Public – Private Partnerships

PERFORMANCE CONTRACTING
Guidelines for Municipalities

CONTENTS

1 - Introduction

Everywhere in Europe there is a visible crisis in public funding. In addition to the increasing liberalisation of markets, municipalities have to find other strategies to ensure the proper management of their projects and of their investments.

The energy sector falls within the scope of this new political order. Moreover, municipalities are directly affected by changes in the energy markets because:

- They are energy consumers,
- They are energy producers,
- They often distribute gas, electricity or heat,
- They plan urban areas and organise the energy networks on their territories,
- They provide the citizens with advice.

The European Community, in the same spirit, encourages local initiatives concerned with sustainable development, including energy efficiency policies.
In this perspective, co-operation between the public and private sectors might prove to be an interesting solution.

The recent European Directive proposal (see box below) for the promotion of energy services to improve energy efficiency (and hence reduce energy consumption) provides a new legal framework for facilitating the implementation of public-private partnerships. Local authorities have a key role to play in this since they will be able make a clear statement of their priorities regarding energy saving.

What is the main issue to be confronted?
In the field of energy efficiency, there has been co-operation between the public and private sectors for a long time, but it has only been sporadic. The existing examples of such cooperation will help in establishing the balance between the respective roles of public and private sectors, that is, the private company, usually called ESCO (Energy Service COmpany), must be left the freedom to act, whilst the municipality must exert its essential control.

Public-private partnerships can be roughly classified into three categories:

- The public authority and a private organisation form a private/mixed company. Both participate in that company. The new company carries out the public services.
- The public authority signs a contract with a private organisation for a planned duration, who carries out the public tasks (such as, for example, construction and maintenance) with his own investments, but the responsibility for providing a public service to citizens still lies in the hands of the public authority. This is Performance Contracting (PC).
- The private organisation is granted a concession to provide a service and is allowed to charge the citizens using that service a fee. This is concession contracts.

These guidelines are concerned with the second of these categories of public-private partnerships: Contracting, especially Performance Contracting, applied to the energy sector. The objective is to present a clear explanation to local authorities of why this form of contract might be of interest to them and which precautions are to be taken.

European Community Legislation

> 26/06/2002
Communication from the Commission to the Council and the European Parliament.
Final report on the Green Paper "Towards a European strategy for the security of energy supply"
http://www.europa.eu.int/comm/energy_transport/en/lpi_lv_en1.html

> 04/01/2003
Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings.
http://europa.eu.int/eur-lex/en/lif/reg/en_register_121020.html

> 10/12/2003
Proposal for a directive of the European Parliament and of the Council on energy end-use efficiency and energy services
http://europa.eu.int/eur-lex/en/com/reg/en_register_121020.html

2 - What is the current situation for Municipalities?

Energy efficiency is becoming a priority, since it allows the problems associated with the greenhouse gas effect to be reduced and it improves energy supplying security through significant energy savings. Municipalities, however, are often confronted with the following vicious circle:

- They own buildings and equipment with quite bad energy performance, so energy is costing them too much,
- They do not have sufficient funds to make investments which would result in energy savings, so they continue to waste energy and money,
- Although they have limited resources, they pay a lot for the energy they use, and so do not have enough money to invest and, even more, to create investment funds.

The same problems are encountered in the overall maintenance of buildings.
Performance Contracting can provide good solutions for overcoming these barriers.

3 - What is Performance Contracting?

The difference between Performance Contracting (PC) and other types of contracts is that PC tries to achieve the highest possible degree of reliability between the municipality and the contractor, since the main goal is long-term quality. Co-operation has to be based on a balanced contract.

The basic principle is quite simple: the Energy Saving Partners (the so-called Contractors) input their know-how and the necessary financial resources into the project; that is they plan, build, maintain and finance at their own risk. It is their responsibility to ensure that adequate investment is made in buildings, so guaranteeing that there are energy savings.

These energy savings are based on the average energy consumption for the previous years. The contractors finance their investments through the savings made in energy costs. The municipality pays the energy bill as normal and, at the end, becomes owner of the efficient equipment.
Profits are reaped by both client and contractors, not forgetting the important benefits for the environment.

