

Project Acquisition

Flexibility Within the Procurement Code

What Types of Development Projects Does Your Agency Need?

What are Impediments to Acquisition of these Needs?

Does the Consolidated Procurement Code (the Code) Help or Hinder You?

How?

Consider the Flexibility of the Code

Preliminary Considerations

Is it a Project Delivery Method or a Source Selection Method?

Authorized Project Delivery Methods

- Design-Bid-Build
- Construction Management at-Risk
- Design-Build
- Design-Build-Operate-Maintain
- Design-Build-Finance-Operate-Maintain
- Any combination of design, construction, finance, and services for operations and maintenance approved by:
 - The B&CB by Regulation, or
 - The State Engineer in accordance with 11-35-3010

Authorized Source Selection Methods

Consider the
Following Examples

Sample DB Process

- Pre-qualify on Qualifications Only
- Intentionally narrow to three most qualified
- RFI (issue draft RFP to all three for comment)
- Issue a Solicitation with basic needs & fixed price
- Evaluate on Scope of Work & Life Cycle Cost
- Pay Stipends to two unsuccessful offerors

Design-Build: Special Rules

Design Requirements

Proposal Development Documents

Independent Peer Reviewer

Design Requirements

Heart of the RFP

Competitive Starting Point

Design Requirements - Purpose

“provide offerors a “common, and transparent, written description of the starting point for the competition and to provide the State with the benefit of having responses from competitors that meet the same RFP requirements.”

- R. 19-445.2145(K)(2)
- allows a head to head competition and an apples-to-apples evaluation by the state

Design Requirements - Concept

“functional description that sets forth only the essential features of each project, including anticipated schedule, and estimated budget for design, construction, operation, and maintenance.
. . . If the design requirements go beyond functional description into particular design, construction, finance, or operational requirements, the scope and the intensity of this competition is compromised, to the detriment of both government and offerors.

- MPC §5-101, cmt.2.

Design Requirements - Defined

Written description of the facility, including:

- required features, functions, characteristics, qualities, and properties
- anticipated schedule, including start, duration, and completion
- estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance

Design Requirements - Defined

may, but need not, include drawings and other documents *illustrating the scale and relationship* of the features, functions, and characteristics of the project

Proposal Development Docs

Finish Line

Heart of a Proposal

Proposal Development Documents - Purpose

“The purpose and intent . . . is *to provide actual offerors with a common, and transparent, written description of the finish point for the competition.* To be responsive, each offeror must submit drawings and other design related documents that are sufficient to *fix and describe the size and character of the infrastructure facility to be acquired, including price . . .*”

- R. 19-445.2145(K)(3)

Proposal Development Documents - Defined

“drawings and other design related documents that are *sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements* as may be appropriate to the applicable project delivery method.”

Independent Peer Review

Quality Control

Independent Peer Reviewer

“The Independent Peer Reviewer’s purpose is to provide the government with independent professional advice and assurance that key design elements of the project are consistent with the functional description in the Request for Proposals and with the common law standard of professional care. “

- MPC § 5-204(3), cmt.

Independent Peer Reviewer

- evaluation factor - offeror *must* name
- agency can contract separately

Sample CM at-risk Process

- Select CM/GC on Qualifications Only
- Select A/E with CM/GC Input (or vice versa)
- Fast Track Site Prep
 - Negotiate GMP for Site Prep; Self-Performed
- At 80% Design
 - CM/GC pre-qualifies subs & bids major components
 - Negotiate GMP

Construction Manager at-risk

Overview of Key Rules

Construction Manager at-risk

- RFP Source Selection Method
 - Solicitation must include a preliminary budget, *and if applicable, completed programming and the conceptual design.*
 - Must ask for qualifications
 - Proposed fee *may* be evaluation factor.
- Fast Track OK, but partial bonded & partial GMP
- Can't self-perform on work bid to subs (limited exceptions)
- GMP required pre-construction
 - "Partial" GMP OK for part of job
 - Total GMP pre-"final construction drawings" must be justified

