

# State of Oregon



## Oregon Department of Energy REQUEST FOR STATEMENTS OF QUALIFICATION (RFQ)

### COVER SHEET

### ENERGY SERVICE COMPANY

RFQ #: ODE-09-16  
ORPIN # 330-1006-09

**Date of Issue:** February 20, 2009  
**Request Due Date:** March 27, 2009, 5:00 PM (PT)

**Issuing Office:** Oregon Department of Energy  
Contact Name: Lorena Wise  
Address: 625 Marion St. NE  
City, State, Zip: Salem, OR 97301-3737  
Phone (voice): 503-378-6968  
Phone (fax): 503-373-7806  
E-mail: [lorena.wise@state.or.us](mailto:lorena.wise@state.or.us)

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## SECTION I INTRODUCTION

### 1.01 PURPOSE

In this RFQ, the Department of Energy (“**ODOE**”) is seeking to pre-qualify Energy Service Companies (“**Proposers**” or “**ESCOs**”) capable of providing comprehensive energy and water management services and related capital improvements (“**Services**”) for various state agencies (“**Agencies**” or “**Agency**”) through Energy Savings Performance Contract Projects (“**Projects**”).

The primary intent of this selection process is:

- To increase the number of successful energy savings performance contracts statewide.
- To provide State and local agencies the opportunity to procure Services of qualified ESCOs in a timely and cost-effective way.
- To ensure minimum qualifications of ESCOs to implement successful ESPC Projects.

To conclude the first part of a two-step process, successful Proposers will be invited to sign an Agreement to Agree “**ATA**”, which outlines general terms and conditions between ODOE and the ESCO and will have an initial term of five (5) years. ODOE expects to select a range of 4-10 pre-qualified ESCOs. Pursuant to ORS 276.900 through 276.915 and Division 130 of OAR Chapter 330, when various State Agencies wish to engage the Services of an ESCO, they will issue RFPs only to those pre-qualified ESCOs or they must request approval from ODOE for an exemption from this requirement. Local government agencies such as school districts, counties and cities may also wish to employ pre-qualified ESCOs by using the same limited RFP process. The terms and conditions from the ATA will be incorporated by reference as part of the individual Agency’s Energy Saving Performance Contracts (“**ESPCs**” or “**Contracts**”).

Qualified ESCOs must be able to:

- 1) Provide an investment-grade Technical Energy Audit to identify energy and water conservation opportunities at an Agency facility (“**Facility**”) and prepare the corresponding Project Development Plan;
- 2) Design, construct and install capital improvements that reduce the consumption and related costs of energy and water use at the Facility;
- 3) Measure and verify the operation of the improvements; and
- 4) Guarantee the energy savings at the Facility arising from the ESCO’s Services.

Agencies seek Services that reduce the consumption and related costs of energy and water use in their Facilities. ESCO’s services and capital improvements will be provided through a performance-based ESPC under which contracting Agency:

- Achieves long-term cost savings;
- Achieves guaranteed energy savings and water savings;
- Obtains consistent levels of comfort and functionality; and

- Maximizes ancillary benefits that may accrue as a direct result of such energy-related services and capital improvements, such as environmental protection and the proper disposal of hazardous materials.

Essential services and improvements that will reduce energy and water consumption in a Facility will include, without limitation, an upgrade in capital energy-related equipment; improved building operations; fuel cost savings and improved demand management; and assistance in meeting environmental management responsibilities. ODOE anticipates that the ESCO selected by an Agency for a particular Project will identify feasible energy efficiency measures during the performance of the Phase I Technical Energy Audit and (if authorized by the Agency), the preparation of the Phase I, Part B Project Development Plan.

During the design and construction phases of each Project, the ESCO shall identify issues within their control as designers, specification providers and constructors that involve sustainability. These issues shall be discussed with the Agency and decisions made based on the best “sustainability” practices. “Sustainability” issues will include, but may not be limited to:

- 1) Analyzing alternative materials and building components to determine which is most sustainable;
- 2) Life-cycle cost analyses to help analyze alternatives; and
- 3) Agency documenting the choices considered and the basis for making selections.

**State Energy Efficiency Design:** Beginning during the course of the Project Development Plan in Phase I, Part B and continuing through all design services provided for an Agency Project, the ESCO shall prepare a comprehensive State Energy Efficiency Design (“**SEED**”) analysis of the Project, provide all Agency documentation required for a SEED Award to the Agency for the Project, and provide all other services for the Project that are required under the SEED Program of ODOE, consistent with the requirements of ORS 276.900 through 276.915 and OARs 330-130-0010 through 330-130-0080, that are applicable to the Project. Where applicable, the completed Project shall exceed the state building code requirements for energy efficiency by 20 percent or more and shall be a “model of energy efficiency” as that term is described in the above-referenced administrative rules.

**Solar Energy Technology:** For public buildings, designs must include solar technologies based on at least 1.5 percent of the construction costs (if applicable, per ORS 279C.005 to 279C.670).

## 1.02 BACKGROUND

ODOE will evaluate an ESCO’s Statement of Qualification (“**SOQ**”) regarding specific experience, financial condition, and the ESCO’s general approach to performance contracting. (See other sections of this RFQ for more specific evaluation criteria.) Following selection, ODOE intends to enter into ATA’s with the successful ESCOs, who will then be pre-qualified to perform the Services/work on Agency Projects. **Entering into an Agreement to Agree does not assure selection of an ESCO to provide Services for any State Agency Energy Savings Projects.** The ATA enables State Agencies to choose from qualified ESCOs to contract for ESPCs.

### 1.03 REQUIRED CAPABILITIES

Each Proposer must specifically identify in its SOQ all of the Oregon licensed design professionals who will provide professional design services in connection with Agency Projects. The design professionals may be identified by individual or firm names.

An interested ESCO must demonstrate technical and managerial capability to address a broad range of building energy and water systems, provide a comprehensive set of energy and water services, and capture the value of any directly related ancillary benefits.

- Energy systems include, but are not limited to, HVAC equipment, energy management and control systems, lighting systems, domestic hot water systems, the building envelope and other energy using systems.
- Water systems include, but are not limited to, devices that reduce water consumption and sewage services such as automatic controls, low-flow sink aerators, toilets and landscape irrigation equipment.

**Required energy and water services** include, but are not limited to, the Technical Energy Audit; the creation and development of a Project Development Plan; the design, procurement, installation, modification and commissioning of new or existing energy systems.

**Additional services** include, but are not limited to, training of Agency's staff on routine maintenance and operation of systems as well as training of occupants, and compiling information needed for the contracting Agency to complete its post-project evaluation.

**Measurement and verification services** include appropriate measurement and reporting of performance and of savings achieved from improvements.

Each Proposer must also identify any person or entity that will be providing, directly or indirectly, any Energy Savings Guarantees offered by the Proposer.

