandalism and malicious mischief.

18.6.1 The insurance policy shall contain the following:

a. "This insurance shall not be canceled, limited in scope of coverage, or nonrenewed until after THIRTY (30) days written notice has been given to the **University** of Hawaii, Director of the Office of Procurement, Property and Risk Management."

b. "All rights of subrogation are hereby waived against the **University** of Hawaii and the State of Hawaii, their officers, employees, and agents."

c. A standard loss payee clause naming the **University** of Hawaii as loss payee.

18.7 Contractor agrees to deposit with the Director of the Office of Procurement, Property and Risk Management, on or before the effective date of this contract, a certificate of insurance as evidence that such insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificates thereof on deposit with the **University** during the entire term of this

contract.

18.8 Contractor shall maintain insurance coverage against the risk of loss, damage, or theft of contractor-owned and installed equipment until title to the equipment passes to the **University** upon expiration of the contract.

19. Permits and Licenses

19.1 The Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work.

19.2 At the time the **University** determines to make award on the project, the Proposer shall possess a valid State of Hawaii contractor's license in accordance with Chapter 444, Hawaii Revised Statutes. If the Proposer is a joint venture, all parties to the joint venture must be individually licensed or the joint venture must be licensed. If the **University** determines that the Proposer does not possess a valid license at the time of award, its proposal will not be considered.

20. Force Majeure

20.1 The term Force Majeure as used herein means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure including acts of God, labor disputes, sudden actions of the elements, actions by federal, state, and municipal agencies and actions of legislative, judicial, or regulatory agencies that conflict with the terms of this Contract.

20.2 If either party because of Force Majeure, is unable to perform its obligations under this Contract, then that party shall be excused from whatever performance is affected by the Force Majeure, to the extent it is affected, except as to obligations to pay money, provided that:

20.2.1 The non-performing party, within fourteen (14) days after the commencement of the Force Majeure, gives the other party notice describing the particulars of the occurrence.

20.2.2 The suspension of the performance is of no greater scope and of no longer duration than is required by the Force Majeure.

20.2.3 The non-performing party uses its best efforts to remedy its inability to perform.

20.3 When the non-performing party is able to resume performance of its obligations under this Contract, that party shall give the other party notice to that effect within fifteen (15) calendar days of resumption of performance.

21. Events of Default

Each of the following events or conditions shall constitute a default by the Contractor:

21.1 The Contractor fails to produce the guaranteed energy savings in any consecutive twelve-month period during the term of the Contract and fails to pay the **University** the guarantee payment as set forth in the Energy Study Report;

21.2 The standards of service and comfort set forth in the Contract are not provided due to failure of the Contractor to properly design, install, maintain, repair, or adjust the Contractor-furnished equipment, or failure to provide other services as described in the Proposal or Energy Study Report, providing that such failure continues for thirty (30) days after notice to the Contractor requesting that such failure to perform be remedied, or if a remedy cannot be effected in such thirty

(30) days, without a good faith effort by the Contractor to perform in that period and diligent subsequent performance;

21.3 Any intentionally false or misleading material representation or warranty furnished by the Contractor in connection with the proposal, the Energy Study Report or this Contract;

21.4 Any material failure by the Contractor to comply with the terms and conditions of this Contract, including breach of any covenant contained herein, providing that such failure continues for thirty (30) days after notice to the Contractor requesting that such failure to perform be remedied, or if a remedy cannot be effected in such thirty (30) days, without a good faith effort by the Contractor to perform in that period and diligent subsequent performance.

22. Remedies Upon Default

Upon occurrence of a default by the Contractor, the **University** may, without an election of remedies:

22.1 Exercise all remedies available at law or at equity including bringing action for recovery of amounts due to the **University** for damages

and / or specific performance;

22.2 Exercise its option to terminate the Contract by paying seventy percent (70%) of the termination value to the Contractor, without the otherwise required 90 day notice;

22.3 Without recourse to legal process, terminate this Contract by delivery of a notice declaring termination, whereupon the Contractor shall remove the Contractor-furnished equipment and reconnect and restore the **University**'s original equipment, if available, or other **University**-furnished equipment, to the conditions which existed prior to the inception of this Contract, normal wear and tear excepted.

