Accelerate SUNShINE

SAVE YOUR BUILDING
BY SAVING ENERGY

Guidelines for procurement of energy efficiency project with energy performance contracting

GUIDELINE FOR MUNICIPALITIES

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ABBREVIATIONS AND DEFINITIONS

EES – energy efficiency service – the physical benefit, utility or good derived from a combination of energy with energy efficient technology and/or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to lead to verifiable and measurable or estimable energy efficiency improvement and/or primary energy savings [1]

EnPC – Energy Performance Contracting - a contractual arrangement between the beneficiary and the provider (normally an ESCO) of an energy efficiency improvement measure, where investments in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement [1]

ESCO – Energy service company – a natural or legal person that delivers energy services and/or other energy efficiency improvement measures in a user's facility or premises and accepts some degree of financial risk in so doing. The payment for the services delivered is based (either wholly or in part) on the achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria.[1]

INTRODUCTION

The Accelerate SUNShINE continued and complemented the work carried out in the SUNShINE project. These are two projects supported by the H2020 programme of the European Union. The concept behind the projects is to deliver building deep renovation based on Energy Performance Contracting. SUNShINE focused on multifamily buildings, while Accelerate SUNShINE was also extended to public buildings. The projects delivered a financial instrument for Energy Service companies and aimed to increase the level of private funding in the building renovation industry.

Municipalities often lack the capacity and expertise needed regarding energy performance contracting. Most of the project in Latvia are based on a design bid and build approach, where when the contractor has been given the design by the employer. Based on this approach, the municipality first hire an engineering design company and then using that project design prepares a tender for civil engineering and installation works including a standard construction contract. For example, in international contracts this approach is described by the FIDIC Red Book.
In this approach in Latvia the municipality selects the lowest costs bid and do not include other indicators based on life cycle costs.
This approach is not an optimum approach for Energy Performance Contracting, where the Energy Service Company may need to be involved already at the design face of the project, where measures, investments and operational and maintenance costs can all be assessed on life cycle costs basis.

Based on the experience of Latvia and other countries, Accelerate SUNShINE developed this guideline for the procurement of the energy efficiency services using energy performance contracting for deep renovation of buildings. This guideline can be used by both national and local authorities and other stakeholders who need information and guidance on this complex and interdisciplinary matter.

The guideline is divided into three main chapters. The first chapter provides an insight into existing experience and practices in different European countries on the organisation of public procurement of energy efficiency services. This first chapter includes information on the legal framework for public procurement, example of EnPC contracts and examples of the organisation of procurement procedures from other European countries with long-standing experience in the field. The second chapter looks at experience in implementing EnPC projects in Latvia, including preparing documentation, selection criteria, as well as examples of including an energy efficiency guarantee in construction contracts and on performing measurements and verify of energy savings. The third chapter is a proposal on how to implement EnPC in the public sector in Latvia, with a focus on the organisation of the procedure and examples of the requirements of an EnPC model contract.

1. EXPERIENCE IN PUBLIC PROCUREMENT

The mechanism proposed by Accelerate SUNShINE for increasing the uptake of energy efficiency projects in the public sector is Energy Performance Contracting (EnPC). A major advantage of this mechanism is its capacity to possibly mobilize the private sector to provide finance, performance guarantees and sharing risks.
Energy Performance Contracting is "a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure, verified and monitored during the whole term of the contract, where investments (work, supply or service) in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion, such as financial savings" (Directive 2012/27/EU). This contractual
This contractual arrangement creates the possibility for Municipalities to overcome a series of financial and technical barriers to improve the energy performance of buildings. This is particularly interesting for municipalities that have already made several financial commitments and is no longer able to obtain loans from the public treasury or other financial institutions.
According to Section 14 of the Latvian Energy Efficiency Law, the State and local authorities are entitled to use EnPC for a period not exceeding 20 years; however so far, such projects have not been implemented in the public buildings sector as several market and regulatory barriers are still in place[1]. Therefore, most public building renovation projects have been carried out thanks to Green Investment Schemes, EU structural fund, and Latvian Treasury loans.

In Latvia construction procurement is usually organised with an open tender selecting the most economically advantageous tender, considering as the only selection criteria – the offer with the lowest contract price. Although the Public Procurement Law allows other additional assessment criteria (e.g., lower overall project costs throughout the maintenance of the building) as well as other qualitative construction criteria (a certain energy performance indicator to be reached, etc.), so far this has not been the practice. And this is even though this would generally lead to improvements in the energy efficiency of the building and reduce overall project costs throughout the life cycle.

1.1. Legal framework

The European framework related to the procurement of Energy Performance Contracts for building deep renovation is made of several importance directives:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance;

[1] ESCO market assessment and market monitoring, September 2020. Accelerate SUSNhINE – www.sharex.lv

- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance;
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance;
- Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (Text with EEA relevance);
- Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (Text with EEA relevance).

These have been transposed in the Latvian legal framework.

1.2. Different types of EnPC contracts

With reference to the information prepared by the International Energy Agency, there are currently several types of EnPC contracts, the most widely used are:

- guaranteed savings contract – used in countries such as Denmark and the Czech Republic, where the EnPC market is developed with well-established banking system. ESCO guarantees the savings of certain energy costs and takes on all the technical risks associated with the project. The client is granted with a bank loan or uses its own capital to pay the fees specified in the EnPC agreement to the ESCO and the bank but reserves the right to maintain the difference in costs.

Figure 1. Model of the guaranteed savings contract [2]

- shared savings contract – where the ESCO can arrange project financing as well as project development and implementation costs, but the energy savings are distributed between the ESCO and the customer during the EnPC contract.

This model demands that the ESCO has access to advantageous forms of capital (debt and equity) and the financial institution are familiar with the energy efficiency industry.

Figure 2. Model of the shared savings contract [2]

The uncertainty surrounding the energy savings resulting from the implementation of energy efficiency measures often prevents third-party funding from being mobilised for energy efficiency projects. One of the solutions is energy savings insurance, which is currently available only from a small number of private companies and insurance companies in well developed markets. This type of insurance may be particularly important for small ESCO companies, which lack third-party funding and have low creditworthiness. Most frequently two types of energy savings insurance are offered:

- technical – the insurance company covers ESCO if the promised energy savings are not achieved due to the technical risks associated with the implementation of efficiency projects;
- credit – the insurance company takes on the project's credit risk, thereby ensuring that repayment to ESCO still can be made even in the event of a customer's credit default.

1.3. Tender procedures

Municipal procurement departments inviting tenders of which the estimated value exceeds the Latvian threshold values must in principle be put out to tender in accordance with the Public Procurement Law. The open procedures are standard and most typical procedures that can be used for any contract. The negotiation procedures and competitive dialogue with and without prior notice are exceptional procedures in Latvia that are rarely used.