## SECTION II GENERAL REQUIREMENTS AND INFORMATION

### 2.01 SCOPE OF THE RFQ

This RFQ contains pertinent information concerning the preparation and submittal of SOQs, an explanation of how all SOQs will be evaluated, and conditions which will be included in any ATA which may be awarded as a result of the RFQ. This procurement is being conducted pursuant to the Department of Justice Rules applicable to ESPCs, OARs 137-049-0600 to 137-049-0690, and the other applicable rules cited therein, including the additional requirements for RFQs in OAR137-049-0645 and RFPs in OAR137-049-0650, and Department of Energy Rules, OARs 330-130-0010 to 330-130-0100.

### 2.02 INITIAL CLOSING DATE FOR SUBMITTALS

Submit copies as required in **Section 5.02**, including all attachments (in MS Word format) of your written SOQ by the due date and time stated in the 2.03 Schedule of Events, by postal mail, messenger or delivery service to:

RFQ# ODE-0916  
Department of Energy  
Single Point of Contact: Lorena Wise  
625 Marion Street N.E.  
Salem, Oregon  
Phone: 503.378.6968  
Fax: 503.373.7806  
E-mail: lorena.wise@state.or.us

**Telephone, facsimile, or electronically transmitted SOQs will not be accepted. SOQs received after the specified time and date will not be given further consideration.**

Proposers submitting SOQs are solely responsible for the means and manner of their delivery, and are encouraged to confirm delivery prior to the deadline.

ODOE may reject any SOQ not in compliance with all prescribed public procurement procedures and requirements, and may cancel this solicitation or reject for good cause any or all SOQs upon a finding by ODOE that it is in the public interest to do so.

This RFQ will remain open until December 31, 2011, for further submittals (as described more particularly below). However, to establish the initial list of qualified ESCOs, proposals must be submitted no later than 5:00 pm PST, March 20, 2009. ODOE reserves the right to cancel this solicitation for good cause and to commence a new solicitation at any time upon a finding by ODOE that it is in the public interest to do so.

## 2.03 SCHEDULE of EVENTS

### A. Initial Solicitation

Solicitation Release	February 20, 2009	
Deadline for Questions/Clarifications	March 13, 2009	10:00 AM
Closing Date and Time for Submittals	March 27, 2009	5:00 PM
Opening of RFQ	March 30, 2009	10:00 AM
Award Notice (approximate)	May 01, 2009	

An **unsuccessful Proposer** may submit a new SOQ no sooner than 180 days after notification of rejection. ESCOs not participating in the initial submittal period may submit SOQs no sooner than 90 days after the initial closing date.

### B. Additional Solicitation Dates

Interested firms and individuals will have an ongoing opportunity to qualify for the work described in this RFQ. This RFQ will remain open until December 31, 2011. Statements of Qualifications will be accepted at any time prior to December 31, 2011, and evaluated on a regular basis. The Department of Energy plans to evaluate Statements of Qualifications and update the list of qualified ESCOs according to the following schedule:

<u>RFQs Received By</u>	<u>Evaluated By</u>	<u>List Updated By</u>
July 2, 2009	July 31, 2009	September 1, 2009
October 2, 2009	October 30, 2009	November 30, 2009

## 2.04 INQUIRIES/SINGLE POINT OF CONTACT (“SPC”)

All questions and contacts with ODOE regarding this RFQ must be addressed either in writing or by phone to the single point of contact listed in Section 2.02 above. Contact with other ODOE staff without prior clearance from the SPC may result in Proposer disqualification.

In the event it becomes necessary to revise any part of this RFQ, addenda will be posted on Oregon Procurement Information Network (ORPIN).

## 2.05 ORPIN

<http://orpin.oregon.gov/open.dll/welcome>

This RFQ, including all Addenda and attachments, is posted on the ORPIN as part of the ODOE Tier 1 solicitation document and will not be mailed to prospective Proposers. ORPIN is Oregon’s #1 resource for viewing Public Agency Opportunities. To participate, simply register, login, and then view or search for opportunities that match your business offerings.

Proposers unfamiliar with the ORPIN System may contact the Department of Administrative Services’ State Procurement Office at DAS/SSD/SPO, 1225 Ferry St. SE - U140, Salem, OR 97301-4285; telephone (503) 378-4642. Proposers without access to the ORPIN System may

contact the SPC designated in **Section 2.02**. If an Exhibit, Attachment or Addenda is used that cannot be viewed or downloaded through the ORPIN System, the solicitation will include instructions on how to obtain these documents. Proposers should consult ORPIN regularly, until the initial due date for SOQs, to assure that they have not missed any Addenda announcements.

PROPOSERS ARE RESPONSIBLE FOR ENSURING THAT THEIR ORPIN REGISTRATION INFORMATION IS CURRENT AND CORRECT. DAS/SSD/SPO and ODOE accept no responsibility for missing or incorrect information contained in the supplier's registration information in ORPIN.

## **2.06 QUESTIONS AND MODIFICATIONS RELATING TO THE RFQ, CONTRACT PROVISION OR SPECIFICATION**

Questions, including requests for explanations of the meaning or interpretations of provisions of the RFQ, shall be submitted in writing, arrive by the date and time specified in Section 1.03, and be addressed of the SPC. Faxes and emails are acceptable. **No telephone questions will be accepted or considered.**

## **2.07 RIGHT TO AWARD OR REJECT STATEMENTS OF QUALIFICATION**

All SOQs will become part of the public record, without obligation to ODOE. ODOE reserves the right to reject any and all SOQs received as a result of this RFQ and, if doing so would be in the public interest, to cancel this solicitation. ODOE reserves the right to consider an SOQ or SOQs in whole or in part and to determine the responsiveness of an SOQ by reference to the SOQ taken as a whole. ESCOs will be held to the terms submitted in their SOQs. Failure to meet these obligations will result in cancellation of acceptance of any apparently responsive SOQ.

## **2.08 SOLICITATION PROTEST**

Protests of the requirements, evaluation criteria, or contractual provisions in the RFQ, or requests for changes or clarifications of the RFQ shall be in writing and delivered by the time stated in the Schedule of Events to the SPC. Protests of, and requests for changes to, technical or contractual requirements, specifications or provisions shall include the reason for the protest and any proposed changes to the requirements. No such protests or requests shall be considered if received after the deadline. No oral, telegraphic, telephone protests or requests will be accepted.

## **2.09 SELECTION PROTESTS**

Any Proposer who claims to have been adversely affected or aggrieved by the selection of a competing Proposer shall have five (5) calendar days after notification of the selected Proposers to submit a written selection protest to the SPC. This written notification is to be received by 5:00 p.m. of the last day of the five-calendar-day period. **No protest against selection of an ESCO or award of an ATA shall be considered if received after the deadline established for submitting such protest.**

## **2.10 TRADE SECRETS AND PUBLIC RECORDS LAW**

ODOE shall retain this RFQ and one copy of each original SOQ received, together with copies of all ODOE documents pertaining to the award of an ATA. These ODOE documents will be made a part of a file or record, which shall be open to public inspection after Proposer selection and award is announced. If an SOQ contains any information that is considered a trade secret under ORS 192.501(2), Proposers must mark each sheet of such information with the following legend: **"This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."**

Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance". Therefore, non-disclosure of ODOE documents or any portion of an ODOE document submitted as part of an SOQ may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the SOQ, material designated as confidential shall accompany the SOQ, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary. Any SOQ marked as a trade secret in its entirety will be considered non-responsive.