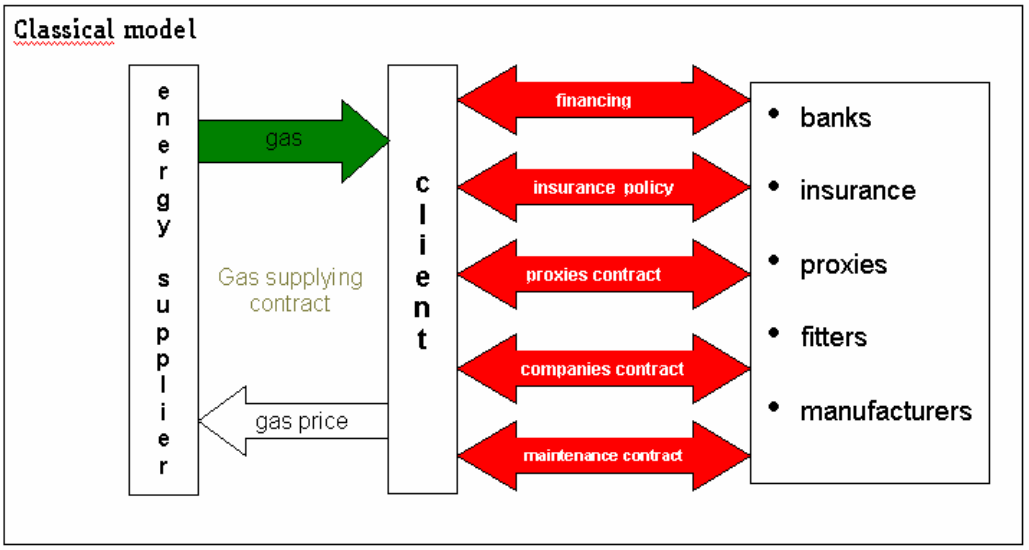
This type of contract guarantees installations of high quality, therefore, since this is in the contractors' interests: high quality installations will mean reduced operating and maintenance costs. Energy efficiency will be optimised, since the greater the amounts of energy saved, the more contractors earn.
If installations stop working, the contractors must ensure service continuity.

At the end of the contract, the client profits fully from the cost savings achieved. The parties might agree to allow the municipality a share of the cost savings during the term of contract (see figure page 11).

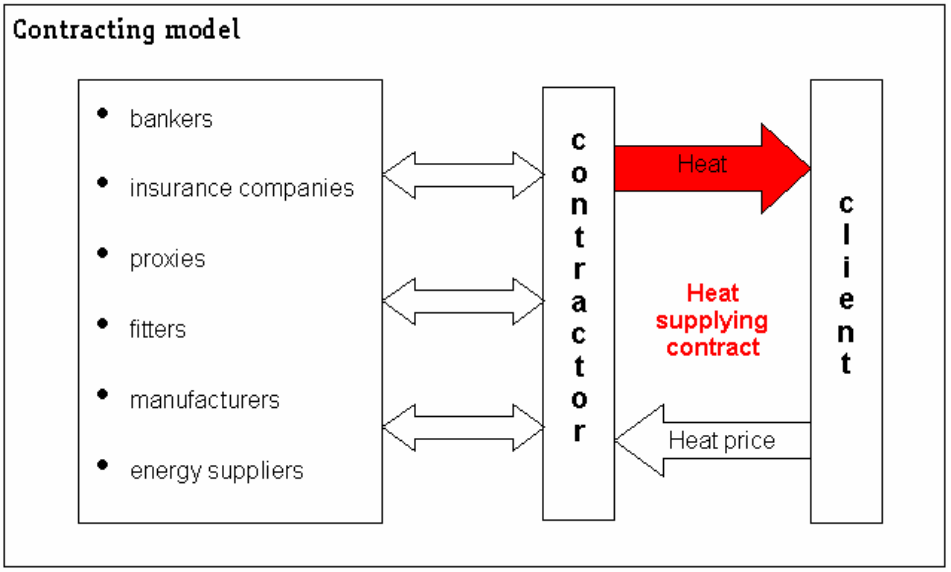
Experience shows that energy costs can be reduced by over 25%. The client can also save money through savings in heating and electricity obtained as a result of the energy efficiency measures that are implemented.

The contract period is usually for between 7 and 15 years. Depending on the actual situation, this duration can last less than 7 years.

Performance Contracting, or Third Party Financing (TPF), may also be attractive to energy users who have financial resources available, since it allows them to obtain a profit from energy savings, without them needing tie up their capital. These resources can then be used for other purposes.



Translation of document from Pierre-Alain Kreutschy _ SI Geneva (Switzerland)



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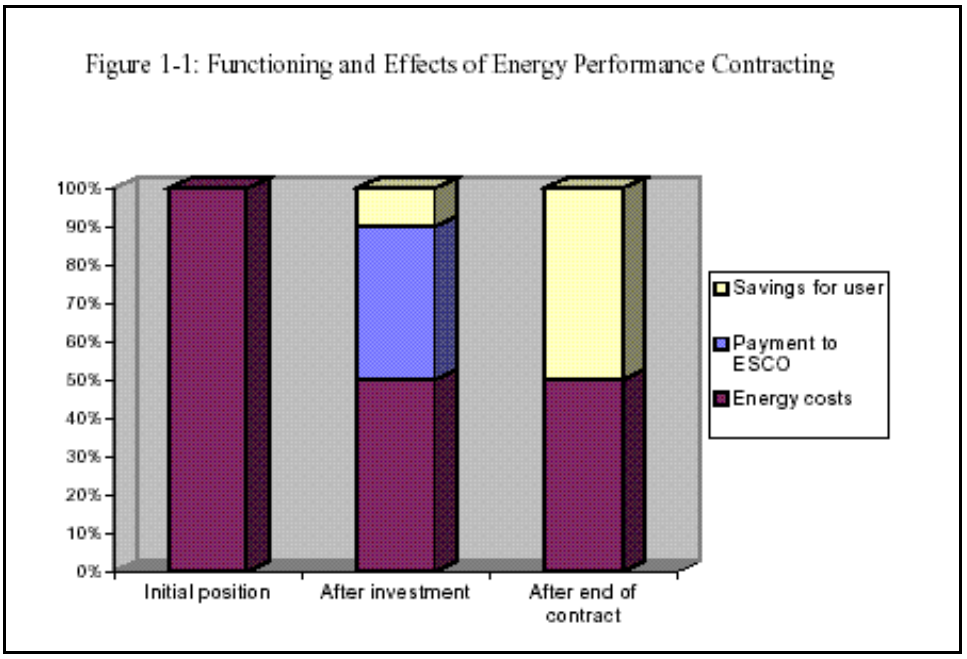

