



Innovation for Our Energy Future

Financing Federal Energy Projects

An Overview ~ DOE Energy Savings Performance Contracts



**Energy Efficiency –
Portal to Profitability**

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Federal Energy Management Program

FEMP Mission

FEMP's mission is to facilitate implementation of sound, cost-effective energy management and investment practices of the Federal Government

FEMP provides assistance to agency EERE projects



Legislation, Guidance and Rules Authorization of ESPC

Energy Policy Act (EPAAct) of 1992

DOE Final Rule – 10 CFR Part 436 Subpart B

Federal Acquisition Regulations (FAR)

Executive Order (EO) 13423

Energy Independence and Security Act (EISA) 2007



Energy Policy Act of 1992 (EPAct)

EPAct 1992 included the following provisions for ESPCs:

- Authorized Federal agencies to execute ESPCs
- Required ESCOs to guarantee savings
- Required measurement and verification (M&V) of savings
- Set the maximum contract term at 25 years, including the construction period



DOE Final Rule 10 CFR Part 436 Subpart B

10 CFR 436 Subpart B included the following:

- Implemented ESPC authority
- Established list of qualified ESCOs
- Specified procurement procedures and criteria for selecting ESCOs
- Allowed unsolicited proposals
- Recommended standard terms and conditions
- Defined conditions of payment
- Addressed annual M&V requirements
- Prioritized 10 CFR 436 over FAR procurement requirements if the two conflict



Federal Acquisition Regulations (FAR)

Federal Acquisition Regulations (FAR) related to ESPCs include:

- FAR Part 23.204 Energy savings performance contracts
- FAR Part 16.505 Ordering



EO 13423

Reduce BTU/S.F. by 3% per year, 2006 – 2015, relative to 2003 (or 30% by end of 2015)

Increase use of renewable energy to

- > 3% of total electric use, 2007–2009
- > 5% in 2010 – 2012
- > 7.5% in 2013 and thereafter
- > 50% from new sources each year
- Implement renewables on agency property for agency use as feasible

Reduce Gal./S.F. by 2% per year, 2008 – 2015 (or 16% by end of 2015)



EISA 2007

Section 512: “[A] Federal agency may use any combination of (i) appropriated funds; and (ii) private financing”

Section 513: Restricts agencies from imposing policies that limit ESPC contract terms or project size

Section 515: Defines “energy savings” to potentially allow agencies to sell or transfer excess energy generated on-site from renewable energy sources or cogeneration.

The ESPC Process

FEMP ESPC Overview

Phase 1 – Project Planning

Agency Objectives

Site Needs

Financing Options

Phase 2 – ESCO Selection

Contractor – Identified

Agency – Identified

Requirements & Selection Documents

Preliminary Assessment & Review

Notice of Intent

Phase 2 – ESCO Selection

Contractor-Initiated Method

ESCO notifies agency of interest

Agency must send requirements and selection criteria to all 16 ESCOs

- Requirements (e.g., buildings, ECMs)
- Selection criteria (e.g., technical approach, past performance, price (required))

Agencies may “down-select” based on preliminary submissions

Finalists (or all interested) submit preliminary assessment

“Fair Consideration” – Agency issues selection statement based on best value

- Post-selection de-briefing; protests allowed if > \$10M

Phase 2 – ESCO Selection

Agency-Initiated Method

Agency notifies all 16 ESCOs and sends requirements and selection criteria

- Requirements (e.g., buildings, ECMs)
- Selection criteria (e.g., technical approach, past performance, price (required))

Agencies may “down-select” based on preliminary submissions

One or more ESCOs submit proposals

“Fair consideration” – Agency issues selection statement based on best value

- protest could occur at this phase, not at award

Phase 2 – ESCO Selection

Requirements Documents

Technical/project manager (PM)

- Backup legislation
- Project “wish list”
- Unfunded Requirements Document

Contracting Officer

- Prepares notice to all ESCOs
- Evaluation factors
- Method of selection
- “Not anti-deficient” legislation
- Review sample

Phase 2 – ESCO Selection

Preliminary Assessment

Must comply with IDIQ contract requirements (section H.4) and provide sufficient information for a decision

Key elements:

- A narrative summary of proposed project
- Description of ECMs
- Estimates of proposed energy and cost savings
- M&V approach (general)
- Risk, Responsibility and Performance Matrix
- Financial schedules

Phase 2 – ESCO Selection

Preliminary Assessment Review

Is the proposed scope sufficiently comprehensive?

