



# ENERGY SAVINGS FOR BUSINESS

*Investing to keep businesses competitive*

## Contractor Code of Conduct

February 1, 2021



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## Introduction

Emissions Reduction Alberta (ERA) has launched an incentive-based Program called [Energy Savings for Business](#) (ESB). The Program is designed to enable the installation of commercially available emissions reduction technologies in commercial and industrial facilities and other types of businesses. The Program offers financial incentives to lower the cost of eligible Measures, encouraging Participants to upgrade systems to save energy and reduce emissions. The Program is a prescriptive program, meaning that the incentive levels are pre-defined for each type of eligible Measure on a per unit basis. The incentives are specified within the Measure list as published on the ESB website.

Eligible Contractors play a central role in the Program. Eligible Contractors are encouraged to inform their customers about the Program and help them complete the necessary Program participation requirements.

For a Product and Service Provider to participate in the Program, they must register with ERA to become an Eligible Contractor. The process is simple:

1. Enter your contact information through the Program Application Portal available at [esbprogram.ca](http://esbprogram.ca).
2. Review and accept the Code as outlined below.
3. Upon acceptance as an Eligible Contractor, help your customers save money and reduce emissions while helping grow your business.

The purpose of this Contractor Code is to provide a framework to ensure that: Program Participants are offered reasonable service, the Program is delivered effectively, and that reputable contractors become Eligible Contractors. The Code is designed to establish minimum performance expectations and business requirements that any reputable Product and Service Provider will already have in place.

Eligible Contractors should become familiar with Program materials and documents including the Participant Terms and Conditions. Ultimately, this Code should be read within the context of the full Program, including all materials and documentation.

If you have any questions, please contact us at [support@esbprogram.ca](mailto:support@esbprogram.ca) or 1-844-407-0025.

## Definitions

The following terms have these meanings in the Code:

- (a) **“Code”** means this ERA Energy Savings for Business Program Contractor Code of Conduct.
- (b) **“Confidential Information”** has the meaning set forth in the ‘FOIP and Confidential Information’ section.
- (c) **“Delivery Agent”** or **“Agent”** means an authorized agent(s) who has been engaged by ERA to implement the Program.
- (d) **“Eligible Contractor”** means a Product and Service Provider that has met the Contractor Eligibility Criteria and is registered with the Program.
- (e) **“ERA”** means Emissions Reduction Alberta.

- (f) **“Issues Escalation Framework”** means the processes for resolving issues that arise during Program participation.
- (g) **“Measure”** means a commercially available emissions reduction technology or installation that meets the Program criteria to qualify for a Participant incentive.
- (h) **“Participant”** means an applicant who meets the Applicant Eligibility Criteria and has entered into a Participation Acceptance.
- (i) **“Participant Terms and Conditions”** means the published Terms and Conditions for the Program which may be updated from time to time at the discretion of ERA.
- (j) **“Personal Information”** has the meaning as defined in FOIP.
- (k) **“Personnel”** means all personnel involved in the development, provision of services and/or deliverables hereunder, whether they are employees, subcontractors or other entities of the Eligible Contractors.
- (l) **“Primary Contact”** means the Eligible Contractor’s main point of contact for the Program.
- (m) **“Product and Service Provider”** means any company that may provide services or sell products to a Participant in the Program. This includes but is not limited to distributors, suppliers, equipment installers, engineering firms, and commercial energy auditors.
- (n) **“Program”** means ERA’s Energy Savings for Business Program.
- (o) **“Program Application Portal”** means the website page for the Eligible Contractors to login to submit, update and view their applications.
- (p) **“Program Staff”** means all ERA or Delivery Agent staff working on the Program.
- (q) **“Work”** means all goods, services, installations, documentation, and compliance processes to be provided by the Eligible Contractor on behalf of any Participant, as part of the Program.