23. Representations and Warranties

Each party warrants and represents to the other that:

23.1 It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, necessary to execute and deliver this Contract and to perform its obligations;

23.2 Its execution, delivery, and performance of this Contract has been duly authorized by, and is in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories and constitutes its legal valid and binding obligation;

23.3 Its execution, delivery, and performance of this Contract will not result in a breach or violation of or constitute a default under any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound to be affected; and

23.4 It has received no notice, nor to the best of its knowledge is there pending or threatened any notice, decree, award, permit, or order that would materially adversely affect its ability to perform hereunder.

24. Choice of Law

This Contract shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Hawaii and any litigation arising therefrom shall be brought and resolved by its courts located in Honolulu, Hawaii.

25. Laws to be Observed

The Contractor at all times shall observe and comply with all Federal, State, and local laws or ordinances, rules, and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules, and regulations shall include any amendments thereto.

26. Notices

All notices to be given by either party to the other shall be in writing and must be either delivered personally or by overnight courier service or mailed by registered or certified mail, return receipt requested, addressed as follows:

To the University: University of Hawaii
Office of Procurement,
Property and Risk Management
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

To the Contractor: _____
_____
_____
_____

27. No Waiver

None of the provisions of this Contract shall be considered waived by either party, except when such waiver is given in writing. The failure of any party, at any time or times, to enforce any right or obligation, with respect to any matter arising in connection with this Contract, shall not constitute a waiver as to future enforcement of that right or obligation of this Contract.

28. Tax Clearance

28.1 In accordance with Section 103-53, HRS, final payment for the settlement of the contract will not be made by the **University** until the Contractor has submitted to the **University** a Department of Taxation clearance certifying that all delinquent taxes levied or accrued under State statutes against the Contractor have been paid.

28.2 To obtain such tax clearance, the Contractor, particularly an out-of-state contractor who does not possess a Hawaii I.D. number for

General Excise Tax License, must obtain a Hawaii General Excise Tax License and pay the taxes due. The Contractor may apply for either a regular or a one-time General Excise Tax License.

28.3 Tax license and tax clearance applications may be obtained by telephoning (808)587-1455 or submitting a request to the following address:

State of Hawaii
Department of Taxation
Taxpayer Services Branch
P.O. Box 259
Honolulu, Hawaii 96809

29. Supplemental Agreement

This contract may be modified by a Supplemental Agreement executed by the Contractor and the Contracting Officer.

30. Indemnification

30.1 The Contractor shall defend, indemnify, and hold harmless the **University** and the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the negligent acts or omissions of the Contractor or the Contractor's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement. However, Contractor shall be required to indemnify, defend, and hold harmless the State of Hawaii only to the extent claim is caused in whole or in party by negligent acts or omissions of Contractor.

30.2 The Contractor shall be required to and shall hold the **University** and its duly authorized representatives harmless against all demands, claims, actions, or liabilities arising from the use of any article, process or appliance covered by letters, patents or copyrights used in connection with the contract. Any royalties due or becoming due for use of the article or process shall be paid by the Contractor and shall be deemed to be included within the bid amount and contract price.

30.2.1 The Contractor shall defend, at its own expense, any action

brought against the **University**, to the extent that it is based on a claim of infringement and the Contractor will pay those costs and damages finally awarded against the **University** in any such action which are attributable to any such claim, but such defense and payments are conditioned by the following:

a. That the Contractor shall be notified properly, in writing, by the **University** of any notice of such claim;

b. That the Contractor shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; and

c. Should the article, process or appliance become, or in the Contractor's opinion be likely to become, the subject of a claim of infringement, that the **University** shall permit the Contractor, at its own expense, either to procure for the **University** the right of continued use, or replace or modify the same so that they become noninfringing, or remove the article or appliance or discontinue the process.

30.3 The **University** shall be responsible for damages or injury caused by the **University**'s agents, officers, and employees in the course of their employment to the extent that the **University**'s liability for such damage or injury has been determined by a court of otherwise agreed to by the **University**, and the **University** shall pay for such demages and injury to the extent permitted by law and approved by the Hawaii Legislature.