## **2.11 NO OBLIGATION**

All Proposers who submit an SOQ in response to this RFQ are deemed to understand, acknowledge and agree that ODOE is not obligated as a result of the submittal of an SOQ to enter into an ATA or contract with any Proposer and, furthermore, ODOE has absolutely no financial obligation to any Proposer arising from the Proposer's response to this RFQ, the Proposer's attendance at any mandatory meetings or the Proposer's participation in finalist interviews. All Proposers who respond to this solicitation do so solely at their own expense.

## **2.12 NON-RESPONSIVE STATEMENTS OF QUALIFICATION**

Proposers are responsible for carefully reading all the terms and conditions contained in this RFQ (including the terms and conditions contained in any attachments, exhibits or schedules to the RFQ), and for following the instructions given. SOQs that do not contain all the information requested may be rejected as non-responsive.

### SECTION III SUBMITTAL REQUIREMENTS

**3.01.** Proposers must submit copies including all attachments (in MS Word format) of their SOQ as directed in **Section 5.02** of the RFQ, ESCO SOQ Requirements. No other material shall be submitted with the SOQ except that specifically identified in **Section 5.02**. SOQs must be signed by an official authorized to bind the Proposer to its provisions.

**3.02** SOQs shall be typed and prepared in a simple, economical manner, with no binders or stiff covers of any variety, fastened in the top left-hand corner.

**3.03** SOQs shall not exceed **25 single sided, 8-1/2 x 11-inch, white paper pages** (regardless of the text equivalency in page length), including pictures, charts, graphs, tables and text. The following are excluded from the 25-page limit: transmittal letter, resumes of the proposed key individuals, ESCO Profile (**Section 5.02 B. 1 through 9**), and Attachment A, Request and Authorization to Release Information, Release of Liability/Claims, and Agreement Not to Sue. These items are to be appended at the end of the SOQ.

**3.04** Proposers shall make every effort to use no less than a 12-point font and no less than 1-inch margins for the text portion of their SOQs. ODOE reserves the right to reject SOQs that are deemed illegible or too difficult to read.

**3.05** All SOQs become the property of ODOE and will not be returned to ESCO. SOQs will become part of the Public Record (except for any material properly marked as a “trade secret” under the provisions of Section 2.08 of this RFQ, which will be handled according to the provisions of that Section).

**3.06** To be eligible to propose in response to this RFQ, the Proposer must be registered with the Oregon Construction Contractors Board and must provide its CCB number with its SOQ.

**3.07** SOQs must contain a statement that the Proposer agrees to be bound by and will comply with the provisions of ORS 279C.800 through 279C.870 during Phase II of any awarded ESPC.

**3.08** SOQs must contain a certification that the Proposer has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts.

**3.09** If Proposer is a partnership or joint venture, information must be provided for each partner or joint venturer, and each partner or joint venturer must sign the SOQ and any contracts on behalf of both itself and the Proposer, and each will be jointly and severally liable.

## SECTION IV SCOPE OF SERVICES

### 4.01 CONTRACT PROVISIONS

ODOE intends to enter into an ATA for ESPCs with **4-10** Qualified ESCOs. ODOE reserves the right to increase or reduce the range based on the quality of responses it receives. **Attachment B** is a sample of the ATA. Each resulting ATA with the successful ESCOs will be substantially in the form set forth in **Attachment B**, with only those revisions necessary to reflect the company information for each ESCO, the Statement of Work regarding services to be performed under any ESPCs awarded as a result of a Tier 2 procurement issued under the ATA, and the rates to be charged by the ESCOs for the Services to be performed under any resulting ESPCs.

### 4.02 GENERAL SCOPE OF SERVICES

ESCOs must submit an SOQ confirming the ESCOs' willingness and ability to contract for the performance of all of the Services identified in this RFQ and in the Attachments to this RFQ that will be performed for a contracting Agency under an ESPC. ODOE seeks ESCOs that will assume complete responsibility for all of the elements identified above. An ESCO may propose to perform certain of Agency Project Services under ESPCs in conjunction with or through the use of one or more subcontractors or sub-consultants. The ESCO must, however, accept an ESPC under which it will serve as the prime contractor to the Agencies, contractually responsible for the performance of all obligations under the ESPC.

### 4.03 SERVICE REQUIREMENTS AND QUALIFICATION PREREQUISITES

At a minimum, the ESCO (either alone or with its joint venture partner) shall be capable of providing an investment-grade technical audit, the project development plan, all project management services, all construction management services, all site supervision and all sub-contractor procurement **using its own key personnel**. In addition, the ESCO must have significant experience completing the Phase II Design and Construction portion of an ESPC, and **must have completed the Measurement and Verification Phase of an ESPC as the prime contractor on three (3) prior projects, at a minimum.**

An ESCO shall identify, in its SOQ, proposed major subcontractors and sub-consultants and their respective roles in providing ESPC Services.

## SECTION V EVALUATION OF QUALIFICATIONS

### 5.01 GENERAL INFORMATION

**A. SOQ Evaluation.** ODOE will evaluate SOQs in accordance with the evaluation procedures set forth in OAR 137-048-0210 and OAR 137-049-0640. SOQs will be forwarded to an evaluation committee of at least seven (7) members that will independently review and score SOQs. ODOE has established qualifications-based factors that outweigh price-related factors to evaluate submittals.

The outcome of the Evaluation process may, at ODOE's sole discretion, result in:

- (1) notice to Proposer(s) of selection or rejection for Agreement to Agree negotiation and possible award;
- (2) further steps to gather additional information for evaluation, (e.g. checking references, notice of placement on an interview list, requesting clarification); or
- (3) cancellation of the RFQ and either re-issuance of the RFQ in the same or revised form or no further action by ODOE with respect to the RFQ.

ODOE may reject any or all SOQs and may cancel this RFQ at anytime if doing either would be in the public interest as determined by ODOE. ODOE is not liable for any costs a Proposer incurs while preparing or presenting the SOQ or during further evaluation stages. All SOQs will become part of the public record without obligation to ODOE. In evaluating the SOQs, ODOE may seek information from a Proposer to clarify the Proposer's SOQ. A Proposer must submit written and signed clarifications and such clarifications shall become part of the SOQ. (OAR 137-049-0650(3)(a)(A)).

**B. Proposer Interviews.** In person interviews may be conducted by ODOE and follow-up written questions may be submitted to Proposers by ODOE, with any interview responses and answers to follow-up written questions scored in a manner described by ODOE at the time the interviews are conducted or the questions are submitted to Proposers, all at the discretion of ODOE. An interview or providing answers to written follow-up question(s) will allow Proposer to more fully discuss how its approach to Projects satisfies the evaluation criteria set forth in this RFQ. All persons with major responsibility for audits, technical design, management and contract negotiation shall be present at any such interviews. Based on results from the written responses to any follow-up questions submitted by ODOE and the oral interviews conducted by ODOE, if any, ODOE will issue a Notice of Intent to Award to all Proposers and will invite Successful Proposers to enter into Agreements to Agree.

