

**PRESIDENTIAL DECREE**



**Decree No. 2850**

The "Decree on the Procedures and Principles Concerning the Public Energy Performance Contracts", attached herein, has been decided to be put into force in accordance with Additional Article 1 of Law no. 5627 on Energy Efficiency.

20 August 2020

**Recep Tayyip ERDOĞAN**  
PRESIDENT

# DECREE ON THE PROCEDURES AND PRINCIPLES CONCERNING THE PUBLIC ENERGY PERFORMANCE CONTRACTS

## Purpose

**ARTICLE 1-** (1) The purpose of this Decree is to determine the procedures and principles concerning energy performance contracts to be concluded by public administrations within the scope of general government and other public institutions and organizations in order to reduce energy consumption or energy costs.

## Scope

**ARTICLE 2-** (1) Public administrations within the scope of general government and other public institutions and organizations may conclude energy performance contracts within the framework of the provisions of this Decree.

(2) This Decree encompasses state-owned buildings, facilities, vehicles, and similar movable and immovable properties provided that there is no decision or plan for demolition, relocation, or the disposal thereof, as well as public services.

## Basis

**ARTICLE 3-** (1) The present decree was prepared on the basis of Additional Article 1 of Law no. 5627 on Energy Efficiency dated 18/4/2007.

## Definitions

**ARTICLE 4-**(1) In the present Decree;

- a) "Ministry" means the Ministry of Energy and Natural Resources.
- b) "Simple payback period" means the value in years obtained by dividing the cost of the investment pertaining to the energy efficiency measure by the economic equivalent of the annual savings to be achieved by the energy efficiency measure.
- c) "Energy performance contract" (hereinafter to be referred to as the "Contract") means the contract based on guaranteeing the energy savings to be achieved following the implementation project and paying the expenses with the savings made as a result of the implementation.
- ç) "Energy efficiency consulting companies" mean companies defined as a "company" under Law no. 5627 and companies certified to carry out energy efficiency services.
- d) "Energy efficiency measure" means the measure that includes solutions in matters such as the use of energy-efficient equipment and systems in any field of energy generation, transmission, distribution, and consumption, saving through repair, modification, rehabilitation, and process development, avoiding or minimizing unnecessary energy use, energy loss and leakage, as well as the recovery of waste energy and the use of renewable energy sources.
- e) "Survey" means surveys that are carried out in order to reveal opportunities to increase energy efficiency consisting of information gathering, measurement, evaluation, and reporting stages.
- f) "Survey report" means the final report comprising the studies on determining the energy-saving potentials calculated within the scope of the survey and the energy efficiency measures aiming to recover the said potentials by way of measurement, calculation, and market research.
- g) "Administration" means public administrations within the scope of general government and other public institutions and organizations.
- ğ) "Administrative authority" means the most senior executive in charge of the spending unit to which an appropriation is allocated from the budget.
- h) "Tender" means the proceedings to grant the performance of the project to be implemented under this Decree to one of the bidders, completed with the signing of the contract following the approval of the relevant administrative authority.
- ı) "Bidder" means the legal persons or partnerships they have established that place bids in

the tender.

