

STEPPING - Supporting The EPC Public Procurement IN Going-beyond

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Tenders models, specifications and contract schemes for EPC procurement

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Index

Premise.....	2
1. Model for “Tender specification”	4
2. Model for “Management and technical specifications”	12
3. Model for “Performance Monitoring and Verification Plan”	16
4. Model for “EPC contract scheme”	22



Premise

This document includes models, suggestions and schemes about EPC tenders that could support PPs while drafting tender documents in order to launch investments in the framework of STEPPING testing phase.

The tenders documents include:

- Tender specification. Here it is possible to find rules and procedures to manage the procurement phase.
- Management and technical specifications. The document highlight the key issues and aspects that deal with the management phase. It is a crucial document as the EPC contract lasts for several years.
- Monitoring and Verification Plan. This is a plan that set the rules and procedures for checking the level of achievement of the performance on the basis of which the operational payments are based on.
- EPC contract scheme. It defines duties, liabilities, rights and obligations on the awarded ESCO and the Public Administration.

The information provided in this model documents are to be considered as a guide to address the Partners and potential replicants in drafting the tender documents. Since public procurement is very specific and mainly based on National regulation, what is hereafter written can be applied whenever it is feasible and consistent with the National legislative framework. Given that, in the following document legislative quotes are avoided, the Partners should add it whenever consistent.

Each of the following chapter is dedicated to one of the above bullet point, which must be considered as a stand alone document.

As it is possible to understand, the documents provide useful information and sufficient guiding principles to make sure that the tender documents are drafted with the intention to pursue a well balance between public and private interest. The final version of the tender documents must be designed in a way to bind the awarded ESCO in performing investments and energy management in a effective way in order to achieve the most in terms of energy efficiency.

In the document it is possible to find boxes grey-colored in the back. These parts must be considered as examples that the user can consider as a guide, while drafting its own documents. Each part must be considered only if relevant to its National Legislative context and procedures.

The sentences written in italic and brackets are comments to optional parts, whereas the other parts are to be considered as instructions and advices.

Despite the fact that EPC can be implemented in different ways, the following documents have been drafted mostly taking in consideration the possibility that the investments are implemented by a private ESCO. For this purpose, the model schemes hereafter provided are based also on the

suggestions and guide delivered by the European Investment Bank and Eurostat on May 2018. The so called “A Guide to the Statistical Treatment of Energy Performance Contracts”, in contrast to existing Eurostat publications that look at the statistical treatment of EPCs from a statistical standpoint, looks at the topic from a contractual and commercial standpoint and so it is considered very useful for the purpose of STEPPING project.

The models here presented will be disseminated at MED level for replication inside other contexts.



1. Model for “Tender specification”

Introduction

A preamble of the initiative should be made, describing the overall context and framework. Key questions behind might be the following:

- Why have the administration decided to proceed through an EPC to renovate own buildings?
- Which have been the main steps followed?
- Who did what?

(.....)and any other information related to the case. For example:

Piemonte Region is the leader of the European project called STEPPING co-funded by the MED Program 2014-2020. In addition to the Piedmont Region, the followings are project partners:.....

The project partners are required to promote energy efficiency investments in public buildings testing Energy Performance Contract (EPC). For the purpose, 8 Investment Plans and 4 tender procedures will be launched in the MED Area.

Piemonte Region, in combination with Environment Park has carried out a technical assistance service in order to launch the investments in energy efficiency, involving the Municipality/Municipalities/Public Administration of providing an energy audit service, a legal consultancy and a coordination support.

Following the results of this analysis, the Municipality/Municipalities/Public Administration of declared its/their willingness to proceed with a tender procedure in order to select an ESCO (Energy Service Company) able to implement energy investments in the concerned buildings, provide maintenance and energy management service for XX years and guarantee the achievement of the energy performances offered.

ESCOs will carry out, with both their own and third party financial resources (*avoid if the scheme is different*), a series of services and integrated interventions aimed at the refurbishment and improvement of the energy efficiency of the buildings and/or plants owned by the above Municipality/Municipalities/Public Administration.

The ESCOs that will be awarded commits himself contractually to ensures that the energy savings are not lower than the agreed levels, declared in the offer.

To implement the energy efficiency measures, the Municipality/Municipalities/Public Administration have to stipulate EPCs (energy performance contracts).

The contractual mechanism makes it possible to repay the investments of the ESCO, with the economic savings obtained thanks to the implementation of the energy efficiency investments (*avoid if the scheme is different*).

etc.....



1. Tender object

Explain what is the purpose of the call and what are the services to be included in it (aimed at obtaining a technical-economic offer to renovate buildings).

For example:

Open procedure for the selection of an Energy Service Company (ESCO) for the awarding of the contract for the concession of goods and the energy performance service (Energy Performance Contract - EPC), through a Public-Private Partnership, for the energy requalification and energy management of XX public buildings owned by the Municipality/Municipalities/Public Administration of The service includes the energy supply (*optional*), routine maintenance, the extraordinary maintenance of investments implemented and of any thermal heating system installed, besides the management of heating and domestic hot water systems in order to guarantee the standards of comfort prescribed by current legislation also in terms of savings and energy optimization.

The procedure is in a single lot/divided into xx lots.

The investments must be carried out with third-party financing (*optional*).

The total value of the contract is € inclusive of VAT, including the energy supply of the carrier (*optional*). The minimum total amount of energy requalification investments envisaged, according to the description given in the Tender specifications is €, inclusive of VAT. The safety charges can be estimated at around XX% and not subject to discount.

The annual guaranteed savings offered in the bids by the competitor company will be subject to verification and monitoring according to the Performance Monitoring and Verification Plan and according to the provisions of the EPC Implementing Contract and the Management Specifications with consequent adjustment of the relative fee.

The baseline values in terms of minimum energy savings, minimum investments, maximum maintenance services, minimum economic savings for the Municipality/Municipalities/Public Administration are included in the Annex X and must be taken into consideration while preparing the offer.

2. Tender documents

It has to be highlighted what is included in the tender documentations.

For example:

The tender documentation includes:

- The call;
- The Tender specification and the relative attachments (baselines, description of buildings, template for delivering the offer, etc...)
- Templates of declarations for the set of requirements to participate at the tender procedure;
- EPC Implementation Contract Scheme and related attachments including the Risk Matrix
- Management Specifications;
- Performance Monitoring and Verification Plan (PMVP);
- Energy audits and technical documentation relating to individual buildings and baselines.



3. General information

3A – sites inspections

Define if a site inspection is compulsory needed or not, in order to ensure full knowledge of the status of the sites and for the purpose of preparing the tender offer. A site visit is strongly recommended.

Besides, describe the foreseen procedure to implement the inspections.

For example:

In order to ensure full knowledge of the status of the sites and for the purpose of preparing the tender offer, the competing companies will have to proceed with the inspection in relation to all the buildings subject to energy refurbishment with this procedure and owned by the Municipality of.....
During the competition, the Assessment Committee will verify with the Municipality the correct fulfillment of these inspections, acknowledging the minutes of the relative session.
To this end, the competing company must make accurate visits to the buildings subject to the contract, upon request with..... *(describe how and responsible persons identified and appointed by the Public Authority).*

3B – clarification requests

Identify the procedure to forward possible questions by the ESCOs to the administration, and terms and procedure to reply. For example:

The competing companies may ask for any questions or requests for clarifications concerning aspects about participation to the present tender procedure, to be sent by e-mail to the address: *(insert contact info)*. Requests for clarification can be sent up to XX days before the deadline for submitting offers. Requests for clarifications must be provided with a header of the applicant competing company; questions formulated and/or sent in a different way, other than indicated, will not be taken into consideration. The Public Authority has XX days to reply and is committed to publish in anonymous way the answers on its own website (FAQ section).