According to Public Procurement Law, in Latvia the EnPC procurement can be organised in the following way [3]:

- **Open procedures** for the selection of EnPC provider or ESCO. The open procedure is a standard procedure with a single round, in which all interested companies submit a tender. The disadvantage of this procedure is that everyone can submit a tender, which can raise the cost of the procedure and the effort for selecting a contractor. In the case of EnPC, the open procedure

can be more suitable for simple projects and energy efficiency services (energy management/lighting/energy monitoring). One of the other procedures is probably more suitable for more complex projects, where the municipality has not selected the energy efficiency and building conservation measure to be implemented. Using an open procedure for building deep renovation requires the municipality to include in the tender the detailed project design and requires the provider to carry out the works according to that project design. Open procedures are probably not the most suitable tender procedures in complex buildings and in situations in which multiple energy-saving and technological solutions are possible and in which not all measures have been selected. However, for standardised deep renovation projects, this procedure can be used for EnPC. The provider when contract must take over the responsibility of the project design developed by the employer, tendering with a guarantee on energy savings, which is based on that provided project design and required operational and maintenance activities. In Latvia open procedures have been used for deep renovation of public buildings using EnPC. In this case the municipality includes as annex to the construction contract, which has a warranty period of five years with a performance bond, the guaranteed level of energy savings, the description of measurement and verification activities and the description of operational and maintenance activities. So far in Latvia this has been the only approach used and tested for the procurement of EnPC base deep renovation projects. Current regulatory barriers and financial options prevented the use of longer term EnPC (>5years) and third-party financing. This type of procurement has been organised and used for the deep renovation of public buildings in the municipalities of Tukums, Ādaži, Jūrmala, Kocēni and Daugavpils.

- **Closed procedures** – this is the standard procedure in which potential ESCOs are assessed in two different rounds. The first round (shortlisting) serves to select those ESCOs that will be invited to submit a full tender. These full tenders are then assessed in the second round. The closed procedure is considered more suitable than an open procedure for energy performance contracts, which a require more extensive tenders. However, in closed procedure the Municipality selects all measures before tendering and ESCOs do not have much freedom for innovative ideas. Closed procedures are probably not the most suitable tender procedures in complex buildings and in situations in which multiple energy-saving and technological solutions are possible and in which not all measures have been selected. However, for standardised deep renovation projects, this procedure can be used for EnPC and shall be preferred to the open procedures if the number of ESCOs to tender is expected to be very high.

- **Procedure with negotiations** – in this procedure the municipality inviting tenders consults with the ESCO it shortlisted and in which it determines the terms of the contract through negotiations with one or more of those ESCOs. The special circumstances in which the negotiation procedure can be applied are quite restrictive. The Municipality inviting tenders with a negotiation procedure must prove the existence of specific situations. Considering EnPC, these situations may be linked to complex projects making impossible to estimate the total price in advance (a complex building, where more integrated energy efficiency solutions may reach different energy efficiency targets and have different operation and maintenance costs). This procedure may also be appropriate when the tender also include a financial service as part of the EnPC, for which the Municipality is not able to determine the costs sufficiently accurately. So far in Latvia this type of tender procedure has not been organised for the implementation of public building renovation projects.
- **Competitive dialogue** – The competitive dialogue is considered the most suitable procedure in situations where the Municipality wants to tender an EnPC for deep buildings renovation, without indicating in advance which type of solutions can be used and which technical and/or financial solutions can be provided. For example, the municipality could tender the deep renovation of a building just indicating the energy efficiency target to be reached and requiring the best net present value of the project in a timeframe of 20 years. In selecting the competitive dialogue procedure, the Municipality manages a dialogue with the shortlisted ESCOs for determining the solutions that are most suitable to reach the targets and fulfilling the needs of the Municipality. The Municipality will continue the dialogue until it selects all solutions that best fulfil its needs. After the dialogue, the participants submit a final tender for the select solutions and services. So far, in Latvia this type of procedure has not been used by Municipalities in the procurement of energy efficiency projects in buildings. The competitive dialogue offers the most advantages in the case of complex energy performance contracts and it is generally the recommended approach.

In the case of an EnPC a negotiated procedure or a procedure with dialogue are better options. [4] The competitive dialogue offers the most advantages in the case of complex energy performance contracts and it is generally the recommended approach. These two procurement procedures are most used in other European countries. In the case of EnPC projects, the ESCO may offer a variety of technical solutions to meet certain requirements (allowed in the tender procedure with negotiations), or the tenderer may offer different approaches to the whole implementation of the EnPC project, which was not known to the contracting authority at the time of giving the award of the contract (allowed in the tender dialogue). If the contracting authority has determined the conditions for the tender so that the picked tenderers can prepare an appropriate tender, the tender

procedure with negotiations may be used. On the other hand, the tender procedure with dialogue should be chosen if the contracting authority can define its own needs and requirements but not the way in which it can be achieved. It should be noted that tender procedure with dialogue is generally a more time-consuming and an administratively complex process than tender procedure with negotiations. [5]

These two procedures make it more technically and economically feasible to achieve the outcome of the EnPC procurement procedure. An overview of the organisation of procurement procedures in different European countries is shown in Table 2.

Table 2. Overview of procurement procedures in different countries [5]

Country	Tender procedure	Services
Belgium	tender procedure with negotiations	EnPC
Czech Republic	tender procedure with negotiations	EnPC
France	tender dialogue	EnPC and energy supply contracting (ESC)
Slovenia	tender dialogue	EnPC and ESC
United Kingdom	public tender	EnPC
Greece	public tender	EnPC, ESC and other energy efficiency services
Slovakia	public tender	EnPC, ESC and other energy efficiency services

Belgium currently has one of the best performing market for energy performance contracting; the number of EnPC contracts concluded has increased from 3 to 29 in 301 public buildings, compared to 2015, when only three building renovation projects were implemented based on EnPC. To promote the development of ESCO and EnPC market in Belgium, a special ESCO association (BELESCO) was established in 2010. Most often, ESCOs are attracted to energy efficiency projects for public buildings, including hospitals, educational institutions, and municipal administration buildings. The average duration of an EnPC project is 10 years. [6]

One of the leading ESCO consulting agencies and facilitator in Belgium is Vlaams Energiebedrijf NV (VEB), a Flemish External Independent Agency under the form of a Publicly owned Limited Company of the Flemish Government. This Agency promotes communication and cooperation between customers and ESCOs, ensuring successful conclusion of the EnPC. VEB provides the necessary expertise (technical, legal and project management) for the success of the ESCO project. These EnPC also cover management costs as they form a significant part of the energy management of the

building. To implement EnPC projects by attracting VEB consulting company, the total energy costs must be at least €250k per year. To reach this threshold, buildings are often bundled in groups.[7]

Currently, in Belgium, the ESCO procurement procedure is organised as a tender procedure with negotiations consisting of the stages shown in Figure 3. In order to determine the winner of the tender, both the tender quality criteria (around 30% of the total score, such as the quality of the project plan and the energy efficiency measures envisaged) are considered and the quantitative criteria or costs (around 70% of the total score), which also weight, for example, the energy saving guarantee, investment costs, and operational and maintenance costs. [5]

Figure 3. ESCO tender procedure stages [5]

The successful development of the EnPC market in the **Czech Republic** has been driven by the active involvement and legislative framework for ESCO companies, such as the introduction of a mandatory energy management system, including the use of EnPC in the procurement of energy efficiency projects.