31. Minimum Wage Requirements

31.1 In accordance with the provisions of Chapter 104, Hawaii Revised Statutes, the following shall be complied with by the Contractor, Subcontractor, and others who are connected with this job.

31.2 All laborers and mechanics engaged in the performance of this Contract on the job site shall be paid minimum wages not less than those determined by the Director of Labor and Industrial Relations to be the prevailing wages for corresponding classes of laborers and mechanics on any project of similar character in the State. The attached wage rate schedule contains the prevailing wages for corresponding classes of laborers and mechanics on any projects of

similar character in the State, or as determined by the Director of Labor and Industrial Relations for purposes of Chapter 104, Hawaii Revised Statutes. All rates are subject to change.

31.3 The minimum wages shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract, if the director determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on a public work project shall be raised accordingly.

31.4 Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its Subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. Such records shall contain the name and address of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Such records shall be made available for inspection by the **University** or any authorized representative thereof who may also interview employees during working hours on the job.

31.5 A certified copy of all payrolls shall be submitted weekly to the **University**. The General Contractor shall be responsible for the submission of certified copies of the payrolls of all Subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wages rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations, attached to this contract, and that the classification set forth for each laborer or mechanic conforms with the work performed by the laborer or mechanic.

31.6 A copy of the minimum wage rates shall be posted by the Contractor in a prominent and easily accessible place at the job site, and a copy of such rates of wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time of employment, provided where there is a collective bargaining agreement, the Contractor does not have to provide employees with the wage rate schedules.

31.7 No laborer or mechanic employed on the job site shall be permitted or required to work on any Saturday, Sunday and legal holiday of the State, or in excess of EIGHT (8) hours on any other day unless the

laborer or mechanic receives compensation for all hours worked on any Saturday, Sunday and legal holiday of the State, or in excess of EIGHT (8) hours on any other day at a rate not less than one and one-half times the basic hourly rate of pay. For the purposes of determining overtime compensation under this sub-section, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.

31.8 The Contractor or Subcontractor shall pay all mechanics and laborers employed on the job site unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment regardless of any contractual relationship that may be alleged to exist between the Contractor or Subcontractor and laborers and mechanics.

31.9 The **University** may withhold from the Contractor so much of the accrued payment as may be necessary to pay the laborers and mechanics the difference between the wages required by the contract and the wages received by such laborers and mechanics.

31.10 If the **University** finds that any laborer or mechanic employed on the job site by the Contractor or any Subcontractor has been or is being paid wages at a rate less than the rate required by this contract or the specifications, or has not received full overtime compensation, the **University** may, by written notice to the Contractor, terminate the Contractor's right, or the right of any Subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, the Contractor and its surety

shall be liable to the **University** for any excess costs occasioned thereby.

31.11 For further information on this Act, the Contractor shall refer to Chapter 104, Hawaii Revised Statutes.

32. Utilization of Small Business and Small Disadvantaged Business Concerns

32.1 It is the policy of the **University** that small business and small

business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by the **University**.

32.2 As used in this contract, the term "small business concern" shall means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" hereafter referred to as disadvantaged business, shall mean a small business concern:

a. Which is at least 50 percent owned by one or more socially and economically disadvantaged individuals; or in, the case of any publicly owned business, at least 50 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b. Whose management and daily business operations are controlled by one or more of such individuals.

32.3 The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Lao, Cambodia or Taiwan), Asian-Indian Americans (i.e., U.S. citizens whose origins are in India, Pakistan, or Bangladesh), and any other minorities, or any other individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

32.4 The **University**, acting in good faith, may rely on written representations by the Contractors and Subcontractors regarding their status as either a small business concern or a small business

concern owned and controlled by socially and economically disadvantaged individuals.

33. Utilization of Women-Owned Business

33.1 It is the policy of the **University** that women-owned small businesses shall have the maximum practicable opportunity to participate in the

performance of contracts awarded by the **University**.