**C. Preliminary Agreement to Agree Negotiations.** Successful ESCOs invited to enter into ATAs will be required to disclose a description of the intended pricing methodology in addition to general cost markup information for the ATA. Negotiated markups, inclusive of all fees, for all cost categories will be required, such as markups for direct labor and direct materials as well as markups on both labor and materials related to profit, overhead, subcontractors and contingencies. Cost categories can be specified by the ESCO. Negotiated markups will be used in any subsequent technical audit cost projections and in any final ESPC. ODOE has the

right to reject any ESCO if costs and overall price are not determined to be reasonable, in the sole discretion of ODOE.

- D. Establishment of the ESPC. Entering into an Agreement to Agree does not assure selection to provide Services.** An ATA enables contracting Agencies to distribute RFPs to those pre-qualified ESCOs for Proposals to perform contract Services. Any resulting ESPC would contain a scope of work to be provided and estimated monetary consideration for the Contract, depending upon the Services requested by an Agency to be performed under the ESPC. ESCOs will be selected for ESPCs by the individual Agency seeking ESPC work based on criteria including price, experience, past performance, personnel assigned to the project, and timeline requirements. See **Exhibit 7** to the ATA for a **Sample Tier 2 Agency RFP**.
- E. Insurance and Bonds.** Throughout any Project, including all Phases of Services or work, the ESCO must have and maintain the insurance coverages, and comply with the other insurance-related requirements, as provided in the State of Oregon General Conditions for Public Improvement Contracts, in the Supplemental General Conditions, if any, in the ESPC and in the Phase II Design and Construction Contract, as applicable to the phase(s) of Services/work under contract at a given point in time. The ESCO must comply with all bonding requirements, including but not limited to the requirement to provide a performance bond and a payment bond, covering both the design and construction services under the contract, before or contemporaneously with execution of the Phase II Design and Construction Contract.
- F. Prevailing Wage Rates.** During Phase II Design and Construction of any Project, the ESCO and all subcontractors must comply with ORS 279C.800 through 279C.870 relative to prevailing wage rates and other requirements, and as provided in the administrative rules of the Commissioner of the Oregon Bureau of Labor and Industries (“BOLI”), and in the State of Oregon General Conditions for Public Improvement Contracts. SOQs must include a statement by the Proposer that it agrees to be bound by and will comply with the foregoing. Before beginning work under the Phase II Design and Construction Contract, the ESCO and all subcontractors must file the required public works bond with the Construction Contractors Board. These requirements apply to the Phase II Design and Construction Contract, and any other work that would constitute “public works” under the referenced requirements.

The applicable BOLI prevailing wage rates are those in effect at the time the Phase II portion of the ESPC is executed, appearing in the latest-issued BOLI publication titled “PREVAILING WAGE RATES for Public Works Contracts in Oregon, which are incorporated herein by reference and is available at the following web address:

**[http://www.oregon.gov/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.oregon.gov/BOLI/WHD/PWR/pwr_state.shtml)**

The Contracting Agency for the particular project addressed in the ESPC will pay the fee required by ORS 279C.825 to BOLI, according to the BOLI administrative rules.

## **5.02 STATEMENT OF QUALIFICATION REQUIREMENTS**

The following provisions detail the information required in the SOQ submittal from each ESCO and provide questions that must be answered and forms that must be completed and submitted by the ESCO.

**A. SUBMITTAL INFORMATION**

**1. General Information**

- Refer to other sections of this RFQ for more detailed information on SOQs.
- Failure to complete any question in whole or in part, or any deliberate attempt by the Proposer to mislead ODOE, **may disqualify the Proposer.**

**2. Submit the following:**

Proposers must submit **seven (7)** copies and **two (2)** disc copies including all attachments (MS Word format) of their SOQ.

In addition to the General Requirements, responsive SOQs shall contain a completed Firm Profile in **Section 5.02 B** below, and shall include all the information required in **Section 5.02 C** below.

**B. ESCO PROFILE**

**1. General Firm Information**

Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Names, Titles and Phone Numbers of two principal contact persons:

- |    |       |       |       |
|----|-------|-------|-------|
| a. | _____ | _____ | _____ |
| b. | _____ | _____ | _____ |
|    | Name  | Title | Phone |

Submittal is for:

- Parent Company
- Subsidiary
- Division
- Branch Office

List any Division or Branch Offices that will participate in the development of the statement of qualification, in its evaluation process, or in the performance of any Services:.

Name of Office: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Address of Parent Company (if applicable):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Former Name(s) of Firm (if applicable):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Oregon CCB Number: \_\_\_\_\_

2. **Date Prepared:** \_\_\_\_\_

3. **Type of Entity**

Corporation

Sole Proprietorship

LLC

Partnership

Joint Venture

Other (specify)

4. **Federal Employer Identification Number:** \_\_\_\_\_

5. **Year Firm Established:** \_\_\_\_\_

6. **Five-year summary of contract dollar amounts of energy related services previews:**

2008: \$ \_\_\_\_\_

2007: \$ \_\_\_\_\_

2006: \$ \_\_\_\_\_

2005: \$ \_\_\_\_\_

2004: \$ \_\_\_\_\_

Estimate of total value for all energy-related contracts that are currently in force with your company: \$ \_\_\_\_\_ (total value) as of \_\_\_\_\_ (date).

7. **Corporate Background**

a. **Years Under Present Name.** How many years has your firm been in business under its present business name? \_\_\_\_\_ Years

b. **Former Names.** Indicate all other names by which your organization has been known and the length of time known by each name.

Name: \_\_\_\_\_ Years: \_\_\_\_\_

Name: \_\_\_\_\_ Years: \_\_\_\_\_

- c. **Years in Energy Business.** How many years has your firm been providing energy-efficiency related services? \_\_\_\_\_ years. How many years your firm has offered performance contracting services? \_\_\_\_\_ years.
- d. **Number of Contracts.** Indicate the number of energy savings performance contracts actually implemented by your firm. (**NOTE:** If this statement of qualification is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division.)
- e. **State Qualification.** Identify all states in which your firm is legally qualified to do business.
- f. **Lawsuit Involvement.** Has your firm been involved in a construction related lawsuit (other than labor or personnel litigation) during the past five (5) years? \_\_\_\_Yes \_\_\_\_No. If yes, please explain in detail the nature of the claim, circumstances, amount in dispute, date suit was filed, and the outcome of the case.
- Note:** If your firm is currently under licensure suspension, your statement of qualification may not be accepted or considered.
- g. **Construction Arbitration Involvement.** Has your firm been involved in any construction arbitration demands during the past five (5) years? \_\_\_\_Yes \_\_\_\_No. If yes, identify the nature of the claim, amount in dispute, parties, and ultimate resolution of the proceeding.
- h. **National Labor Relations Board or Similar Involvement.** Has your firm been involved in any lawsuits, administrative proceedings or hearings initiated by the National Labor Relations Board, State of Oregon Bureau of Labor and Industries, or a similar state or federal Agency during the past five (5) years? \_\_\_\_Yes \_\_\_\_No. If yes, identify the nature of the claim and the ultimate resolution of the proceeding.
- i. **OSHA-Type Proceedings.** Has your firm been involved in any lawsuits, administrative proceedings or hearings initiated by the Occupational Safety and Health Administration or a similar state or federal Agency during the past five (5) years regarding the safety of one of your firm's projects? \_\_\_\_Yes \_\_\_\_No. If yes, identify the nature of the claim and the ultimate resolution of the proceeding.
- j. **Bankruptcy Involvement.** Has your firm, or any of its parents or subsidiaries, ever had a bankruptcy petition filed in its name, voluntarily or involuntarily? \_\_\_\_Yes \_\_\_\_No. If yes, explain in detail the circumstances, date the protection order was filed and the resolution of the case (or current status, if still ongoing).