4. Subjects admitted

Specify which types of subject can submit an offer to the tender (Companies' networks, European Economic Interest Grouping - EEIG, Consortia, Single players) and the nature in case of grouping (temporary or not).

Please refer to standard procedure in your National Legislation according to the value of the contract and to ensure the wider participation possible.

5. Requirements for participation

Following the previous article, specify which are the general minimum requirements needed to be in possession by the participants. For example requirements of:

- General nature (i.e. registration within the Business Register and others),



- Economic-financial capacity (a share capital of not less than € XXX, a specific minimum turnover for energy/energy efficiency related services in the three years prior to this of € XXX..... it could be about the value of the contract)
- Technical-professional capacity (have at least XX years of project skills and experience in the design of building energy and plant requalification interventions)

6. Awarding criteria

This part should contain the individual criteria on which the evaluation of the offers received will be based. The common types of criteria are:

Technical, specify the total level of points (at least 70 or minimum threshold considered in your National Legislative context) and the breakdown for each criteria and subcriteria. Specify, besides, the way each criteria is assessed (formula, weigh, etc...). Examples can be:

- Energy savings offered from the minimum level set in the baseline,
- Duration and quality of the specific investments foreseen (for example, insulation of walls and change of windows can be weighed differently than a simple change of boilers),
- Quality of the project (clarity of projects delivered, coherence of the overall offer, etc..),
- Quality of the management and maintenance plan (frequency and standards offered),
- Reduction of CO₂ emissions due to installation of systems working with renewable energy sources.

Economic, specify the total level of points (complementary level in order to have 100) and the breakdown for each criteria and subcriteria. Specify, besides, the way each criteria is assessed (formula, weigh, etc...). Examples can be:

- Total value of the investment above the minimum threshold fixed in the baseline,
- Percentage of savings costs for the Municipality compared to historical expenditure and above the minimum threshold set in the baseline.

It is recommended to prepare some template for an homogenous and fair assessment of each criteria. Templates, if foreseen, must be attached to the tender documentation.

Please make sure that you don't penalized or award the same issue in different criteria. Please make sure that you don't mix technical and economic criteria. While assessing technical aspects you must not have any clue of the economic offer.

7. Energy supply

"Supply of the energy carrier" means the procurement by the awarded company of the energy carrier, regardless of the type of fuel required (natural gas, gas oil, electricity or other, including district heating) for the operation of the heating system and production of hot water.

Define if the energy supply remain in the Municipality's hands or goes into the ESCo's. In the latter, the fuel must be considered as a pass through cost.

An important remark has to be done in order to decide if the Public Authority remains holder of the energy account or not. It has to be specified because could change the EPC nature and if it's on balance sheet. The possibilities are that the authority keeps the account or passes the lease to the winner ESCo that become the new accouter for the duration of the contract and the authority will reimburse the costs (under the annual fee).

*Eurostat's view, explained in the guide, is that provisions for the Authority to reimburse the ESCo for energy supply costs, where this is included as a service in the EPC, do not influence the statistical treatment. However, provisions that treat other costs that the ESCo incurs in providing the services (e.g. maintaining and/or replacing the EPC assets, monitoring/measurement of energy consumption) on a pass-through basis do influence the statistical treatment and lead automatically to the EPC being **ON BALANCE SHEET** for government. An exception to this is for costs that the Guide states can be reimbursed by the Authority without an influence on the statistical treatment (e.g. the costs of implementing an Authority change).*

8. Determination of the Annual Fee

In this part the way to calculate the annual fee should be defined. The fee is usually divided into a consumption share (in case the energy supply is paid directly by the ESCO), a management share and an investments share (in the case the investment is paid directly by the ESCO). The fee must be also detailed in the contract, so refer to chapter 4 of this document to have a better comprehension. Briefly the formula is usually the following:

$$F = F_i + F_m + F_e$$

where F is the Annual Fee, F_i will be the intervention fee (regarding the works), F_m will be the management fee and F_e will be the energy supply fee, if it's in ESCO's hands.

A more accurate explanation is made in chapter 4 (EPC contract scheme), article 11 and 12.

9. Contract duration

Specify the duration of the contract and if there will be different steps for it. Usually it's recommended to divide the contract in 2 phases:

- PHASE I, for the implementation of energy renovation measures of the buildings and the management service provided;
- PHASE II, for the effective management, operation and maintenance of the building/plants.

PHASE I starts with the delivery of the buildings to the ESCo and should be kept in a reasonable timeframe (usually 12 months). In the hypothesis in which the deadline of PHASE I should fall during the thermal season (October/April), PHASE I could extend its duration until the end of that season. The expiry date of PHASE I will be expressly indicated in the EPC Implementation Contract.

PHASE II: starts from the end of PHASE I and has a duration of XX years (*establish the number*). During Phase II, the ESCo shall provide for the supply of energy carriers (*if the case*), the operation, management and ordinary maintenance (and extraordinary as expected) of the buildings and plants. All as described and reported in the Management and technical specifications and in the EPC Contract.

10. Terms and modalities to present the application form

In this article the procedure to submit the offer has to be specified.

For example:

Offers and documentation relating to the possession of the participation requirements must be sent in paper/electronic form, to the Municipality of (Contracting Authority), Office, Address....., within XX days (it must be a long enough timeframe: 90days?) from the publication of the call for tenders, under penalty of inadmissibility of the package containing the application for participation and the non admission to the procedure. Specify terms and procedures of delivery.....

11. Offer contents

The contents of the envelopes to be delivered must be indicated in the terms just described above (10). They are usually divided into administrative, technical and economic documents in order to cover all requests of the bidding party.

For example:

The envelope "A - ADMINISTRATIVE DOCUMENTATION" must contain the following documents:

- (1) Participation Application Form
- (2) The DGUE - Single European Competition Document
- (3) Original or authentic copy of the statements of the banking institutions
- (4) Statement of the appointed designer,
- (5) Receipt of payment to the National Authority of the contribution due for participation in this tender (*if due*)
- (6) Commitment to issue the final guarantee
- (7) Document certifying participation in the inspection referred to in the previous art. 3.

The envelope B, packaged as indicated and named "B - TECHNICAL OFFER", countersigned and sealed on the closing flaps (*in case of paper offer*), must contain, under penalty of exclusion, only the Technical Offer. The deeds of the Technical Offer, under penalty of exclusion, must not bear any indication of the values of the elements that pertain to the economic offer, or which allow to infer all or part of the Offer of the Competitor being assessed and contained in the envelope C called "C - ECONOMIC OFFER".

No fee is payable for the submission of the Technical Offer nor is the return of the same to the non-awarded parties.

Please list all documents to be included in the technical offer and specify if there is any text length to be respected:

- feasibility studies for each building



- templates of technical offer signed by the legal representative as requested for each concerned criteria
- the maintenance plan envisaged
- etc....