Public buildings (including hospitals and educational institutions), administration buildings, public lighting, as well as the private sector – office buildings, hotels, tourism facilities and production buildings are the most common customers of ESCOs. In 2018, there were 15 ESCOs active on in market, of which 11 had implemented projects based on EnPC. To further promote market development, an EnPC model contract for public buildings was developed. It can be downloaded on the home page of the Czech Ministry of Industry and Trade. In addition, a list of energy service companies and EnPC providers is available, in line with the legislative requirements of the Czech Republic. [6]

Similarly, as in Belgium, in the Czech Republic an Energy Service Providers Association has been established in 2010, with 25 ESCOs currently engaged. The association aims

to develop the EnPC market in the Czech Republic by providing the necessary knowledge and information approach on energy efficiency services and EnPC (including the preparation of various EnPC templates).[8]

In the Czech Republic, the procurement of EnPC based projects is also typically organised negotiation procedures. Although the stages of the procurement procedures may vary from case to case, the steps relating to the organisation of a typical procurement procedure have been identified in Figure 4 below.

In order to identify the best tenderer, the following evaluation criteria and their relevance shall be taken into account when selecting them [5]:

- price (30-40%) – all costs are included during the time EnPC. For example, the technical project, installation, operation and maintenance of technological equipment, technology control systems, energy management, including measurements and inspections, capital costs;
- the amount of the guaranteed savings provided in the contract (40-50%) – expressed in monetary terms (EUR) and is the most important evaluation criterion;
- the reach of the guaranteed savings prior assessment (5-25%);
- other technical quality management criteria (5-10%).

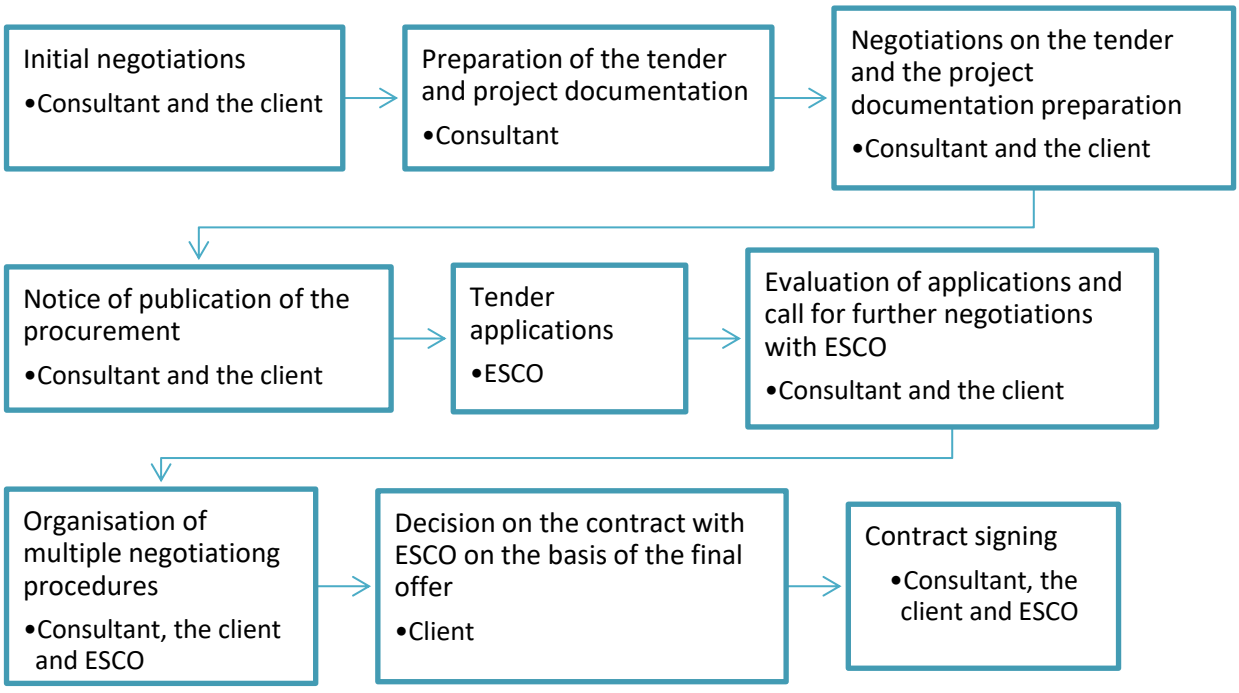

Figure 4. Organisation of ESCO procurement procedure in the Czech Republic [5]

In **Slovenia**, the EnPC has an important role in the implementation of public building renovation projects. In 2018, ten energy service companies were registered, four of which provided EnPC based projects. Project facilitators play an important role in the

development of both the EnPC and the energy supply contracts market in Slovenia, particularly in the case of small municipalities.

Most often EnPC projects are implemented in the public buildings sector (administration buildings, educational institution, kindergartens, nursing homes, etc.) and street lighting projects. New solutions are sought to attract private investors mostly due to the lack of financial resources in the public sector to implement energy efficiency measures and renovation of public buildings. To promote harmonised use of the EnPC, guidelines for the implementation of energy efficiency measures in public buildings were developed in 2014 based on EnPC. They were renewed and supplemented with requirements for the EnPC in the building sector. A model of the EnPC contract for public energy efficiency projects has also been developed in recent years, which is supplemented and in line with Eurostat guidelines. [6]

In Slovenia, the EnPC procurement process is organised as competitive dialogue, consisting of several phases. First, the public authority assesses whether the EnPC procurement procedure can be organised as a competitive dialogue, in accordance with the Law on Public-Private Partnerships, or whether it should be carried out with standard procedures (open or closed public tender procedures).

The assessment is based on the description of the project and the national/local energy concept, and the interest of the participating ESCO is examined as well. If the competitive dialogue is carried out, the legal partnership is characterised by a service concession, a bilateral legal relationship between the contractor as the awarding authority and ESCO as a concessionaire, where the awarding authority gives the concessionaire the exclusive right to provide energy efficiency services in the public interest. The next stage of the procedure is the evaluation of the EnPC project, which involves carrying out an energy audit of the building and developing an energy performance certificate, as well as carrying out a feasibility study of the project and preparing documentation in accordance with standardised methodologies and processes.