**8. Financial Information**

- a. **Statement of Financial Conditions.** Attach the most recent annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months. Provide the name, address, and the telephone number of firm(s) that prepared the Financial Statements:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

- b. **Accounting Firm Information.** If these financial Agency documents were not produced in-house, indicate the name, address and phone number of the firm(s) that prepared these financial statements.
- c. **Financial Statements – Three Years.** In addition to the foregoing, ODOE may require ESCOs selected for interviews to provide their annual financial statements for each of the last three years.
- d. **Bonding Limits Information.** Attach a letter or other signed Agency documentation from a surety company authorized to transact business in Oregon stating your firm’s bonding limits or capacity for this Project, including for the performance bond and payment bond required for the Phase II Design and Construction Contract.

9. **Attachments.** List all attachments to your SOQ created to address additional information. List attachments by number and heading here in this ESCO Profile. If a computer-generated form is used, detailed descriptions can be included in the appropriate section rather than prepared as an attachment.

	<u>Item #</u>	<u>Heading Name</u>
Attachment for #	_____	_____
Attachment for #	_____	_____
Attachment for #	_____	_____
Attachment for #	_____	_____
Attachment for #	_____	_____

**C. ESCO QUALIFICATIONS AND APPROACH TO PROJECTS**

Please provide answers to each category listed below. Number and title each answer to the corresponding category.

**1. General Qualifications**

- a. **Personnel Information.** Provide the following information as it relates to your general approach to a proposed Project.

- 1) Full-Time Personnel. Indicate the number of full-time personnel employed by your firm.
- 2) Qualifications and Experience of Project Personnel. Identify those persons or subcontractors (and if a subcontractor, the person within that subcontractor entity) who will have the primary responsibility for each task and phase of an Agency Project including technical energy analysis, engineering design, construction management, construction, training, and post-contract monitoring (the "Key Personnel"). For each of the individuals listed, indicate the following: name, title, intended role and responsibilities for the duration of the ATA, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities (if relevant to role), list of projects the individual was associated with during the last five (5) years including type of project and project cost, as well as a copy of the individual's resume.
- 3) Areas of Expertise. List all areas of expertise related to potential energy and water improvements in facilities. Include specialized areas of expertise that might be relevant to an Agency Project (energy management control systems, renewable energy system application or rehabilitation, lighting design, etc.) Also describe the professional and skilled trades that your firm customarily performs with employees.
- 4) Contract Negotiations Personnel. Give the name and address of the person(s) who will have primary responsibility for contract negotiations.
- 5) Subcontractors. Describe the nature of construction-related work generally conducted by subcontractors and discuss your practices in assigning particular subcontractors to particular Agency projects. Provide qualifications and experience information on firms and areas of expertise.
- 6) Sub-consultants. Identify any sub-consultants ESCO plans to use for an Agency Project and categories of technical services or design-related services to be performed by sub-consultants. Provide qualifications and experience information on firms and areas of expertise.
- 7) Organizational Chart. Include a company-wide organizational chart.
- 8) Key personnel references. References for each of the Key Personnel you propose for Agency Projects in your SOQ. The references should represent at least one of each of the following: Owners, Sub-consultants, Subcontractors and Architects. The references should be from projects of varying size, scope and complexity. **Note:** Results obtained in these reference checks may be used in scoring all evaluation criteria.

- b. **Project History.** Briefly describe all energy savings performance contracts or related projects which *your* firm has managed within the last three (3) years. (Do not include projects/contracts managed by team members or subcontractors.)

NOTE: If this SOQ is submitted by a branch office or division of a parent company, please provide project histories for those that have been managed directly by the specific branch or division. Projects that have been managed by individuals who will likely be specifically assigned to an Agency Project should also be included and identified.

Include the following information on each project:

- 1) **Project Identification.** Name the project owner, state the type of project (generic building type such as office building, hospital, school, etc.), provide the location (city, state).
- 2) **Project Dates.** Project actual construction start and end dates.
- 3) **Project Size.** Number of buildings and total square footage.
- 4) **Project Dollar Amount.** Provide the total contract amount and the total project capital expenditure amount.
- 5) **Source of Funds.** State the source of funds used for the project and your firm's role, if any, in securing those funds.
- 6) **Contract Terms.** State the type of Contract (shared-savings, lease purchase, guaranteed savings), the duration of the contract term, and the financing arrangement.
- 7) **Technical Design Personnel.** Include name(s) of primary technical design personnel.
- 8) **Project Schedule.** Indicate if the project was completed on schedule. If not, please explain.
- 9) **List of Improvements.** List the retrofits and operational improvements related to energy and water cost savings.
- 10) **Projected Annual Savings.** State the projected annual savings resulting from energy, water, and operational improvements (Therms, kWh, kW, Gallons, etc.). (See sample form below.)
- 11) **Guaranteed Savings.** State the amount of the guarantee (see sample form below). Also describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.

12) Actual Annual Savings. State the actual annual savings resulting from energy, water and operational improvements (Therms, kWh, kW, Gallons). Also describe if savings were measured or stipulated. (See sample form below.)

13) Savings Summary. Summarize savings results in a format similar to that shown in the table below:

Project Name:

<b>Projected average annual savings</b>	<b>Guaranteed annual savings</b>	<b>Actual Annual Savings</b>				
		<b>Year #1</b>	<b>Year #2</b>	<b>Year #3</b>	<b>Year #4</b>	<b>Year #5</b>
kWh:	kWh					
\$	\$	\$	\$	\$	\$	\$
Therms:	Therms					
\$	\$	\$	\$	\$	\$	\$
kW:	kW					
\$	\$	\$	\$	\$	\$	\$
gal:	gal					
\$:	\$	\$	\$	\$	\$	\$

14) Comments. Comment on any special features, services, conditions, etc.

15) References. Provide the names, addresses and current telephone numbers of three (3) owner's representatives and three (3) subcontractor or sub-consultant representatives from the projects identified in this sub-section 1(b), to be used as references to help determine any ATA award and later award of ESPCs for individual Projects. Verify that the individuals identified have had direct contact with the referenced project, and verify that the phone number is current.

