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| **Responsibility / Description** | **Contractor-Proposed Approach** |
| **1. Financial** |  |
| **a. Interest Rates**: Neither the contractor (ESCO) nor the customer (ordering agency) has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the Task Order (TO) signing may impact the available interest rate and project cost. |  |
| **b. Energy Prices:** Neither the contractor (ESCO) nor the customer (ordering agency) has significant control over actual energy prices. For calculating savings, the value of the saved energy may either be constant, change at a fixed inflation rate, or float with market conditions. If the value changes with the market, falling energy prices place the contractor (ESCO) at risk of failing to meet cost savings guarantees. If energy prices rise, there is a small risk to the customer (ordering agency) that energy saving goals might not be met while the financial goals are. If the value of saved energy is fixed (either constant or escalated), the customer (ordering agency) risks making payments in excess of actual energy cost savings. |  |
| **c. Construction Costs:** The contractor (ESCO) is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the customer (ordering agency) assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor (ESCO) may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, the customer (ordering agency) loses some design control. **Clarify design standards and the design approval process (including changes) and how costs will be reviewed.** |  |
| **d. Measurement and Verification (M&V) Confidence:** The customer (ordering agency) assumes the responsibility of determining the level of confidence that it desires to have in the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and the contractor (ESCO) must consider the requirement prior to submittal of the proposal. **Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&V costs.** |  |
| **e. Energy Related Cost Savings:** The customer (ordering agency) and the contractor (ESCO) may agree that the project will include savings from *recurring* and/or *one-time* costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the customer (ordering agency). Recurring savings generally result from reduced operations and maintenance (O&M) expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. **Clarify sources of non-energy cost savings and how they will be verified.**  Note: Energy Related Cost Savings are typically not applicable to a PV ESA ECM. |  |
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| **f. Delays:** Both the contractor (ESCO) and the customer (ordering agency) can cause delays. Failure to implement a viable project in a timely manner costs the customer (ordering agency) in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). **Clarify schedule and how delays will be handled, including delays caused by a Force Majeure Event.** |  |
| **g. Major changes in facility:** The ordering agency (or Congress) controls major changes in facility use, including closure. **Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.** |  |
| **2. Operational** |  |
| **a. Operating Hours:** The customer (ordering agency) generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in “savings” depending on the M&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). **Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.** If the operating hours are stipulated, the baseline shall be carefully documented and agreed to by both parties. |  |
| **b. Load:** Equipment loads can change over time. The customer (ordering agency) generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in “savings” depending on the M&V method. **Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change**. If the equipment loads are stipulated, the baseline shall be carefully documented and agreed to by both parties. |  |
| **c. Weather:** A number of energy efficiency and water conservation measures are affected by weather, which neither the contractor (ESCO) nor the customer (ordering agency) has control over. Should the customer (ordering agency) agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. **Clearly specify how weather corrections will be performed, including proposed corrections for the PV ESA ECM.** |  |
| **d. User participation:**  Many energy conservation measures (ECMs) require user participation to generate savings (e.g., control settings). The savings can be variable and the contractor (ESCO) may be unwilling to invest in these measures. **Clarify what degree of user participation is needed and use monitoring and training to mitigate risk.** If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capacity to save (e.g., confirm that the controls are functioning properly). |  |
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| **3. Performance** |  |
| **a. Equipment Performance:** The contractor (ESCO) has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor (ESCO) has responsibility to demonstrate that the new improvements meet expected performance levels, including specified equipment capacity, standards of service, and efficiency. **Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.**  Note: For PV ESA ECM the Contractor is responsible for performance throughout the term of the ESA. Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements. |  |
| **b. Operations:** Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor (ESCO) bears the ultimate risk regardless of which party performs the activity. **Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.**  Note: For PV ESA ECM the contractor is responsible for equipment operation throughout the term of the ESA. Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements. |  |
| **c. Preventive Maintenance:** Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor (ESCO) bears the ultimate risk regardless of which party performs the activity. **Clarify how long-term preventive maintenance will be ensured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency).**  **Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term.** **Clarify what will be done if inadequate preventive maintenance impacts performance.**  Note: For PV ESA ECM the contractor is responsible for performing long-term preventive maintenance to maintain operational performance throughout the term of the ESA. Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements. |  |
| **d. Equipment Repair and Replacement:** Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable; however it is often tied to project performance. The contractor (ESCO) bears the ultimate risk regardless of which party performs the activity. **Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract. Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.**  Note: For PV ESA ECM the contractor is responsible for performing equipment repair and replacement throughout the term of the ESA. Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements. |  |
| **e. Force Majeure Events:** Force Majeure Event means any act or event that prevents the Contractor from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the Contractor and such Contractor had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums).  Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements.  If Contractor claims relief pursuant to a Force Majeure Event, the Government shall have no obligation to make payments to the Contractor for the period of time during which the Contractor is unable to perform.  Specify the Contractor’s approach to Force Majeure Events, including how they will prevent or minimize damage and restore the PV ESA ECM after a Force Majeure Event (refer to the Force Majeure and Service Interruption Plan as needed). |  |

NOTE: The column entitled “Contractor-Proposed Approach” shall be negotiated between the customer (ordering agency) and the contractor (ESCO) for each TO and then the word “Proposed” removed from the title prior to Task Order (TO) finalization/award.