Does it meet the majority of our needs?

Is it a good deal for the government?

Is this a good long-term partnership?

Phase 2 – ESCO Selection

PA Review (cont'd)

Do the ECM descriptions provide enough detail?

Are projected energy savings reasonable?

Are the ECM M&V approaches appropriate?

Is the estimated annual cost savings reasonable?

Are the cost savings consistent with the technical approach?

Are the contract term and the total cost acceptable?

Phase 2 – ESCO Selection

Evaluating the Price Estimate

Are the project development costs reasonable?

Are the ECM costs reasonable?

Are the indirect costs and profit reasonable?

Are the financing costs reasonable?

Are the performance period services costs reasonable?

Phase 2 – ESCO Selection

Proceed or Not

IF NO:

Return all PAs if none is satisfactory

- Scrap the project, or
- Issue a revised set of requirements to the ESCOs

Phase 2 – ESCO Selection

Proceed or Not

IF YES:

Accept one of the proposals and notify the ESCO

- Address deficiencies and desired changes; (ESCO must address in the Investment Grade Audit (IGA) and in the final proposal)

Return other PAs to issuing ESCOs

Notify Federal Financing Specialist (FFS) of Selection

Phase 2 – ESCO Selection

Notice of Intent to Award (NOI)

Formalizes ESCO selection and decision to proceed

Specifies timeframe for IGA and final proposal

Outlines pre-award requirements

Includes any other conditions of commitment

Phase 2 – ESCO Selection

After Issuing NOI ...

- ESCO's project development costs may be claimed and recovered if
- NOI is issued but TO is not awarded,
 - if government has not acted in good faith (recourse from FAR)



Phase 3 – Negotiations & Award

IGA Kick-off Meeting
Preparing the RFP
Reviewing the Final Proposal
Prepare for Negotiations
Financial Schedules
Conducting Negotiations
Award Documents

Phase 3 – Negotiations and Award

IGA Kick-off Meeting

Prepare for meeting

- Schedule the meeting time and location
- PM/FFS engage Project Facilitator (PF)
- PF conducts Kickoff Meeting
- Acquisition Team and Agency Decision Makers attend

During meeting

- Develop Milestones
- Discuss Site's "Wish List" and Goals
- Setup communication requirements

Phase 3 – Negotiations and Award

Prepare the RFP

Technical

- Lighting requirements
- HVAC standards

Contracting

- Invoicing requirements
- Sub-contracting plan
- Agency clauses



Phase 3 – Negotiations and Award

Review the Final Proposal

CO calls a meeting of the Acquisition Team

Roles and responsibilities for Review

- Technical Proposal
- Price Proposal



Phase 3 – Negotiations and Award

Preparing for Negotiations

Submit Comments to CO

- Technical Proposal
 - Risk & Responsibility Matrix
 - M&V methods
- Price Proposal
 - Financial Schedules



Phase 3 – Negotiations and Award

Conduct Negotiations

Prepare Government team

- Executive Summary
- Management of project
- Technical discussion
- Pricing discussion
- Review timeline
- Review milestones

PF may support



Phase 3 – Negotiations and Award

Financial Schedules – Assess Cost Elements

TO–1, *Guaranteed Cost Savings and Contractor Payments*

- Guaranteed savings vs. contractor payments
- Term
- Construction period
- Escalation rates



Phase 3 – Negotiations and Award

Financial Schedules – Assess Cost Elements

TO–2, *Implementation Price by Energy Conservation Measure*

- Implementation costs
- Cost of equipment
 - Benchmarking tools
 - Support documentation
- Performance/payment bonds



Phase 3 – Negotiations and Award

Financial Schedules – Assess Cost Elements

TO–3, *Post-Acceptance Performance-Period Cash Flow*

- Implementation price
- Financing procurement price
- Term
- Index rate
- Added premium
- Performance-period costs



Phase 3 – Negotiations and Award

Financial Schedules – Assess Cost Elements

TO–4, Task Order Performance Period First Year Estimated Energy Cost Savings, by Energy Conservation Measure and Technology Category