## 2. Performance Contracting Approach

- a. **Project Summary** (not to exceed 5 pages): Summarize the scope of services (auditing, project development plan design development, construction, monitoring, operations, maintenance, training, financing, etc.) that would be offered for an Agency Project. Include a brief description of your firm's approach to management and the specific benefits your firm can offer a contracting Agency, including, but not limited to general coordination of work on a Project site, as well as mobilization, construction staging, site access, vehicular circulation, pedestrian circulation, noise and etc. Include a sample Project schedule.
- b. **Engineering Design**. Describe your firm's general approach to the technical design of a project.

- c. **Technical Energy Audit/Project Development Plan.** Describe any processes you recommend or require regarding the Technical Energy Audit/Project Development Plan. Briefly describe your approach to auditing a facility. Provide a sample of a Technical Energy Audit and Project Development Plan for a particular project. The samples should be for a comprehensive energy efficiency project that affected more than one building and two or more systems including lighting, controls, and HVAC Mechanical systems. The samples must include detailed energy and economic calculations.
- d. **Baseline Calculation Methodology.** Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
- e. **Adjustment to Baseline Methodology.** Describe the method(s) used to adjust the energy, water and operations baseline due to such factors as weather and facility use changes. Describe factors that would necessitate adjustment.
- f. **Dollar Savings Calculations.** Describe the procedure to assign dollar values to the energy, and water, and operational savings.
- g. **Guaranteed Savings Calculations.** List all procedures, formulas and methodologies including special metering or equipment, your firm will use to calculate energy and water savings. Include assumptions to be made in the calculations. Provide sample calculations for lighting, boilers, chillers, motors and drives, controls, ventilation measures.
- h. **Training Provisions.** Describe your firm's capabilities in providing technical training for an Owner's facility personnel. Describe your firm's experience on past projects and involvement in developing training manuals for facility staff.
- i. **Measurement and Verification Method and Sample.** Describe the methodology proposed for ongoing measurement and verification of the performance of each EEM recommended, including the frequency of such efforts. Note if an industry standard such as the *International Performance Measurement and Verification Protocol* is used and describe the preferred method. Provide three (3) sample measurement and verification reports. Describe the types of services included in the scope of work of Phase III, Measurement and Verification. Comment on Owner's maintenance staff responsibilities.
- j. **Cost Savings Guarantee Calculations.** Describe your firm's procedures and schedule for measuring financial performance of projects. Describe how the guarantee provisions work in the event that project results vary from projections. Also describe how excess savings will be documented for Owner's benefit.
- k. **ESCO Fee Calculation.** Describe your methods for calculating your firm's fees. Describe the specific services for which your firm would be paid over the contract term.
- l. **Open Book Pricing.** Describe your firm's approach and experience in providing open-book pricing.

- m. **Billing and Invoices**. Describe your standard billing procedures and attach a sample invoice.
- n. **ECM Vendors**. Describe the product vendors your firm uses for projects and how the vendors are chosen.
- o. **Provision of Insurance and Performance/Payment Bond(s)**. Describe the levels and types of all insurance policies applicable to and available for an ESPC Project. Describe the firm's performance and payment bonding capacity. (See requirements in **Sections 5.01 E** and **5.02 B.8.d** above)
- p. **Provision of Warranties**. State the nature and term of all warranties that would apply to a Project.
- q. **Sustainability**. Describe your experience in construction site recycling and consideration of life cycle cost analysis factors in selecting equipment and materials

### **5.03 STATEMENT OF QUALIFICATION EVALUATION CRITERIA**

Statements of qualification will be reviewed and evaluated for conformity with stated submittal requirements, and the content and quality of the responses, as called for in **Section 5.02** above, ESCO Statement of Qualification Requirements. Final selections will be based on the criteria set forth below, the information provided in the proposers' responses, the information gathered in any ESCO interviews and the information obtained from ESCOs in response to any written follow-up questions.

The criteria listed below will be used to evaluate ESCO SOQs, any ESCO oral interviews and any ESCO responses to written follow-up questions. Statements of qualification should include all necessary information that is pertinent to these evaluation criteria, as more particularly set forth in **Section 5.02** above (references to particular paragraphs or provisions of **Section 5.02**, where appropriate, are included below). Additional information required for proper assessment of statements of qualification may be requested from the ESCO at the discretion of ODOE.

**The criteria are not listed in order of importance.**

#### **A. Firm Background ("ESCO Profile")**

Your firm's history; information identifying the firm's annual volume, financial/bonding capacities, and the firm's stability in the marketplace; annual financial statements for years 2006, 2007, and 2008; information identifying the firm's strengths and weaknesses, along with special capabilities, that will assist in the evaluation. Include a company-wide organizational chart.

#### **B. Firm Experience and Success ("Project History")**

Your firm's experience with projects of varying size, type and complexity; the firm's success in designing, constructing, and performing verification of projects and projected schedules;

the status of current major work within the firm in terms of schedule and dollar volume. At a minimum, the ESCO (either alone or with its joint venture partner) must be capable of providing an investment-grade technical audit, the project development plan, all project management, all construction management, all site supervision and sub-contractor procurement using its own key personnel. In addition, the ESCO must have significant experience completing the Phase II Design and Construction portion of the ESPC, and must have completed the Measurement and Verification Phase of an ESPC as the prime contractor on three (3) prior projects, at a minimum,

**C. Key Personnel (“Personnel Information”)**

The proposed key personnel's specific experience on projects of varying size, complexity and scope; length of their employment with your firm, their typical responsibilities on a Project, and their primary office location, time commitments of personnel during the design, construction, and measurement & verification phases; the experience and expertise of key sub-consultants and subcontractors with whom you propose to team, if any.

**D. Proposed Work Plan/Project Management (“Performance Contracting Approach”)**

The firm's process for designing, constructing, managing and otherwise completing projects, in order to ensure an ESPC project is completed on schedule and reaches projected energy savings; the firm's approach to adapting control strategies, equipment, and maintenance practices in response to changes in utility rates, technology, and building conditions in order to enhance project performance and maintain standards of comfort; other specific information consistent with the “Performance Contracting Approach” (**Section 5.02 C.2**) provisions.

**E. Proposed Site Coordination (“Performance Contracting Approach”)**

The firm's approach to the management and administration of on-site construction activities, including, but not limited to, mobilization, construction staging, site access, vehicular circulation, pedestrian circulation, noise and etc.

**F. Sustainable Design (“Performance Contracting Approach”)**

Please describe your firm's experience with sustainable design; specific examples of techniques and materials used.

**5.04 EVALUATION PROCESS**

This Request for SOQs is the first step in the selection of ESCOs for State Agency Projects. ODOE will evaluate all written statements of qualification in accordance with the evaluation criteria set forth in this RFQ. The selection committee will score each Proposer on the basis of responses to the above evaluation categories.

The proposal evaluation has been broken out into two major weighted categories: i) ESCO Profile, worth 25 percent of the total points, and ii) ESCO Qualifications and Approach, worth 75 percent of the total points.

