Guideline for Tenders for Energy Performance Contracts
Foreword

In partnership with the Ministry of the Interior and Kingdom Relations, Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland, RVO.nl) is implementing the Energy Efficiency Directive in relation to the promotion of energy services.

RVO.nl has prepared reports in the past regarding the many opportunities in improving the sustainability of social properties through energy performance contracts. Yet, the market is only slowly developing.

In the case of energy performance contracts, it is highly imperative for the government to act as a launching customer, so as to communicate the policy regarding energy services and to assist the market in its development in this manner. This requires professional project commissioning.

This guideline is intended to make a contribution to the resolution of the bottleneck concerning invitations for tenders for energy performance contracts.

This guideline, reviewed by the consultative group, is new in the Netherlands and very useful for authorities, as well as for market parties that will respond to such invitation.

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**Introduction**

Energy performance contracts are being concluded with increasing frequency in the Netherlands. The energy performance contract functions as a contractual framework for the implementation of a guaranteed energy cost savings. The executing party is sometimes also referred to as an Energy Service Company or ESCo.

Energy performance contracts are often integrated contracts, which can comprise construction work in the building envelope, the supply of systems and energy, financing, management and maintenance services, and energy conservation guarantees. For contracting authorities that must or want to invite tenders for an energy performance contract, the question is how to do this: What are the suitable tender procedure, requirements, and criteria? The complexity of many energy performance contracts causes the standard procedures, requirements, and criteria for invitations to tender to be less suitable and the entire procurement process to require more preparation.

This guideline provides a step-by-step description of the process of achieving an energy performance contract. It specifically deals with the applicable rules governing tenders, suitable procedures, and examples of criteria for selection and award for the invitation to tender (tendering phase) for energy performance contracts.

**1 Procurement Process**

The invitation to tender for an energy performance contract is one of the phases in the overall process of achieving an energy performance contract. It is very important to complete the preparatory phases in order to achieve a proper invitation to tender and ultimately a successful project. The following steps can be identified in the process of realising an energy performance contract:

<table>
<thead>
<tr>
<th>Project identification</th>
<th>Initial analysis</th>
<th>Invitation to tender</th>
<th>Implementation</th>
<th>Operational</th>
</tr>
</thead>
</table>

**Project Identification**

This first step entails the identification of an energy conservation project and the collection of the required information. This step begins with data collection:

1. Information about the building: functional use; floors; Material Take Off List Gross Floor Area (GFA), Net Internal Area (NIA), and Gross Internal Area (GIA); hours of use; year of construction; year of renovation; existing leases and maintenance contracts; and gas and electricity consumption (a more extensive list can be found in Appendix 1);
2. Information about engineering: HVAC systems, lighting, building physics and building management system, prior recommendations;
3. Financing: internal financing or attract (partial) external financing.

Contracting authorities must realise that contractors and (their) financiers require a large quantity of information to be able to submit a qualitatively sound tender and to conclude an energy performance contract. This information must be gathered and made available at the beginning of the tender procedure.

Furthermore, it is important to identify the objectives of the organisation. Does achieving the energy-saving objectives of an organisation require an energy conservation project? This initial step also entails an assessment of the possible types of contracts; traditional or through an energy performance contract. What does selecting an ESCo mean? What are the advantages and disadvantages? What is the scope of the project (number of property objects)?

**Initial analysis**

The technical and economical feasibility of the project is analysed in this phase. The technical conservation measures desired will be identified. It is possible that there is an energy audit available that has already assessed this. Data of the energy consumption over the last three years, at the least, as well as hours of use and comfort settings, are required. This information serves to establish the so-called baseline. The conservation guarantee will be determined later in comparison to this baseline. Existing contracts that relate to maintenance or energy management must also be assessed. Setting up a project organisation, including user, and exploring the market are also part of the preparation.

**Invitation to tender**

The procurement or invitation to tender can be prepared once a project has been identified, a first analysis of its feasibility performed, a project organisation set up, and an (initial) exploration of the market performed. The applicable rules governing tenders, whether an invitation to tender should be issued, and the type of tender procedure to be used should be determined. In addition, it must be decided how the contracts will be specified, which requirements will be imposed on the contractors, and which award criteria will be used when assessing the tenders. Furthermore, the conditions of contract and tender must be prepared. Moreover, the dates and terms must be determined. This concerns the phase in which the energy performance contract is launched. The present guideline deals with that phase.

**Implementation of measures**

The implementation phase concerns the implementation of the energy-saving measures. This also includes setting up a measurement and verification system to measure energy consumption and to make it possible to quantify the energy conservation.