The Economic Offer and the document of which it is composed must be signed by the Legal Representative of the Company or, in any case, by a subject with the power to bind the competitor for the specific amount proposed at the time of the offer. In this case, the declarations must be accompanied by a copy of the power of attorney. All amounts referred to in the Economic Offer must be expressed in figures. The economic offer must be contained, under penalty of exclusion, in a single duly closed and sealed envelope, as well as countersigned on the closing flaps (*in case of paper offer*).

In Envelope C, named "C - ECONOMIC OFFER" the competitor must enclose:

- templates of economic offer signed by the legal representative as requested for each concerned criteria
- An Economic and Financial Plan sworn by one of the subjects indicated in previous articles, which must contain data consistent with the values included in the economic offer. The Economic and Financial Plan must contain and prove all the adequate levels of bankability of the investments envisaged in the offer.

12. Temporary groups

In this article it should be established if it's forbidden or not to participate to the tender in groupings. Usually it is forbidden for competitors to participate in the competition in more than one temporary grouping, or to participate in the competition individually if they have participated in the same competition in a temporary grouping.

13. Availment

In absence of internal expertise, declare whether it is possible to participate in the tender using the expertise of a third party or not.

14. Guarantees and insurance

This part contains some specifications about the economic guarantees that the Contracting Authority requires from the ESCOs participating to the tender, such as:

- The offer of competitors is usually accompanied by a provisional guarantee, depending on national legislation (*in Italy is equal to 2% of the amount based on the tender issued by qualified entities*).
- The offer is also accompanied by a declaration issued by a bank or an insurance company containing the commitment to issue a guarantee, equal to 10% of the value of the investment relating to the EPC contract as a result of the technical offer and economic
- Other commitments to guarantee the offer.



15. Subcontracting

The Authority should decide if it's possible the sub-contracting and the transfer of the contract to third parties. Subcontracting is, usually, permitted, whereas transfer of the contract, it is not.

Eurostat opinion about subcontracting is that it's allowed, but all responsibilities are linked to the contractor party (Municipality or ESCo).

16. Exclusion Causes

Define what are the shortages that could essentially exclude the participation or reject the request received: usually problems of incompleteness of data or documents, problems of timing /delays.

17. Procedure for offers evaluation and performance of the tender

Describe how the evaluation process is working. The procedure of appointment of an external Evaluation Committee, how it would work, which are the rights of the bidders and the forms of communication and any other related issues.

Besides of that, some other parts could/must be included, such as:

18. Ranking list validity
19. Financial flows traceability
20. Treatment of personal data
21. Exclusion of refunds and expenses
22. Communications
23. Jurisdiction in case of disputes



2. Model for “Management and technical specifications”

1. Purposes

The purpose of the Management Specifications is to define the minimum management service levels and standards required by the Partner/ESCo for the entire duration of the contract. In this part of the document it should be specified the minimum environmental criteria and legislative conditions on which the services are based.

For example:

The purpose of these Management Specifications is to define the minimum management service levels required by the ESCo for the entire duration of the contract. However, all the operations that, although not specified below, are necessary or appropriate for the performance of the energy performance and requalification service, of ordinary and extraordinary maintenance, according to what is stated in the EPC contract. It should be noted that the implementation of the energy renovation measures and the management services - including maintenance - referred in the contract and in the final design and approved design, must meet the minimum environmental requirements set by the national regulations, which are fully recalled and an integral part of the present management specifications. Failure to comply with the aforementioned minimum environmental criteria, even during the course of the contract, may lead to termination of the contract.

2. Requested services

Indicate which are the fundamental services that the Partner/ESCo has to fulfill.

For example:

In order to achieve and maintain the objectives set in the awarding contract, the ESCo must perform the following services:

- Design and implementation of technological and building renovation measures to improve efficiency and save energy,
- Exercise and management of heating systems (*cooling/internal light?*),
- Ordinary maintenance of heating and domestic hot water systems,
- Extraordinary maintenance on the investments made,
- Retrofitting of plants,
- Supply of the energy carrier(*if the case*).

In order to ensure adequate comfort conditions for users, the ESCo, as "third party responsible for the operation and maintenance of the heating system" shall guarantee the maximum values of the indoor temperature and the operating limits of the winter heating systems provided. Moreover, the ESCo must also guarantee the supply of hot water, where provided, even in periods when no heating is required.



3. Performances included in the service

The entire management system must be clarified under any single aspect in order to achieve the desired objective of the contract. It's recommended to prepare a paragraph defining all conditions about every sub-theme as follows:

3.1 "energy management and supply" (rational use of energy and recommendations about indoor comfort conditions, improvement of process and proper operation);

3.2 "goods supply and plants operation" (establish all the precautions and activities to be carried out to conduct the plant in its proper way: timeline of service, record and air-conditioning booklet, controls and measures; try to establish a comprehensive schedule of activities and deadlines).;

3.3 "maintenance activity" (defining all the activities to carry on the ordinary and extraordinary maintenance; establish the frequency: usually each activity should have done annually or semiannual, and if those activities are included in the Annual Fee);

3.4 "plants retrofitting" (the Partner is obliged to provide for the retrofitting of each systems that do not comply with the provisions of the law);

3.5 "energy supply" (define if it's required the supply by the Partner of the energy carrier, regardless of the type of fuel (natural gas, diesel oil, or other, including district heating) for the operation of winter air conditioning systems and production of hot water and superheated water and steam. If so, establish the conditions of this service: who is the account holder;

3.6 "General management activities" (personnel assigned to plants management, implementation of remote systems, service of availability and prompt intervention).

Regarding management, there are several and specific issues to tackle, so a focus is needed. The Eurostat guide approaches this theme in particular regarding "Maintenance and operation of EPC assets (theme 3)". The main issues highlight in the guide are:

- Responsibility of this activity
- Energy supply

The Authority is usually responsible for maintaining and operating the site excluding the EPC assets but in some EPCs the ESCo/Partner's service include, for example, cleaning the EPC assets, monitoring and verifying performance, supplying energy.

*About this aspect, Eurostat view is that the Partner must be always obliged to maintain the condition of (and, as necessary, replace) the EPC assets for the duration of the contract and the fact that additional activities or services are included does not influence the statistical treatment. If the Authority is taking some responsibility for maintaining and/or replacing the EPC assets, it does influence the statistical treatment and it is an issue of **HIGH importance**. The Authority controlling the use or operation phase (e.g. regulating times) does not influence the statistical treatment.*

*Moreover a right for the Authority to share the financial benefit of the Partner incurring lower costs than anticipated in maintenance. This topic does influence the statistical treatment and leads to the EPC being automatically **ON BALANCE SHEET for government**.*

The EPC typically specify standards to which the ESCo is required to maintain the EPC assets and failures trigger a payment liability for the Partner. Regular monitoring and reporting of maintenance are usually based on self-reporting by himself, with the Authority having rights to dual-monitor and/or audit the reports.

*Eurostat view is that an EPC that does not meet either the conditions here mentioned, does influence the statistical treatment and is automatically **ON BALANCE SHEET for government**.*

In the end, it's possible to say that planned maintenance is typically carried out in accordance with an agreed maintenance plan, updated by the ESCo on a regular basis and issued to the Authority for approval.

Eurostat says that this does not influence the statistical treatment if the Authority's approval does not remove or reduce the Partner's liability for deficiencies in the EPC assets and/or delivery of related services.

4. Realized intervention guarantee

It should be stressed that the Partner/ESCo is obliged to guarantee all the plant and building works that will be installed regards the quality of the materials, their assembly and regular operation throughout the management period. All systems must be made in compliance with current regulations.