These major weighted categories are comprised of several sub-categories that precisely follow the Submittal Information section of the RFQ. Each sub category is scored either as a pass/fail, or has been given a certain number of points ranging from 0-10 through 0-150 depending on that sub-category's level of importance as determined by ODOE. Pass-fail categories are listed in the table below. Proposers are reminded to take due care to make certain that SOQs are complete in every category.

<b><u>Pass-Fail Categories</u></b>	
<p><b>ESCO PROFILE</b></p> <ul style="list-style-type: none"> <li>▪ General Firm Information</li> <li>▪ Date Prepared</li> <li>▪ Type of Entity</li> <li>▪ Federal Employer Identification Number</li> <li>▪ Year Firm Established</li> <li>▪ Years Under Present Name</li> <li>▪ Former Name/s</li> <li>▪ Number of Contracts</li> </ul>	<p><b>ESCO QUALIFICATIONS AND APPROACH</b></p> <ul style="list-style-type: none"> <li>▪ Service Requirements and Qualification Prerequisites: See <b>Section 4.03</b> of the RFQ.</li> </ul>

At ODOE's discretion, some Proposers may be required to participate in interviews as provided in **Section 5.01.B**.

Furthermore, in advance of the interviews, the Proposers may be asked to respond to additional written questions designed to clarify or expand on the statement of qualification. Interviews may include a presentation period for the proposers to highlight their original statements of qualification as well as to respond to additional questions or information requested in advance by the evaluation committee. The format of the interviews, method of evaluation of the interviews, method of combining scoring information from the SOQs, any written questions and the interviews and other specifics will be announced at the time Proposers are invited for interviews. Based on results from the written responses to any follow-up questions submitted by ODOE and the oral interviews conducted by ODOE, if any, ODOE will issue a Notice of Intent to Award to all Proposers and will invite Successful Proposers to enter into Agreements to Agree.

**5.05 TENTATIVE AWARD NOTICE**

Upon selection of successful Proposers for ATA award, a notice of selection will be sent to all Proposers. Following selection, ODOE intends to enter into Agreements to Agree with the successful ESCOs, who will then be qualified to perform the services/work on Agency Projects. **Entering into an Agreement to Agree does not assure selection to provide Services.** The ATA enables State Agencies to invite qualified ESCOs to propose to perform Project-specific Services.

## SECTION VI OVERVIEW OF TERMS AND CONDITIONS

### 6.01 CONTRACT TERM

The Term of the ATA will be [from xxxx to xxxx].

The following provisions apply to an Agreement to Agree resulting from this RFQ:

#### A. Effective Date; Duration and ESPC Contracting Period.

1. **Effective Date.** The ATAs are anticipated to be effective on the dates they are signed by all parties.
2. **Duration and ESPC Contracting Period**
  - a. **Expiration.** The ATA shall have a limited ESPC contracting period but will not expire until the later of the following occurs: (1) the expiration of the ESPC contracting period, or (2) each and all respective ESPCs established under the ATA have been fully performed, have expired or have been terminated.
  - b. **ESPC Contracting Period.** Unless the ATA is sooner terminated, the ESPC contracting period (which may be extended) ends 5 years from the effective date of the ATA. An ESPC is considered established (for purposes of meeting the ESPC contracting period limitation) when the Agency ESPC negotiations are successfully completed, all required signatures have been obtained on the ESPC, and the Agency has issued a notice to proceed to the ESCO.

#### B. Termination

1. **Termination by Mutual Consent.** An ATA may be terminated at any time by mutual written consent of the Parties.
2. **ODOE's Right to Terminate for Convenience.** ODOE may, at its sole discretion, terminate an ATA, in whole or in part, upon 30 calendar days' written notice to ESCO.
3. **Immediate Termination.**
  - a. ODOE may terminate an ATA immediately should any of the required insurance coverages not be in effect.
  - b. ODOE may terminate an ATA immediately upon (i) the appointment of a receiver, trustee, liquidator, or conservator for ESCO or for the purpose of taking possession of all or substantially all of the ESCO's property, (ii) the filing of a petition for insolvency, dissolution, liquidation, or reorganization, or order for relief in which the ESCO is named as a debtor, pursuant to any law for the protection of debtors.

4. **ODOE's Right to Terminate for Cause.** ODOE may terminate an ATA, effective upon delivery of written notice to the ESCO or at such later date as may be established in the notice, under any of the conditions noted in **Part I, Section 1.c.iv.** of the **ATA**.

Nothing in this RFQ or in any resulting ATA relieves any contracting agency from complying with all laws and regulations applicable to ESPCs contemplated or executed between ESCO and the contracting agency.

## 6.02 DISPUTE RESOLUTION

- A. **Governing Law and Jurisdiction.** Any disputes arising in connection with an ATA will be governed by Oregon law, without reference to its principles of conflicts of law.

Any party bringing a legal action or proceeding against any other party arising out of or relating to the ATA shall bring the legal action or proceeding in the Circuit Court of the State of Oregon sitting in Salem, Oregon, provided, however, that if a claim must be brought in a federal forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. In no way will this Section or any other provision of the ATA be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- B. **Good Faith Negotiation/Mediation.** Prior to filing suit on any dispute which arises between the Parties under or relating to the ATA, the Parties agree to attempt to resolve the dispute through good faith negotiation. If the dispute cannot be resolved through good faith negotiation, the Parties may agree to hire an independent, trained and mutually acceptable mediator to mediate the dispute. The cost of the mediator shall be shared equally by the Parties. The mediation is to be conducted in Salem, Oregon.

## 6.03 EFFECT OF EXPIRATION OR TERMINATION.

Expiration or termination of an ATA shall not extinguish or prejudice contracting Agency's right to enforce ESPCs entered under an ATA with respect to any breach of an ESCO warranty or any default or defect in ESCO performance that has not been cured. Expiration or termination of an ATA shall not result in expiration or termination of any underlying ESPC in effect at the time of ATA expiration or termination. Such ESPCs shall remain in effect, and may be amended, until the particular ESPC expires or terminates in accordance with its terms.

## 6.04 ENERGY SAVINGS PERFORMANCE CONTRACT TERM

Project Contracts may be established as needed by State Agencies via Tier 2 RFPs resulting in ESPCs. The ESPC contracting process is described in **Exhibit 4** of the sample **ATA (Attachment B hereto)**. **There is no guarantee that any specific amount of Services will be assigned or overall dollar amount will be expended through the duration of the Agreement to Agree.** The

ESPC term will be subject to conditions set forth in the ESPC and the Exhibits thereto pertaining to termination and to appropriations, limitations or other funding authority.

#### **6.05 ENERGY SAVINGS GUARANTEE**

Improvements and services must guarantee results in an actual decrease in annual energy and water unit consumption that will generate a corresponding economic savings while maintaining minimum standards of occupant comfort. Payments to the successful ESCO under Phase III will be linked to actual energy consumption measured after the installation of energy efficiency measures (“**EEMs**”, also known as Energy Conservation Measures or “**ECMs**”) as compared to baseline energy consumption determined before the installation of any EEMs. If the energy unit consumption savings are less than guaranteed, then the ESCO shall pay the corresponding difference between the actual savings and the guaranteed savings. Agency has the option of withholding payment under Phase III in the amount of the difference or requiring the ESCO to reimburse the Owner.