33.2 The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, "women-owned small businesses" means small business concerns that are at least 51 percent owned by women who are U.S. citizens and who also control (that is, being actively involved in the day-to-day management of business) the business.

33.3 As used in this contract, the term "small business concern" shall mean a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is proposing on **University** contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

33.4 The **University**, acting in good faith, may rely on written representations by the Contractors and Subcontractors regarding their status as women-owned businesses.

34. Equal Opportunity

In compliance with Executive Order 11246 and the applicable rules, regulations and orders of the Secretary of Labor, the Contractor agrees that, during the performance of this contract, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

35. Affirmative Action for Special Disabled and Vietnam Era Veterans

The Contractor agrees to comply with the rules, regulations or relevant orders of the Secretary of Labor issued under the Vietnam Era Veteran's Readjustment Assistance Act of 1972, as amended, if such rules, regulations, or relevant orders apply to this procurement. The Contractor agrees to indemnify and hold the **University** harmless from any claims or demands with regard to the Contractor's compliance.

36. Affirmative Action for Handicapped Workers

The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 USC. 793), as amended, if such rules, regulations, and relevant orders apply to this procurement. The Contractor agrees to indemnify and hold the **University** harmless from any claims or demands with regard to the Contractor’s compliance.

37. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

a. A claim by the Contractor shall be made, in writing, and submitted to the Contracting Officer for a written decision.

b. The Contracting Officer shall make a finding of fact and render a decision within 60 days of the request, provided all the necessary investigations can be made. The findings and decision shall be written and shall be mailed or otherwise furnished to the Contractor.

c. If the Contracting Officer cannot decide the claim within 60 days, the Contractor will be notified of the date when the decision will be made. The Contracting Officer's decision shall be final.

38. Service of Process

The Contractor may designate a representative within the State of Hawaii duly authorized to accept service of process on its behalf. In the event that the Contractor fails to so designate such a representative, or such representative is unavailable, the Contractor consents that service of any notice or process issued against it may be served upon it by filing same with the Director of Commerce and Consumer Affairs, State of Hawaii or in his absence with the Deputy Director. The **University** shall forward by certified mail to the Contractor a copy of any such notice or process served on the Director of Commerce and Consumer Affairs. A copy of such notice must also be sent to the Contractor.

Appendix 2

Form Of Energy Study Report

The Contractor shall perform a detailed study of the facility and document its findings in a report including, at a minimum, all of the following information:

1. Cover

The cover page should provide the following information:

- The words “Energy study for (the facility’s name)”
- Name(s) and address(es) of the building(s) analyzed in the study
- Name of the firm producing study
- Date

2. Table of Contents

Must be complete with page numbers and descriptive title for each section, table, exhibit, attachment, etc. Tables, charts, attachments, and exhibits should be listed separately by number, title and page number.

3. Page Numbers and Revisions

Each page should be numbered and dated. Should revisions be requested, a listing of original pages and replacement pages should be provided. Each revised page should indicate at bottom right corner “Revised--date."

4. Executive Summary

A short (one or two page) narrative summary of the project, including discussion of the project’s energy savings and financing.

a. The following tables must be included:

1) A summary of EEM[8] measures for the project (Table 6-1);

2) A summary of the project cost (Table 12-2);

3) Maintenance services provided by equipment covered, scope, frequency (Table 11-1);

4) A cost savings calculation (Table 12-3); and

5) A payment schedule (Table 12-4)

b. Savings guarantee. The following statement shall be included:

"The Contractor guarantees that in each year of the Term following Substantial Completion, the State will realize energy savings of at least _____kWh. At current rates, these energy savings have a value of _____Dollars ($_____)."

5. Existing Conditions

Document the existing conditions of the facility, including the following information itemized for each building in the facility:

a. Building physical condition;

b. Hours of use or occupancy;

c. Area of conditioned space;

d. Area of unconditioned space;

e. Inventory of energy consuming equipment or systems;

f. Energy consuming equipment operating conditions and loads;

g. Standards of service and comfort observed (e.g. light levels, ventilation, and temperatures); and

h. Current practices that unnecessarily increase energy use or impact baseline.