Construction Manager at-risk

- State must evaluate price before negotiating GMP
 - Bid Major Components to Subs
 - [Contract should require CM/GC to invite bids for all major components of the construction work.]
 - For work not bid - must get cost/price data pre-GMP
- Pre-GMP: pay a fee only as fixed amount or based on fixed formula
 - high bar to justify use of cost-reimbursement
- If can't negotiate GMP, Gov't can cancel CM/GC and bid out
- Agency can audit CM/GC

What Factors Should You Consider in Deciding on a Project Delivery Method?

- Facility:
 - Facility type
 - Complexity
 - Extent to which design requirements for the infrastructure facility are known, stable, and established in writing
- Location
 - Required site attributes
 - Available sites
 - Unique characteristics of available sites that would impact project

What Factors Should You Consider in Deciding on a Project Delivery Method?

- Time
 - Earliest date on-site work can start
 - Deadline for completion
 - Critical intermediate deadlines
- Financing to support project/facility life cycle
 - Projected life cycle costs
 - Potential sources of funding
 - Projected cash flow requirements

What Factors Should You Consider in Deciding on a Project Delivery Method?

- Available Project Delivery Methods
 - Comparative advantages & disadvantages for the project
 - How each method might be configured and applied to fulfill requirements
 - Methods used on similar projects in the past and the results
- Decision Making/Administrative Services
 - Available decision makers and administrators
 - Their relevant experiences, skills, and abilities
 - Extent to which decision-making and administration can be assigned to others by contract

Advice

- Learn Project Delivery Procurement Rules
 - Read Statute
 - Read Regulations
 - Read Model Code Excerpt
- Learn RFP Procurement Rules
 - Negotiations
 - Post-Opening / Pre-Evaluation Discussions
- Those who know the rules can use them to their greatest advantage.

A WORD CONCERNING JOINT VENTURE PROPOSALS

What is It

- A joint venture is a partnership recognized as a distinct legal entity between two or more venture partners that may be an individual, partnership, LLC, or corporation (Fig. 1). Normally a joint venture has a limited life and, in the context of construction, is usually formed for the purpose of constructing a specific project.
- Joint ventures have been utilized for years among traditional construction contractors to achieve the operational, financial, and surety bonding capacity necessary to undertake large and/or complex construction projects.

Joint & Several Liability

- Each venture partner is jointly and severally responsible for performance of the contract, as well as payment for the labor and materials used and consumed in the construction of the project.
- While normally there is a percentage split or share of the project's profit or loss among the venture partners, the joint venture overall is responsible to the project owner for completion of the job.
- If there is a default by any venture partner, the remaining venture partner is severally, i.e., individually responsible for the completion of the project.

To remove any question about the joint and several liability of each venture partner to the owner

Require each and all venture partners to execute the contract on behalf of the joint venture.

Scenario 1

You have a need for a 400 bed prison dormitory

Additional Facts

- You need the beds ASAP (under a court order)
- Funding has been made available
- Already have dormitories of the type you need
- Design requirements generally known and stable but not compiled in a written document
- Staff competent and capable but limited experience with Alternative Project Delivery and little time to spend compiling design requirements

Develop An Acquisition Strategy

Scenario 2

You have a growing demand for parking and will need 800 parking spaces by 2016.

Additional Facts

- No funds available
- 1 ½ Acre available on site but development may negatively impact future project development on campus
- Know at least one other privately owned site of comparable size is available within easy walking distance
- Other privately owned sites several miles away or more may be available
- Daytime security is not a concern in the neighborhood but may be further out. Nighttime security a concern off premises.
- Staff are competent and capable and have experience with D-B-B, D-B, and CM-R

Develop An Acquisition Strategy

Scenario 3

Campus water, wastewater, and energy distribution systems in bad shape. Also have a significant deferred maintenance backlog on HVAC systems. These systems are inefficient and wasting water and energy. You have been directed to develop a project to knock out as much of this backlog as you can.