Graph taken from EVA (Energie Verwerguntsagentur - Austria): Guideline for success.

Example: Without Performance Contracting, the municipality pays its whole energy bill. During the contract, the municipality pays 90% of its initial energy bill (among which 50% represent the energy cost and 40% pay back for the contractor's investments), that already permits 10% of savings. After the end of the contract, the municipality pays only 50% of its initial energy bill and profits from 50% of savings.

This type of contracting can be applied in many fields:

- Buildings: schools, social housing, roads, energy management,
- Water, Sewage, Waste,
- Health, Education, Safety, Defence,
- Parking areas, support services and maintenance, Information, etc.

Performance Contracting can be used for building improvements as well as for new construction, and for all energy technologies.

There are three types of Performance Contracting corresponding to several spheres of activity:

- Management and monitoring of buildings,
- Investment and management of technical equipment (i.e. boilers, cogeneration equipment, ventilation, lights),
- Contracts for making energy savings, including investment in thermal insulation of buildings.

Which type of contract is selected will depend mainly on the extent of the renovations that need to be carried out and on the tasks assigned to the contractor. It will, however, also depend on the presence of qualified staff in the municipality (who can carry out maintenance, for example), on the number of buildings involved, the period for which it is desired that a contract is to run etc.

Advantages/Drawbacks

An energy-performance contract project holds numerous advantages for the client:

> A global solution with a full spectrum of services from a single source,
> A guarantee of obtaining a rational and economic energy solution which is in accordance with needs,
> Minimisation or even removal of the need to invest in installations,
> All risks associated with construction are transferred to the contractor,
> A stable price throughout the duration of the contract,
> Problems concerning operation and maintenance are no longer an issue,
> Contract duration shorter than the useful life of the installation.

One of the main advantages is that the energy service company assumes responsibility for any unforeseeable events in the areas of the technology involved and finance.
Finally, the value of the building is maintained or even increased, positive environmental effects are produced and the comfort provided for users is improved.

For contractors too, PC offers numerous advantages:

> A better public image thanks to:
    - Orientation towards the client's interests,
    - Rational energy use.
> Long term development of customer loyalty,
> Adds value to basic activities: PC is not an objective in itself, but complements energy savings,
> It increases market share.

There are, however, some drawbacks:

> Since PCs are not common, both contracting parties will have to make increased efforts in terms of organisation (but this guide and some examples that are already in existence will help to light the way!).
> Where low levels of investment and/or low levels of savings are involved, these will not be attractive either from the TPF company's point of view, or from that of the client. A possible solution would be to include, for example, a smaller building in a project involving several other buildings.
> In most cases, the term of an energy Performance Contracting project would be more than five years. This means that a long-term commitment will have to be made to the ESCO. This may, however, be desirable anyway from your point of view.

4 - How to implement Performance Contracting?

Most of information given in this section has been taken from the EVA web site:
http://www.eva.ac.at/(en)/publ/pdf/tpf-rat_en.pdf

This section will deal with how to approach a real project.
It is particularly important:

- To know how to identify buildings that are suitable for an energy Performance Contracting project,
- To establish clear targets to be attained by the project,
- To know which points to consider when awarding an energy performance contract,
- To know which elements should be included in this contract, and
- To know what the responsibilities of the local authority will be once the contract is concluded.

4.1 - Assessing the energy saving potential

The first thing to do to in ascertaining whether Performance Contracting could be of interest is to make an assessment of the municipal property.
As has already been stated, energy savings made during the implementation of the energy saving investment must be high enough to cover interest and repayment of investment costs. They must also cover the expenses incurred by the TPF company in connection with services such as operation and maintenance. For example, some TPF companies in Austria work on the assumption that it is worthwhile implementing energy Performance Contracting projects if energy expenditure exceeds a value of approximately 20,000 € per year.

The « Display » Campaign, which is co-ordinated by Energie-Cités, may help in assessing energy performance for buildings. The aim of this campaign is to ensure that municipal building energy efficiencies (in terms of primary energy consumption, water consumption and CO_2 emissions) are publicly displayed. A simple calculation tool, based on yearly energy consumption and the energy source, is used:

- To calculate the current energy efficiency class,
- To simulate the impact of improvement measures,
- To compare different buildings,
- To compare one municipality's buildings with those of other municipalities,
- To exchange experiences with other European cities.