6. Energy Efficiency Measures (EEM)

[8] EEM--Energy Efficiency Measure

Provide a narrative description of each proposed cost effective energy efficiency measure (EEM) to be installed including:

a. The proposed upgrade, replacement, operational change, or maintenance requirement ;

b. The interface between the proposed EEM and remaining State equipment;

c. The impact on remaining State equipment (changes in load, run time, etc.);

d. Any impact on standards of service and comfort; and

e. Complete Table 6-1 for all measures.

f. Describe EEM's analyzed but disqualified under cost effectiveness criteria.

General Information

- EEM's should be presented in the order that interactions are considered;
- Energy Management System (EMS) savings must not be calculated as a percentage of total energy use. Each process controlled by the EMS should be analyzed separately, and savings associated with that process improvement calculated;
- Maintenance measures should be analyzed for savings in the same manner as other EEMs; and
- An EEM summary sheet must be provided for each measure (See Table 6-2).

7. Energy Savings Proposed

Provide a detailed energy analysis for each EEM proposed, documenting the estimated annual energy savings. Document assumptions on current and proposed equipment operating conditions and energy savings calculations.

Computer models

When computer modeling is used, the model and each set of results must be properly documented. Minimum documentation required is:

- Name of the program
- Description of the calculations the program performs

  Table showing the model's calculation of the building's energy consumption for each month of the base year, and actual consumption for those months

8. Facility Support Required

For each EEM proposed, identify any utility interruptions needed and any other facility support that may be required during installation.

9. EEM Installation Schedule

For each EEM provide a proposed implementation schedule. Include the following milestones:

a. Design completed;

b. Permits;

c. Submittals (plans and specifications);

d. Equipment / Material acquisition;

e. Mobilization;

f. Installation;

g. Clean up;

h. Startup / Testing;

i. Final inspection and Notice of Substantial Completion;

j. Post installation submittals; and

k. Training.

10. Hazardous Waste Disposal Plan

Provide a descriptive hazardous waste disposal plan for the project.

11. Energy Baseline and Savings Measurement

The Contractor shall establish and document on a site specific basis:

a. An Energy Baseline, including data, methodology, and variables used to compute it.

b. The method it will use to measure energy savings and energy cost savings for each energy type after proposed EEMs have been installed.

c. The method it will use to verify installed EEM compliance with requirements of General Provision Number 16 (Standards of Service and Comfort).

d. The method of determining energy savings and compliance with Standards of Service and Comfort annually throughout the contract term.

e. If a computer program or programs will be used to establish the baseline, modify the baseline, or measure savings, furnish the name of the program, the name, address, and phone number of the program developer or supplier, and descriptive literature. The State may require contractor to furnish a properly licensed copy of the program(s) to the State for its use in administering the contract, at no cost to the State.

12. Description of Maintenance Services and Training

Provide a complete description of the maintenance services Contractor will provide, including schedules. Summarize on Table 11-1. (Note: refer to Article 3.4 and General Provision Numbers 8 and 10.). Describe any training being provided.

13. Pricing and Project Financing

Contractor shall complete Table 12, Parts 1-4. This includes a payment schedule with termination value for each year of the contract.

14. Calculations

a. All calculations must be complete and easy to follow. Spreadsheet formats must include a description of the assumptions and calculations.

b. Units must be indicated and only so many significant digits as the accuracy of the calculation warrants included.

c. Weather data source should be described.

d. Calculation details and supporting documentation shall be placed in an Appendix.

15. Utility Rebates

The contractor shall prepare all applications and process all documents necessitated by rebates offered by the utility company. Any savings generated by rebates shall be credited to the facility's utility bills. If utility rebates will be included as part of the energy study recommendations, it may be necessary for the Contractor to develop a system which reports annual savings by meter and/or account number. Contractors should contact the local utility for further information.