#### **6.06 INSURANCE AND BONDS**

Throughout any Project, including all Phases of Services or work, the ESCO must have and maintain the insurance coverages, and comply with the other insurance-related requirements, as provided in the State of Oregon General Conditions for Public Improvement Contracts, in the Supplemental General Conditions, if any, in the ESPC and in the Phase II Design and Construction Contract, as applicable to the phase(s) of Services/work under contract at a given point in time. The ESCO must comply with all bonding requirements, including but not limited to the requirement to provide a performance bond and a payment bond, covering both the design and construction services under the contract, before or contemporaneously with execution of the Phase II Design and Construction Contract.

#### **6.07 PREVAILING WAGE RATES**

During Phase II Design and Construction of any Project, the ESCO and all subcontractors must comply with ORS 279C.800 through 279C.870 relative to prevailing wage rates and other requirements, and as provided in the administrative rules of the Commissioner of the Oregon Bureau of Labor and Industries (“BOLI”), and in the State of Oregon General Conditions for Public Improvement Contracts. SOQs must include a statement by the Proposer that it agrees to be bound by and will comply with the foregoing. Before beginning work under the Phase II Design and Construction Contract, the ESCO and all subcontractors must file the required public works bond with the Construction Contractors Board. These requirements apply to the Phase II Design and Construction Contract, and any other work that would constitute “public works” under the referenced requirements.

The applicable BOLI prevailing wage rates are those in effect at the time the Phase II portion of the ESPC is executed, appearing in the latest-issued BOLI publication titled “PREVAILING WAGE RATES for Public Works Contracts in Oregon, which are incorporated herein by reference and is available at the following web address:

**[http://www.oregon.gov/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.oregon.gov/BOLI/WHD/PWR/pwr_state.shtml)**

The Contracting Agency for the particular project addressed in the ESPC will pay the fee required by ORS 279C.825 to BOLI, according to the BOLI administrative rules.

**6.08 Additional Agreement to Agree Terms**

See the Agreement to Agree (**Attachment B** to this RFQ) **Part I** for all the Terms and Conditions applicable to the ATA and any resulting ESPC.

**SECTION VII  
OVERVIEW OF ATTACHMENTS**

To aid ESCOs in their response to this RFQ the following items are attached:

- ATTACHMENT A:** Request and Authorization to Release Information, Release of Liability/Claims, and Agreement Not to Sue
- ATTACHMENT B:** Sample Energy Savings Performance Contract (“ESPC”) Agreement to Agree
- Exhibit 1 to the Agreement to Agree:** Scope of Services
- Exhibit 2 to the Agreement to Agree:** Compensation
- Exhibit 3 to the Agreement to Agree:** Insurance
- Exhibit 4 to the Agreement to Agree:** Energy Savings Performance Contract Establishment and Requirements
- Exhibit 5 to the Agreement to Agree:** Annual Profile Update
- Exhibit 6 to the Agreement to Agree:** Contact Information and Key Persons

**TIER 2 RFP COMPONENTS:**

- Exhibit 7 to the Agreement to Agree:** Sample Tier 2 Agency RFP
- Exhibit 8 to the Agreement to Agree:** Tier 2 Agency RFP Requirements
- Exhibit 9 to the Agreement to Agree:** Tier 2 Agency RFP Proposer Certifications
- Exhibit 10 to the Agreement to Agree:** Sample Energy Savings Performance Contract (“ESPC”)

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**ESPC SCHEDULE AND EXHIBIT OVERVIEW**

**Schedules to be provided during performance of an ESPC Contract:**

Final Schedules to be provided by ESCO under Phase I, Part B (Division 3 of the ESPC) (the Project Development Plan):

- Schedule 1 Equipment to be Installed by ESCO
- Schedule 2 Calculation of Energy Savings Guarantee
- Schedule 3 Compensation to ESCO
- Schedule 4 Energy Baseline
- Schedule 5 Savings Calculation Formulae: Methodology to Adjust Baseline
- Schedule 6 Measurement and Verification Plan and Guaranteed Savings Contract Provisions (to be included in the Phase II Design and Construction Contract)

DRAFT Phase II Schedules to be provided by ESCO under Phase I, Part B (Division 3 of the ESPC) (the Project Development Plan):

- Schedule -7 Systems start-up and Commissioning: Operating Parameters of Installed Equipment
- Schedule -8 ESCO's Training Responsibilities
- Schedule -9 Owner's Maintenance Responsibilities
- Schedule -10 Facility Maintenance Checklist

**Exhibit A to the ESPC: Phase II, Design and Construction Contract**

Exhibits and Schedules to the Phase II Design and Construction Contract:

- Exhibit-1A State of Oregon Standard General Conditions for Public Improvement Contracts (January 1, 2008)
- Exhibit-2A Supplemental Conditions to the State of Oregon Standard General Conditions for Public Improvement Contracts
- Exhibit-3A Performance and Payment Bonds
- Exhibit-4A Prevailing Wage Rate Schedules
- Exhibit-5A Consultants/Sub-contractors List
- Exhibit-6A Savings Contract Provisions (unless set out in the Contract)

FINAL Schedules to be provided by ESCO under Phase II:

- Schedule 7 Systems start-up and Commissioning: Operating Parameters of Installed Equipment
- Schedule 8 ESCO's Training Responsibilities
- Schedule 9 Owner's Maintenance Responsibilities
- Schedule 10 Facility Maintenance Checklist

**ATTACHMENT A**

**REQUEST AND AUTHORIZATION TO RELEASE  
INFORMATION, RELEASE OF LIABILITY/CLAIMS,  
AND AGREEMENT NOT TO SUE  
(This Form Will Be Provided To References)**

**To Whom It May Concern:**

I, the undersigned, have submitted a response to a Request for Qualifications ("RFQ") to contract with the State of Oregon, Department of Energy ("ODOE"). I request and authorize you to furnish to ODOE any and all information you may have regarding my employment or my firm's employment, including but not limited to, evaluations or assessments of my/my firm's work performance and qualifications.

I request and authorize you to provide the information requested or to participate in a phone or in-person interview with a representative of ODOE.

In consideration of your cooperation with this request, I hereby release you, and any and all other persons employed by or connected with your firm, Agency and/or organization from any and all liability and/or claims now or in the future arising from the furnishing of any information, including good faith expressions of opinion, to ODOE as requested. I further agree not to sue ODOE, you, or any and all other persons employed by or connected with your Agency/organization as a result of the furnishing of any information, including good faith expressions of opinion, to ODOE.

I am aware and understand that the information and good faith opinions furnished to ODOE pursuant to this request will remain confidential with ODOE if requested by you, and will not be disclosed to me or to any other person, except as required by law.

The individual signing on behalf of Proposer hereby accepts all terms and conditions contained in the foregoing Request and Authorization to Release Information:

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*Signature of Authorized Representative*

*Date*

---

*Name of Firm*

**Note: Photocopy or Fax reproduction of this request shall be for all intents and purposes as valid as the original. You may retain this form for your files.**