For more information see: http://www.display-campaign.org

Another method of assessing a building's energy-saving potential is given in:
http://www.eva.ac.at/(en)/publ/pdf/tpf-rat_en.pdf (page 16 of the PDF document).

4.2 - Creating "building pools"

"Building pools" can provide a really good solution for the management of property energy issues.
The technique involves combining several buildings into a single joint project. This allows elements with lower energy saving potential to be included with others having higher energy saving potential. These pooled buildings have different levels of energy consumption, different construction materials, different fixtures and fittings etc, which leads to profitable cross calculations and also means that seemingly unprofitable buildings can be integrated into the project.

Small municipalities may not have enough buildings to do this. It may then be possible to combine with one or several other municipalities who are interested in this project, especially if co-operative structures have already been established between them. It is very difficult to set up this kind of project, however, since energy saving measures in one municipality's building could end up being financed by the energy cost-savings in another town's buildings.
For more information: http://www.penelope-save.org/front-moteur.php, search for: Pooling of Energy Contracting in Small Municipalities in Styria (Austria).

Some projects even involve upgrading the building stock of an entire city (public buildings, commercial and industrial facilities, apartments and private homes).
For more information: http://www.energie-cites.org/meels/index.php/cat/6/ (example of Peterborough).

Once it is known that some buildings might be suitable for Performance Contracting, the next step involves a consideration of what exactly the municipality would like to do: what level of improvement would it like, what functions would the contractor have to carry out (maintenance, inspections, services etc), what are the assessment criteria that the contract would be based on etc. These points are very important if a "win-win" contract is to be ensured, since these are the keys for the implementation of a successful partnership.

4.3 - Starting the public procurement process

The public procurement process will allow you to identify the most suitable contractor. It is carried out using a tender process at the European level. Only in this way will competition of prices and ideas be stimulated. It is necessary, however, to find suitable criteria for assessing the bids that are submitted. These selection criteria should be based on the project targets.

Warning!!
Even if the relevant Community Law is taken into consideration in the quoted legal opinion, you will need to establish whether the various energy Performance Contracting options are compatible with the legal framework used in awarding contracts in your own country.

Here are the stages that should be followed in the preparation of a prospective PC:

- An invitation to tender is to be published in the Official journal of the European Union; it is essential that all awarding criteria be published,
- Those submitting a tender will then carry out and submit a preliminary study of the expected energy savings (rough analysis),
- The contract is awarded to the bidder with the most advantageous tender,
- The contractor (tenderer) signs a contract with the municipality to make a "Feasibility study" (detailed study), and the municipality signs a letter of intent (ensuring that the contract will be signed if the feasibility study confirms the energy savings to be made in the preliminary study),
- Decision made as to whether the performance contract should be concluded.

4.3.1 - Call for tenders

The larger the project, the greater should be the amount of time invested in the preparation of the tender documents. If the project is small, it will be sufficient to lay down a number of essential framework conditions.

In order to be able to take advantage of competition involving both prices and ideas, it is suggested (particularly for larger projects), that a "two-step procedure" is applied when awarding energy performance contracts.

Step 1: Publicly assessing the field of potential applicants before starting the actual awarding procedure. This will both provide information about who the tenderers in the market are, and at the same time eliminate unsuitable tenderers. This will help to reduce the work involved in assessing in-coming tenders to a minimum.

Step 2: Inviting suitable companies to submit a tender and subsequent start of contract negotiations. How this procedure can be brought into compliance with the relevant legal framework of the country involved still remains to be investigated, however

The tenderers themselves will also be interested in obtaining more information on the project. It is therefore recommended that a relevant information leaflet be prepared. For larger projects in particular it would be sensible to provide tenderers with the opportunity to obtain detailed information on the project through an informative event. The criteria for assessment of incoming documentation must be publicly announced in advance.

Contents of Tender Documentation:

- Subject Matter and Project Targets,
- Advice in Preparation of Documents,
- Determination of Remuneration,
- General Framework,
- Scheduling,
- Assessment Criteria
- Building-specific Data.

Warning!!
The lowest bid is not always the best; public authorities should carefully select the option providing best value. The invitation to tender should specify as precisely as possible the conditions required by the authority.

4.3.2 - Assessment criteria

This section offers a few ideas and suggestions regarding the criteria by which to assess whether (and to what extent) an offer is of interest. These assessment criteria are of particular importance for awarding the energy performance contract.

Examples of assessment criteria:

- Guaranteed energy cost savings,
- Client's share of savings made,
- Savings involving other areas of expenditure,
- Reduction of energy consumption,
- Reduction of Greenhouse gases/pollutants.

4.3.3 - Feasibility study of the Performance Contracting process

Main aspects

> The feasibility study must contain:
> The object of the agreement,
> The basis of the contract,
> The contractor's obligations,
> The municipality's obligations,
> Additional regulations.