Table 6-1
Energy Efficiency Measure Summary

Company Name: _____

Building or Facility Name: _____

(Aggregates data from summary sheets)

EEM No.	Energy Efficiency Measure (EEM)	Electricity Savings (kWh/yr)	Peak Demand Reduction (kW)	Fuel Savings (include units)	Energy Cost Savings ($/yr)	Estimated Measure Cost ($) from Table 6.2	Estimated Life of Measure (years)	Refer to Page(s)

	TOTALS							

Table 6.2-x
Summary Sheet for EEM Number _____

Building: _____
Name of EEM: _____

1. DESCRIPTION (include quantities, types, sizes, locations, etc.
   a. Existing Conditions: _____
   _____
   _____
   _____
   b. Proposed Conditions with EEM: _____
   _____
   _____
   _____

2. NET FIRST YEAR ENERGY SAVINGS

Fuel Type (electric, gas, oil)	Fuel Units (kWh, Therms, KW, gallons)	First Year Fuel Savings (kWh, Therms, KW, gallons)	Unit Cost for the Fuel	Cost Savings
TOTALS				

3. Cost Estimate Summary of Measure

Materials	$_____
Labor	_____
Contingency	_____
Other(Specify)	_____
Total	$_____

4. Expected useful life: _____years.

5. The measure interacts with EEM or MM No(s) _____

6. The measure impacts EEM or MM No(s) _____

7. Impact on standards of service and comfort.

Table No. 11-1
Maintenance Services
(Contractor-installed, existing facility)

Building (if appropriate): _____

MM No.	EQUIPMENT	SCOPE	FREQUENCY	PARTY RESPONSIBLE (Contractor/Facility)

Table 12-1
Price Formula
(Same as Table 7-1 in the RFP)

For each item enter the proposed price as a lump sum and as a percentage of construction cost.

12-1.1 Energy Study Fee	$_____.___
Estimated Cost to Prepare Energy Study (if different from price above)	$_____.___
12-1.2 Design Services	$_____.___or _____% of Construction Cost
12-1.3 Construction / Project / Management Services	$_____.___or _____% of Construction Cost
12-1.4 General Contractor Overhead and Profit	Overhead _____% of Construction Cost Profit _____% of Construction Cost
12-1.5 Commissioning and Initial Training	$_____.___or _____% of Construction Cost
12-1.6 Interest During Construction	$_____.___ at _____%
12-1.7 Bond Fees	$_____.___or _____% of Construction Cost
12-1.8 Miscellaneous Fees and Permits	$_____.___or _____% of Construction Cost
12-1.9 Term Financing Interest Rate	_____% of Principal (APR)
12-1.10 Monitoring, Verification, and Savings Guarantee	$_____.___or _____% of Energy Savings
12-1.11 Maintenance Services Overhead and Profit	Overhead _____% of Maintenance Cost Profit _____% of Maintenance Cost

Table 12-2
Calculation of Not To Exceed Project Cost
(Same as Table 6-1 RFP)

Not to Exceed (NTE) Installed Measure Cost	_____	From Table 6-1 Energy Study
Energy Study Cost	_____	From Table 12-1.1
Design Services	_____	From Table 12-1.2
Construction / Project Management Services	_____	From Table 12-1.3
General Contractor Overhead and Profit	_____	From Table 12-1.4
Commissioning and Initial Training	_____	From Table 12-1.5
Interest During Construction	_____	From Table 12-1.6
Bond Fees	_____	From Table 12-1.7
Miscellaneous Fees and Permits	_____	From Table 12-1.8 and 12-1.8.10
Project Development Fee	_____	2% of Installed Measure Cost
Other	_____	Specify
Pre-Tax Subtotal	_____	
Hawaii General Excise Tax	_____	
Other Taxes	_____	
Subtotal (NTE) Project	_____	
Less Utility Rebate	_____	
TOTAL (NTE) Project	_____	

Table 12-3
Calculation of Cost Savings
(same as Table 6-2 in the RFP)

Year	Annual Energy Cost Savings{ A}	Maintenance Cost Savings {B}	Other Cost Savings {C}	Gross Savings {D}={A}+{B}+{C}	Total Payments (from Table 12-4) {E}	Net Savings {F}={D}-{E}
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
TOTAL						

Notes: Include utility rebates in "Other Cost Savings" if they will be included as part of the project.