- Energy baseline
- Guaranteed savings



Phase 3 – Negotiations and Award

Reviewing the Financier's Proposal

Investor Deal Summary

Standard Finance Offer

Selection Memorandum



Phase 3 – Negotiations and Award

Final Negotiations

Review Risk and Responsibility (Matrix)

Price Proposal

Financier

Sub-Contracting Plan

Wage Determination

Submittals and Deliverables



Phase 3 – Negotiations and Award

Finalize the Task Order

Revisions to RFP

Award Document

Review attachments

Award Task Order



Phase 4 – Post-Award

Post-Award Conference
Construction

Phase 4 – Post-Award

Post-Award Conference

Post-award conference

- Proof of insurance
- Payment & performance bonds

Review of designs & equipment selections

What constitutes a Change Order/modification to TO?

Notice to proceed with construction/installation



Phase 4

Construction

Who monitors the installation/construction?

Report changes to the Contracting Officer

Submittals and Deliverables

Commissioning and post-installation M&V Reports

Acceptance of installed ECMs



Phase 5 – Performance Period through Closeout

Invoices & Payment Stream

M&V Reports

Managing a Shortfall

Modifications/Change Orders

Partial or Complete Termination

Closeout

Phase 5 – Performance Period through Closeout

Invoices & Payment Stream

Annual invoices most common

- First invoice – 30 days after acceptance and performance
- Annually thereafter
- Support documentation required?
 - Standard payments do not require backup
 - First year M&V report
 - Shortfall?
 - Excess savings?

Phase 5 – Performance Period through Closeout

Utilizing the M & V Reports

Annual M&V reports

Document who is responsible for review

Reports to CO

Provide Desk Reference and Guidance

How often are personnel trained?

Phase 5 – Performance Period through Closeout

Managing a Shortfall

What constitutes a shortfall?

- Guaranteed savings not met

Who interprets the M&V Report?

- PM or assigned personnel

How does it affect the payment stream?

- Reduction of contractor payments

Who is responsible for repair/replacement

- Contractor is always responsible

When is the contractor's payment readjusted?

Phase 5 – Performance Period through Closeout

Modifications & Change Orders

When is a modification to the Task Order required?

- Change in site's mission
- Reduction/increase in site's usage

What happens to the finance schedules and interest rate?

- Renegotiation of debt service term
- Realignment of schedules and interest rate

When is a Change Order required?

- During construction – differing site conditions
- Others

Phase 5 – Performance Period through Closeout

Partial or Complete Termination

Using the TO–5

- Represents outstanding capital investment on the entire project
- Partial Termination can occur when:
 - Buildings are being shut down
 - Excess Savings allows for buyout of ECM
 - Other
- Complete Termination
 - Shutdown of site

Phase 5 – Performance Period through Closeout

Closeout

Verify that the final M&V Report has been received and that the savings guarantee has not been compromised.