## Eligible Contractor Conduct Expectations

Eligible Contractors will:

- (a) consent to receive updates, communications, and emails from ERA or its Agents;
- (b) be effective communicators with Program Staff. This Program will require communication via email and the Program Application Portal. Eligible Contractors will:
  - (i) communicate openly and respectfully with Program Staff to seek assistance as needed in technical or administrative areas pertaining to Program participation;
  - (ii) regularly stay up to date with communication, checking for Program messages or updates weekly at a minimum; and
  - (iii) be responsive to inquiries made by Program Staff, providing responses within three (3) business days for phone and email inquiries. If unable to fully respond within three (3) business days, the Eligible Contractor must provide an estimate of the time needed to fully respond to the Program Staff, based upon the complexity of the inquiry;

- (c) provide ERA and its Agents with accurate contact information and any other data or documentation required to comply with the Program on-boarding requirements. If any of this information changes during the course of the Program, ERA must be notified;
- (d) provide feedback to the Program Staff on issues pertaining to Program design and administration, or any other experiences with the Program in general;
- (e) participate in training and outreach sessions where applicable, including webinars related to the Program as scheduled by Program Staff from time to time;
- (f) adhere to the following customer service requirements:
  - (i) treat Participants fairly and deliver Work in a timely and responsible manner;
  - (ii) honour scheduled appointments. When unable to attend scheduled customer appointments, the Eligible Contractor should notify the customer at least 24 hours before the scheduled visit;
  - (iii) make every effort to communicate clearly and regularly with Participants; and
  - (iv) provide Participants with adequate and accurate information about the proposed products or services, including all involved costs, any relevant risks, performance and savings claims, and projections, if applicable;
- (g) conduct all communication and all aspects of business in relation to the Program without deception, abusive acts or practices, or discrimination (as defined by the *Canadian Human Rights Act*);
- (h) only offer, perform, and accept responsibility for Work that the Eligible Contractor is qualified and competent to perform, based on their training, experience and where they are licensed to perform;
- (i) properly represent the relationship of the Eligible Contractor to ERA. The Eligible Contractor must explicitly disclose to each Participant that it is an independent business, and must not represent itself as being employed, certified, approved, or endorsed by ERA;
- (j) promote, in good faith, positive participation in the Program, commercially available emissions reduction technologies among Participants and the public; and
- (k) promote ERA Programs accurately, and when possible through materials provided by ERA or its Agent.

## Eligible Contractor Obligations

Nothing in this Code affects the obligation of an Eligible Contractor, or any representatives it appoints to act on its behalf, to comply with all applicable Federal, Provincial, and Municipal laws.

Nothing in this Code affects the obligations of an Eligible Contractor to the Program Participant to comply with the contracts that the Participant may have in place with the Contractor.

The requirements set out in this Code apply in addition to any other requirements imposed by law, whether dealing with the same subject matter or otherwise, including the requirements of the *Consumer Protection Act* and the *Direct Selling Business Licensing Regulation* and the *Direct Sales Cancellation and*

*Exemption Regulation and the Designation of Trades and Businesses Regulation and the Prepaid Contracting Business Licensing Regulation.*

Where compliance with this Code would cause non-compliance with a relevant law or regulation in a specific jurisdiction, an Eligible Contractor should act in full compliance with the relevant law or regulation in that jurisdiction instead of this Code.

The terms of any vendor financing, such as energy performance contracts, must not conflict with any Terms and Conditions offered through the Program. All terms and conditions for any vendor financing must be disclosed to the Participant at the time of offering.

The following additional obligations are required for specific projects:

- (a) on-site generation combined heat and power projects must have the project designs approved by an experienced P.Eng with the appropriate insurance policies. The Eligible Contractor is obligated to disclose the individual or organization and associated credentials meeting these requirements in association with Eligible Projects.
- (b) on-site solar photovoltaic projects must have Eligible Contractors that are a member in good standing of Solar Alberta (previously known as Solar Energy Society of Alberta), the Canadian Renewable Energy Association, or the Electrical Contractors Association of Alberta.
- (c) on-site geothermal ground source heat pump project designs must be approved by a P.Eng. having completed the Certified Geo Exchange Designer (CGD) course from the International Ground Source Heat Pump Association or equivalent. Ground Source Heat Pump installers must have completed the Accredited Installer accreditation from the International Ground Source Heat Pump Association or equivalent. The Eligible Contractor is obligated to disclose the individual or organization and associated credentials meeting these requirements in association with Eligible Projects.