**Operational phase**

The operational phase revolves around contract management: organisation of maintenance and administration, resolving defects, measurement and verification of conservation, guaranteed or not, and the payment of the agreed instalments. The contracts for this phase are crucial and determine in part the eligibility for financing.

“For the invitation to tender, determine how the energy performances should be financed. An energy performance contract with external financing offers more powerful incentives, while imposing at the same time more stringent requirements on the preparation of the invitation to tender. No pain, no gain.” - Caspar Boendermaker, BNG Advies

1 Source: Transparence Energy Performance Contracting Guideline
2 Tendering phase

2.1 Rules governing tenders

In principle, the provisions of the Dutch Public Procurement Act 2012 (Aanbestedingwet 2012) govern the commissioning by a Dutch government institution or body governed by public law of the performance of energy conservation services. The Public Procurement Act does not apply to purely private clients. Even when an energy performance contract does not fall within the scope of the Public Procurement Act, it is still subject to the principles arising from European law.

If the contracting authority has prepared and published its own tendering policy, then that contracting authority must also take into account the obligations arising from that tendering policy, in addition to the rules and principles governing tenders described here.

Finally, regarding the regulatory framework, it should be noted that three new European tender directives have been published in March 2014. The national legislators have until 18 April 2016 to transpose these directives into national measures. This guideline does not yet take into account these directives, as it is not yet clear how the Netherlands will transpose them into national measures.

2.2 Obligation to put out to tender

The Public Procurement Act imposes an obligation to organise a European invitation to tender if there is (i) a department inviting tenders, (ii) which awards a public contract (iii) that exceeds the European threshold values and (iv) that is not subject to an exception.

2.2.1 Qualification of department inviting tenders

Regarding the application of the rules governing tenders, a distinction is made between the ‘classic’ departments inviting tenders and the special-sector companies.

Special-sector companies are subject to a special regime. The differences that are relevant here are higher threshold values and the possibility for special-sector companies to opt by default for a negotiation procedure with prior notice (refer to 2.3) in addition to the open and private procedure. Since most cases discussed in this guideline fall within the regular regime of Part 2 (department inviting tenders and public procurement) of the Public Procurement Act, the regular regime will be used as the guiding principle in this guideline. Since both regimes have the same principle in this guideline. Since both regimes have the same

2.2.2 Qualification of department inviting tenders

An energy performance contract with an ESCo can assume many forms. It can contain: (i) just the implementation of energy management/monitoring (ESCO light), (ii) a single specific measure, e.g. the delivery of LED lighting (product ESCO), (iii) more radical energy-saving measures, such as the design and delivery of climate control systems (system ESCO), (iv) more comprehensive measures in the envelope of a building with construction work, renovation, and the delivery of systems (building ESCO) or of multiple things in an area (area ESCO). The contract can also entail the financing of work and systems, e.g. through a loan, rent or lease, as well as administration and maintenance. Since the measures to be implemented can be very diverse (solar panels, insulation, wind, biomass, management systems, and lighting, for instance), this results in a wide range of possible services, supplies, and works that can make up an energy performance contract.

“Cofely supports frameworks like this, because it sets standards to Energy Performance Contracting. The Guide offers handles to procurement, which includes energy savings and energy performance. Cofely emphasises to think and act integrated.” – Guido Frenken, Cofely

For the application of the European rules governing tenders, it is important to make a distinction between public works contracts, public supply contracts, and public service contracts.

• A “public works contract” pertains to (the design and) the execution of structural or civil-engineering works destined as such to fulfil an economic or technical function.
• A “public supply contract” pertains to the purchase, leasing, rent or hire-purchase, with or without purchase option, of products, potentially including the additional affixing and/or installation of that supply.
• A “public service contract” pertains to the performance of services, in which any potential products to be delivered are lower in value than those services and in which potential work to be performed is secondary in nature.

As indicated above, energy performance contracts are often integrated contracts, which can comprise construction work in the building envelope, the supply of systems and energy, financing, management and maintenance services, and energy conservation guarantees. As a result, energy performance contracts are in most cases mixed agreements, consisting of a combination of public works contracts, public supply contracts and/or public service contracts, and may even contain an concession element.1

In the case of an energy performance contract that entails works as well as supplies and/or services, the contract’s main subject must be used to determine whether it concerns a public works contract, a public supply contract or a public service contract. The main subject of the contract must be determined on the basis of the essential obligations that are typical of the concerned contract. The value of the various constituent parts of the contract is merely a factor in the determination of the main subject. When the services and/or supplies are secondary to the works, it concerns a public works contract and vice versa.

