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TESTIMONY TO THE NEVADA LEGISLATURE
AB 398

May 7, 2003

Ken Baker

Energy Consultant and Customer Service Representative
Rebuild America

Mr. Chairman and members of the committee, thank you for this opportunity to address this committee today. I am Ken Baker, a private consultant and contracted customer service representative to the U.S. Department of Energy's Rebuild America Program.

Rebuild America provides technical and program support to communities wishing to save dollars through reduction of building energy use.

The Story Behind Performance Contracting

As a result of the 1992 Energy Policy Act federal agencies were given orders to reduce 1985 baseline energy use by 30% by 2003. That original executive order (XO 12902) has been reissued since that time, calling for additional savings but extending the time period for compliance. Recognizing that government agencies did not always have either the in-house expertise and/or dollars to finance energy improvements, the federal government began working with private sector Energy Service Companies as a means of providing a turnkey method of acquiring the needed building energy savings. Performance contracting, as we know it today, was thus formed.

As with the federal government, under an energy service performance contract (ESPC), an energy services company (ESCO) can assist State of Nevada departments (agencies) in procuring financing for the investment of installing energy efficient equipment with no up-front costs to the department. The investment includes identifying a building's energy requirements and then financing, acquiring, and installing the energy-efficient improvements to the facility. The ESCO is generally paid for these improvements at the time that all energy saving measures are installed. A lending institution provides a loan to the department that is repaid over time from a portion of the dollars saved by the agency on its energy and maintenance bills. This means that for the duration of the contract, the agency does not pay any more for utility costs than they would have paid without the ESPC and the new equipment. The agency, and ultimately the taxpayer, is protected since the ESCO must make a yearly reconciliation payment if the energy savings are not as promised. Once the loan is paid off, the department/state continues to realize the energy savings.

Why Use a Performance Contract

A performance contract is a highly useful tool for gathering energy savings through energy conservation measures such as a building retrofit. They are best used when an agency has older or inefficient technologies – such as lighting, and heating and cooling equipment – high energy costs, and no budget for replacement of the energy intensive technologies. (Remember, a performance contract must be paid for out of the existing energy payment cash stream).

A performance contract is also beneficial for replacement of old equipment that requires extensive effort to maintain. By taking care of these "deferred maintenance" backlogs that exist within most agencies, the performance contract can free up building maintenance staff to focus on more critical building issues such as occupant comfort and health and safety.

Why the Low-Bid Process does not work for PC

A performance contract is different than the traditional bidding process. Until they have a completed Financial Grade Operation Audit, an agency cannot know what building retrofit measures will give them the best value. So up front the agency cannot present measures to be bid. Only after the audit and through the audit process will the agency be able to identify the exact measures they wish to implement.

Measures that are installed as the result of the audit and the subsequent performance contract are guaranteed to reduce energy consumption by an amount identified in the audit. Generally, ESCOs will only guarantee measures when their engineers have done the auditing and calculated the savings. Thus, a low bid process does not work under a performance contract. The ESCO negotiates building retrofit pricing and guaranteed savings fees with the agency after the Financial Grade Operational Audit and subsequent selection of measures.

The Performance Contracting Process (Simplified)

Performance contracting legislation would authorize an agency to:

1. Let an RFQ to select a qualified provider.
2. Once selection has been made the ESCO is contracted with to perform the Financial Grade Operational Audit. This audit is a professional engineer audit of the entire facility(s) identified under the contract. It looks at the building envelope (windows, walls, ceilings, etc.), heating and cooling equipment, existing operation schedules, etc. This detailed audit allows the ESCO to list all of the potential energy saving measures in a facility along with an estimate of payback in years.
3. Once the audit is finished and measures are presented the agency selects a "package" of measures that best meet their needs. The combination of measures will have a combined payback of a set number of years that the agency deems acceptable. For example, a lighting system replacement may pay for itself through energy savings in 4 years. A new chiller may have a payback of 15 years. Combined they may have a payback of 10 years. Typically the loan for a project like this would match the timeline of energy savings payback.
4. The agency now enters into a second contract with the ESCO – to install the measures and guarantee the energy savings over the agreed upon time frame.

Closing

I believe performance contracting can be an excellent tool for state agencies to utilize in reducing energy costs and in taking care of deferred maintenance. In order for it to be effective, the performance contract should allowed to contract out over a minimum 10 year period. (The federal government allows performance contracts to contract out over a period of 25 years.)

Thank you for this opportunity to testify.