5. Initial buildings delivery

Indicate which are the fundamental documents to produce at the delivery moment (signed delivery report, state of the art of the plants and so on).

6. Conditions and terms of return of the assets at the end of the contract

All details linked with the assets about the final delivery at the end of the contract should be stated. Usually the buildings and plants must be returned at the end of the contractual relationship in a situation of compliance with the regulations at the time in force and in a state of safety and proper functioning. It's possible to mention if an inspection will be conducted by the Authority or a third party.

7. Energy consumption measuring

It's fundamental to establish the responsibility for measurement and the modality of conduct it. The Partner/ESCo is required to arrange, together with the Municipality/Public Administration, the reading of the meters at the time of the transfer. If a PMVP plan is present, that is strongly recommended, it's important to state that the monitoring phase has to follow it (usually measurement at the beginning of the season and at the end and other important aspects).

8. Obligations for Partner/ESCo and Municipality/Administration

Indicate in this part if all heating and air-conditioning systems or plants linked to the use of renewable sources (photovoltaic, solar thermal, heat pumps, etc.), building works (interventions on casing, doors) or other assets subject of this contract must be total responsibility of the Partner/ESCo or not and also if, in addition to what previously reported, all technical and professional services and various charges connected with the execution of the proposed works are responsibility of him or Municipality/Public Administration. Usually it's better to make a complete list for charges of both the entities.



3. Model for “Performance Monitoring and Verification Plan”

Most EPCs provide for monitoring and measurement activities to be carried out in accordance with an agreed plan. Performance is typically measured and reported on an annual basis with a test of performance.

*Eurostat view is that the right for the Authority to approve the plan do influence the statistical treatment if such approval removes or reduces the Partner’s liability for underperformance. This is of **HIGH importance** so.*

Ongoing monitoring and measurement of the EPC assets’ performance is a core element of the EPC. It is typically defined as a service to be provided by the Partner but in some cases it might be provided by an independent third party.

*Eurostat opinion is that an EPC that does not contain such a regime does influence the statistical treatment and is automatically **ON BALANCE SHEET** for government.*

Introduction/premise

A preamble of the monitoring plan can be made: describing what is this plan and why it is important for the tender/contract for the Municipality/Public Administration. Moreover it’s recommended to report, in this paragraph, the reference standards for the aforementioned plan.

1. Purpose of the Plan

Explain what is the purpose of the plan and what are the results to achieve. Usually the main objective of the PMVP (Performance Monitoring and Verification Plan) is to have an objective feedback on the performance achieved after the renovation under the EPC contract (performances, proper operation, benchmark comparison). For example:

The main objective of the PMVP is to have an objective feedback on the results obtained. In particular:

- Verify compliance with the performance with the contractual commitments;
- Verify the correct functioning of the building/plant system following the energy renovation interventions offered by ESCo during the tender phase and subsequently realized;
- Collect building consumption data and create historians useful for defining benchmarks;
- Represent an example for communication initiatives aimed at disseminating best practices and demonstrating the effectiveness of EPCs in Public Administrations.

2. PMVP type chosen and boundaries of the measurement system

In this part, it has to be established the international standard used as reference to determine the value of energy savings achieved. The EPC contract defines the scope, frequency and standards of monitoring. Reference is often made to independent industry-standard protocols such as the



IPMVP (International Performance Measurement and Verification Protocol - <https://evo-world.org/en/products-services-mainmenu-en/protocols/ipmvp>).

The boundaries of measurement systems to determine energy savings are usually the fuel meters by each building but it's possible to use different systems.

3. Baseline, period, energy and conditions of use

Usually in order to determine the fuel consumption baseline, reference is made to the data recorded in the last thermal seasons available bills (at least 3 years). As far as usage conditions are concerned, it's fundamental to indicate the operational periods (times of occupation), the internal average temperature to maintain and the whole volumes to be heated.

For example:

Consumption data were normalized on the value of average day degrees of the seasons of the weather station, equal to; the final result and the reference consumption baseline are shown in the table below. Report a table if possible.

Variable factors

- Heated volumes (reporting building data)
- Occupational times (reporting building data)
- Operating conditions (reporting building data)

4. Monitoring period

It has to be established the monitoring period valid for the entire duration of the EPC contract (annually, half yearly..). For example:

This PMVP is valid for the entire duration of the contract and, in particular, starting from the date on which PHASE II started as envisaged in the EPC Implementation Contract.

Therefore, the total time duration of this PMVP is years and until the management of the buildings and plants is returned to the owner municipality.

The overall monitoring period is divided into periods of 12 months, including complete winter thermal seasons.

5. Standardization of measures

Typically in this article it's possible to indicate that the PMVP intends to verify the achievement of the savings percentages declared by the Partner during the tender stage by measuring the fuel consumption of the fiscal meters after the investments implemented.

For example:

This PMVP intends to verify the achievement of the savings percentages declared by the ESCo during the tender stage by measuring the fuel consumption of the fiscal meters following the interventions.



The sum of the consumption of natural gas referring to the buildings of the Municipality of will represent the physical value to be verified; this value represents the maximum consumption of methane gas (*adapt accordingly*) expected and is determined as follows:

$$m_{c_{max}} = E_s \times (1 - r_{cc})$$

where is it:

E_s = consumption of historical natural gas baseline

r_{cc} = is the% of savings declared by the ESCo

In order to make the maximum consumption value foreseen in the contract comparable with that deriving from the fiscal meter readings of each year, this must be adjusted on the basis of:

- 1) additional volumes heated compared to those of the baseline;
- 2) longer hours of use than those of the baseline;

and normalized on the basis of actual day degrees relative to the reference period of measured consumption. The measured consumption data, however, can be adjusted in the case of change of the energy carrier.

6. Data Analysis

Indicate if some adjustments are needed in order to analyze the data or to normalize them. For example you can insert here any important aspect/formulas for adjustments.

The expected maximum methane consumption value may be adjusted if the Municipality/Public Administration decides to change variables than those considered for the calculation of the consumption baseline: times of occupation, heated volumes, internal temperatures, external temperatures, energy vector changed.

7. Energy price

Establish the energy price and the condition to regulate the choice. For example, usually, it is planned to recognize the energy component of the fee through the application of the tariff for natural gas more convenient at the time of publication of the tender among those available. This reference price for the energy carrier is fixed for the entire duration of the contract usually and may be adjusted only if, during the reference period of consumption, this value undergoes variations above +/- 10%. It's possible to decide a different percentage. But the price could also be adjusted in different ways.

If a price adjustments is needed, 3 situations might happen:

- 1) the Municipality/Public Administration takes the risk/benefit of fluctuations and these are neutralized in the guarantee mechanism;
- 2) the risk/benefit of fluctuations is shared (e.g. by applying an agreed index to the baseline data);
- 3) the Partner/ESCO take the full risk on fluctuations.

*The Authority taking or sharing the risk/benefit of fluctuations in future energy prices **does not** influence the statistical treatment. However, usually in EPC, in the event that the savings quota*

verified by the Joint Commission is lower/higher than the one indicated in the project presented by the ESCo during the tender, the Commission will adjust the fee related to the remuneration of the energy component of the annual fee.

8. Meter specifications

Indicate the specifications that meters must have to ensure a proper counting. Distinguish among meter for natural gas, electricity or other carrier (woods, pellets, w-chips).