The value of the supplies and/or services is decisive if the energy performance contract pertains solely to supplies and services. When the value of the services exceeds that of the supplies, it concerns a public service contract and vice versa. For that matter, this is not a factor in the determination of whether the threshold value has been exceeded, as supplies and services have the same threshold value (refer to 2.3).

What can be important is whether an energy performance contract qualifies as a public works contract, public supply contract or public service contract, as the determination of the presence of a European obligation to put out to tender uses different threshold values for the various types of public contracts.

2.2.3 Threshold values and value estimate

The type of contract and the type of department inviting tenders determines the European threshold value to be applied. Once the contract’s value has been determined, it must be checked with the applicable threshold value.

The following thresholds apply for the period 2014-2015:

<table>
<thead>
<tr>
<th>Sector</th>
<th>Works</th>
<th>Supply</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special sectors</td>
<td>€ 5,186,000</td>
<td>€ 414,000</td>
<td>€ 414,000</td>
</tr>
<tr>
<td>Central government</td>
<td>€ 5,186,000</td>
<td>€ 134,000</td>
<td>€ 134,000</td>
</tr>
<tr>
<td>Local and regional government</td>
<td>€ 5,186,000</td>
<td>€ 207,000</td>
<td>€ 207,000</td>
</tr>
</tbody>
</table>

2.3 Types of tender procedures

Contracts of departments inviting tenders of which the estimated value exceeds the European threshold values must in principle be put out to tender in accordance with the Public Procurement Act. The open and private procedures are standard procedures that can in that case be used for any contract by the department inviting tenders. The competitive dialogue and the negotiation procedures with and without prior notice are exceptional procedures that can only be used in special circumstances and for contracts with a value below the threshold value. The competitive dialogue offers the most advantages in the case of more complex energy performance contracts. It is therefore recommended by the consultative group of this guideline. The tender procedures to be selected are being expanded in the new tender directives.

The Dutch Public Procurement Act provides that the department inviting tenders must select the type of tender procedure and the enterprises to be admitted on the basis of objective criteria. The reasons for this selection must be given in writing at the request of an enterprise.

2.3.1 Standard procedures: open procedure and private procedure

Open procedure

The open procedure is a standard procedure that can always be used. This procedure has a single round, in which all interested ESCOs submit a tender. The disadvantage of this procedure is that everyone can submit a tender, which can raise the cost of the procedure and the time consumption for tenderers and

1 The Dutch Public Procurement Act constitutes the implementation of two EU tender directives (2004/17/EC and 2004/18/EC).
2 Departments inviting tenders include: the government (the state, a province, a municipality, a water board) and bodies governed by public law.
3 A special-sector company is a department inviting tenders, a public enterprise or an enterprise or institution to which the department inviting tenders has granted a special or exclusive right, in so far as it performs an activity as referred to in Articles 5 to 56 inclusive of the Public Procurement Act (gas and heat, electricity, transport or the operation of airports and seaports, drinking water or postal services).
departments inviting tenders. In the case of energy performance contracts, the open procedure can namely be suitable for less complex forms, such as an ESCo that solely focuses on the implementation of energy management/monitoring (ESCo light) or on a single specific measure, e.g. the supply of LED lighting (product ESCo). One of the other procedures is probably more suitable for more complex forms, in which e.g. the technical conservation measure to be implemented has not yet been selected.

**Private procedure**

The private procedure is the standard procedure in which candidates and tenders are assessed in two different rounds. The first round (pre-qualification phase) serves to select those ESCos that will be invited to submit a tender. The tenders of the selected candidates are then assessed in the second round (award phase). The private procedure is more suitable than the open procedure as energy performance contracts are often more complex contracts and require more extensive tenders. However, neither the open nor the private procedure provide ESCos with much leeway for innovative ideas. The two standard procedures are probably not the most suitable tender procedures in situations in which multiple energy-saving solutions are possible and in which one or more measures have not yet been selected.