Performance Contracting is self financed once it has been established. The major issue concerning feasibility study is that it needs a considerable amount of investment and commitment in order to be set up. Generally, it needs the support of a major and stable organisation, such as a local authority or utility.
Such funding is sometimes needed over several years before the process becomes self-financing, and finding that level of commitment is not easy. For example, support given by public sector contracts was vital to getting the Performance Contracting sector off the ground in Canada, and in Berlin, the energy agency (Berliner Energieagentur) relies on local authority contracts for financial security.

Government involvement is needed since governments can provide assistance by easing the restrictions on both local authorities and other public sector institutions and by providing security guarantees.
Promotion of ESCOs needs action at local level and a strong public sector market. Government can promote the use of energy Performance Contracting in their sector of control, it can adjust tax rates so that energy investment is not penalised through the VAT system, it can encourage local government to invest in such structures, and it can set them targets. But, again, it requires long-term will and commitment to maintain such policies over a reasonable length of time.

Feasibility Study in detail

Object of agreement

The basis of the contract

> Preliminary contract,
> Applicable law,
> Include[1] letter of intent or extra documentation.

Contractors obligations

> To prepare a study within a certain time limit (date)
> The study has to contain:
    - Present operating levels,
    - Expected standards of comfort,
    - The specifications for any equipment to be installed (what, when, where, costs),
    - The “Baseline Consumption”, that is the energy consumption and costs for the baseline by reference to which any savings will be measured (Reference value),
    - The assumptions upon which the ”Baseline Consumption” is calculated,
    - The value of savings and the method proposed for calculating energy savings,
    - The services to be supplied by the contractor,
    - The annual cost payable to the contractor,

[1] For example, in a Swiss performance project: the contract will be concluded if no additional costs arise in comparison to the present energy costs.

- The price for a purchase option,
- Comments on provision of and costs of additional services.

> The cost of the study (if the performance contract is awarded, no additional costs; if no contract is awarded, then if the feasibility study differs significantly from the preliminary study then no payment; if no contract, but the feasibility has roughly confirmed the preliminary study, then payment),
> Insurance: professional indemnity insurance.

Municipalities' obligations

The Municipality should provide the following information to the contractor for their studies:

> Records of energy consumption and energy costs for the last 3 years,
> Copies of any existing energy supply contracts,
> Copies of any existing maintenance contracts,
> Standards for services and comfort levels (e.g. temperature of rooms),
> Plans of buildings,
> Information on the use of each part of buildings (occupancy),
> Details of equipment which uses energy,
> Information about plans for any current or future construction work on the building,
> Details as to when and where it would be possible to install new equipment,
> Any other information which might reasonably be required.

Further conditions

> Termination of contract, no regulatory termination,
> Liability and warranty, with reference to the laws involved,
> The laws governing the contract,
> Written amendments only,
> Agreement of jurisdiction.

This preparation phase can be long and expensive, but it is an essential part of establishing a “win-win” contract, and it will ensure that maximum possible energy savings are achieved.

5 - How to draw up the contract?

Once the contractor has been chosen and the feasibility study accepted, the actual text of the contract can be drawn up.

5.1 - What are the main aspects of the contract?

Performance Contracting tries to ensure the greatest possible reliability. It takes all the specific demands of the project into account and legally guarantees the client's interests. The contract includes:

- All the details of technical actions carried out,
- The nature and extent of any investment made by the contractor as well as the duration and level of savings involved,
- All areas of responsibility,
- Maintenance,
- Rights of ownership and usage.

Contractors are responsible for the performance of the technical systems involved and also, therefore, for any risk involved if the systems break down. They also guarantee the client a minimum level of targeted energy savings and will carry all financial risk (if, for example, interest rates rise).

Clients provide contractors with the necessary factual basis required to make accurate calculations for the duration of the project. This involves adjusting their annual energy costs (the so-called base line) to account for climatic changes and alterations in consumption and energy prices. The following example provides an illustration: if the building is used for purposes other than those for which it was originally intended, the contractor is not to be burdened by any unforeseeable rises in energy consumption.

Both partners must also agree on matters that are additional to the guaranteed savings. This can act as an incentive for the building's "users" (such as tenants) to save even more energy than stipulated by the contract.

The principal elements of a contract for guaranteed energy savings are:

- A guarantee from the contractor (under your country's law) indicating the level of savings to be expected,
- The options chosen by the contractor for servicing and maintenance of the existing energy equipment,
- The options chosen regarding the type and amount of investment to be made by the contractor (the quality, compatibility, working-life of the technical components),
- A declaration that ownership of the investments made is transferred to the owners of the buildings from the moment of their installation (this gives security in case the contractor becomes insolvent (bankruptcy). If this happens clients can themselves continue with the measures being taken).

5.2 - What are the conditions required for successful Performance Contracting?

Contractors:

> Well trained, engineering-based companies,
> Willingness to use advanced tools and techniques,
> Credibility.