## **Representations and Warranties**

The Eligible Contractor represents and warrants that:

- (a) the Eligible Contractor and all Personnel possess the skills, knowledge, and experience necessary to provide all of the Work as required;
- (b) the Work will be of professional quality, in accordance with professional standards, in strict compliance with all Participant Terms and Conditions, and free of infringement of any intellectual Property Rights of any third person or entity;
- (c) it will act in full compliance with all applicable Federal, Provincial, and Municipal laws, including without limitation, all laws regarding truth in advertising, consumer protection, contract law, health and safety, and other relevant regulations within their professional practices;
- (d) it will maintain all relevant licenses and permits required by Federal, Provincial, or Municipal government, or any other agencies with jurisdiction over the course of Work performed during the

Program, including all relevant licenses or permits for subcontractors engaged in fulfilment of Work performed through the Program;

- (e) it will comply with all applicable Federal, Provincial, and Municipal Health guidance as it pertains to COVID-related safe work practices;
- (f) it has made full, true and plain disclosure to ERA and to the participants of all facts relating to the Program;
- (g) the acceptance of this Code and the participation in the Program have been duly and validly authorized by the Eligible Contractor in accordance with applicable law, and this Code shall constitute a binding legal obligation of the Eligible Contractor;
- (h) it will submit accurate and truthful information to the Program relating to product specifications, quotes, invoices and other documentation as required by the Program to approve projects;
- (i) it has read and understands the *Consumer Protection Act* as it relates to its business and the delivery of the Program;
- (j) it will ensure that no Personnel acts in a manner that would disparage or defame ERA or the Program; and
- (k) it will ensure that all Personnel will act in compliance with the terms of this Code.

## Conflicts of Interest

Except as has been previously disclosed to ERA or its Agent, the Eligible Contractor affirms that neither the Eligible Contractor or its Personnel, has, or will enter into any contractual, financial, business or other interest, that would conflict in any manner with the Eligible Contractor's performance of its obligations under this Code or would otherwise create the appearance of conflict with respect to this Code.

## Business Requirements

To become an Eligible Contractor the following minimum requirements must be satisfied. Signing this Code certifies that the Eligible Contractor has met the below requirements and, upon request, can demonstrate valid and appropriate business documentation and insurance coverage for the type of Work offered. The minimum requirements are as follows:

- (a) registered and in good standing with the Workers' Compensation Board (WCB), or evidence of WCB exemption;
- (b) commercial general liability insurance, written on an occurrence basis, including bodily injury, property damage, personal injury, advertising injury, products and completed operations, and contractual liability, in an amount not less than:
  - (i) each Occurrence Limit \$2,000,000;
- (c) automobile liability insurance with a minimum limit of \$2,000,000 liability for bodily injury and property damage for all owned, rented, leased or hired vehicles used in conjunction with the Program and the associated Work;



- (d) the corresponding coverage held by the Eligible Contractor for the sole use and protection of the Eligible Contractor. All coverage obtained and maintained by the Eligible Contractor shall be primary to and non-contributory; and
- (e) a legal right to perform Work in Alberta as applicable.

The following may be required to become an Eligible Contractor:

- (f) where there is a risk of damages arising out of any act, error or omission in professional services rendered, the Eligible Contractor must obtain and maintain errors and omissions insurance, in accordance with the *Alberta Insurance Act*, in an amount not less than \$1,000,000 per claim insuring its liability resulting from errors and omissions in the performance of its Services under this Contract. This insurance is required to remain in place for a period of 12 months following the completion or termination of this Code and this condition may be satisfied with a 12-month extended reporting period.

ERA or the Delivery Agent reserves the right to verify these requirements at any time for any Eligible Contractor. Signing this Code certifies that the Eligible Contractor agrees to share any documentation or proof of compliance as needed for verification purposes over the course of the Program and the subsequent 12-month period.