### 2.3.2 Briefed procedures: competitive dialogue and negotiation procedure

**Competitive dialogue**

The competitive dialogue can be used by departments inviting tenders for exceptionally complex contracts. A public contract is exceptionally complex when the department inviting tender is objectively incapable of determining the technical resources or of specifying the legal or financial terms of a project. The competitive dialogue is the most suitable procedure in situations in which a department wants to put out to tender an energy performance contract for various drastic energy-saving measures, without being able to indicate in advance which solutions can resolve this or without being able to assess which technical and/or financial/legal solutions the market can provide. When selecting the competitive dialogue, the department inviting tenders conducts a dialogue with the selected candidates for the purpose of determining the resources/solutions that are most suitable for fulfilling the needs of the department inviting tenders as well as possible. The dialogue can cover all aspects of the concerned public contract. A department inviting tenders will continue the dialogue until it has selected, after comparison if necessary, the solutions that can fulfill its needs. After the dialogue, the participants are asked to submit a final tender for the selected solution(s).

The steps of the competitive dialogue are listed below as an example.

1. **Preparation**
2. **Selection**
3. **Dialogue**
4. **Submission of tenders**
5. **Award and Contract close**
6. **Financial Close**
7. **Realization**
8. **Operation and Maintenance**

#### Negotiation procedure

The negotiation procedure is a procedure in which the department inviting tenders consults with the enterprises in which it selects and in which it determines the terms of the contract through negotiations with one or more of those enterprises. The special circumstances in which the negotiation procedure can be applied are interpreted very restrictively in the case law. The department inviting tenders that invokes one of those special circumstances must prove the existence of those circumstances. The cases in which the use of the negotiation procedure is justified can be divided into categories: those in which a prior notice of the contract must be published and those in which no prior notice must be published. The situations in which the negotiation procedure can be used without prior notice do not provide justifications specific to energy performance contracts.

Two of the situations in which the negotiation procedure with prior notice may be used, may be relevant in special circumstances to putting energy performance contracts out to tender:

- When the nature and uncertain circumstances make it impossible to determine the total price in advance;
- When it concerns a public financial services contract or a public intellectual services contract for which the specifications for that public contract cannot be determined sufficiently accurately due to the nature of the services to be performed.

With respect to the situation in which the total price can be determined in advance, the European Commission notes in its Green Paper on Public-Private Partnership (PPP) that the derogation applies exclusively to exceptional situations in which there is prior uncertainty about the nature or the scope of the work to be performed, but not situations in which the uncertainties are attributable to other causes, such as when it is difficult to determine the price in advance due to the complexity of the financial-legal structure. In situations in which the total price of energy performance contracts cannot be determined exactly in advance, the cause will often not reside (mainly) in the nature or scope of the work to be performed. It is therefore recommended to act with rectitude when using the negotiation procedure to put energy performance contracts out to tender.

The derogation for financial services (including banking services) can be important when a financial service provider grants financing for an energy performance contract (e.g. bank financing for a system). When the negotiation procedure with prior notice has been selected and justified, the department inviting tenders will negotiate the tenders submitted with the tenderers, for the purpose of adapting those tenders to the imposed requirements in order to find the best tender to award the contract to. This also reveals the practical difference between the competitive dialogue and the negotiation procedure, namely the moment of consultation and negotiation. In the negotiation procedure, the consultation occurs once the tenders have been submitted, while the consultation for the competitive dialogue takes place prior to the submission of the final tender.

### 2.4 Criteria for the selection of enterprises

#### 2.4.1 Distinction

The award of a contract within the context of the invitation to tender is divided into (a) the selection of candidates with the required capacities by means of selection criteria, and (b) the selection of an tender on the basis of award criteria. Selection criteria pertain to the enterprise that registers or submits a tender.

Grounds of exclusion are used to check whether the candidate is subject to personal circumstances that preclude admission to the procedure. For example, enterprises that are in involuntary liquidation or that have obtained a moratorium on payments, that did not pay their taxes or social security contributions, that have committed serious professional errors or that have committed an offence. The Public Procurement Act contains a limited list of grounds for exclusion.

Suitability requirements indicate the minimum level of the competences the tenderer must possess to qualify for being awarded the contract. The suitability requirements can be requirements that pertain to the economic and financial strength and the technical and professional competence.

Selection criteria are subsequently used in a pre-selection procedure to restrict the number of participants (shortlist) that will be invited to submit a tender.

#### 2.4.2 Grounds for exclusion

The Public Procurement Act also provides for two types of grounds for exclusion above the European tender thresholds, namely mandatory and optional grounds for exclusion. Imposing grounds for exclusion is optional under the European tender thresholds. It is not always necessary to unnecessarily impose (all) grounds for exclusion for each contract. For each contract, it must be assessed in advance which (optional) grounds for exclusion are relevant.