9. Other measurements and adjustments

If some other measures are required, you should establish the tools and the way to carry out this measurements: temperatures, humidity or others. Usually, same as price, these measurements require adjustment during the contract period.

Routine adjustments for weather, indoor temperature, hours/days of usage/occupancy, number of users/occupants are always needed during a long term contract. Non-routine adjustments for adverse site conditions, change in law, the Authority vacating the site, etc... could happen sometimes.

*Eurostat suggests that adjustments **do not** influence the statistical treatment if all of the following conditions are met:*

- *there is a finite number of well-defined events (i.e. not an indefinite number of risks);*
- *the events do not capture changes in macro-economic conditions;*
- *the events are not attributable to the acts or omissions of the Partner;*
- *the events, or the consequences of the events are not reasonably foreseeable or estimable;*
- *the adjustments do not compensate for anything other than the effects of the event.*

*Provisions that do not meet one or more of the conditions listed above are issues of **HIGH importance** to the statistical treatment.*

10. Monitoring responsibility

It's fundamental to indicate who is responsible for every aspect of the PMVP. Usually it is expected the nomination of a Joint Commission (as already mentioned), made up of three members, with the task of verifying that the energy efficiency measures carried out reach the performance levels of the building-plant system in line with the energy savings guaranteed at the tender stage, contractually agreed by the project. Usually the first member will be identified by the Municipality/Public Administration that owns the buildings among his internal staff. The second member will be appointed by the Partner/ESCo. The third member will be identified by the Municipality through public selection and will assume the role of President of the Commission.

The tests that are the subject of this PMVP will be carried out by the Commission starting from the end of PHASE I. The tests usually consist of:



- 1) analysis and evaluation of the data acquired by the meters;
- 2) verification of the achievement for each period of measurement of the energy savings declared by the Partner/ESCO;
- 3) determination for each period of measurement of the price of energy as defined in art. 7 of this PMVP.

11. Performances test and grace period

Some EPCs allow for an initial or for special “grace period” following completion, giving the EPC assets time to settle in to their full operation and performance, in which case the guarantee is tested on each anniversary of the end of the grace period.

*Eurostat considers that a “grace period” does NOT influence the statistical treatment if the period of time is reasonable (for example 3 months for a 8 year duration of EPC). If it is considered longer than reasonable is of **MODERATE** importance.*

12. Expected accuracy

It’s possible to indicate the accuracy of measurement compared to other sources or measuring methods. Usually, since consumption measurements will be obtained through the reading of fiscal meters and those of external temperatures from the Regional Environment Agency, there are no tolerance factors on the measures themselves.

13. Monitoring budget

Determine who and how intends to pay for the application of the PMVP.

Usually, all the expenses necessary to find the measures are charged to the ESCo/Partner. The expenses necessary for the payment of the Joint Commission's activities have to be divided by both parties.

14. Activity report

Indicate who has the responsibility to draw up the report document (annual frequency usually) and which are the information that has to contain.

For example:

The Report to be drawn up by the third member of the Joint Commission on the basis of the data collected by the other two members must report the following information in it:

- verification of the correctness of the measurement of the requested energy data (meter, period, etc.).
- check whether the data necessary for standardization and adjustments have been correctly measured and during the requested period (check start and end).
- describe and justify any changes made to the data collection period.
- determine the price of the energy to be used for the calculation of the energy component of the fee.



- detail of all the values that can lead to extraordinary performance adjustments. Details should include an explanation of changes in baseline conditions (events, assumptions, adjustments based on adjustments)
- calculation of energy consumption and verification of compliance with contract performance
- calculation of the energy component of the fee, taking into account the subdivision of any extra saving

15. Quality assurance

Indicate if re-examination activities should be planned to verify the compliance of the activities with the requirements of this PMVP.

16. Extraordinary adjustments of the PMVP

If needed it's possible to change some important articles or aspect of this PMVP; for example in case of new and different interventions from the tender project.



4. Model for “EPC contract scheme”

Before the contractual dictate it is necessary, even briefly, to identify:

- a. the European and National regulations governing the contract;
- b. the reasons that prompted the Contracting Authority/Municipality to call the tender and sign the contract.

1. Nature and purpose of the contract

The first article clarifies the nature of the contract and its purpose. Indicate which kind of contract is this, what are the objectives and the result to reach (energy renovation, energy supply or not, management of the building or not and so on..) and what is the way of financing it. Usually this article establishes that, for the performance of the EPC, the energy renovation of buildings is mandatory: the awarded ESCo must ensure that the energy requalification measures are designed to achieve the minimum expected savings described in following articles, respecting the micro-climatic parameters and indoor air quality (environmental indoor comfort).

2. Contractual Object

The identification of the contractual object must be done in a timely manner. So indicate which are the activities that the awarded ESCo has to carry out. For example:

- a) the drafting of the executive design documents in relation to the works, interventions and services all offered and proposed by the awarded ESCo in the tender awarded and processed in the Definitive Project approved by the Municipality/Public Administration on the chosen buildings ;
- b) the execution of the aforementioned works, interventions, services and supplies in accordance with the Design Documents, as well as the supply of the necessary goods, materials and equipment;
- c) the provision of Management and Maintenance Services as indicated in the Management Specifications, including the Supply of the Carrier if needed.
- d) Indicate other important activities that you want to include in the contract.

An important concept to define immediately is the **legal ownership** of the site/assets.

Typically, legal ownership remains with the Municipality/Public Administration for the duration of the EPC (and after its expiry) and the Authority grants access rights over the site to the awarded ESCo. In fact, usually the EPC contract will contain an express obligation to ensure those access rights for the duration of the contract. Most EPC assets become fixtures to the site and therefore, after construction and/or installation, their legal ownership transfers automatically (by law) to the owner of the site (i.e. typically the Public Administration).

The legal ownership of any EPC assets that do not become fixtures to the site will typically (under the provisions of the EPC) transfer to the Authority either on completion of the construction and/or



installation or on expiry/termination of the EPC. All these aspects do not influence the statistical treatment.

3. List of terms

The article is dedicated to the precise identification of the terms used in the contract, in order to avoid misunderstandings on who does what. The precise identification of terms can not only be the mere transposition of definitions given in the legislation, but must contain the effort to be the most widely understood.

4. Temporal terms

a. *Duration*

Establish in this paragraph the whole duration of the contract (in years) and describe all its steps if needed: for example the first step could include the delivery of the buildings and the important works; the second step, instead, should start with the conclusion of works and the phase of management and conduction of the building plants.

b. *Delays*

Indicate what will happen if there will be delays. Usually the awarded ESCo is required to respect the Timetable approved by the Municipality/Public Administration and will be responsible for any delay, except for the cases in which the delay and the consequent modification of the timetable are due to events not attributable to the awarded ESCo. Establish if there will be a penalty fee to pay and in which measure.

c. *Prolongation*

Indicate which are the cases that obliged the awarded ESCo to delay the schedule due to external circumstances: legislative adjustments, variants authorized by the municipality, failure to issue or delay in obtaining the construction Permits. Usually if such event or circumstance does not allow the Partner to respect the expiration date (of Timetable), the latter will be entitled to an extension of the amount equal to the delay suffered.

5. Awarded ESCo obligations

This article must include all the obligations and responsibilities in the hands of the awarded ESCo in order to conduct the renovation works in a proper way, achieving the desired results. It is advisable to include the possibility of the Public Administration to oblige the ESCo to perform work differently to those envisaged under the contract, without the awarded partner being able to assert the right to the resolution of contract.