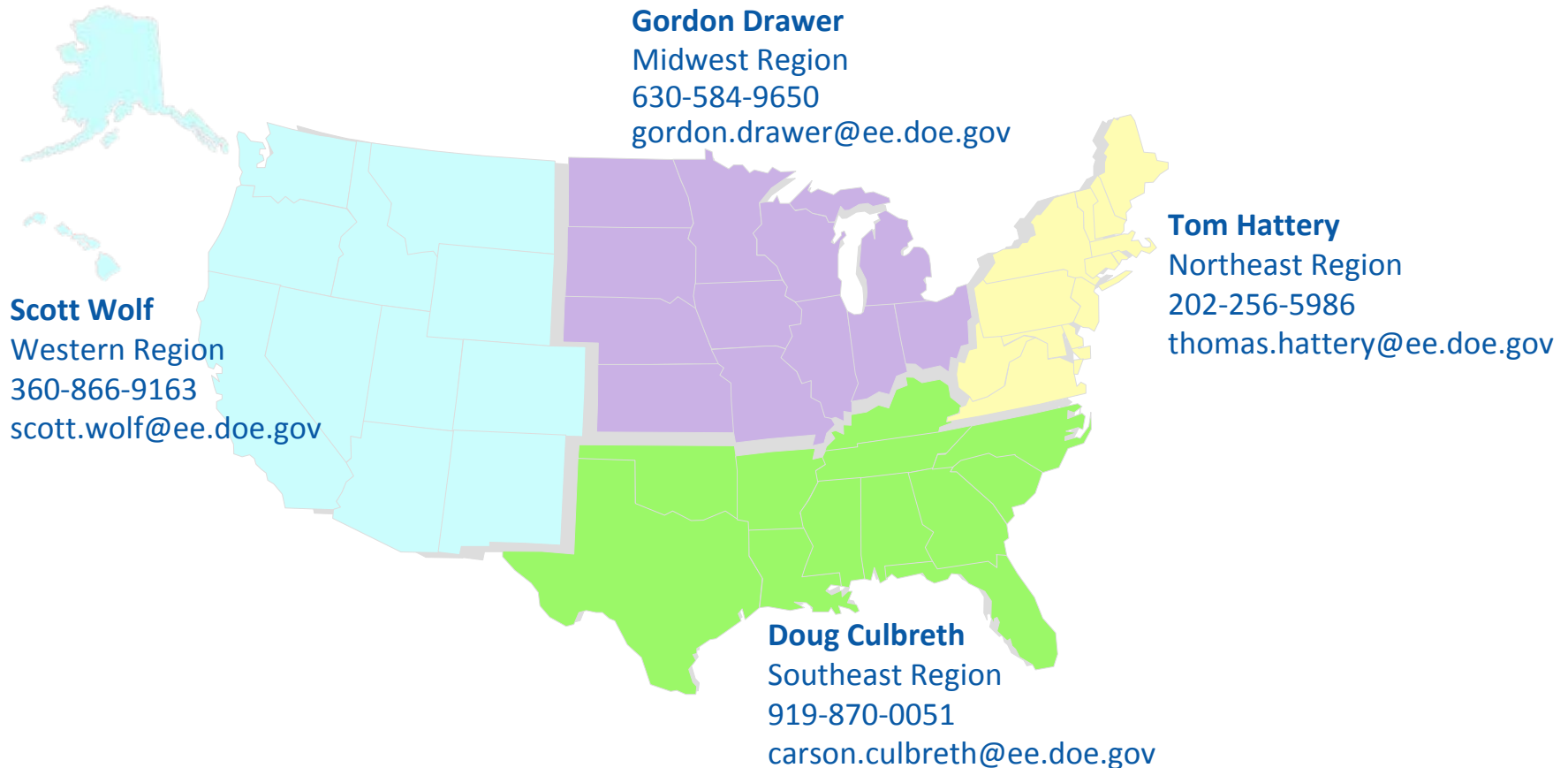
Send Contractor a letter stating that the debt service has been satisfied and that the last payment was received

Submit the final Past Performance Evaluation to DOE Golden Field Office Contracting Officer.

FEMP Resources

Federal Financing Specialists

Your link to FEMP ESPC support



www1.eere.energy.gov/femp/financing/espcs_financingspecialists.html

Classroom Training

Energy Management

Project Financing

- Super ESPC
 - Basic
 - Refresher
 - Comprehensive
- UESC

Renewable Energy

ESPC Users Group Meeting

Federal Utility Partnership Working Group Meeting

Project Financing (ESPC & UESC)

- Introduction to Alternative Financing for EE/RE projects
- ESPC Contracting and Negotiations

First Thursday Series

Energy 101

Greenhouse Gas Accounting

& many others

FEMP Resources



GovEnergy 2010

Aug 15-18, 2010

Dallas, TX

<http://www.govenergy.com>

- Gain insight on reducing energy usage and cost, as mandated by
 - EO 13514
 - EPLA of 2005
 - EO 13423
 - EISA 2007
- Access tools, techniques and best practices;
- Develop partnerships amongst federal energy professionals

GovEnergy 2010 Federal Agency Sponsors



FEMP ESPC Web Site

www1.eere.energy.gov/femp/financing/espcs.html

- ESPC success story (video)
- ESPC resources, guidance, contract documents
- Calendar of Events (all training dates)

For ESPC Assistance:

http://www1.eere.energy.gov/femp/financing/espcs_assistance.html

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