- i) "Monitoring period" means the period starting from the date the implementation project is accepted by the implementation supervision commission and spans throughout the contract period.
- j) "Acceptance" means the approval and official acceptance of the project, the investment of which has been completed by the contractor, by the implementation supervision commission.
- k) "Net present value (NPV)" means the difference obtained by deducting the present value of project expenses from the present value of the income generated during the economic life of the investment expected to provide savings.
- l) "Measurement and verification" mean the planning, measurement, data collection and analysis procedures and processes conducted using methods determined in accordance with the standards of "TS ISO 50006 Measuring energy performance using energy baselines (EnB) and energy performance indicators (EnPI)", "International Performance Measurement and Verification Protocol" or "TS ISO 50015 Measurement and verification of energy performance of organizations" in order to verify and report the energy savings achieved as a result of the implementation of energy efficiency measures.
- m) "Measurement verification expert" means the real person having a measurement and verification certificate.
- n) "Project" means the project which is the subject matter of the tender, which includes all energy efficiency measures.
- o) "Reference energy consumption" means the amount of energy consumed by the area of implementation under certain conditions, calculated in accordance with the TS ISO 50006 standard.
- ö) "Specification" means the specification in which the terms and conditions for the tender are set out.
- p) "Saving" means reducing energy consumption or losses or decreasing the unit cost by increasing efficiency by ensuring minimum comfort standards in the area of implementation, without causing a decrease in the quality and quantity of service and production.
- r) "Savings verification report" means the report, which displays the amount of savings verified on account of the variables that affect the reference energy consumption, prepared by the contractor in accordance with TS ISO 50006 and the International Performance Measurement and Verification Protocol or TS ISO 50015 standard during the monitoring period, at the intervals specified in the contract.
- s) "Savings guarantee/guaranteeing of savings" means the total energy savings that the bidder undertakes and guarantees to realize within the scope of its bid.
- ş)"Bid" means all documents and information including the savings amount and technical, economic, and administrative details of the project submitted by the bidder to the administration.
- t) "Bid evaluation commission" means the commission consisting of at least 5 persons including at least 3 engineers (mechanical, electrical, or civil engineers) and at least 2 people working in the field of accounting and finance, formed by the administration in accordance with the nature of the work to be done in order to evaluate the bids, conduct and finalize the tender process.
- u) "Area of implementation" means all kinds of buildings, facilities, vehicles, and similar movable and immovable properties owned by or allocated to the administration implementing the energy efficiency measures and the services carried out by the administration.
- ü) "The implementation period" means the investment period that includes the detailed engineering, procurement, installation, testing, and commissioning processes between the date the contract is signed and the date of the project's acceptance.
- v) "Implementation supervision commission" means the commission formed by at least 3 engineers (mechanical, electrical, or civil engineers) selected by the administration according to the nature of the work to be done in order to verify whether the works and proceedings to be performed during the implementation period and the monitoring period are carried out in accordance with the

contract.

y) "Implementation project" means the project that covers the scope of energy efficiency measures to be implemented in the area of implementation.

z) "The investment cost" means the total amount of the costs required to implement each energy efficiency measure and to start to make savings in line with the said measure.

aa) "Contractor" means the bidder concluding the contract with the administration.

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(2) For the definitions and abbreviations not included in the present Decree, Law No. 5627 and the legislation regarding the implementation of this Law shall be taken as a basis.

### **Tender procedure and fundamental principles**

**ARTICLE 5-** (1) Tenders within the scope of the present Decree shall be made in accordance with the sealed bid procedure. As a result of the evaluation carried out by the bid evaluation commission, the offer with the highest NPV in terms of net benefit to be provided to the administration among the offers deemed appropriate in view of the criteria sought in the tender documents shall be considered the most suitable offer.

(2) Tenders within the scope of this Decree shall be carried out under the following terms:

a) The investment value within the scope of the contract cannot be less than TRY 2,000,000.

b) In the measures to be implemented in buildings, savings corresponding to at least 10% of the total annual energy consumption of the area of implementation shall be guaranteed, or at least a 20% savings guarantee shall be provided for each energy efficiency measure to be applied in any final energy consumption area. In areas of implementation other than buildings, as of the start of savings, the administration shall be given a share of at least 10% of the annual savings during the remaining contract period.

c) The simple payback period of the energy efficiency measures within the scope of the contract cannot be less than 2 years.

(3) The Minister of Energy and Natural Resources shall be authorized to reduce the price, duration, and rates specified in the second paragraph by half according to the demand and need that may arise regarding the implementation of energy performance contracts.

(4) The Administration may postpone, suspend, or cancel the tender at any stage until the signing of the contract.

(5) The total of the annual payments cannot exceed the amount corresponding to the annual savings guaranteed.