These are the following stages of the procurement [5]:

1. publishing an invitation to participate in the procurement;
2. an invitation to participate in the tender dialogue. In the first stage of the tender dialogue, candidates are selected to negotiate and to discuss all the details related to the EnPC project during the second phase of the dialogue;
3. call for the final tender offer – based on both stages of the dialogue, the selected candidates are invited to submit final tenders;
4. signing of the contract

In addition to mandatory requirements, the following evaluation criteria and their relevance is taken into account when determining the winner of the procurement [5]:

- energy efficiency (50%):

    - ratio between the total annual energy savings and the total area of the building(s) (80%). The energy efficiency rate must be at least 30 kWh/m^2/year otherwise the tender is rejected;
    - share of renewable energy production, representing the share of renewable energy production relative to the total energy consumption of the building(s) after renewal (20%)

- profitability (35%) – total energy savings relative to the total eligible costs of the EnPC project. This criterion must be at least 15%, otherwise the offer is rejected;
- contribution to raising public awareness and promoting social change (15%);
- specific criteria for cultural heritage buildings.

France has a well-developed ESCO markets in Europe. Several ESCO associations and ESCO consulting companies operate on the market. Most often ESCO clients are public authorities, including educational institutions, office buildings and hospitals.

The French Ministry of Ecology and Inclusive Transition has prepared and published information on the EnPC (such as services and performance work, including its establishment, implementation, management, and maintenance) - Guidelines for Energy Efficiency Service contracts. The Ministry of Economy and Finance has published information on EnPC as part of the types of cooperation agreement. The Environment and Energy Management Agency has published guidelines on the EnPC as a type of service for both private entrepreneurs and the sector professionals. [6]

In France, EnPC projects are often particularly complicated, so competitive dialogue procedures are the most common approach, which is used in approximately 60% of cases. Two types of contracts can be used for EnPC projects: a contract for energy efficiency partnerships (covering public and private partnerships) or a public energy efficiency contract. The stages of organising the procurement procedure are shown in Table 3.[5]

Table 3. The tender dialogue stages in France [5]

Stage name	Description
Shortlisting	A procurement notice is published for shortlisting potential ESCOs for the competitive dialogue procedure. ESCOs are evaluation based on the quantitative selection criteria.
Organisation of the dialogue	A dialogue with shortlisted ESCO is established to define project specification and best solutions. The number of dialogues is not limited.
Submission of final tenders	Shortlisted ESCOs submits an offer based on the solutions agreed during the dialogue phase

When determining the winner of the procurement, the most economically advantageous tender is selected, considering the selection criteria announced at the beginning of the procedure.

In the **United Kingdom**, the start of the energy service market is dated back in 1960, when the Energy Management Agreement was established. EnPC are used since 1980 and mainly in the public sector. Based on the results of a study, there are currently 136 companies in the United Kingdom providing energy efficiency services. In addition, they are divided into the following categories: ESCO, EnPC providers, technology suppliers, and consultants.

The main customers of the EnPC are public buildings, including hospitals, educational institutions, and municipal administration buildings. The second largest customer group is commercial buildings and industrial companies. In order to improve the development and quality of the market, the United Kingdom Government has developed an EnPC model for the public sector, guidelines for its use and examples of good practices that are freely available to everyone. [6]

The EnPC procurement procedure in the United Kingdom is organised as a public tender, but it also holds a small internal procurement between tenderers whose requirements are strictly established.

There are four types of EnPC procurement procedures that are used for public building procurement in the United Kingdom. Municipalities most frequently use the RE:FIT programme, which is divided into three sub-categories where each is suitable for a particular country region and NDEEF, which is intended for the Scottish region. In the case of hospitals, the following two programmes “The Carbon and Energy Fund” and “Essentia Trading” are used”.

To enable EnPC providers to participate in public building renovation procurements, they must first meet the requirements of each of the above programmes (OJEU procurement). Only after the EnPC provider has passed the first or programme procurement procedure it can participate in the procurement of individual public buildings under the programme. [5]

The winners of the procurement are determined at two levels with different criteria. Firstly, the EnPC providers participating in the procurement of a specific programme are identified. The winners of the RE:FIT programme shall be determined by seven criteria, each with a specific impact on the total score. Project pricing holds the greatest impact, project management, analysis and design, development and the achievement of the identified indicators hold less impact. Funding sources and the achievement of strategic objectives or other benefits are with the least impact. The winners of internal, small procurement are determined on the basis of similar criteria as in the procurement of the programme, but in addition, particular attention is paid to a specific project or the possibility of incorporating specific customer requirements. [5]

Table 4. Stages and participants of the procurement procedure[5]

Stage name	Description	Participating organisations
Stage 1: Procurement inside the Programme	The Programme "owner" produces the procurement documentation (OJEU) and announces the procurement under a specific programme, where ESCOs companies are invited	The Programme owner (e.g., NDEEF, Greater London Authority) brings together 33 local authorities and public sector organisations – RE:FIT).
Stage 2: Project development	Individual EnPC projects are being developed to which EnPC service providers can submit their tenders.	Project developers/consultants. The head of the building renovation programme in an organisation which is an "internal" or outsourced support unit that performs the role of ESCO project coordinator.
Stage 3: Small (internal) procurement	EnPC service providers qualifying for the requirements of the programme shall receive specific information on individual projects and submit their tenders.	
Stage 4: Development contract	The designated ESCO pretendent signs a development agreement with the EnPC provider for the development of an investment category proposal or final tender by the EnPC service provider.	The contracting authority or client (a specific local government or public organisation), as well as support shall be provided by project implementers/consultants. EnPC service provider.
Stage 5: EnPC	Once the final tender has been accepted, the parties concerned shall agree on the signing of the EnPC Agreement.	

2. EnPC PROCUREMENT FOR RENOVATING PUBLIC BUILDINGS IN LATVIA

2.1. Preparation of the procurement documentation

The procurement of energy efficiency services and building energy efficient renovation project based on EnPC is based on public tenders. The tender procedure must be prepared in accordance with the legislation of the Republic of Latvia, which follows from the rules of the EU legal framework (see Chapter 1.1). The main requirements for the execution of energy efficiency services are:

- Energy Performance Act for Buildings – Article 4, "Minimum Energy Efficiency Requirements";
- Public Procurement Law – Section 8. Types of Procurement Procedures.

In accordance with the directives on public procurement issued by the European Union in 2014, contracting authorities have rights to enter a contract with the applicant who has submitted the most economically advantageous tender (MEAT). Such offers shall include elements of economy such as price, quality, technical and functional solutions. When evaluating MEAT's offers, the decision may be based on the following aspects, as all include elements of economy:

- only the price of the tender;
- only costs arising from cost effectiveness approaches. For example, the costs proposed are based on the calculation of life cycle costs;
- best ratio between the price and quality offer.

When preparing the procurement documentation, the contracting authority must clearly indicate what aspects will be considered in the evaluation of tenders. These aspects should be included in the procurement documentation under the criteria for selecting the most economically advantageous tender:

- exclusion clauses – conditions which should exclude the applicant from the procurement procedure;
- selection criteria – determining the eligibility of tenderers for the performance of the contract (including determining the capacity and quality of the tenderer)
- technical specification – refers to the characteristics of the work, supply, or service to be procured and not to the overall capacity or quality of the tenderer;
- award criteria – determines which tenderer has drawn up the most economically advantageous tender and which should therefore be awarded the right to enter a contract.