## FOIP and Confidential Information

- (a) The Eligible Contractor acknowledges that any Personal Information collected by ERA in connection with the Program is collected and used in compliance with FOIP. Personal Information will be disclosed only to administer the Participant's participation in the Program, including to ensure that the Participant is in compliance with the Participant Acceptance.
- (b) "**Confidential Information**" means all technical, corporate, financial, economic, legal or other information or knowledge generally concerning ERA, its directors or officers, other boards, agencies, associations of the Government of Alberta, or specifically concerning the Program, whether disclosed orally, or in the form of written material, computer data or programs, and includes information respecting ERA's registrants, processors, financial information, models, mechanisms, processes, intellectual property, trade secrets or otherwise, but does not include information that is:
  - (i) in the public domain;
  - (ii) disclosed lawfully to the Eligible Contractor by a third party who has no obligation of confidentiality to ERA with respect to the disclosed information;
  - (iii) becomes known to the public, other than by a breach of the Eligible Contractor of its obligations under this Code; or
  - (iv) already known by the Eligible Contractor before disclosure by ERA under this Code, as evidenced by written records of the Eligible Contractor.
- (c) The Eligible Contractor shall not use Confidential Information for any purpose other than to perform its obligations in accordance with the terms of this Code and shall maintain the Confidential Information in strict confidence and shall not disclose, divulge or communicate directly or indirectly



at any time any Confidential Information to any person, firm, corporation, subcontractor, employee, or to any third party, except to the extent necessary to perform its obligations under this Code, and fulfill the terms of this Code, provided that the Eligible Contractor shall contractually require such person, firm, corporation, subcontractor, employee or third party to be bound by confidentiality and restricted use obligations no less stringent than those provisions that bind the Eligible Contractor. The Eligible Contractor may only disclose the Confidential Information with the prior written consent of ERA or where required by law.

On termination of this Code for any reason, the Eligible Contractor will immediately return or destroy if requested by ERA or its Agent all Confidential Information provided to the Eligible Contractor by ERA or its Agent, and all property, writing, materials, designs, patterns, blue-prints, work-in-progress and data relating to this Code.

## Compliance

- (a) ERA will utilize a tiered corrective action procedure for non-compliance with any Program requirements. Corrective action procedures are documented in the Issues Escalation Framework attached to this Code as Appendix A. The Eligible Contractor acknowledges that they have read and understand the Issues Escalation Framework in Appendix A.
- (b) Notwithstanding the expiration or termination of this Code or the Program in whole or in part for any reason, all covenants and agreements to be performed and/or observed under this Code which by their nature are to survive the termination of this Code, including without limitation those relating to confidentiality, termination, and indemnification, will survive any such expiration or termination.

## Limitation of Liability

- (a) ERA's sole liability hereunder is limited to the extent ERA is legally responsible, arising out of the negligence or willful acts of ERA in relation to the performance of its obligations under the Eligible Contractor on-boarding process;
- (b) the Eligible Contractor shall indemnify and hold harmless ERA and its directors, officers, employees, representatives and Agents from any and all claims, losses, liabilities or damages, including consequential damages and costs arising directly or indirectly from but not limited to the obligations supplied under this Code. In no event shall ERA or its Agent be liable to the Eligible Contractor for any consequential, incidental, special reliance or indirect damages arising out of or related to Program participation, its cancellation, or any changes thereto whether such claim is based in contract or tort and whether or not the Eligible Contractor has been advised of the possibility of such damages;
- (c) the Eligible Contractor, its entities, successors and assigns hereby release and forever discharge ERA and its Agent from all actions, causes of action, claim or demands whatsoever under this Code;
- (d) the Eligible Contractor waives the right to bring or assert any claim against ERA relating to its registration and status as an Eligible Contractor (including public listing of information) and releases ERA and its Agent from any and all liability therefore or relating thereto; and
- (e) ERA and its Agent shall have no obligation to maintain, remove or perform any Work whatsoever on any equipment installed.

## Miscellaneous

- (a) ERA makes no assurance that any person or entity will gain additional business or any other business advantage from being an Eligible Contractor.
- (b) ERA reserves the right to amend this Code, in whole or in part, at any time and solely at its discretion.
- (c) Notwithstanding the process outlined in Appendix A, ERA reserves the right to unilaterally terminate an Eligible Contractor's eligibility to participate in the Program at any time without liability. By signing this Code, the Eligible Contractor acknowledges and understands that they shall have no recourse against ERA or its Agent for such termination.