(6) The contract price cannot be equal to or higher than the total savings to be provided during the economic life of the implementation project.

(7) Other issues related to the tenders shall be determined by way of communiqués issued by the Ministry.

### **General procedures and principles regarding the tender process**

**ARTICLE 6-** (1) In order to conclude the contract, the administrations shall prepare or have prepared survey reports, the format of which is determined by the communiqué issued by the Ministry, in accordance with the procurement procedures to which they are subjected before the tender. In the event that the administrations have survey-project certified personnel, they may prepare the said survey reports themselves or have them prepared by energy efficiency consulting companies.

(2) The administrations shall decide which energy efficiency measures provided for within the scope of the survey report will be implemented in accordance with Article 5.

(3) The tender preparations for the project, which includes the energy efficiency measures determined by the administration, shall be completed and the tender shall be announced through the Electronic Public Procurement Platform (EKAP).

(4) Possible bidders may examine the area of implementation on the date and/or dates

determined by the administration before submitting their bids. In case of objection to the prepared survey report or the specifications in due time, the objections raised shall be evaluated by the Administration. Where necessary, an addendum shall be published and the survey report and specifications shall be finalized before the bid. Where the administration deems necessary, it may organize evaluation meetings for surveys, specifications, and other details. The bidders determine the savings calculations in their bids on the basis of the final survey report and on-site inspections.

(5) Bidders with legal personality which employ measurement verification experts may place bids in tenders. Bidders with legal personality which do not employ measurement verification experts may place bids in tenders by establishing a business partnership or subcontractor relationship with an energy efficiency consulting company, which employs a measurement verification expert. Other qualification criteria shall be determined in the specifications by the administration depending on the nature of the work to be done.

(6) In order for the tender to be finalized, at least 2 bids deemed valid by the bid evaluation commission must be received. Otherwise, the tender shall be called off.

(7) The bid evaluation commission shall examine the proposals by taking into account the project cost including investment, annual maintenance, operation and renewal costs (including personnel, spare parts, consumables, heavy maintenance, license costs, and similar expenses), equipment life, the monetary value of the savings to be achieved during the annual and economic life and the savings and the payment terms to be agreed with the contractor. The proposal with the highest NPV in terms of net benefit to be provided to the administration during the economic life of the project shall be determined as the most suitable offer.

(8) The method required to calculate NPV, the validity period of the bids, the minimum requirements, the format, the receipt, placing and evaluation of the bids, the minimum technical and financial qualifications sought in the bidders, and other matters regarding the announcement, making and finalization of the tender shall be determined in accordance with the communiqué issued by the Ministry.

(9) The bidder whose bid is approved by the bid evaluation commission shall be invited to sign the contract following the approval of the administration after the tender processes are completed. Following the provision of the necessary collaterals, the administration signs a contract with the bidder deemed appropriate. In the event that the bidder is a business partnership, all partners of the said business partnership shall sign the contract alongside the relevant partner. The contract and other relevant documents shall be recorded in EKAP.

#### **Collaterals and other minimum provisions**

**ARTICLE 7-** (1) Bidders to participate in the tender shall submit the bid bond amount determined by the administration provided that is not less than 2% of the investment cost. In order for the contract to be signed, the contractor shall submit the performance bond amount determined by the administration, provided that it is not less than 4% of the investment cost of the submitted bid. The collaterals accepted under this Degree are as follows:

- a) Turkish Lira in circulation.
- b) Letters of guarantee.
- c) Government debt securities issued by the Undersecretariat of Treasury and documents issued in lieu of these securities.

Pursuant to the relevant legislation, letters of guarantee issued by foreign banks allowed to operate in Turkey and letters of guarantee issued by banks or private financial institutions operating in Turkey based on counter-guarantee of banks or similar credit institutions operating outside Turkey shall also be considered collateral.

d) Securities mentioned in subparagraph (c) and other documents issued in lieu of these securities that are issued by adding interest to nominal value shall be considered collateral over the sales value corresponding to the principal.