For example, in relation to the implementation of building renovation projects, more specific requirements should be determined, in line with the technical project and the purpose of the project. The requirements of the criteria in the procurement documentation, contracts and negotiations should also be reflected with equipment suppliers and contractors. The verification of the energy performance indicators of clear procedures should be determined, for example, a report on the verification of the indicators should be drawn up, where responsibility for the fulfilment of the requirements is determined.

The selection, technical specifications and award criteria must be linked to the contract performance rules corresponding to the subject matter of the contract. However, each of the criteria should not necessarily provide the contracting authority with an economic advantage.

First, the contracting authority shall determine whether there are grounds for denying the tenderer participation in the tendering procedure and whether there is any derogation from it. The contracting authority shall then assess whether the remaining tenderers have fulfilled the procurement requirements for the selection criteria. Tenderers meeting the selection criteria for the procurement shall be invited to submit final tenders, to negotiate or to participate in a dialogue with the contracting authority.

If contracting authority determines the conditions for the exclusion of the tenderer or the tenderer does not meet the selection criteria, the tender shall be deemed inappropriate and the other parts of the tender shall not be assessed. The rules of the Public Procurement Directive of the European Union allow contracting authorities to reject tenderers who have demonstrated unsatisfactory performance or serious deficiencies in relation to a previous public procurement contract.

The main objective of the selection is to identify qualified tenderers for the performance of the contract, which are assessed based on the selection criteria set out in the procurement documentation. The objective of the selection criteria is to identify applicants who can meet the requirements of the contract and to ensure expected results.

2.2. ESCO selection criteria

It is possible to impose the following requirements on the EnPC provider / ESCOs:

- experience in managing energy efficiency projects;
- experience in the implementation of projects of the same/similar type;
- appropriate training and qualification of professionals;
- general demands on ESCO's legal and financial situation.

These are the most common requirements or selection criteria for ESCO procurements carried out in Latvia so far:

- The financial situation of ESCO:
    - insolvency proceedings of the tenderer have not been announced (except for the case where a set of measures is applied within insolvency proceedings oriented towards restoration of solvency of the debtor), economic activity thereof has not been suspended or the tenderer is not liquidated;
    - observing the date of the last updating of the public debtor database of the State Revenue Service of the Republic of Latvia, it has been established that on the last day of the term for submission of tenders, or on the day when the decision is taken to possibly award the procurement contract, the tenderer has not got tax debts in Latvia or in the country of registration or permanent residence thereof, including the debts of mandatory State social insurance contributions which exceed EUR 150 in total in any country.
- Eligibility for professional activity:
    - the tenderer (including subcontractors and each member of the supplier association) is registered in conformity with the requirements of regulatory enactments;
    - the tenderer (including subcontractors and each member of the supplier association) is registered for the performance of the tasks and requirements specified in the Technical Specifications (if such registration is required for the performance of the specific works in accordance with the requirements of regulatory enactments).
- Technical and professional capacity: the applicant must have experience in the organisation of energy efficiency projects during the renovation of buildings:
    - the tenderer has prepared at least [X] building renovation projects during the previous [X] years (up to the date of submission of the offer), which include works such as:
        - Development of a technical project (development of a building project);
        - Planning and organisation of building renovation works;
        - maintenance of the guarantee of energy performance works performed for a period of at least five years following the renewal of the building or experience in the management of buildings
    - during the previous calendar years of [X], the tenderer has experience of equivalent nature and extent in the performance of contracts for energy efficiency services including (design or construction work), in addition to year [X] i.e.;

- the tenderer has at his or her disposal a highly qualified and certified technical personnel in conformity with the requirements of regulatory enactments (if this is determined by binding regulatory enactments) for the performance of design works specified in the Technical Specifications;
- the project manager proposed by the tenderer must have education in engineering, experience in managing energy efficiency projects and experience in at least 1 (one) relevant project as a project manager, coordinating the preparation of the technical project of the building, organising construction procurement, and building renovation works.

2.3. Energy efficiency guarantee

Until now, long term EnPC contracts for public building renovation have not been concluded in Latvia. The current EnPC are construction contracts with 5 years terms after commissioning, which includes an energy efficiency guarantee. Based on this energy efficiency guarantee, the contractor is required to achieve a certain level of energy efficiency after the building has been renovated and to follow the operation of the engineering systems (ventilation, heating, hot water, etc.) installed. In this case, the contractor guarantees the achievement of certain energy efficiency indicators. The applied principle is also shown in Figure 5 below.

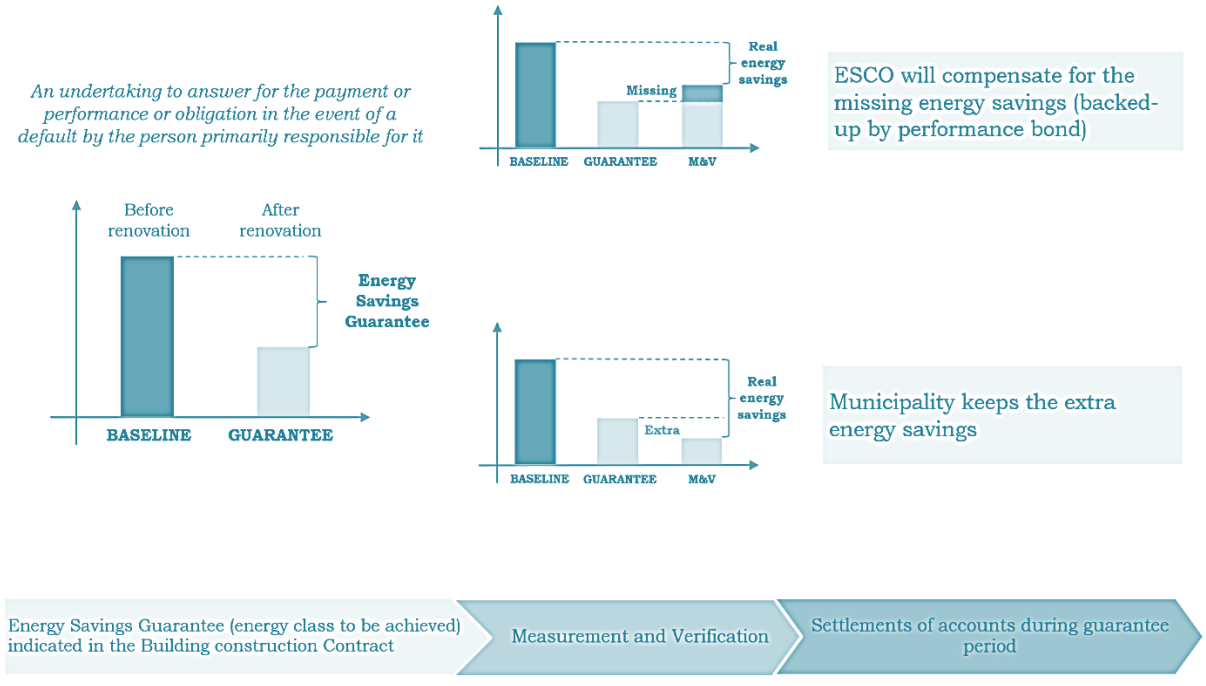

Figure 5: Energy efficiency guarantee principle for the renovation of municipal buildings

The contracting authority shall prepare a procurement contract (hereinafter - contract), in conformity with the objectives of the project and the construction project, the planned or achievable energy efficiency level shall be determined in

conformity with the development of the building design, which is in line with Construction Law's section 19 sub-section 5 "*The contractor of civil engineering works shall be responsible for the conformity with laws and regulations at the construction site, and for the conformity of the works carried out as a result of construction and installation work made in accordance with the project design documentation and the requirements of the employer, the requirement of this Law and other relevant laws and regulations; and also for choosing construction material, equipment and solutions in conforming to the requirements of laws and regulations and integration technologies thereof*."