In the case of an invitation to tender for energy performance contracts, the grounds for exclusion that are relevant are namely those that pertain to enterprises that have repeatedly violated environmental laws and regulations and that have been irrevocably sentenced for those violations, or that can be considered to have committed a serious error in the performance of their profession, as referred to in Article 2.87, paragraph 1 (b) and (c), respectively, of the Public Procurement Act.

#### 2.4.3 Requirements with regard to financial and economic strength

The requirements with regard to financial and economic strength pertain to the strength of the candidate or tenderer and to potential third parties whose strength that candidate or tenderer can invoke. Giving substance to these requirements demands a tailor-made approach and depends on the nature, scope, and value of the energy performance contract.

The Public Procurement Act (Article 2.95) provides four pieces of evidence with which the department inviting tenders can check these requirements, namely the banker’s opinion, occupational...
Of the energy performance contract. The requirements concerning technical and professional competence pertain to the required competence of the enterprise for the fulfilment of the energy performance contract. The Public Procurement Act contains a limitative list of the pieces of evidence concerning turnover. This is not an exhaustive list. According to the law, the guiding principle is that there will be no turnover requirement, unless the department inviting tenders substantiates its necessity in the tender documents. Financial ratios can be imposed, but this should be done carefully. Due to the diversity in accounting methods and differences between industries, it is not unusual for the mutual comparability of those ratios to be problematic. Potential ratios must therefore be defined clearly in the tender documents.

The candidate is insured against business risks and has taken out a corporate liability insurance policy at the least.

Box 2: Examples of financial and economic strength requirements

2.4.4 Requirements with regard to technical and professional competence

The requirements concerning technical and professional competence pertain to the required competence of the enterprise for the fulfilment of the energy performance contract. The Public Procurement Act contains a limitative list of the pieces of evidence requested to prove this competence. When imposing these requirements, it is important to find wording that fits in with the core competencies that are relevant to the fulfilment of the energy performance contract. For the verification of the technical and professional competence, the Guide on Proportionality in the Public Procurement Act prescribes the determination of core competencies that correspond to the desired experience in essential aspects of the contract. Giving substance to this determination of core competencies that correspond to the desired experience is essential.

The department inviting tenders must also accept other pieces of evidence if those pieces demonstrate that equivalent measures of environmental management have been fulfilled. This means that the department inviting tenders cannot demand that enterprises have an EMAS or ISO registration or that they (fully) fulfil the requirements for registration. A few examples of certification requirements that can be imposed in invitations to tender for energy performance contracts have been included below.

Note: Depending on the nature, scope, and value of the energy performance contract to be put out to tender, it must be determined whether and, if yes, which (combination of) model requirements (with related preconditions) are (is) applicable in a specific invitation to tender. The simultaneous use of all or multiple model requirements can be disproportional with an undesirable consequence that none or fewer of the enterprises can fulfil them.

From the moment the candidate submits its registration and throughout the entire fulfilment period, the candidate must possess:

1. A valid certificate of an environmental management system in conformity with ISO 14001 or an equivalent.
2. A valid certificate of a safety management system in conformity with the Safety Checklist Contractors (Safety, Health, and Environment (SHE**) or an equivalent certified safety management system applicable to the mentioned works;

This certificate must be valid on the date of registration/tender and during the entire tender procedure and the fulfilment of the contract, or be demonstrably renewable. The certificates (or a potential statement of equivalence) must have been issued by one of the institutions recognised by the Accreditation Board.

Box 3: Examples of certification requirements

Examples of requirements regarding experience:

A few examples of requirements regarding experience that can be imposed in invitations to tender for energy performance contracts have been included below.

Additional or other requirements can be imposed on experience when an energy performance contract has been selected in which other competencies are being requested.

Box 4: Examples of requirements regarding experience

A. Experience in the maintenance and repair of buildings and systems, in which the work performed pertains at the least to:

- Providing for the management;
- Regular maintenance (i.e. remedial, preventive and corrective maintenance);
- Daily maintenance;
- Rectification of failures in structural parts and systems.

The reference project for this core competency must fulfil the following preconditions:

- The management and maintenance were performed for at least (two) years within the five-year period preceding the final registration date.
- The work performed was executed by the candidate itself or under its responsibility.
- It concerns a [utility] building;
- The gross floor area amounts (in total) to a minimum of [×] 000 m2.

B. Experience in monitoring energy performance and maintenance, in which the work performed pertains at the least to:

- The installation and management of a digital system used to measure, record, and report the energy performance of a building on the basis of a generic interchange format.
- Monitoring on at least two of the following energy flows: gas, electricity, and heat (and potentially water).