Table 12-4
Payment Schedule and Termination Value
(same as Table 6-3 in the RFP)

		Payment Summary			
Year	**Contract Payments {A}**	**Maintenance Services Fee {B}**	**Operations Monitoring Fee {C}**	**Other (Specify) {D}**	**Total Payments {E}={A}+{B}+{C}**
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
TOTAL					

Notes: Operations Monitoring Fee equals 1.5% of Gross Annual Energy Cost Savings. Maintenance service fee is for other than contractor-installed equipment.

Payment Schedule and Termination Value

Year	Termination Value	Total Payments From Above	Payment Number		Payment Number		Payment Number		Payment Number	
			Date	Amount	Date	Amount	Date	Amount	Date	Amount
1										
2										
3										
4										
5										
6										
7										
8										

9										
10										
TOTAL										

Notes: Enter the date and amount of each payment. Show additional payments on another sheet if necessary. "Termination Value" is the lump sum payment required to buy out of the contract and receive title to all equipment in each year. If this option is not proposed in any year(s), indicate by "NA."

Energy Study Report Acceptance Form

The undersigned hereby on the content and form of the Energy Study Report and such Report shall be a part of this Contract as though full set forth herein.

IN WITNESS WHEREOF, the parties have executed this Form, the _____day of _____, 19___.

University of Hawaii

By

_____

Its _____

Contractor

By

_____

Its _____

Approved and Recommended for Execution

_____

_____

Appendix G

ENABLING LEGISLATION

1695

H.B. NO. H.D.2

HOUSE OF REPRESENTATIVES
NINETEENTH LEGISLATURE, 1997
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO ENERGY PERFORMANCE CONTRACTING FOR PUBLIC FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended to read as follows:

"§36-41 Energy performance contracting for public facilities. (a) Any agency may enter into a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility or facilities. An energy performance contract may include [, but shall not be limited to,] options such as leasing, joint ventures, shared-savings plans, or energy service contracts, or any combination thereof; provided that in due course the agency may receive title to the energy system being financed. Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

(b) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into

an energy performance contract shall do so in accordance with the following provisions:

(1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

(2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;

(3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;

(4) The term of any energy performance contract entered into pursuant to this section shall not exceed [ten] fifteen years;

(5) Any contract entered into shall contain the following annual allocation dependency clause:

"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made"; [and]

(6) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract[.]; and

(7) Any energy performance contract shall provide that total payments shall not exceed total savings.

(c) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed [ten] fifteen years.

(d) For purposes of this section:

"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the

State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.

"Energy performance contract" means an agreement for the provision of energy services and equipment, including but not limited to building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the [energy] cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings [or], energy production[.], avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.

"Facility" means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, the agency.

"Shared-savings plan" means an agreement under which the private sector person or company undertakes to design, install, operate, and maintain improvements to the agency's facility or facilities and the agency agrees to pay a contractually specified amount of measured energy cost savings."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that it may have retroactive effect upon all existing contracts executed by any agency under section 36-41, Hawaii Revised Statutes.

Appendix H

REFERENCES

Appendix H

References

- Green Lights ProjectKalc Version 2.00 User's Manual, U.S. Environmental Protection Agency
- Contractor's Business Handbook, R.S. Means Company, Inc.

Appendix I

MEMORANDUM OF UNDERSTANDING

Appendix I

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM AND THE _____, FOR PERFORMANCE CONTRACTING AT _____ FACILITIES

WHEREAS, the Director of the Department of Business, Economic Development, and Tourism (DBEDT) is the Energy Resources Coordinator under Chapter 196-4, Hawaii Revised Statutes (HRS), and is charged with assisting agencies with implementing energy efficiency measures, and Chapter 36-41 HRS, provides for the use by State agencies of performance contracting as a means to finance and implement energy efficiency projects in State buildings; and

WHEREAS, the State of Hawaii has executed a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency, making Hawaii a Green Lights Partner and committing the State to install energy-efficient lighting systems in 90 percent of State-owned buildings by 1997;p and