Additional Facts

- You have been given 1 ½ years to accomplish the project
- You have no funds
- You do not have the technical staff available to manage the technical aspects of the project
- Your staff are competent but only have experience with design-bid-build

Develop An Acquisition Strategy

Can You Think of
Other Possibilities

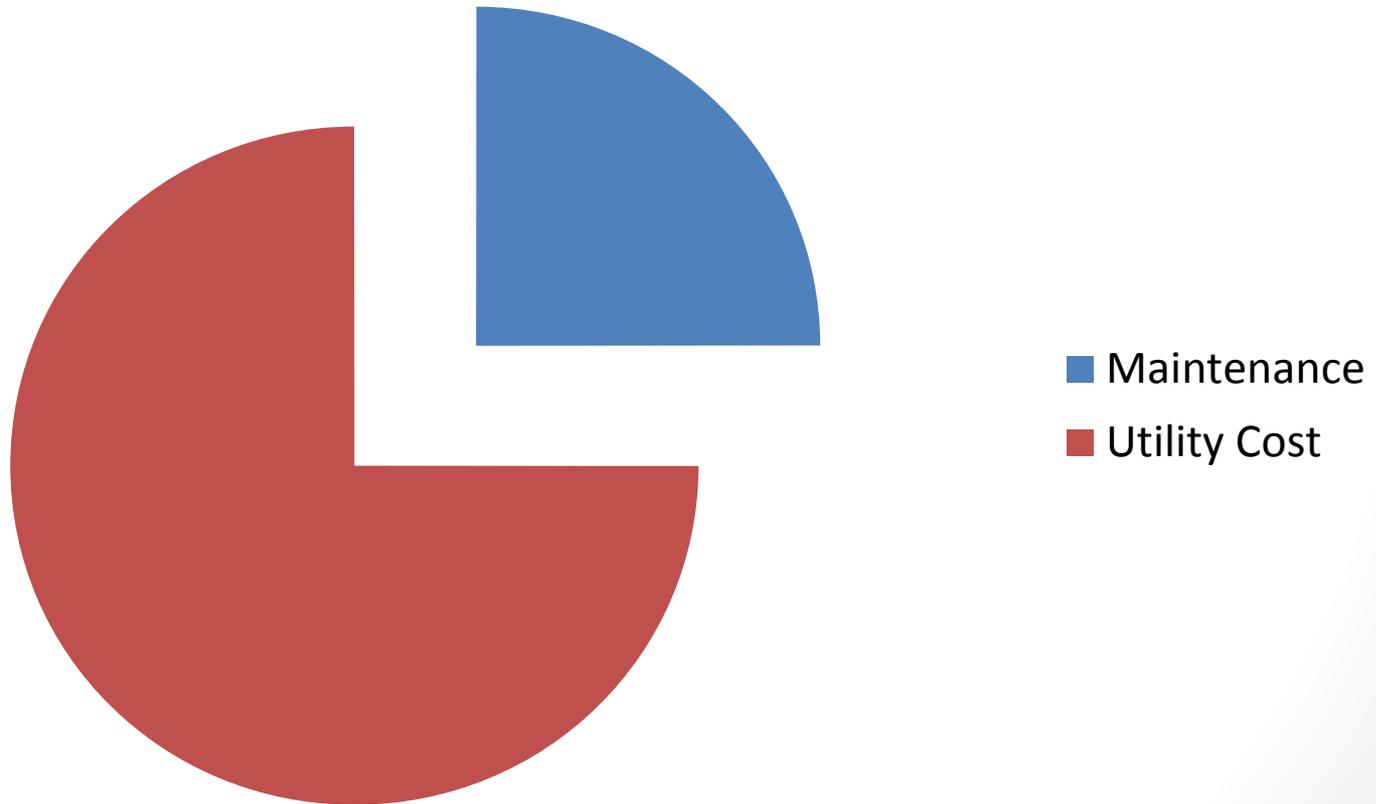
What are Your
Experiences?