The reference project for this core competency must fulfil the following preconditions:

- The monitoring was performed for at least (one) year within the (five)-year period preceding the final registration date.
- The management and maintenance were performed for at least (two) years within the five-year period preceding the final registration date.
- The work performed was executed by the candidate itself or under its responsibility.
- It concerns a [utility] building;
- The gross floor area amounts (in total) to a minimum of [×] 000 m2.

- Based on the specific contract, it must be determined which of the activities mentioned are relevant.
- In principle, a contract will concern either management and maintenance or monitoring, so that the model experience requirement 4A or 4B can be selected in function of the situation.
2.4.5 Criteria for further selection
If several suitable companies remain after verifying the registrations
on their completeness, legal validity, grounds for exclusion, and
suitability requirements, then the department inviting tenders can
opt for restricting the number of candidates admitted to the next
phase by means of (additional) selection criteria. The
One potential method of restricting that number is to create a
ranking of the suitable candidates on the basis of the degree in
which the reference projects supplied fulfil the requested core
competencies and/or the number of competencies in a single
reference/project. In addition, a further assessment can be made of
the extent to which the core competencies pertain to e.g. the type of
building to which the contract pertains or the specific background
of the contracting authority. For example: ‘experience in energy
conservation for office buildings/sports-centres/other’, or ‘energy
conservation for buildings with a public function’.

2.5 Award criteria for the assessment of tenders
The Public Procurement Act prescribes that a public contract must
in principle be awarded on the basis of the criterion ‘economically
most advantageous tender’. If the department inviting tenders
nevertheless opts for awarding the contract on the basis of
preferential award criteria, two types of additional award criteria can be distinguished:
quantitative and qualitative criteria. The application of both types
of criteria will be preferred in most invitations to tender for energy
performance contracts. Examples of both types have been included
below.

Examples of award criteria:
Based on the award criterion ‘economically most advantageous
tender’, two types of additional award criteria can be distinguished:
quantitative and qualitative criteria. The application of both types
of criteria will be preferred in most invitations to tender for energy
performance contracts. Examples of both types have been included
below.

Not Which (combination of) award criteria are relevant and
suitable must be determined in function of the specific contract.

2.5.1 Price component(s):
1. Net present value of the energy cost savings in favour of the
contracting authority, consisting of:
   annually guaranteed energy cost savings during the term
   residual value after the conclusion of the project (on the
due date of the annual fee for the contractor (ESCo)
Potentially supplementary: Energy consumption-related
component
2. Lowest guaranteed energy consumption and the percentage
of the use of renewable energy sources that generate
capacity at the site of the building itself (e.g. solar panels
and cells, biomass boilers, and wind turbines) and/or
high-efficiency cogeneration. Energy consumption lower
than required in the specifications/schedule of
requirements.

2.5.2 Qualitative criteria:
1. Action plan (present with explanation):
   • Outline vision on the energy plan
   • Vision on the relationship with actors and players in
   the area (stakeholder analysis): involving/encouraging
   users, among others
   • Blueprint for organisational form
   • Future role of the contracting authority and the
   fulfilling parties.
   • Outline business case
   • Earnings model: costs, revenues/returns, investments,
   eligibility for financing
   • Significance of the business case for users
   • Significance of the business case for contracting
   authority
   • Division of tasks and risks
   • Vision on migration
   • Description of current situation and developments
   • Description of future situation
   • Strategy for dealing with anticipated and unanticipated
developments
   • Opportunities and threats
   • Description of strengths and weaknesses in the
   business case in comparison to opportunities/threats
   • Compatibility of proposed measures with existing
   structures
   • Maintenance and failure management plan
   • Strength of the financing concept: access to and ability
   to obtain financing for the implementation of the project.
   • Quality of the package of measures:
   • Quality of life span of the proposed installations and
technical systems,
   • Future availability of spare parts,
   • the compatibility with existing systems, and
   • the quality of the guarantees offered for equipment/
systems
   • Qualifications and experience of the project team
   • Quality of monitoring/measuring/control systems
   • (Quality of the training for the personnel of the building
   manager and/or building users
   • Duration of the agreement
   • Use of an environmental management system in the
   fulfillment of a contract.

2.5.3 Combination of quantitative and qualitative
criteria
1. The calculated net present value of the energy cost savings is a
   technique for assessing the investment for the contracting
   authority. The savings in favour of the contracting authority are
   calculated by decreasing the annually guaranteed energy cost
   savings for the duration of the contract by the annual fee to the
   contractor and to increase it by the residual value after the expiry
   of the contract. The calculation of the net present value has been
   presented diagrammatically in Appendix 2.