Municipalities:

> Political willingness,
> Awareness and being well-informed (information networks and partnerships),
> Good project preparation,
> Involvement of staff (controlling the progress of the project).

Warning!!
Problems usually arise after the contract is signed. Thinking about them before drafting the terms of the contract can avoid nasty surprises cropping up, such as:

> Disagreements about not keeping to schedule for installations,
> Disagreements about the quality of the installed components,
> Disagreements about the standards of comfort involved,
> Additional co-ordination work by the public authority (client),
> Disagreement due to unclear demarcation of responsibilities for maintenance.Disagreements in the event of the building going out of use or of changes of use.
> Contractors' refusal to install or maintain the energy system because of disagreements
> Bankruptcy of the contractor.

5.3 - What should a Performance Contract contain?

This section explains which contract terms should be discussed with a private company. Only those points that differ from standard contracts will be discussed.

Warning!!
Make clear what you expect from the contract
be precise in definitions
protect against possible problems!

Performance Contract
Between a public authority (municipality) and a private company (contractor).

Contractors' obligations

> Installation (which works make up an installation, what are the quality levels, duration, inspection and approval),
> Guaranteed target (providing heat/electricity, guaranteed savings[2], energy cost baseline, calculation),
> Maintenance (what exactly is to be maintained, how often, replacement or alteration, emergency cases),

[2] The Municipality should be provided with a performance bond or other security until measures are satisfactorily completed.

- Other obligations (calculation of energy savings, insurance, accounting),
- Risk allocation (risks in operation of the energy saving installations).

Municipalities' obligations

- Payment,
- Providing free access to the building,
- Providing rooms for plant, providing water, fuel and electricity access,
- Maintenance of the building (interface with contractors responsibilities),
- Right of veto.

Terms of contract: Duration, Payment, Allowable costs

- Contract type “first-out model”, or fixed duration,
- Setting the energy cost baseline,
- Setting the guaranteed savings (amount of savings, basis for payment),
- Should Municipality share in energy savings?
- Payment if the target is fulfilled, not fulfilled or over fulfilled (penalties or bonus).

Terms of contract: Avoiding problems, finding solutions

- Define clearly who owns the property (take applicable law into consideration),
- Conditions governing delays to installation works,
- Conditions governing poor operation of the system,
- Conditions applicable if guarantee target is not reached,
- Conditions that apply if the contractor will not or cannot install or maintain the energy system (e.g. insolvency or legal dispute),
- Conditions that apply if a building falls out of use (or when there is a change of use),
- What are the reasons for terminating a contract & claiming damages?
- Should financial securities be given, which insurance,
- Duration and commencement of warranties.

Distribution of responsibilities and risks

The client provides a reliable base for calculations to the contractor **throughout the entire period of the contract** adjusting annual energy costs (baseline) for possible changes in the climate, the use of the building and the price of energy. This implies, for instance, that if the degree or level of use of the building increases, the client will have to bear any additional costs related to the increased energy consumption.
If the savings are less than predicted, then the guarantee applies. The client's bill will in no case increase.
Examples:

- The service provided also offers options for increasing the motivation of the users. Caretakers receive training, and the awareness of schoolchildren is raised via energy saving packs and games,
- During the contract duration, a number of buildings were sold and others were included in the pool when the opportunity arose; this was all taken into account in the contract and so these can be very flexible.

(Document from MEELS: Case studies of good practice in meeting the challenge of liberalisation – The example of Berlin)

5.4 - What are the specific points which may lead to conflict?

This part is inspired by existing examples of Performance Contracts. It can help to avoid some problems, but there is no obligation for it to be applied! (such clauses have to meet the needs of the particular cases involved).

Right of veto

The Municipality has the right to operate a veto if the installation of plant or of an energy saving system would be:

> In contradiction of the law,
> If the measures taken conflict with contracts made with other parties,
> If the investment exceeds a certain value,
> If the contractor can provide no proof of the quality of the measures taken to save energy,
> If the investments lead to further cost for the Municipality.

No transfer of business

Energy saving measures result in no transfer of business: refer to decision of the European law court C 392/92.

Allowing sub-contracting to take place:

> Contractors must inform the Municipality if they wish to subcontract,
> Written approval is needed from the Municipality,
> The right to exclude suppliers or subcontractors with whom the Municipality believes it has had a poor working experience.

Take-over notice

> Municipality
  - Whether allowed or not to sell the property and the object of the agreement: does the contract end or not,
  - Conditions for taking over the contract.
> Contractor
  - If the contractor is taken over by another enterprise: does contract does end or not.

Purchase option

After 1 year from the commencement of the contract, the Municipality may ask to terminate the contract by acquiring all the works carried out at the termination value.

Warranties

> Warranty period, either refer to law or negotiate a longer period (the whole contract duration for example),
> Beginning of warranty period depends on time when risks are transferred,
> Warranties after expiration of contract if not mentioned:
  - Warranties according to the law (time when risks are transferred is important) and,
  - Warranty for availability of spare parts for a period of some years.