Guaranteed Performance Contracting

What is It?

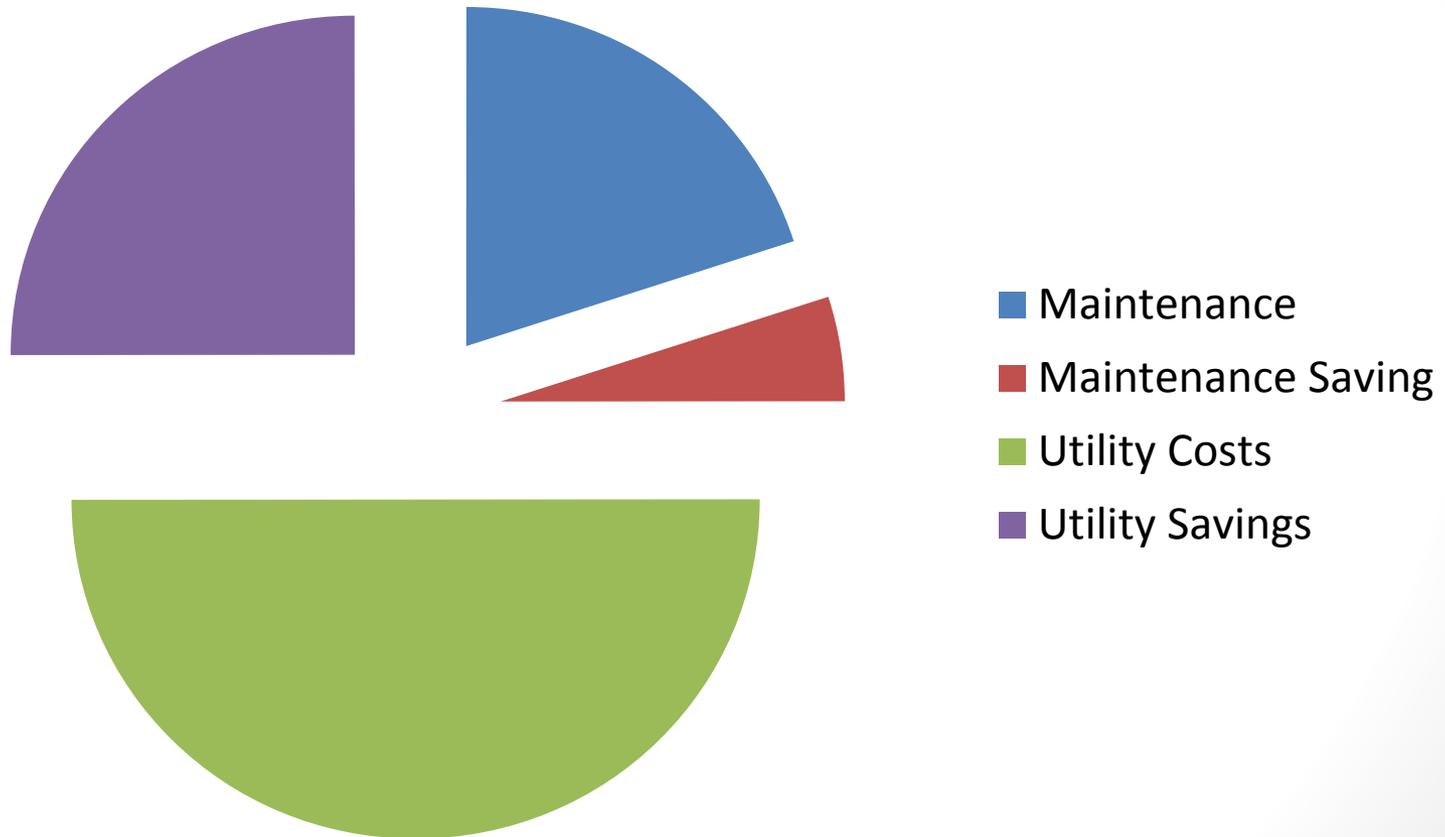
Consider Energy Consumption

Energy Systems Cost



Consider Energy Consumption

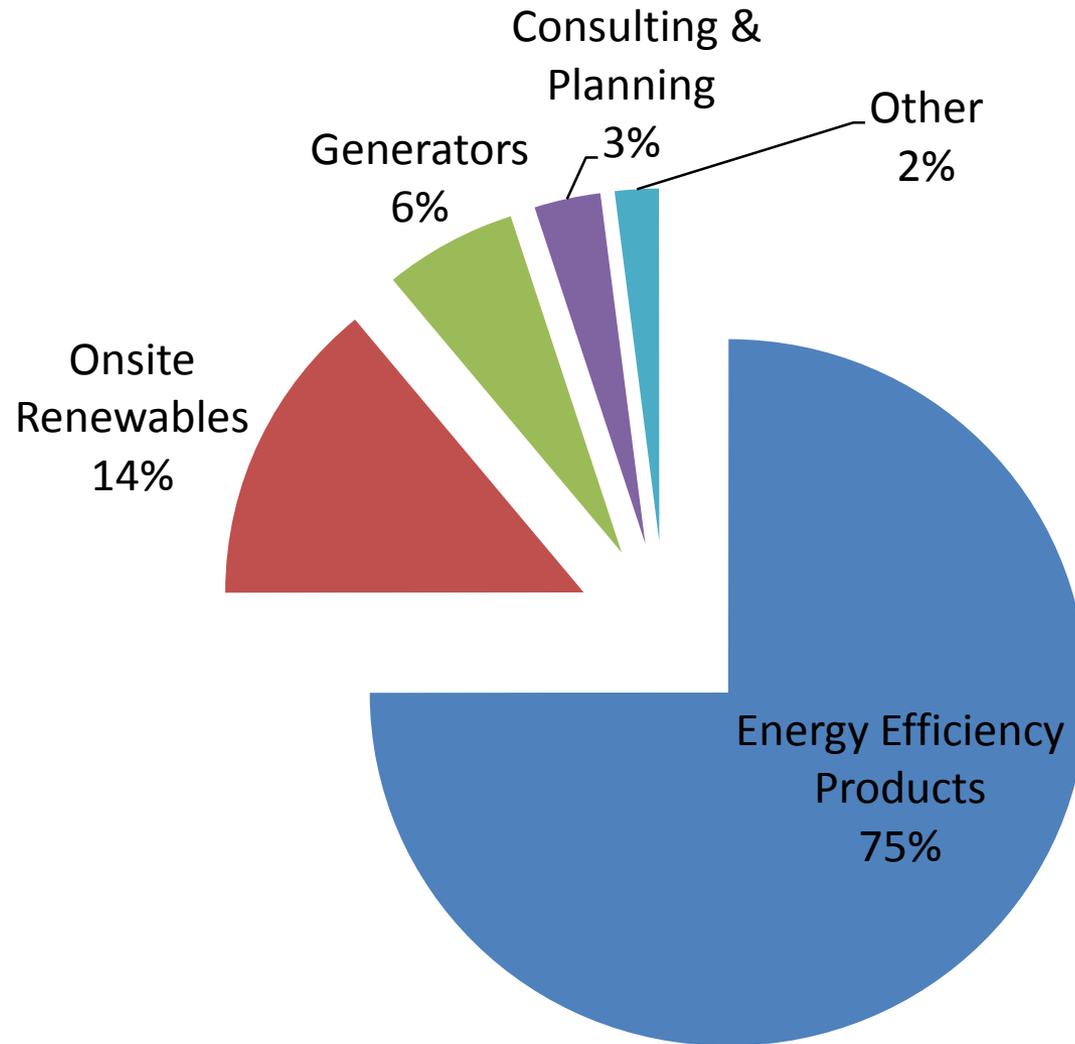
After Improvements