## Appendix A – Issues Escalation Framework

### Purpose

This Issues Escalation Framework applies to Eligible Contractors under the Program. This will serve as a guide to ensure that: Program expectations are met, ERA and its Program are fairly represented to Albertans, and to clarify how breaches of the Code or Participant Terms and Conditions will be handled.

The Issues Escalation Framework describes Program management processes for resolving conduct issues regarding Eligible Contractors that arise throughout the duration of the Program. Participation as an Eligible Contractor is managed by Program Staff.

### Issue Identification and Escalation

Issues may be identified through several pathways including being identified by Program Staff, raised by Participants, or reported by external authorities. A list of issue types and common descriptions is below.

Table 1: Types of issues may include, but are not limited to the following:

| Issue type                                       | Issue description   |
|--|---|
| Issues involving Program administration          | Customer service complaints from Participants or the public.  |
|  | Deviations from application submission standards as noted by Program Staff and documented in Program Terms and Conditions or other Program guidelines. This includes repeated errors, omissions, or other quality issues relating to any submitted documentation.                       |
|  | If the Eligible Contractor is completing the application submission on behalf of the Participant and fails to forward any Program benefits, financial incentives, or otherwise from the Program to the Participant.   |
|  | Non-compliant marketing practices or misrepresentation of relationship to the Program or ERA.   |
|  | Unresponsiveness (more than 10 business days) or disrespectful communication to Participants or Program Staff.  |
|  | Significant deviations from industry standards or non-compliance with Participant Terms and Conditions.   |
|  | No longer meeting the minimum criteria as an Eligible Contractor. Program Staff may conduct periodic verification of the Eligible Contractor criteria (e.g. WCB Alberta clearance) to ensure compliance.  |
|  | Other business or industry peer reporting technical or quality related issues to Program Staff.   |
|  | Other issues that may arise during Program participation that are in non-compliance with the terms of the Code or marketing guidelines.   |
| Issues involving business operations             | Issues which affect the ability of the Eligible Contractor to fulfill Program obligations or commitments to Participants. This includes an Eligible Contractor going out of business which may be communicated by the Eligible Contractor to Program Staff or reported by Participants. |
| Issues involving standards, codes or regulations | Issues of compliance with consumer protection legislation. The Consumer Investigations Unit investigates breaches of Alberta’s consumer protection legislation and takes enforcement action. Enforcement actions may include  |

|  |  |
|--|--|
|  | licensing actions, administrative penalties, undertakings, Director’s Orders, or court charges.  |
|  | Serious issues of compliance with industry specific standards, codes and regulations as reported by relevant industry associations (e.g. APEGA or the ECAA).                           |
|  | Serious issues of code, permitting, or licensing compliance as reported by any local, provincial, or federal authority having jurisdiction. This includes issues of health and safety. |

When an issue arises or an instance of non-compliance becomes known with the Eligible Contractor Code, the first step in all situations is to gather relevant information, seek clarification from affected parties, and ensure obligations are clearly understood. From that point, the following escalation and resolution approach is followed:

1. The first level in the resolution process is to use coaching whenever possible. Coaching includes following up with the Eligible Contractor Primary Contact with a written notice, communicating the issue, and agreeing on and documenting the corrective actions that are required within the stated timeframe. In most cases it will be considered reasonable to expect corrective actions within 10 business days. If the issue persists following coaching, cannot be resolved, or cannot be verified by an external authority (if required) or if a response is not received from the Eligible Contractor within 10 business days, the issue will be escalated to the next level.
2. Program Staff will issue a written warning to the Primary Contact that Eligible Contractor status will be suspended if there is no response or action taken within 5 business days. If the issue remains unresolved or if the Eligible Contractor remains unresponsive after the 5 business day period, the Eligible Contractor status will be suspended and a notice will be sent to the Primary Contact outlining the actions that must be taken to be reinstated.
3. The final level in the resolution process is the permanent removal of Eligible Contractor status. After an Eligible Contractor has been suspended two times throughout the Program, a written notice will be sent to the Primary Contact explaining that any further suspensions in the calendar year may result in the removal of Eligible Contractor status. If issues persist following this notice and are not remediated within 15 business days, a written notice will be issued to the Primary Contact removing the Eligible Contractor status and outlining the actions that must be taken to be reinstated.