WHEREAS, Administrative Directive No. 94-06 puts into effect the *State Energy Management and Efficiency Program* which calls for instituting performance contracting whenever possible to take advantage of government and private partnerships to install energy-efficient equipment and to optimize operations; and

WHEREAS, the *State Energy Management and Efficiency Program* further requests agencies undertaking performance contracting projects to coordinate implementation with DBEDT's Energy, Resources, and Technology Division, and

WHEREAS, it is the intent of the Energy Resources Coordinator to assist State agencies to implement Chapter 36-41, HRS; and

WHEREAS, the _____ requests that DBEDT provide assistance for the purpose of entering into a performance contract with a private company to improve energy efficiency at the _____ facilities statewide;

NOW THEREFORE, DBEDT and the _____ enter into this MOU with the goal of executing a performance contract and cooperating toward that goal by the following:

A. DBEDT will support the _____ by advising and assisting the _____ in the following:

PROJECT DEVELOPMENT ASSISTANCE

Evaluating Performance Contracting Potential

- Assist in briefing the _____ personnel and administrators on performance contracting;
- Respond to questions regarding standardized forms to assess potential for performance contracting found in DBEDT's Performance Contracting Guide;
- Provide and assist in using software tools for evaluation of savings; and
- Review and advise on collection of preliminary data for facilities and on performance contracting potential.

Preparing and Issuing the Request for Proposals

- Customize DBEDT's model RFP for particular the _____ needs;
- Review and advise on the completed RFP before issuance; and
- Provide mailing list of potential contractors.

Evaluating Proposals and Selecting a Contractor

- Participate in pre-proposal meetings;
- Advise regarding responses to Proposers' questions;
- Participate as a member of the evaluation committee;
- Analyze cost and pricing proposals and estimate the net present value of financial benefits to the _____;
- Advise on analyzing financial capability of Proposers;
- Review and advise on measurement plans and baseline methods proposed for the project;
- Participate in discussions and interviews with Proposers;

- Suggest positions to maximize the project benefit to the _____;
- Assist the _____ in customizing the standard contract to meet specific project needs; and
- Assist in selection of proposal and award of contract.

Reviewing Contractor's Detailed Energy Study

- Review and advise on Contractor-submitted baseline and measurement plan; and
- Review and advise on other aspects of Contractor-submitted energy study report.

OPERATIONS MONITORING ASSISTANCE

- Advise on setting up spreadsheet-based tracking systems and their use to monitor energy use and to review contract savings estimates;
- Assist in reviewing the _____'s monitoring of actual energy usage and compare it with the energy study estimates and contractor guarantees;
- Review and advise regarding any contractor-submitted estimates of energy savings or baseline modifications; and
- Assist in mediating the _____-contractor disputes.

B. The _____ shall ensure that all appropriate procurement, purchasing, facilities and administrative personnel are briefed on the project. In addition, the _____, shall carry out the following:

- Designate a representative or project manager with authority to act on behalf of the _____, for all purposes of the project and to act as liaison with DBEDT, other agencies, and performance contractors;
- Collect facility data as needed for performance contracting potential evaluation, RFP preparation, and development of a baseline for measuring energy savings;
- Review and comment on the draft RFP and other documents in a timely manner;
- Designate facility representatives to coordinate on-site activities for site visits, construction, repairs, and maintenance;

- Inform DBEDT of the project progress to assist DBEDT in evaluating its performance contracting program;
- Advertise the RFP and, as the contracting agency, coordinate proposal evaluation including a creditworthiness check of the Proposers, chair the evaluation committee, conduct discussions with the Proposers, determine with the evaluation committee the best and final offer, award the contract;
- Review and approve Contractor's energy study and select projects for approval;
- Review and approve design documents;
- Monitor construction, performance, operations, and maintenance requirements of the Contractor.

The _____ acknowledges that DBEDT will be investing substantial time and funds in providing assistance under this MOU, and in consideration of this investment and the importance of performance contracting to the efficiency of the State, agrees that it will not terminate the efforts to execute a performance contract without the consultation and concurrence of DBEDT.

_____

_____

The _____
By Its

Department of Business,
Economic Development, and Tourism
By Its Director