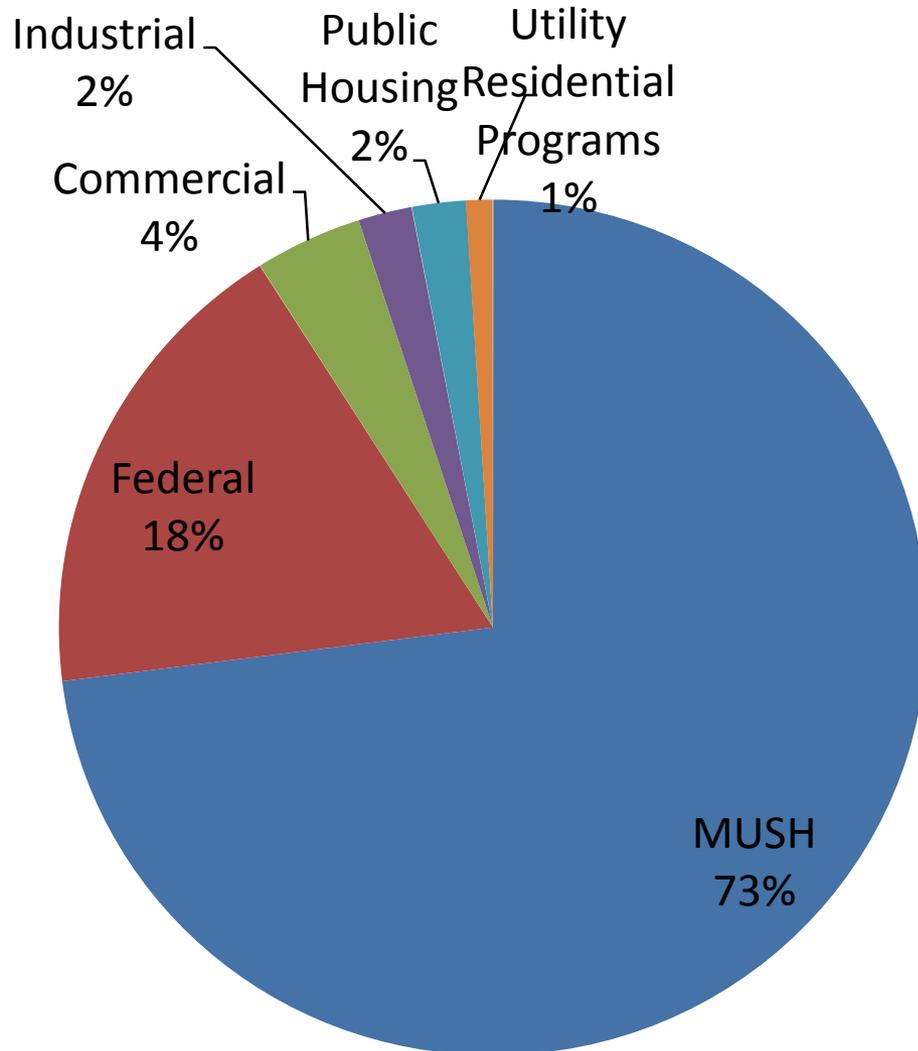
Typical Projects

- Minimum \$1 million in equipment and installation costs
- Ideal Project:
 - High energy use facilities
 - Predictable usage patterns
 - Multiple buildings with similar construction and internal technologies

Contractor Revenues by Product Type



Revenues by Market Sector



What is MUSH?

- State & Local Government
- Universities
- K-12 Schools
- Hospitals

Why Is MUSH Attractive?