6. Municipality/Public Administration's obligations

Same as previous article, here it has to be established in details the responsibilities and obligations of the Municipality about this contract.

It is noted that the particularity of the Energy Performance Contract requires, for the achievement of the objectives, of the direct involvement of the Public Administration, and its behavioral fairness.



7. Design and execution phases (PHASE I)

This paragraph contains the first step of activities that the awarded ESCo must conduct: he shall provide for the heading of the utility bills, the supply of energy carriers, the conduction and ordinary maintenance of the buildings/facilities, the presentation of the executive project within 30 days from the Delivery of the Buildings (usually), for the approval of the municipal offices and the planned completion of the works, interventions and works of energy requalification, including testing.

Design phase: the awarded ESCo must submit the proposal for an Executive Project and an updated Timetable to the Municipality/Public Administration. In a short period (usually 20 or 30 days), the Public Authority will present his observations, which will be the subject of joint review between the Parties for the purposes of defining the Executive Project and the Timetable. Within other 20 days (typically) will be the approval of the Definitive Project by the Municipality and the obtainment, by the competent Authorities (for example Fire Brigade), of all the authorizations required by current legislation.

Specification and design can be led by the awarded ESCo (e.g. during a procurement process), or by the Authority itself before initiating a procurement process. In exceptional cases, EPCs envisage that the Partner might identify, specify and design some or all of the energy efficiency measures after the EPC is signed and typically gives the Public Administration the right to review, comment on or approve it. In all above cases, the EPC will typically make it clear that the Partner is responsible for ensuring that the design, construction and/or installation and performance of the EPC assets meet the standards set out in the EPC. Any comment or approval given by the Authority does not typically remove or reduce the Partner's responsibility.

*Usually these aspects do NOT influence the statistical treatment in Eurostat vision, however any risk that the Authority takes under the EPC for construction and/or installation, maintenance, operating costs and/or performance failures that may arise as a consequence of developing, reviewing and/or approving the specification and/or design **does** influence the statistical treatment and is an issue of **HIGH importance**.*

Execution phase: the Works must be carried out in perfect timing and to the letter and, of course, in compliance with the technical, graphic and performance specifications contained in the Planning Documents, and in compliance with all applicable regulations, including those relating to the environment, safety and hygiene and any provision, condition or performance the observance of which is necessary to obtain the Permits. The works must be planned and performed in agreement with the Procurement Manager and carried out in such a way as not to compromise the normal operation and functionality of the buildings.

Indicate if the risks of this step/activity is assumed by the awarded Partner totally or not.

Usually, the awarded ESCo is responsible for completing the construction and/or installation by a fixed date (penalties might be foreseen); he takes responsibility for obtaining permits and



authorizations (save those that are not in its control). The awarded ESCo takes all responsibilities for this phase: usually takes responsibility for the performance of all its supply chain (designers, subcontractors, etc) and commits to tender process for appointment and to fair payments .

The Authority has rights to monitor the progress and quality of the work and to require to rectify issues of noncompliance. All these aspects do NOT influence the statistical treatment

But if the Authority is entitled to share the financial benefit of the Partner incurring lower costs than anticipated. The EPC will be automatically on balance sheet.

8. Health, safety and protection of workers

It is essential to provide for a clause relating to safety rules, which we can only define generally now, depending also on each national legislations.

However it is necessary to recall the rules concerning the health and safety of workers as the Station Contracting Authority and the awarded ESCo have precise legal obligations for the protection of health and safety of workers.

Usually in these contracts are highlighted some general measures of safety for workers or every person that will enter the building during the execution phase, but also during all the contractual period. Then, measures more detailed should be established.

9. Works completion and test

Public works are subject to testing to certify that all performance is achieved, objectives and the technical/economic/qualitative characteristics have been realized and carried out in compliance with the contractual provisions and agreements agreed upon the awarding (and with legislations).

Once the works have been completed, the Municipality/Public Administration will appoint a tester to carry out the testing operations. These will consist on testing of the performance and all the acts required by the legislation in force and in particular in the examination, checks and tests necessary to determine the technical compliance of the Work with the Design Documents, this Contract and the current legislation in force.

10. Management phase (PHASE II)

The management of the plants and the ordinary and extraordinary maintenance of the buildings are an integral part of the Energy Performance Contract; moreover it should be declared that the fee remunerates the activities referred to in this article. It should be noted that maintenance in buildings must be carried out on all opaque and/or components transparent which have been the subject of energy requalification interventions by the awarded ESCo. Usually the methods of execution of this service are described in detail in the Technical Specifications document.



Regarding management, there are several and specific issues to tackle, so a focus is needed. The Eurostat guide approaches this theme in particular regarding “Maintenance and operation of EPC assets (theme 3)”. The main issues highlight in the guide are:

- *Responsibility of this activity*
- *Energy supply*

The Authority is usually responsible for maintaining and operating the site excluding the EPC assets but in some EPCs the ESCo/Partner’s service include, for example, cleaning the EPC assets, monitoring and verifying performance, supplying energy.

*About this aspect, Eurostat view is that the Partner must be always obliged to maintain the condition of (and, as necessary, replace) the EPC assets for the duration of the contract and the fact that additional activities or services are included does not influence the statistical treatment. If the Authority is taking some responsibility for maintaining and/or replacing the EPC assets, it does influence the statistical treatment and it is an issue of **HIGH importance**. The Authority controlling the use or operation phase (e.g. regulating times) does not influence the statistical treatment.*

*Moreover a right for the Authority to share the financial benefit of the Partner incurring lower costs than anticipated in maintenance. This topic does influence the statistical treatment and leads to the EPC being automatically **ON BALANCE SHEET for government**.*

The EPC typically specify standards to which the ESCo is required to maintain the EPC assets and failures trigger a payment liability for the Partner. Regular monitoring and reporting of maintenance are usually based on self-reporting by himself, with the Authority having rights to dual-monitor and/or audit the reports.

*Eurostat view is that an EPC that does not meet either the conditions here mentioned, does influence the statistical treatment and is automatically **ON BALANCE SHEET for government**.*

In the end, it’s possible to say that planned maintenance is typically carried out in accordance with an agreed maintenance plan, updated by the ESCo on a regular basis and issued to the Authority for approval. Eurostat says that this does not influence the statistical treatment if the Authority’s approval does not remove or reduce the Partner’s liability for deficiencies in the EPC assets and/or delivery of related services.

11. Annual fee and Economic Plan

The awarded ESCo undertakes to respect the commitments made in the economic offer presented during the tender.

The nature of the EPC contract is not instantaneous but continuous; therefore the payment cannot be unique, but it must be paid in several installments, identifying in the case of a “fee”, which is paid to leave from the month/two-month/quarter following the date of the record of taking over the building and a frequency that can vary (usually annual fee). The fee for the supply of energy

carriers was also provided in the contract which, of course, is omitted if it is not part of the contractual object.

In respect of the realization of the works and all interventions of energy requalification, including the supply of the fuel carrier and any other service, activity and service rendered by the awarded Partner pursuant to this Contract with reference to the Buildings as a whole, the Municipality/Public Administration will pay the awarded ESCo an “Annual fee”, plus VAT. As foreseen in the tender specifications and the Management Specifications, the fee includes:

- the quota relating to fuel consumption subject to verification of the Performance Test;
- the quota relating to management and maintenance operations;
- the quota related to the renovation interventions.