The contractor shall guarantee that the installation and works comply with the requirements of the building design and that they will be executed in accordance with the provisions of the contract. The contractor shall be responsible for all defects and damages caused to the commissioning party which arise or may arise in the event of such non-compliance. The contractor guarantees that the works performed will be of high quality, operational use, will comply with the parameters specified in the construction project or contract.

The purpose of the contracting authority is to select a building contractor and/or ESCO who has experience and expertise in the performance of energy efficiency measures and who can achieve the indicators specified in the building design, which also includes the planned level of energy efficiency.

According to the Construction Law, energy efficiency is an essential requirement for the construction to be set. The contractor is responsible for the performance of the contract, in conformity with the procurement procedure documents, as well as the requirements and criteria specified in the tender. In conformity with the Construction Law, the developer of the project design documentation is responsible for the conformity of the project. The contractor civil engineering works is responsible for the conformity of the work with the project design documentation. According to the requirement of the contract "Determination of the performance of the energy savings guarantee" on the impact of indoor temperatures on the heating energy consumption of the building, an adjustment of the heating energy consumption to the standard conditions is made. To calculate the energy efficiency level achieved (planned), it is necessary to determine the amount of heat spent during the heating season and the number of heating season days, the average outdoor air temperature and the average maintained indoor temperature during the specific heating season. Each of the above indicators are determined as follows:

- heating energy consumption – from heat meter readings for heating;
- number of heating season days – from the marked information in the heating operation journal, when the heating started and finished;
- average outdoor air temperature during heating season – selecting station Riga and actual air temperature according to the Latvian Environment,

Geology and Meteorology Centre (https://www.meteo.lv/meteorologija-datu-pieejamiba/?&nid=462)

- from measurements of average indoor temperature during the heating season;

In addition to everything mentioned above, the contractor provides instructions on all engineer communications – thermostatic valves, air handling equipment, heating, and hot water systems, changing the settings of the heating unit, and on the management of heat energy accounting and equipment. After coordinating with the contracting authority, the contractor organises a one-day training for the building's manager and technical personnel. During the training equipment and building operating instructions are issued to ensure high comfort on the premises, a proper operation of heating systems and air handling equipment and their efficient use. The main aim of these measures is to ensure a low energy consumption of the building by ensuring that temperatures are reduced at night, weekends, and holidays. The contractor, together with the contracting authority and the building manager, must perform the following activities with the engineering equipment (heating unit, heating and carded water system and air handling system):

- adjusting when designing and setting operating timelines;
- developing and setting up the temperature mode;
- determination of the required air exchange in each room, depending on the building's time of use;
- setting up and adjusting air handling equipment.

In accordance with the Civil Law, the Public Procurement Law, the Construction Law and the project objectives, the contracting authority, when preparing the procurement contract, consider the requirements of the regulatory enactments regarding the procurement object, in conformity with the developed construction project. The contracting authority determines that the contractor is responsible for the conformity of the work resulting from the construction work or part of it with the building project, including the energy efficiency level. The contractor, receiving the building project, checks its quality and the possibilities to achieve the requirements specified in the building project.

2.4. Measurement and verification procedure

An essential element in the preparation of the contract with the energy efficiency guarantee are the requirements for verification of the level of energy efficiency achieved, which is based on a variety of measurements following the implementation of the building renovation project.

To determine the level of energy efficiency achieved, the energy consumption of the building and its reduction should be determined by comparing the measured energy

consumption before (energy consumption for heating and hot water circulation losses) and after the implementation of energy efficiency measures in the building.

To determine the actual reduction in energy consumption, it is necessary to carry out energy consumption data both before and after “adjustments” according to average climate and indoor comfort conditions. The energy consumption adjustment is made based on LBN 003-01 "Construction climatology”, Cabinet of Ministers rule Nr.348 “Methodology for Calculating the Energy Performance of a Building” standard LVS EN ISO 13790:2009 "Energy performance of buildings. Calculation of energy use for space heating and cooling". Energy consumption data, on the other hand, is based on measurements made from heat meters. Therefore, after the building has been renovated, the installation of heat meters for heating and for hot water in cases where hot water is prepared centrally is mandatory. If the heat energy is produced in boilers on site in the building, it is necessary to install heat meters or to perform a calculation based on the fuel consumption and the efficiency of the boiler.

In addition to the contract, the requirements for long-term maintenance of the building should also be indicated by the contractor. An example is given in Table 5.

Table 5. Extract of building maintenance requirements

Medium-term preventive maintenance measures	Frequency of the maintenance
Testing radiator thermostat valves (change if necessary)	Once every 5 years
Air-lift test (change if necessary)	Once every 5 years
Inspection of the heating balancing valves (change if necessary)	Once every 5 years
Hot water system circulation pump test	Once every 5 years
Heating system circulation pump testing	Once every 5 years
Reporting on energy performance	Once every year
Annual project action plan. Not later than ninety (90) days before the first day of each contracting year. The annual project action plan will include a transcript for management measures, will set a period when the facilities will not work, and a plan for capital repairs, and provide justification for the assumptions on the prepared budget and possible availability over the period considered.	Every year
Energy monitoring and target reporting	Every month

For more information on measurements and verification procedures, including calculation methods, see “Measurement and verification guidelines for public buildings” in “Accelerate Sunshine” project’s deliverable 2.4.

3. FUTURE PERSPECTIVES FOR ORGANISING EnPC PROCUREMENT FOR RENOVATION OF PUBLIC BUILDINGS IN LATVIA

Based on other countries experience, the EnPC contract has an average duration of 10-15 years in the public buildings sector. Until now, samples of the long term EnPC contracts, which are longer than 5 years, have not developed in the municipal sector in Latvia due to the requirements of existing laws and regulations [9]. However, ESCO involvement in public building renovation projects is one of the solutions for raising funding for public buildings. Further sub-sections of these guidelines will provide proposals for the procurement of EnPC in the public building sector, based on the current situation in Latvia and existing practices in other European countries.

3.1. Organisation of the procurement procedure and selection criteria

One precondition for a successful execution of public building renovation projects under the EnPC contract is the establishment of appropriate quality criteria for energy efficiency services already during the procurement process. This makes it possible to replace the lower price principle with the lowest costs throughout the lifecycle of the project.