- (2) The administrations may define a maximum contract term that can be offered in

accordance with the project. The contract term cannot exceed 15 years.

(3) The drafts of the contract that the administrations will sign with the contractor, specifications draft, and survey report format shall be annexed to the communiqué issued by the Ministry. In the annex of the said communiqué, the Ministry also includes additional documents such as documents, formats, calculation tools to be used within the scope of tenders, or to assist administrations.

### **Implementation period, monitoring period and savings verification activities**

**ARTICLE 8-** (1) Within the scope of the project, the contractor shall be responsible for the detailing, implementation, and guaranteeing of performance of the energy efficiency measures, as well as maintenance/repair, if included in the specifications, operation, and all other terms related to the project defined in the contract, specifications, and annexes thereof throughout the contract term.

(2) The implementation period shall start on the date of signing of the contract and cannot be longer than the period defined in the specifications by the administration, except for force majeure events and delays caused by the administration organizing the tender and the penalty time extension granted in accordance with the third paragraph.

(3) In the event that the project is not completed within the implementation period except for force majeure events and delays caused by the administration organizing the tender, the administration may grant additional time in accordance with the contract. In the case that the work cannot be completed at the end of the additional time, the administration shall terminate the contract and record the collateral as revenue. As to the time extensions, provisions of the present contract shall apply for other issues, if any, such as the right to intervene.

(4) The project shall be accepted in accordance with the contract. Guarantee periods and monitoring period shall start with the acceptance by the implementation supervision commission.

(5) No lien may be placed on investments and equipment used within the scope of the project. The ownership of the investments made and the equipment used within the scope of the project passes to the administration as of the date on which the monitoring period has started with the issuing of the project acceptance certificate.

(6) During the monitoring period, the contractor shall prepare an annual savings verification report at the end of each 12-month period completed from the beginning of the monitoring period, and the administration may require that the savings verification periods overlap with the fiscal year. The procedures and principles regarding the measurement and verification of the savings, the format of the savings verification report, and the minimum requirements shall be determined as per the communiqué issued by the Ministry.

(7) A copy of the savings verification reports approved by the implementation supervision commission shall be submitted to the Ministry for information purposes.

(8) In the event that no savings are achieved according to the savings verification report, the administration shall terminate the contract and record the collateral as revenue.

(9) In the event that the contract is terminated by the administration for any grounds provided for within the scope of this article, the contractor cannot claim any compensation from the administration under any name such as loss, damage, or alike.

### **Payments to be made as per energy performance contracts**

**ARTICLE 9-** (1) If the savings verification report is deemed appropriate by the implementation supervision commission, the contractor shall be paid at the rate specified in the contract over the verified annual savings in accordance with the budget allocations for energy purchase costs of the administration, provided that it is not higher than the annual savings specified in the contract. The administration may also make payments for periods less than one year, as defined in the contract. In such a case, netting shall be made on an annual basis, taking into account the monetary value of the savings verified on an annual basis and the payments made throughout the year.

(2) In the event that the savings verification report is not approved by the implementation supervision commission, no payment shall be made. If the administration and the contractor cannot reach a final agreement on the savings verification report, upon the request of the contractor the administration receives the opinion on the savings verification report of a measurement verification expert approved by both parties, at the expense of the contractor. Following the submission of the savings verification expert's opinion on the report, payment shall be made if the administration and the contractor come to an agreement. In case of failure to reach an agreement, the parties shall reserve their rights to take legal action.