The awarded ESCo might be required to provide some services in relation to existing infrastructure during the Construction Phase. These services might be subject to a different regime to the one that applies once the EPC assets are complete.

*In this case, Eurostat thinks that an obligation on the Authority to start making Operational Payments in respect of the EPC assets before the date on which they are complete **does** influence the statistical treatment and automatically leads to the EPC being **ON BALANCE SHEET** for government.*

*Certain costs can be charged to the Authority on a pass-through basis, meaning that the Operational Payments are adjusted on the basis of the actual costs incurred by the ESCo. The most common example of this is where energy supply is a service delivered by him. To reimburse energy supply costs **do not** influence the statistical treatment in Eurostat opinion. Provisions that treat other Partner's costs on a pass-through basis **DO**.*

The Economic Plan, basis of the calculation of the annual fee and of the entire contract, is a fundamental part of the EPC. In case of requests by the Municipality/Public Administration to change the conditions laid down on the basis of the contract, such as the replacement of buildings, or other events or circumstances of a general nature that affect the Parties positively or negatively, they will be entitled to a rebalancing, also in terms of the revision of the annual fee in accordance with national rules.

In absence of the aforementioned revision, and in the impossibility of finding new equilibrium conditions of the Economic Plan in the hypotheses outlined before, the Partner shall be recognized the right to withdraw from the contract agreement without penalties.

12. Savings

The savings guaranteed in the EPC will most typically relate to a minimum reduction in volume of energy that might be expressed in units of energy (e.g. kWh) or in monetary terms, and might relate to a particular form of energy (e.g. electricity, gas) or output (e.g. lighting, heating, CO₂). The contractual amount of the EPC Fee, as derived from the technical-economic offer improvement of

the amount defined in the tender, is also calculated on the basis of the allocation of these “**guaranteed savings**” between the Municipality/Public Administration and the ESCo.

In fact, the two parties, through the creation of a Joint Commission, will evaluate the performance achieved by the building from year to year and will compare it with what was established during the tender. It is important to define immediately the percentages of the extra-savings subdivision or the penalties to be paid by the awarded ESCo in case the promised results are not achieved.

Usually there will be 3 case scenario:

- a) the Energy Saving actually achieved is **lower** than the Guaranteed Energy Savings, the ESCo will be recognized the contractually indicated fee remaining at the exclusive charge of the Partner, account holder of the utility, the higher costs due to the greater fuel consumption compared to the guaranteed objectives of consumption reduction and energy savings set in the contract and not achieved.
- b) the Energy Saving actually achieved is **equal** to the Guaranteed Energy Saving, the Municipality/Public Administration will be required to pay the awarded ESCo the annual fee established in accordance with the contractual provisions.
- c) the Energy Saving is **greater** than the Guaranteed Energy Saving, so the greater benefits from extra-performance related to the greater energy savings achieved will be distributed to the extent of% in favor of the awarded ESCo and% in favor of the Conceding Municipality/Public Administration. (*Decide which is the distribution of the extra-saving, usually bigger for the ESCo, so it's encouraged always to do better*).

Underperformance

*Eurostat's view is that the principle of proportionality is fundamental to the EPC provisions that deal with the performance of the EPC assets in delivering guaranteed savings. This means that the Partner's liability for a savings shortfall must be proportional (or over-proportional) to the proportion of guaranteed savings that have been achieved. If an EPC does not comply with this principle of proportionality it will be automatically **ON BALANCE SHEET** for government.*

*Eurostat's view is that any provision that caps the Partner's liability for the full amount of any savings shortfalls undermines the principle of proportionality, therefore does influence the statistical treatment and automatically leads to the EPC being **ON BALANCE SHEET** for government.*

Overperformance

Eurostat's view is that there are two different approaches to sharing savings excesses that do not influence the statistical treatment:

- *The first approach is where the EPC states that the Authority is entitled to the share of any savings excesses that result from identifiable and measurable actions of the Authority (e.g. where the Authority changes the maximum/ minimum temperatures to be maintained in a building or reduces the operational hours of a building);*



- The second approach is where the EPC states that the Partner is entitled to a specified share of any savings excesses that arise. The Partner's share must be no less than **two thirds**. Under this approach no assessment is made of whether a savings excess results from the actions of the Authority or the Partner or other factors.

We could have also other important suggestions about savings: where the EPC assets are spread across a portfolio of sites, the savings might be aggregated, meaning that savings and revenues achieved in relation to individual sites compensate for each other when it comes to testing performance. The EPC will identify a baseline against which savings are compared and tested. On some EPCs the defined amount of guaranteed savings varies from year to year, usually increasing in later years.

Eurostat says that the principal rule on guaranteed savings is that the level of guaranteed savings over the duration of the EPC is equal to or greater than the sum of:

- the operational payments forecast to be made by the Authority to the Partner over the total duration of the EPC and,
- any amount of government financing that is not repayable by the Partner.

$$\sum \text{Guaranteed savings} \geq \sum \text{Operational Payments} + \text{government grants}$$

If this rule is not satisfied then the EPC will be on Balance Sheet for the government.

13. Financing arrangements

Eurostat's view is that a government commitment to the financing of an EPC in any form and any amount (i.e. taking into account all commitments provided by the Municipality/Public Administration or other government entities) **does influence** the statistical treatment as follows:

Financial arrangements of the capital expenditure	Level of influence on the statistical treatment
50% or more	Automatically recorded ON BALANCE SHEET
Less than 50% but more than one third	Issue of VERY HIGH importance
One third or less but more than 10%	Issue of HIGH importance
to 10% or less	Issue of MODERATE importance

Note also that:

- EU financing (e.g. grant, loan) is not counted as government financing;
- Any amount of capital expenditure that is funded by EU grant is deducted from the capital expenditure against which government's contribution of financing is calculated. If the



decision to allocate the EU grant to the particular EPC is made by the Municipality/Public Administration itself (or another government entity), the amount of the grant is only deducted from the capital expenditure if it originates from a specific EU fund or programme (otherwise the grant is considered to be government financing);

- National co-financing to match an EU grant is considered to be government financing;
- Financing arranged between the Partner and the EIB or any other international finance institution is considered to be financing from the private sector.

14. Incentives

There are a lot of incentives from each single European country that can be part of this contract (EPC). They are different from Country to Country, but one of them is common because it derives from an European Directive: the EEC.

The Energy Efficiency Certificates (EEC) are issued by the Energy Markets Manager (GME). These include ESCOs and public bodies, provided they have done so the appointment of the responsible for the conservation and rational use of energy (Energy Manager).

Their purpose is to empower the natural gas and/or electricity distribution companies, which have a fleet of final customers exceeding 50,000 units, improving efficiency energy to be achieved at its end customers through certified savings. The ESCOs can access the EEC market, as they do not have to comply with any of their obligations as the companies above, have the opportunity to make profits on the market through the sale of securities obtained from projects relating to the EPC contract.

In Italy it's possible to request other national incentives, such as about photovoltaic installations or about renovation of thermal plants (*Conto termico*).

*Usually it's common to leave to the **awarded ESCO** the right to request these incentives, so the investment will be more attractive for them.*

15. Surety

This article is made up to guarantee the real interest of the awarded Partner, so it will be bound to the contract. In fact the awarded ESCO must establish and deliver to the Municipality/Public Administration, at the time of stipulation of the present contract, a surety guarantee equal to 10% (it's possible to define another percentage) of the amount of the Investment Value relating to all the Buildings envisaged for the EPC Contract, to guarantee presentation within the terms provided of the Executive Project, of the correct execution of the Works (the "Execution Guarantee").