Based on the information provided in Chapter 2 in these guidelines about the organisation of procurement procedures for different types, one of the most appropriate ways in Latvia would be to organise tender procedure with negotiations, for the following reasons:

1. public building renovation projects may be type-renovation projects which do not need to raise specific requirements every time. Thus, service providers can submit tenders based on uniform procurement conditions (for the same solution);
2. in certain cases, it is necessary to meet the specific requirements for the renovation of public buildings, and therefore, unlike standard procedures, contracting authorities may negotiate with participants on their initial tenders and improve them in accordance with the requirements.

Similarly, in the case of other countries, project facilitators could be involved in the implementation of the EnPC projects in Latvia. They would be experts with adequate qualifications and expertise in the fields of the EnPC from private companies, regional energy agencies or planning regions. Their main role would be to help the customer prepare the procurement documentation, organise the procurement procedure and choose the most suitable company for the execution of the ESCO service.

Since tendering procedures are organised in several stages, it would be possible to involve several representatives at each stage:

- Representative of the relevant planning region/regional energy agency - regional organisation (e.g., Vidzeme, Riga, Kurzeme, Latgale, Zemgale Planning Region), which has prepared standard requirements and has set the basis criteria for evaluating initial offers, as well as evaluating them. This could be achieved by standardising the requirements for procurement of ESCO public buildings, as public building renovation projects can be type-renovation. Similar practices are also used in the United Kingdom (see section 1.3);
- EnPC project manager appointed by the client – Owner of the public building (or group of buildings) in the ESCO procurement, who has entered a contract with an EnPC field expert on participation in the procurement of ESCO;
- Contracting authority – State institution, local government or other institution which is in the ownership of the public building (or group of buildings), to which the procurement of ESCO is performed.

Based on the above information a tender with negotiation procedure could be organised as shown in table 6 below.

Table 6. Proposals for a procurement procedure for tender with negotiations

Evaluation stage	Expected outcome	Involved
Evaluation of the initial tender	Candidates eligible for future negotiations shall be based on the tenders initially evaluated	Representative of the relevant planning region/regional energy agency EnPC project manager appointed by the contracting authority
Negotiations with tenderers	Adjustment of tenders according to requirements Submission of final tenders	EnPC project manager appointed by the contracting authority Contracting authority
Evaluation of final tenders and announcement of the winning tenderer	Tenders shall always be ranked according to the number of points assigned.	Contracting authority

Initial tender and the evaluation criteria.

At this phase, the relevant Municipality, which has prepared selection criteria for ESCO companies seeking to participate in the procurement of the EnPC for public buildings, could play a key role. In the first phase, when the eligibility of the various applicants for the purpose of the project is assessed, a standard procedure is carried out in which public building owners are not required to participate. Like the

experience of other countries, procurement could be organised not only separately for one building owner, for example one municipality, but for several municipalities at the same time.
The project manager of the EnPC, appointed by the contracting authority (owner of the building), may also participate in the first phase, in case it is necessary to adapt any specific requirements for ESCO applicants. The criteria for the selection of the first round could include the requirements described in Sub-chapter 2.2 of these Guidelines. In other words, all tenderers who meet the requirements of the selection criteria and who are not excluded may participate in the 2nd procurement phase – negotiations with tenderers

Negotiations with ESCOs.

At this stage, the main role is for the contracting authority appointed EnPC project manager, since at this stage ESCO companies would submit tenders that meet the requirements of the technical specification for procurement. The requirements of the specification could include all the criteria which are later reflected in the EnPC agreement. For example, what is the proposed technical solution for the renovation project, what are the planned guaranteed annual savings, how will the project be monitored and the verification of the results will be carried out (see section 3.2 more extensively). According to these requirements, points are assigned. Since the contracting authority often does not have sufficient knowledge or experience in the preparation and evaluation of the technical specification, the involvement of the EnPC project managers with appropriate skills and requirements would play an important role here. As mentioned before, during this period, the various options proposed may be discussed with the potential tenderer for ESCO, and changes or additions may be made if necessary. A financial offer is also presented at this stage. After the negotiations with all invited tenderers (ESCOs), a final tender (technical and financial) will be requested, on which the basis of phase 3 of the procurement will be carried out, assessing the criteria for re-grading.

Evaluation of final tenders.

Based on the submission of final tenders for the technical specification and the criteria proposed, it is determined which of the tenders is the most economically advantageous (MEAT). Based on the experience of other countries, it would best be necessary to select a tender with the best price-to-quality ratio. Consequently, the various criteria should be assigned coefficient to determine the relevance of this criterion in the total number of points. The award criteria developed and their coefficients should be indicated in the procurement documents using an assessment matrix or a clear valuation method.

For more information on the criteria for ESCO procurement, see the materials from the “Quality EE” project supported by the EU Horizon 2020, available here.

3.2. An example of an EnPC contract and its requirements

Currently, the Ministry of Economy is developing a standardised model of the EnPC agreement with the guaranteed energy savings in relation to the renewal of energy efficiency infrastructure. After preparing and coordinating the model of the contract with the responsible authorities, it will be freely available to all interested parties for use.

The EnPC contract is based on a guaranteed savings contract, where ESCO guarantees certain savings in energy costs, while the customer pays ESCO under the EnPC agreement (see Figure 1).

The model of the EnPC contract includes 20 points and 14 binding contract graphs. The main points of the contract relating to **the periods of preparation, implementation and monitoring** of the renewal projects may be identified as:

- the obligations of ESCO during the preparation and renovation period shall include requirements such as:
    - the service provider must perform a detailed analysis of the infrastructure of the energy system and make sure that the solutions provided meet the requirements of the contracting authority, including the provision of alternatives to the expected energy savings, as well as the preparation of the technical documentation for the project;
    - the submitted offer for the renovation project must be coordinated with the contracting authority party;
    - the service provider shall cover all costs related to the performance of the energy system infrastructure analysis and the preparation of the technical documentation;
    - if errors or shortcomings are identified in the prepared documentation, they shall be covered by the service provider in agreement with the contracting authority. If the change has been agreed on by the contracting authority, it shall not have the right to reject the technical documentation submitted by the service provider;
    - in accordance with the technical documentation approved by the commissioning party, implement the renovation project in a responsible and timely manner;
    - implement the renovation project so that the guaranteed annual energy savings are achieved based on the following parameters: energy price (MWh/EUR), base annual energy consumption (MWh/m^2, EUR/m^2), guaranteed annual savings (MWh/m^2, EUR/m^2), partial reimbursement (EUR/m^2), service costs (EUR/m^2), GES[1] payment (EUR/m^2)

- the service provider agrees to implement and maintain a “work journal” regarding the project in which activities are documented from the date of commencement of the renovation.;
- the service provider shall allow the contracting authority to check from time to time the performance the duties during the implementation of the renovation;
- during the renovation, the service provider shall train the employees of the commissioning party or persons designated by it who will ensure the further management and maintenance of the renovation project (e.g., public building);
- the service provider shall provide a written statement on the performance of the service, at the same time submitting documents demonstrating that the requirements relating to the annual energy savings guaranteed have been met;