Force majeure : conciliation

Several possibilities, for example:

> Will not give rise to a claim by one party against other,
> Obligations of both parties will be suspended, if continuing uncontrollable situation or reason for termination.

Termination of the contract

> No regulatory termination
> Immediate termination, reasons:
  For the Municipality
  - Insolvency,
  - Gross failure to meet guaranteed energy savings,
  - Gross offence against transparency criteria (accounting) and further refusal,
  - Cases of unfair competition (other: claim for damage),
  - Other severe offences against the conditions of the contract (e.g. refusing to implement measures).

  For the contractor
  - No payment after additional respite (default),
  - Falling out of use or adjustments,
  - Other gross offences against the conditions of the contract.

> Form of termination,
> Damage.

Warning!!

This is a new type of contract and may result in new hazards, such as corruption, or a policy of taking short-cuts on the part of the private organisation.

In all cases, the following information will be substituted by legal advice!!

6 - What are the procedures that guarantee successful Performance Contracting?

6.1 - Project advisor intervention

In order to achieve the best possible results from Energy Saving Partnerships, it is advisable to appoint a project advisor, usually called Project Manager, well versed in the subject matter and in the market. The technical, economic and legal demands of the project have to be coordinated and represented as effectively as possible in a competitive market environment.
Project management involves:

- Drawing up all the papers for the contract itself and its award,
- Recommendations for technical and commercial targets,
- Formal and technical co-ordination of the tendering process,
- Sound knowledge of the market, to allow technical and economic appraisal and negotiation of the tenders to be carried out,
- Recommendations for awarding of a contract,
- Controlling the Project.

(Sources: Berliner Energieagentur)

The Project Manager is an expert who supports and advises the client: he oversees the contract in a general manner as a consultant of the client.

Warning!!
Some companies propose both project advisor and contractor services. Energies-Cités would advise to choose two different companies for those two different tasks, in order to guarantee the best transparancy and to allow the client to profit from an independent assistance.

6.2 - Having energy specialists (control and maintenance) inside the municipality

It is recommended to have some "energy specialists" inside the municipality. Indeed, it is essential that the municipality controls the work done by the contractor. In addition, the municipality has to know how the installations work and how to maintain them in order to be able to take over all those tasks at the end of the performance contract.

EVA advises:
"Depending on the terms of contract, the TPF company (ESCO) can be put in charge of various duties. In many cases, the external partner also takes on duties involving data acquisition and reporting. This leaves the local administration with a mainly controlling function.
In order to remain adequately informed about when certain measures are being implemented in your buildings, you should impose a duty to inform on your partner. In addition, a plausibility check should be carried out relating to the consumption details provided in the TPF company's reports. If you can understand the individual steps involved in calculating the reduction of costs, the results presented in the report will be reliable."
For more information: http://www.eva.ac.at/(en)/publ/pdf/tpf-rat_en.pdf

6.3 - Network creation

Creating a network composed of utilities, local authorities, companies, NGOs, etc. can be very useful for the implementation of PC projects. The specific goals of networking are:

- Achieving high quality projects,
- Working with competent enterprises,
- Providing rational and cost-effective project management,
- Successful implementation of a number of projects,
- Finding qualified enterprises as partners.

For more information, see the example of Graz (from MEELS: Case studies of good practice to the challenge of liberalisation): http://www.energie-cites.org/meels/index.php/cat/6/

Another example involves the activities of the Berliner Energie Agentur in Eastern Europe. They created a network composed of local agencies and international companies in order to facilitate Performance Contracting in Eastern Europe countries.
For more information: http://www.clearcontract.de/
Download: Sustainable Energy Management through Energy Contracting - Opening Markets in CEE

6.4 - Communication campaign

Good communication between all the participants in a contracting project (contractor, municipality, users, etc) is very important if you wish to guarantee a successful operation.
For example, the Miléant project (Switzerland – SI Genève) involved, among other thing, the installation of central heating in the municipality of Budé. SI Genève insisted that communication must involve everyone's attention, since in this example the heating fitters from the Geneva canton were not kept informed.
Another example is the CADIOM project (Switzerland – CIG, Dalkia Switzerland, CGC-energie, Zschokke) which had to install a system recovering heat from a household refuse incinerator in Cheneviers, to provide heating for the municipalities of Onex and Lancy. They followed an interesting communication policy which led to a successful implementation of the project, which involved:

- Establishment of a communication committee in collaboration with the Onex and Lancy municipalities,
- Publishing and distributing an explanatory leaflet to the population involved,
- Information for the population in form of a friendly "coffee-croissant" events,
- Educational information for schools,
- Mobile exhibitions in public places.