16. Contract sale

Establish if it's possible for the awarded ESCO to sell the contract after the winning tender. Usually it's forbidden, otherwise the EPC will be canceled.



17. Subcontract

Establish if it's possible for the awarded ESCo to subcontract some activities of the contract. Usually it's allowed, but a long list of limits and modalities depending on national laws. Usually, in these contracts, a percentage amount for subcontracting is established.

18. Insurance

The EPC usually specifies particular insurances that the awarded ESCo is required to have in place during the contract (as a minimum). The required insurances typically include:

- professional indemnity insurance (covering the awarded ESCo's design liabilities);
- construction/property damage insurance (covering damage to the construction works/EPC assets);
- public liability insurance (covering product liability and liabilities to third parties);
- insurances required by law.

Depending on the nature of the EPC assets and their integration with the site on which they are located it is often envisaged that during the Operational Phase the EPC assets will be covered by property damage and/or public liability insurances taken out by the Municipality/Public Administration. In some cases this is included an express obligation on the Authority in the EPC, in other cases it is implied.

*Eurostat's view is that provisions in the EPC requiring the ESCo to have certain insurances in place, the scope of those insurances and the terms on which they must be put in place **do NOT influence** the statistical treatment. Eurostat's view is that provisions in the EPC requiring the Authority to have property damage and/or public liability insurances in place to cover the EPC assets during the Operational Phase, the scope of those insurances and the terms on which they must be put in place, do NOT influence the statistical treatment. However, extending the Authority's obligation to take out any other insurance for the benefit of the Partner (e.g. insurance against malfunction or poor performance of the EPC assets, business interruption insurance), does influence the statistical treatment and is an issue of **HIGH importance**.*

Moreover, Some EPCs include "uninsurability" provisions that deal with the situation where an insurance that the Partner is required to take out ceases to be available in the insurance market or is only available at excessive cost. Typically, if a situation of uninsurability arises, either party can elect to terminate the EPC and compensation is paid to the awarded Partner (see Theme 12.5). In some situations, the Municipality/Public Administration may have the right to elect for the EPC to continue, on the basis that it will act as insurer of last resort if and when the uninsurable risk occurs.

19. Termination clause and Contract resolution

The termination clause is a fundamental guarantee for the Municipality/Public Administration. It is foreseen in cases of very serious defaults by the awarded ESCo which may concern both the failure



to achieve energy savings for values far lower than the minimum ones required by the contract, and serious failures closely linked to the incorrect behavior of the Partner.

Usually this article presents a list of possible situations that can lead to the contract resolution. Early termination of EPCs can typically be triggered by the following events:

- default by the awarded ESCo (insolvency, bankruptcy, construction failures, breaches, corrupt behavior)
- default by the Public Administration (non-payment, breach of contract, sale of the site, legal change of status)
- unilateral (or voluntary) decision by the Public Administration;
- extended and continuing force majeure event; or
- uninsurability or the occurrence of an uninsurable risk.

*Eurostat's view is that the provisions that define the circumstances and process by which the Partner may terminate the EPC for Authority default, or the contrary, do not influence the statistical treatment. However, it should be noted that if the triggers for early termination for Authority default result in the Authority taking risks that do influence the statistical treatment, this is an issue of **HIGH importance**.*

About the contract resolution, the vast majority of EPCs provide for the payment of compensation by the Public Administration to the awarded ESCo on early termination of the EPC. The amount of compensation payable varies depending on the circumstances giving rise to termination.

Responsibility for the EPC assets themselves will usually revert to the Public Administration or, if the EPC is re-tendered by the Public Administration, to a third party. Where an EPC makes no such provision, compensation payable is typically governed by the underlying law in the relevant jurisdiction.

It should be remembered that it is a right subjective one-off, one-sided and discretionary, placed at the head of the Public Administration, not syndicated in court. With the recess the Contracting Authority may at any time resolve the contract, giving the awarded ESCo a notice of not less than 20 days and recognizing the same payment of work performed, construction material, and usually a 10% of unfinished works. In EPC case, if the Public Administration applies this rule, the awarded ESCo will also have to pay the costs and penalties applied for the early closure of the possible loan contract.

*Eurostat's view, which applies to all early termination scenarios, is that the payment of compensation should not cancel any liabilities of the Partner to the Authority that pre-date termination (e.g. an indemnity claim that the Authority has against the Partner). Provisions (in the EPC or underlying law) that do not preserve pre-termination liabilities do influence the statistical treatment and are issues of **HIGH importance**.*



Some EPCs provide that no compensation is payable to the awarded ESCo on early termination that is triggered by its default.

There are two typical approaches to defining the date on which the EPC expires:

- Some expire on a date that is a fixed period of time from the date of financial close (i.e. the overall duration of the EPC is fixed);
- Others expire on a date that is a fixed period from the date on which the EPC assets become operational (i.e. the Operational Phase is fixed).

In rare cases the EPC does not have a fixed overall duration or a fixed Operational Phase but instead provides that the EPC will expire once a particular level of energy consumption and/or cost savings has been achieved and/or the awarded ESCo has generated a particular level of profit or revenue.

Both this approach do not influence the statistical treatment in Eurostat vision.

20. Disputes

In this part it should be stated what is going to happen in case of disputes about the contract. In the event of a dispute, before proceed with the legal proceedings, alternative remedies to the judicial protection ranging from the goodwill agreement must be explored. If the contract provides for the Joint Control Commission, given the third party, it would be preferable that the attempt to settle the transaction was entrusted to this Commission.

21. Contract expenses and taxes

Usually, it is appropriate to point out that all expenses related to the contract are charged to the awarded ESCo, with the exception of VAT. Make a complete list if you prefer.

22. Contract changes

Most EPCs recognize a right for the Municipality/Public Administration to propose changes to the terms of the contract (including the agreed terms of the design, construction, operation and maintenance of the EPC assets) and that the Partner is entitled to relief and/or compensation for the consequences of complying with those changes. In some EPCs, the Public Administration's right to propose changes is restricted (e.g. to changes below a certain value, to changes of a certain type) and/or by the awarded ESCo having grounds for objecting to the proposed change (e.g. that the change would adversely affect health and safety, good industry practice, permits).

Most EPCs contain provisions that allow the awarded ESCo to claim:

- compensation from the Public Administration for any increase in costs or loss in revenues or change in the EPC's risk profile; and
- relief from any non-performance of the EPC;

that arise as a result of the change.



Eurostat's view is that:

- *provisions that give the Authority a right to propose changes to the EPC (either on a restricted or an unrestricted basis) do NOT influence the statistical treatment;*
- *provisions that give the Partner a right to claim compensation and/or relief for the consequences of complying with an Authority change, and the method for calculating and paying compensation, do NOT influence the statistical treatment if the compensation and/or relief are limited to addressing the effects of the Authority change (i.e. they do not indirectly compensate or relieve the Partner for its own poor performance or other Partner risks). Where this is not the case, the issue is of HIGH importance to the statistical treatment;*

23. General information

In this article typically are report some important information about communication, responsibility about the EPC contract redaction, some disclosure clause and intellectual properties.

24. Attachments

Usually, some fundamental documents are attached to the EPC: Executive project, Technical and management specifications, Monitoring and Verification Plan and so on.