ERA reserves the right to adjust the timelines required for corrective action and response by the Eligible Contractor and escalation by Program Staff if special circumstances arise which require faster response times. Further, entities attempting to be re-instated or re-applying under a different name to avoid issue resolution will not be eligible to be involved in the Program.



### **Issues involving standards, codes or regulations – additional details:**

Serious issues involving standards, codes or regulations follow a separate escalation and resolution process below. This does not replace any recourse that the Participant may have contractually with the Eligible Contractor.

When serious issues involving standards, codes or regulations are identified, Program Staff will cooperate with investigations by authorities as required. Program Staff will review and send a written notice to the Primary Contact of the Eligible Contractor stating the issue that has been raised and that the Eligible Contractor is suspended immediately and for the duration of the investigation. The Program Staff will also make efforts to verify the information regarding the issue with the appropriate external authority involved.

Once the investigation is complete the Program Staff will determine whether the Eligible Contractor will be reinstated or removed from the Program depending on the outcome and severity of the investigation conclusion. If enforcement actions, such as penalties or charges laid are taken and the Program Staff have received verification that action has been enforced, it will result in immediate removal of Eligible Contractor status. Upon removal, the ERA Program Staff will issue a written notice to the Primary Contact stating that Eligible Contractor status has been removed.

### **Suspension**

Suspension from Eligible Contractor status means that the Eligible Contractor cannot participate in the Program on a temporary basis until reinstated. Participating in the Program includes being able to submit a project for incentive, financing, or other support. If there are active projects in the Program with the suspended Eligible Contractor, the projects will not be able to proceed until the Eligible Contractor's status is reinstated or if the Participant identifies an alternative Eligible Contractor. ERA holds no liability for these projects.

Contractors can be reinstated as an Eligible Contractor when the following criteria are met:

- a) corrective action is taken for all outstanding issues as required by ERA or its Agent;
- b) proof of renewal of any outdated documentation or confirmation of Eligible Contractor criteria (e.g. WCB Alberta) is provided; and
- c) proof of completion is provided for any actions recommended by Program Staff due to the suspension.

Reinstatement may also include being subject to additional quality assurance checks or site reviews by Program Staff in the future.

ERA reserves the right, in its sole discretion, to apply the suspension of Eligible Contractor status to: (a) other Eligible Contractors with common ownership or (b) another entity with common ownership that is applying to become an Eligible Contractor.

After an Eligible Contractor has been suspended two times throughout the Program, a written notice will be sent to the Primary Contact explaining that any further suspensions in the Program will result in the removal of Eligible Contractor status.

## Removal

Removal of status as an Eligible Contractor will result in the termination of the Code. Thereafter, and given that acceptance and adherence to the Code is a requirement of Program participation, the Eligible Contractor cannot participate in the Program. Participating in the Program includes being able to submit a project application for incentive, financing, or other support. If there are active projects in the Program with the suspended Eligible Contractor, the projects will not be able to proceed until the Eligible Contractor's status is reinstated or the Participant identifies an alternative Eligible Contractor. ERA holds no liability for these projects.

After being removed, reinstatement as an Eligible Contractor will only be considered by the ERA Program Staff on a case-by-case basis and will require a minimum of 3 months before consideration.

If reinstatement is considered, it will involve signing the Code again and meeting the reinstatement criteria for suspensions as a minimum, in addition to providing documented clearance from any external authority that was involved in the removal. Reinstatement may also require being subject to additional quality assurance checks or site reviews by Program Staff.

ERA reserves the right, in its sole discretion, to apply the removal of Eligible Contractor status to: (a) other Eligible Contractors with common ownership or (b) another entity with common ownership that is applying to become an Eligible Contractor.

# Escalation Framework Process Flow Diagram