2.6 Determining the conditions of contract and tender
Furthermore, a selection will have to be made of substantive
requirements (specifications) to be attached to the contract. The
(might) requirements that the contract must fulfill can be
specified technically or functionally. Technical specifications provide an exact description of the
work, the service or product to be supplied (dimensions, performance, characteristics, etc.). Functional specifications provide a description of the intended results, the required performance or the envisioned
purpose of the work, the service or product to be provided. In that
case, the tenderers must describe how the results will be achieved
with their tender.

In the case of energy performance contracts, it makes sense to
provide functional specifications as it is often the purpose to make
use of the knowledge, experience, and inventiveness of market
parties with regard to energy-saving measures.
3 Execution of the tender procedure

Once the preparations have been concluded and the tender documents with terms, requirements, and criteria are ready, the selected tender procedure can be initiated. The steps to follow in that regard are:

1. Notice
2. Possibly prior registration
3. Possibly prior selection
4. Tender
5. Award (decision)
6. Award and conclusion of the contract

Completing a tender procedure for an energy performance contract is in fact not that different from completing a tender procedure for another type of contract. More information about the execution and completion of tender procedures can therefore be found in the procurement law manual and e.g. the description on the website of PIANOo.

4 Award of the contract

The intended outcome of the invitation to tender is the conclusion of an energy performance contract. A draft contract will have to be prepared prior to the invitation to tender. This draft contract must be added to the tender documents.

In essence, the following subjects constitute the essential components of an energy performance contract:

- the identification of the contractor partners;
- the determination of the energy-saving measures and services to be supplied by the contractor;
- the conservation guarantee provided by the contractor;
- remuneration arrangement on the basis of the conservation guarantee;
- term of the contract;
- performance conditions;
- ownership structure.

The RVO Buildings Management and Maintenance Performance Contracts Guideline (Leidraad Prestatiecontracten Beheer en Onderhoud Gebouwen van RVO) provides support for the preparation of performance contracts for the technical management and maintenance of buildings. The guideline offers tools for making agreements with the supplier on customer satisfaction, sustainable management, optimal costs, and quality and innovation. An ideal balance is strived for by means of satisfaction, sustainable management, optimal costs, and quality tools for making agreements with the supplier on customer preparation of performance contracts for the technical management and maintenance of buildings.

“In addition, on its website, RVO has made available a model performance contract for the supply of heat and/or cooling by an ESCo, including a manual, which can serve as an example (references/downloads have been included in the bibliography). There are also various usable foreign model performance contracts from Belgium, Germany, and Great Britain, among other countries.

4 Appendices

Appendix 1: Indicative list of information required for start of tender

Building:
1. Functional use
2. Material Take Off List GPA, NIA, and OIA
3. Number of floors
4. Opening hours
5. Systems hours of use
6. Building height
7. Year of construction
8. Year of renovation

Tenants
9. Building layout Multi-tenant or single-tenant? Which tenants are occupying which floors and what square metreage?
10. What is the current state of the floors, their condition, and what kind of maintenance is needed?
11. Are new tenants expected?
12. Are the current tenants already tenants of the building in the past three years and did they lease the same floor at that time?
13. What is the current occupancy rate of the building, what has this rate been in the past three years, and which rate is anticipated in the next years?
14. How many employees are currently working on the premises?

Energy
15. The annual consumption of electricity and gas (and municipal heating, if present) of the past three years, including annual invoices that specify the monthly consumption.
16. The most recent energy invoices for electricity and gas (and municipal heating, if present): including grid operation and meter rental, in addition to supply.

Technology
17. HVAC systems:
   - Inventory of the installed HVAC systems, including:
     i. Capacity;
     ii. Clock times;
     iii. Age of the systems;
     iv. Heating curves.
   - Main diagram of HVAC systems
18. Lighting:
   - Current operating hours:
   - Drawings of the current lighting plan combined with a list of the types of fittings/lighting sources used;
   - Age of the lighting.
19. Building physics:
   - Façade, roof, and floor insulation data: type and insulation values
   - Glass data: type and insulation values
   - Floor plans and appearance of the object

Further information can be found in the Procurement Law Manual (BMM) and Energieketen (ENK).

20. Building management system (BMS):
   - The brand, type, and age of (the parts of) the current BMS.
   - Login information (observer login).