- **Guarantee and obligations of the service provider during the warranty period** lays down requirements such as:
  - the service provider guarantees that the works carried out do not contain functional defects and are in accordance with the requirements of this client. If defects are detected during the warranty period, the service provider shall make corrections;
  - the requirements for the guarantee do not apply to natural depreciation (e.g., management and use of the building) and its impact on the guaranteed annual energy savings, if:
    - the contracting authority makes changes to the systems without the service provider's information;
    - on behalf of the contracting authority, another service provider has caused damage to the system;
    - if there are problems during the use of the building which the service provider could not been able to identify and predict in advance.
  - all costs related to the prevention of renovation defects covered by the quality guarantee shall be borne by the service provider;
  - the service provider decides that it is necessary to make changes to achieve the guaranteed annual savings during the guarantee period, the service provider shall do so at its own expense and in accordance with the same rules as are applicable for the implementation of the renovation during the renovation period.

- The service provider must monitor the state of the project after its implementation and the requirements for the guaranteed annual savings. The results of monitoring shall be reported to the contracting authority in accordance with the timetable annexed to the contract;
- if, during the warranty period, the service provider does not supervise the project and has not submitted the necessary documentation, the service provider shall pay the penalty to the contracting authority, an amount guaranteed in accordance with the requirements of the energy efficiency contract.

- **The rights and requirements of the contracting party** include requirements such as:
  - if the renovation project has achieved the objectives, in conformity with the requirements, the recipient of financing (contracting authority) has a duty to approve the project. If the recipient of financing notifies the service provider of defects due to which the renovation does not conform to the requirements, the service provider has a duty to take measures without delay to eliminate such deficiencies;
  - the contracting authority is obliged to inform the service provider of any changes in circumstances (e.g., changes in the use of infrastructure, changes in the timetable, changes in the number of persons using infrastructure) that could have a significant impact on energy consumption and could lead to a guaranteed annual conversion of savings in accordance with the timetable in the Annex;
  - the granting of approval or consent of any other client in respect of any of the activities of the service provider provided does not relieve it from any responsibility, especially, from the achievement of the guaranteed annual savings.

Examples of the contract points, which include the **requirements for GES and the energy savings guarantee**, are the following:

- during a period in which the actual annual savings have not been exceeded and the estimated savings have not been achieved, the service provider shall be entitled to receive from the contracting authority the total amount calculated in accordance with the following formula: A = B – C
  - A. = total amount that the service provider is entitled to receive from the client for the corresponding annual savings period;
  - B. = amount of all GES payments paid to the service provider during the corresponding annual savings period;
  - C. = reducing amount for the annual saving period (if any).

- where an excess of savings has occurred during the savings period of the specific year, the service provider shall be entitled to a financial contribution calculated based on such data:

<table>
<tr><td colspan="3"><u>Actual annual savings</u> are calculated annually and may vary depending on changes in input parameters/assumptions based on which the base and guaranteed annual savings are established. The changes that can be considered relevant for such a conversion are presented below:</td></tr>
<tr><td></td><td>Planned period [2020-(x)]</td><td>Actual [year]</td></tr>
<tr><td>(x)</td><td>(x)</td><td>(x)</td></tr>
<tr><td colspan="3">Changes in daily conditions: e.g., weather conditions, indoor temperature/humidity level or changes in standard parameters, changes in the use of the building or working time (hours/day), decrease or increase in the number of users.</td></tr>
<tr><td colspan="3">Changes not related to daily conditions: for example, breach of client obligations (e.g. the obligation to maintain an object or to provide access to the service provider); client provided inaccurate data; unfavourable conditions (pollution, latent defects or deficiencies in existing infrastructure additional jobs performed by the client at the object; changes in laws (with the exception of changes to laws expected at the time of performance of the contract; and/or of a general nature (e.g. changes in tax rates, etc.)); customer's responsibility for managing the object - non-compliance with specific operational parameters (if applicable); significant changes to the object; the object is closed; changes in energy consumption data (electrical or heat) according to requirements for site maintenance; atypical object user differences; other delays, compensation, etc., even to “force majeure”.</td></tr>
</table>

- The following parameters are used to determine the **energy consumption of the base year**:

Historical energy consumption	Energy consumption data from meters and bills for heat, electricity over the last three years.
Normalized energy consumption	Historical energy consumption data are normalized to building standard conditions. When normalising data, the following standard parameters are considered: weather conditions, indoor comfort level, time of use of the building, number of users, other relevant factors that may affect energy consumption.
Base year annual energy consumption	Is determined as the average of normalized energy consumption over the past three years.

Examples of additional requirements for project **financing, insurance, representation and guarantee, legislative changes**, etc. are:

- renovation and servicing costs shall be covered by a service provider providing the financing and servicing of the renovation from its own or external resources;
- if renovation and servicing are financed by the service provider from external resources, the contracting authority shall be obliged to make all payments in favour of the service provider on the account of the service provider, indicated by the institution providing financing based on the invoice or request submitted by the service provider;
- the commissioning party agrees to enter an infrastructure insurance contract of up to EUR [x] from its own funds and to keep it in effect within a specified period. Infrastructure insurance should also include insurance against damage and damage caused by a natural disaster without any restrictions. The beneficiary undertakes to submit insurance documents at the request of the provider without delay.
- the service provider guarantees that:
    - is established in the field of energy service and has all the powers necessary for the performance of the contract;
    - have certificates and other authorisations or documents attesting compliance with technical and professional qualifications requirements;
    - have sufficient financial and human resources;
    - have adequate powers to enter a contract and no tax debts;
    - prior to the performance of the contract, have been familiar with the documents relating to the contract, including the check-up that the service provider could and was required to carry out, in accordance with the specific nature of the project prior to the performance of the contract.
- The contracting authority guarantees that:
    - It is the owner of an infrastructure/facility or has a legal right to deal with it;
    - the performance of the contract shall be in accordance with the applicable law which is binding with the client;
    - there are no circumstances requiring the imposition of insolvency, bankruptcy, liquidation or restructuring proceedings or allowing it to be applied to the contracting authority;

    - the documents and information provided by the commissioning party to the performing service shall be accurate at the relevant time in all relevant sectors and the beneficiary is aware that the service provider will implement the project based on them.
- having regard to the long-term aspect of the contract, both sides have agreed that changes to laws take place during the performance of the contract, which:
    - could not be expected during the contract;
    - is not a general change of law, i.e., it does not apply comprehensively to the whole business environment (e.g., changes in tax rates, etc.);
    - make the performance of the contract impossible without altering its content or by which the performance of the contract without altering its content would be contrary to the new laws.

Since the largest part of the remaining contract items that were not previously covered but are covered by this EPS agreement relate to general legal and legislative obligations, they are not covered more broadly within the scope of these guidelines.

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