

CONTRACTS

AND

NEGOTIATIONS

CONTRACTS

- ➔ Types of Contracts
- ➔ What they should cover
- ➔ How they vary from “traditional” contracts

CONTRACTS

Types of Contracts

 Planning Agreements

 Financial Agreements

 Energy Services Agreements

CONTRACTS



PLANNING AGREEMENT

Sets the terms and conditions of payment

Establishes objectives to be met if owner is to pay for audit

Provides that the cost of the audit will be rolled into the project if the program goes forward.

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PLANNING AGREEMENTS

Objectives ... primarily to protect the owner

Pricing conditions ... primarily to protect the ESCO

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FINANCIAL AGREEMENT

Will vary with financial structure
Must meet financier's needs
May or may not be appended to ESA

Options include:

Loans

Leases

Self-funding

Issues include:

Terms

Financing charges

Interest rates

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ENERGY SERVICES AGREEMENT

Essential Elements

- Equipment selection and installation
- Equipment ownership
- Malfunctions and emergencies
- Defaults and remedies
- Conditions beyond the control of the parties

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ENERGY SERVICES AGREEMENT

Essential Elements

- Indemnification
- Savings formulas; calculation procedures; baseyear/baseline
- Measurement and verification protocol
- Comfort, safety and health standards
- Compensation and guarantees

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ENERGY SERVICES AGREEMENT

Essential Elements

- Representations and warranties
- Compliance with laws, standards, codes
- Permits, taxes, licensing
- Energy usage records and data
- Inclusion of other documents, schedules
by reference

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Energy Service Agreements

CONSTRUCTION, EQUIPMENT

Performance & payment bonds, standard practice, insurance, access, warranties, etc.
selection, ownership, maintenance

MANAGEMENT

Payment procedures, health & safety, assignability, intrusion, liabilities, default & remedies, etc.
overrides, comfort parameters, ownership, maintenance

CONTRACT MAINTENANCE

Legalese

Applicable law, severability, notices, termination conditions, procedures, effect of waiver, etc.

PERFORMANCE CONTRACT SPECIFIC

Formula (baseyear, baseline, variables, demand); buyout, termination & default values; etc.
comfort, overrides, selection, installation, maintenance, ownership

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ENERGY SERVICES AGREEMENT

The Need for Schedules



Used in larger, multiple measure projects.



Executed for each set of buildings (often called phases)



Signed off after measures are known

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ENERGY SERVICES AGREEMENT

Schedule A. Buildings, Details and Existing Equipment Inventory
Developed jointly. Signed off by both parties

Schedule B. Measure Dependent Information

Actual agreed to measures (or referenced/incorporated audit)

Maintenance requirements on each party

M&V can be included here or a separate schedule



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ENERGY SERVICES AGREEMENT

Schedule C. Formulas, Saving Calculation Procedures

Specific baseline adjustment information;

Variables: i.e., weather, occupancy, formulas for adjustment

Re-open clause conditions

Reconciliation procedures

Schedule D. Compensation and Guarantees

How the ESCO will be compensated for specific services to be performed.

The guarantee language germane to specific measures. The extent to which the guarantee will cover compensation.

Customer equity or buy-down provisions might be treated here.

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ENERGY SERVICES AGREEMENT

Schedule E. Baseyear/Baseline Adjustments

Historical consumption data and operating conditions pertinent to measures installed which caused historical consumption. Agreed upon variables to adjust current conditions to baseyear. Reopen clause.

Developed jointly. Signed off by both parties

Schedule F. Customer Requisite Comfort and Safety Standards

Acceptable temperature, humidity, lighting ranges. Air changes per hour. Conditions unique to processes or safety conditions.

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ENERGY SERVICES AGREEMENT

Schedule G. **Permitted Use Access**

Terms of access to Buildings during construction and throughout the project.

Office space and services on large projects.

Schedule H. **ESCO Training Responsibilities**

Scope of training, target groups, frequency, hours and conditions.

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ENERGY SERVICES AGREEMENT

Schedule I. Implementation Schedule, Installation Provisions

A clear implementation schedule with milestones, deadlines, penalties and bonuses, installation details and standards of practice.

Schedule J. Purchase Options, Buy-out Values

CONTRACTS

In developing a contract, it pays to remember that the main reasons for a contract are to:

- Manage the contract
- Identify and assign risks
- Provide appropriate compensations for services and accepted risks.

NEGOTIATIONS

- ➔ Getting prepared
- ➔ Knowing the trade-offs
- ➔ Negotiable/non-negotiable
- ➔ Establishing a partnership foundation

NEGOTIATIONS

With guarantees

NOT NEGOTIABLE

Without guarantees

NEGOTIABLE

NEGOTIATIONS

If you are not familiar with, or comfortable with, negotiating techniques, I recommend to you a book, *Roger Dawson's Secrets of Power negotiating*. The ISBN # is 1-56414-153-5

NEGOTIATIONS

Negotiations in performance contracting must end on a “partnership” note.

“Winning” at the negotiating table can be very costly.

Key issues For the panel

Adapting, negotiating and implementing performance contract in Brazil