- Customers tend to own their buildings
- Many project over \$1 million threshold
- Older buildings = large energy savings
- Often subject to energy savings mandates
- Can easily obtain financing due to near zero default rates
- Building owners tend to have a long-term energy saving outlook
- Governments support/require a performance guarantee

Pros

- Enables project to proceed with limited fiscal and budgetary impacts
 - Limited cash/bonding capacity
- Guaranteed energy and/or water savings
 - Guaranteed savings pay debt service
- Reduces maintenance and service costs
- Turnkey service offered by single entity

Cons

- Facility Owner's understanding of issues and contract negotiation skills
- Accurate and complete cost and pricing data prior to start of performance
- Savings limited by Contractor's profitability requirements
- Experience of staff managing project, performing maintenance, and operating equipment

Steps in an Energy Savings Project

- Identify the project
- Design & develop the project
- Provide engineering estimates
- Obtain financing
- Begin construction
- Conduct measurement and verification
- Do ongoing service and maintenance
- Conclude the project

What kinds of savings measures should be included?

- Measures based on condition and payback
- Facility Plans

Avoiding Pitfalls

- Active participation in utility baseline development
- Negotiate and agree on the definitions and methodology for future adjustments to the energy baseline
- Be wary of including operational savings in the guaranteed savings (i.e., you do not save labor unless a position is eliminated)
- Cost avoidance – implementing measures today that will allow you to avoid costs in the future but does not save hard dollars compared to past budgets
- Local Facilities Control – i.e. requirements for contractor agreement with changes in building usage

Avoiding Pitfalls

- Avoid terms that allow contractor to carry over savings from one year to offset losses in later years.
- Quality Control – Contractor should provide a detailed definition of both replacements and services proposed. Have this reviewed by someone knowledgeable on the subject.
- Does the cost of a guarantee on a measure warrant implementing the measure.
- Avoid cream skimming

The Savings Guarantee

- **What Does that Mean?**
 - Savings must be achieved or the contractor must make up the difference (as long as the savings parameters do not change)
- **Operating Changes Affect the Guarantee**
 - Savings are based on an established baseline
 - Should establish guidelines concerning changes affecting guarantee
 - Include some amount of contingency in the budget
- **Performance Improvement Savings**
 - Should the guarantee be based on utilities use or \$?
 - When converting utilities savings to \$, what rates make sense ?
 - Is it really savings or cost avoidance ?
 - Should estimated labor savings be included ?

The Savings Guarantee (continued)

- **How are Savings Documented?**
 - Stipulated Savings: Based on utility unit savings calculations.
 - System Level Meter Readings: Verifies savings using metering at the component or system level, and may be used to validate operating efficiency curves.
 - Whole Building Meter Readings: Verifies whole building, whole facility or sub-metering level savings through continuous metering, and is used when several conservation measures interact with one another which affects overall performance.
 - Calibrated Computer Simulation: Models interactive and stand alone savings. Simulation calculations may be compared to actual data.
- **Measurement Beyond Verification at Installation?**
 - How often and how long?
 - MUSC Contract: Two consecutive successful years required.

Payback Period Considerations

- How Quickly Does Space Use & Configuration Change?
 - If changes are frequent, shorter payback is better
 - If changes are rare, longer payback may make sense
- How Do Utility Rate Increases Impact Payback?
 - As utility rates go up, cost avoidance is up, cash available is down
- How short can you make it & still get ESCOs interested?
 - MUSC used 8 years and got 7 responses
 - State of SC Treasurer allows up to a 12 year payback period
- Do you have long term payback items that need to be done ASAP?
 - This type of work will extend your payback period, but may be worth it

Financing Options Pros and Cons

ESCO Financing

Construction loan interest approach

Interest only on amount drawn during the construction period

- Simpler: guaranteed savings payment goes to ESCO
- Reduced scope of work changes affect amount of money borrowed

Owner Financing through Loan Arrangement

Lump sum loan

Interest on full loan amount begins when loan is signed

- Owner has to make loan payment regardless of savings achieved
- Reduced scope of work changes do not reduce amount of loan

There is no short cut to success –
making sure you are getting a
deal that is in your Agency's best
interest takes hard work