(3) At the end of each 12-month period in which the monitoring period begins, the contractor must provide at least 70% of the savings guarantee it undertakes. In the event that the verified savings amount falls below this rate, no payment shall be made to the contractor and the contractor may revise the project provided that it does not impose a financial burden on the administration. In such a case, if the contractor was made a payment for periods of less than one year within the scope of the first paragraph, the contractor shall refund these payments to the administration within the period determined by the administration. In the event that the contractor makes up the performance deficiency and that the amount of savings verified in the next period is realized at 70% or more of the savings guarantee, the payment not made on the grounds that the contractor did not provide the savings guarantee in the previous period(s) shall be made in line with the verified savings amount. In this case, the contractor cannot demand an increase in the payment on the grounds of default interest, escalation, or alike. In the event that the verified savings for the consecutive 12-month periods remain below 70% of the savings guarantee for three periods during the monitoring period, the contract shall be terminated and the collateral shall be recorded as revenue. In this case, the contractor cannot claim compensation in respect of any damage or loss from the administration due to termination.

(4) Payments to be made pursuant to energy performance contracts shall be made in accordance with the budget allocations according to which the energy purchase expenses of the administrations are determined.

### **Sanctions and penal provisions**

**ARTICLE 10-** (1) In the event that the contract is terminated on account of the reasons defined in the present Decree and the contract, the ownership of any equipment installed in the area of implementation within the scope of the project shall pass to the administration and the collaterals shall be recorded as revenue.

(2) In the event that the contractor acts in violation of the penal provisions and prohibitive provisions for tenders specified in Law on Public Procurement (Law no. 4734) dated 04/01/2002 and Law no. 4735 on Public Procurement Contracts dated 05/01/2002 and the secondary legislation of these laws in the performance of the works covered by the contract, penal and prohibitive provisions under these laws shall apply.

(3) Before signing the contract with the successful bidder, the administrations shall verify whether the bidder is banned from the tenders by inquiring with the Public Procurement Authority or through the EKAP ban list inquiry page and sign the contract according to the result of the relevant query.

(4) As to the preparation, interpretation, and implementation of surveys and reports, the parties concerned shall be obliged to demonstrate Due Diligence within the framework of engineering, science and art rules.

### **Training, certification and assignment of measurement and verification experts**

**ARTICLE 11-** (1) The Ministry shall organize or have organized programs for the training and certification of measurement verification experts. Content, duration, and cost of the training, qualifications of the trainers, the examination method, the content of the certificate, the conditions sought in the persons participating in the programs and the institutions/organizations organizing the programs, and other relevant matters shall be determined by the Ministry.

(2) Those who are successful in the post-training exam shall be entitled to receive the measurement verification expert certificate. The Ministry shall be authorized to issue the certificate in question.

(3) If deemed appropriate by the Ministry, a measurement verification expert certificate shall be issued in the name of persons who have successfully completed international measurement and verification programs.

(4) Measurement and verification experts assigned in the works performed within the scope of this Decree must hold the certificate issued by the Ministry.

#### **Other issues**

**ARTICLE 12-** (1) In the event that an amendment to the project becomes necessary due to force majeure events or reasons arising from the administration, the Administration may make amendments to the contract, in agreement with the contractor, provided that the terms of the tender are not changed. The amendment to be made within this scope shall be limited to the provisions directly affected by the reason in question.

(2) The contractor cannot transfer its rights and debts arising from the contract partially or completely to third parties without the written consent of the administration. In the event that the administration approves the transfer of the contract, the company taking over the contract shall be obliged to fulfill the debts and obligations in accordance with the contract and to meet the qualification requirements sought during the tender and bidding phases.

(3) In case of a lack of adequately qualified personnel within the administration during the establishment of the bid evaluation commission and implementation supervision commission, depending on the nature of the job, personnel may be requested from other public institutions and organizations by secondment.

(4) The administrations may request technical and administrative support from the Ministry for the works and procedures to be carried out within the scope of this Decree. The Ministry shall provide support to the administrations with information, training, opinion, and other activities within the framework of the present Decree, implementation communiqué, and its annexes.

#### **Effect**

**ARTICLE 13-** (1) The present Decree shall enter into force on the date of its publication.

#### **Execution**

**ARTICLE 14-** (1) The present Decree is executed by the President.