For more information see: http://www.geneve.ch and http://www.swisscontracting.ch

7 - Questions and answers

Section extracted from the Berlin Energy Agency (Berliner Energieagentur): "Performance Contracting: Energy Saving Partnership – A Berlin Success Model".
http://www.berliner-energieagentur.de/data/020507_final.pdf

Is it possible to manage energy saving partnerships without external support?
There are 3 relevant factors which determine the viability of economic implementation of energy saving measures in a local authority. It may make more economic sense not to sign an Energy Saving Partnership. The 3 factors are: liquidity of budgetary assets, specialist know-how of the building owner and good conditions for purchasing in the construction and planning areas.
An Energy Saving Partnership with an external partner has the following advantages: the reduction in energy consumption and costs is guaranteed by contract, the contractors carry the entire financial burden, they make investment and they legally commit themselves to reducing the energy costs by a certain amount. This amount is guaranteed and will be paid to the client even if the targeted energy savings are not reached. Energy consultants are used to planning and improving energy saving investments as part of their daily work and thus are able to achieve greater savings than the building owner alone.

Are long-term contracts a risk for the building owner?
An energy saving partnership can last between 5 and 15 years, depending on the situation regarding the building: i.e. how much is to be invested and to what extent is the building owner able to participate. It can generally be said that the longer the contract lasts, the further the energy saving investments go. The contract will only run smoothly if the tendering process and contract ensure a solid assessment of the current situation and form a clear definition of the net targets (adjusted according to climate, price and consumption levels).

Doesn't the project development and preparation take up too much time and cost too much money?
The successful implementation of an Energy Saving Partnership depends largely on the careful planning and development of the project. Important synergy benefits are obtained through the establishment of building pools in the project phase. All those involved in the project should participate right from the start in order to achieve a high level of information transfer and transparency in the process. This is the only way to gain broad acceptance of the project. Time and money spent on preparation for the project are usually covered by the subsequent reductions in energy and operating costs.

Will buying-in external consultants for energy management mean having to cut back staff?
No, it has more to do with an outsourcing of specific tasks. The technical staff play an important role because they are the interface between the building owner and the contractor. New job areas are created such as Project Control. Staff are also relieved of certain duties, in particular in maintenance and through the improved operation of the energy saving measures. The technical staff are therefore left more time to improve operating safety and technical services.

Does the building owner lose control of the construction technology and operation management through outsourcing of energy management?
On the contrary: the building owner still owns all new investments and the entire operation management. The contractor is responsible for the installation and operation of the energy saving investments. Building owners can, however, choose whatever are

the most favourable interfaces for them when drawing up the contract (these could involve the maintenance of the system, for example). In this way, there is only one contact person for the building's equipment, rather than a hoard of maintenance firms.

What do I need a project manager for? Can't I transact an energy saving partnership directly with a contractor?

Project managers have the know-how and the necessary overview of the market to award the contract to the best possible contractor. They are the interface between building owner and potential Energy Saving Partner in managing the tendering process. They are also responsible for awarding a contract which guarantees the greatest possible savings. The building owner does not generally have access to this comprehensive knowledge of the market.

What happens if energy prices change?

The contract makes allowance for a so-called price clause: contractors are only paid once they submit proof of the reductions in kilowatt hours that have been made in line with a fixed price. They have no involvement in contracts with energy suppliers or energy prices. Building owners continue to profit from reductions in energy prices, just as they must pay more if prices rise. The difference is that they are guaranteed lower energy consumption.

What happens after the contract expires?

A concluding audit is run on expiry of the contract. Building owners are given an assurance that their systems are in an appropriate technical state for their age. They can then assume responsibility for the process and reap the benefits of the savings. The contractor is only liable for a limited time in providing replacement parts. The contract can always be renewed or a new invitation for tenders started.

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9 - SOURCES

Web sites:

- Berliner Energie Agentur: "Performance Contracting: Energy Saving Partnership – A Berlin Success Model".
  http://www.berliner-energieagentur.de/data/020507_final.pdf

- Clearcontract: Clearinghouse for energy contracting: http://www.clearcontract.de/
  Sustainable Energy Management through Energy Contracting - Opening Markets in CEE

- Energie Verwerguntsagentur_EVA (Austrian Energy Agency): "Energy Performance Contracting for small and medium-sized municipalities: Guideline for success".
  http://www.eva.ac.at/(en)/publ/pdf/tpf-rat_en.pdf

- Municipalities and Energy Efficiency in a Liberalised System MEELS: Case studies of good practice to the challenge of liberalisation.
  http://www.energie-cites.org/meels/index.php/cat/6/

- Service Cantonal de l'énergie de l'état de Genève_ScanE:
  http://www.geneve.ch/scane/home/welcome.asp

- Swiss Contracting: http://www.swisscontracting.ch

- Display campaign: European Campaign for the Display of information on the energy consumption of municipal buildings: http://www.display-campaign.org.

Publications:

- Services Industriels de Genève (SI Genève _ Switzerland): presentation from Pierre-Alain Kreutschy for the seminary made by Swiss Contracting and ScanE (04/03/2004): "How realise a Performance Contracting Project?"

- CGC Energie (Switzerland): presentation from Jean-Philippe Louet for the seminary made by Swiss Contracting and ScanE (04/03/2004): "How realise a Performance Contracting Project?"

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