21. Organisation of the current energy management: which systems are currently used for that purpose?

Maintenance
22. The current annual cost for corrective and preventive maintenance of the mechanical and electrical systems, as well as for structural maintenance.
23. Which replacement investments are planned for the next years (do you have a multi-year maintenance plan)?
24. Is the replacement of the climate control systems (AHUs, cooling machines, boilers, etc.) the responsibility of the tenant or the owner?
25. Is the replacement of the lighting sources the responsibility of the tenant or the owner?
26. Is the replacement of the lighting fixtures the responsibility of the tenant or the owner?

Prior recommendations
27. Prior advisory reports issued for this building.
28. Current energy performance label including substantiation.

Contract
29. Is there an existing loan agreement or loan agreements attached to the real property that constitutes or constitute an obstacle to the project?
30. Is it possible to provide a corporate guarantee or a bank guarantee?
Appendix 2: Chart of net present value calculation

Maximal net-cost saving = actualised value of:
+ Annual guaranteed energy cost savings
  - Annual remuneration ESCO (investment, maintenance,...)
+ Increased elements value at end of project

Before EPC-project \( \rightarrow \) EPC-project \( \rightarrow \rightarrow \) After EPC-project

Appendix 3: 10 tips for contracting authorities in the case of performance contracts

1. Clear instructions
   - Devote time to the specification of requirements to be submitted to the fulfilling party. Consider which performance indicators are important. Be clear and act as an intelligent client. Accept that you cannot do this 100% comprehensively and perfectly.

2. Confidence
   - Devise a relationship based on trust and strive for a win-win situation. Agree on what to do if trust is lost. Talk to each other about expertise.

3. Contract manager
   - Appoint a contract manager who is knowledgeable about buildings, energy, and procurement and who can deliver results.

4. Available data
   - Make a baseline measurement.
   - Set out what will be measured and how.
   - Make as much data available as possible about the building and its energy consumption history.

5. Open questions
   - Ask open questions.
   - Ask the fulfilling party to propose performance indicators and innovations.

6. Flexible
   - Ensure a flexible contract that can accommodate changing circumstances, such as changing hours of use and occupancy rate.

7. Communication
   - Create a clear and open communication structure and include it in the contract who communicates with whom, in what manner, and about which subjects.

8. Employees
   - Take account of employees’ experiences in the specification. Listen to employees who will have to deal with the consequences of environmental changes.

9. Expectations
   - Manage end users’ expectations of the environment and service to be provided under the contract.

10. Manual
    - Ask the fulfilling party to prepare a building use manual for end users and building managers.

For the Energy Performance Contracts menu, go to www.platformduurzamehuisvesting.nl/prestatiecontract
Literature, sources, and downloads

- Experience with energy performance contracts for offices (NESK) (Ervaringen met energieprestatiecontracten voor kantoren (NESK))
- Experience with energy performance contracts for schools (NESK) (Ervaringen met energieprestatiecontracten voor scholen (NESK))
- Model performance contract 2.0 (Modelprestatiecontract 2.0)
  (http://www.rvo.nl/sites/default/files/Modelprestatiecontract%202.0.pdf)
- Model performance contract 2.0 - Manual (Modelprestatiecontract 2.0 - Handleiding)
  (http://www.rvo.nl/sites/default/files/Modelprestatiecontract%202.0%20handleiding.pdf)
- Model performance contract 2.0 - House Style (Modelprestatiecontract 2.0 - Huisstijl)
  (http://www.rvo.nl/sites/default/files/Modelprestatiecontract%202.0%20huisstijl.pdf)
- RGG model maintenance and energy performance contract (19 April 2012) (Model onderhoud- en energieprestatiecontract RGG)
  (http://www.rvo.nl/sites/default/files/Model%20onderhoud%20en%20energieprestatiecontract%20RGG%2019april2012.doc)
  (http://www.transparense.eu/eu/epc-code-of-conduct/epc-code-of-conduct)
- Retscreen – free software tool for energy efficiency projects
  (http://www.retscreen.net/en/home.php)
- Performance contracts menu (Menukaart prestatiecontracten)
  (http://www.platformduurzamehuisvesting.nl/prestatiecontract)
- Applying EMAS: 39 tips (EMVT toepassen: 39 tips)
Het ESCoNetwerk biedt partijen concrete ondersteuning bij het realiseren van energietransities door middel van het actief uitwisselen van kennis en beschikbaar stellen van praktische tools.

Boot Advocaten is een gerenommeerd niche kantoor actief in de sectoren Bouw- en Vastgoed, Zorg en Duurzame Energie.

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