# Utility Energy Service Contracts: Enabling Documents

Revised April 2024

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# Errata

This report, originally published in January 2017, has been revised in April 2024 to remove outdated documents (UESC Template for Master Agreement, GSA Model Areawide Contract, Exhibit C per Areawide Contract, Site Specific Contract, and Negotiated Statement of Work) from the report.

**U.S. Department of Energy**
**Washington, D.C.**

Dear Colleagues,

The U.S. Department of Energy's (DOE) Federal Energy Management Program (FEMP) is pleased to present this edition of *Utility Energy Service Contracts: Enabling Documents.* These documents provide a selected set of background materials that clarify the authority for Federal agencies to enter into utility energy service contracts (UESCs).

In accordance with directives from the White House, Congress, and Senior Energy Officials, Federal energy managers have been directed to use UESCs whenever feasible to transition the Federal Government's building inventory to highly efficient, more-sustainable facilities with improved energy resiliency. UESCs have been successfully used for more than 20 years to award nearly 2,000 energy and water efficiency and renewable-energy projects, investing $2.8 billion and assisting the Federal Government efforts to reduce energy intensity by more than 47% to 98,409 Btu/GSF.

Fostering Federal utility projects and partnerships to reduce the Federal impact on the environment and increase energy security remain among FEMP's highest priorities and its focus continues to be assisting Federal agency and utility staff involved in administering utility energy service projects.

This edition includes Defense Federal Acquisition Regulation Supplement, Part 241, which states the term of a UESC may extend up to 25 years; updated resource and contact links; and information about utilities that provide incentive programs to support their Federal customers and meet their energy efficiency requirements and renewable portfolio standards.

For more information about UESC projects, see the contacts section at the end of this document. FEMP hopes this information will be useful in building support for and implementing your utility energy service projects.

With best regards,

Tracy Niro
Utility Program Lead
DOE FEMP

# UTILITY ENERGY SERVICE CONTRACTS:
# ENABLING DOCUMENTS

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# Overview

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# Overview

## The Federal Energy Management Program

The Federal Energy Management Program (FEMP) is pleased to offer you this book as a valuable resource designed to assist you in making informed decisions concerning financing for energy projects within the Federal Government. Legislation from Congress and orders from the President require and enable Federal agencies to implement energy efficiency, water conservation, and renewable energy projects. FEMP's mission — working with key individuals to accomplish energy change within organizations by bringing expertise from all levels of project and policy implementation to enable Federal agencies to meet energy-related goals and provide energy leadership to the country — is accomplished by leveraging both Federal and private resources.

FEMP is your partner in making projects happen. Tremendous opportunities are available for reducing energy consumption through improved energy-management practices both at the initial design and construction stage or later when energy-consuming equipment replacement is required. Implemented energy projects save taxpayer dollars and contribute to a cleaner and safer environment. FEMP is a resource for Federal agencies and the private sector to facilitate the achievement of aggressive Federal energy-management goals by creating partnerships, leveraging resources, transferring technology, and providing training and project support.

## Utility Incentive Programs

Federal agencies are authorized and encouraged to use utility incentive programs to leverage rebates for equipment replacements, obtain customized services, and implement comprehensive energy projects. A UESC project brings work to local businesses, saves taxpayer dollars, and contributes to a cleaner and safer environment.

This resource book and additional information about UESCs can be found at the FEMP website: http://energy.gov/node/1159056.

### Requirements

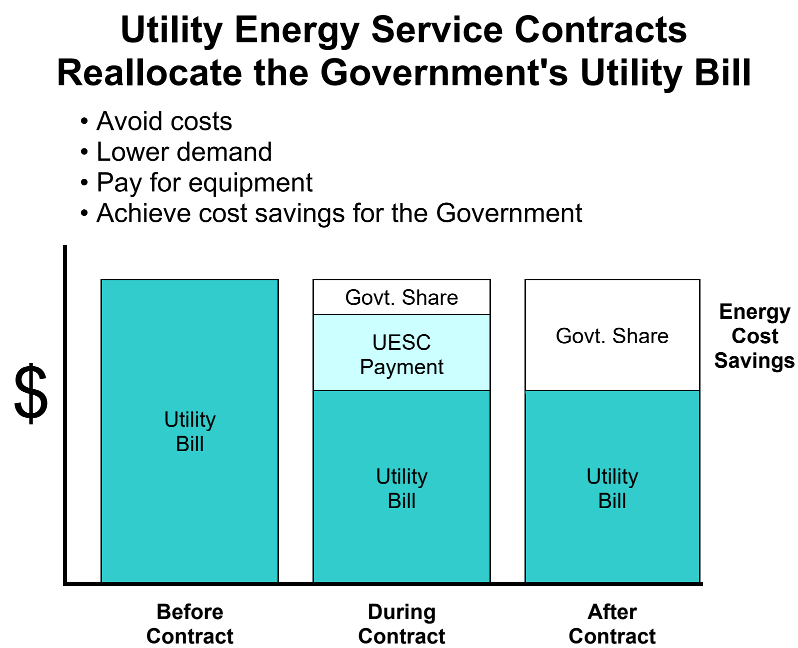
As the largest energy consumer in the United States, the Federal Government has both a tremendous opportunity and a clear responsibility to lead by example with smart energy management. A series of Congressional enactments, executive orders, and other directives mandate specific energy efficiency, renewable energy use, and water conservation goals for Federal agencies and facilities. Among them are:

- Reduce agency energy consumption on a per-square-foot of building space by prescribed percentages increasing to 30% in 2015 compared to 2003 [EISA Sec. 431]
- Reduce fossil fuel use in new buildings or in major renovations of buildings at Federal facilities by prescribed percentages increasing from 55% for 2010 building projects to 100% for 2030 building projects, compared to 2003 use in similar buildings [EISA Sec. 433]
- Install meters for energy use in all Federal buildings by October 2012 [42 USC 8253 (e)] Metering < October 1, 2015: Agencies shall provide equivalent metering of natural gas and steam [EISA Sec.434]
- Energy & Water Evaluations: Evaluate 25% of facilities every year; implement the identified measures within two years; and authorizes agencies to use appropriations, private financing, or appropriations and private financing to comply with this section [EISA Sec. 432]
- Buildings shall be equipped with energy-efficient lighting fixtures and bulbs; Effective Date: January 28, 2009 [DOD Authorization Act 2008 Signed January 28, 2008, Sec. 2863 Use of Energy Efficient Lighting Fixtures and Bulbs in DOD]

A list of requirements by type is kept up to date on the Federal Laws & Requirements Search at https://www4.eere.energy.gov/femp/requirements/.

### Utility Energy Service Contracts

In a UESC, a serving or franchised utility company agrees to provide a Federal agency with services or products (or both) designed to make that agency's facilities more energy efficient. Federal facilities can also obtain project financing from a utility company through a UESC. During the contract period, the agency pays for the cost of the UESC from the "avoided-cost-savings" resulting from the energy efficiency improvements. After the term of the contract, the energy and water efficiency improvements continue to realize the avoided-cost-savings for the life of the improvements and the savings can be used to do more projects.




UESCs offer many benefits to a Federal agency, including:

- Streamlined procurement process
- Flexible contracts
- Relationship with a long-standing entity
- Flexibility in performance assurance
- One-stop-shopping for a turnkey project
- Low finance rates

Federal agencies can capitalize on the many advantages of a UESC. One of the primary benefits is the ability to implement energy efficiency projects without using direct appropriations (UESCs can, however, be used in conjunction with appropriations). Vehicles such as areawide contracts, basic ordering agreements, and other agreements used in UESCs save time in implementing projects.

## Contract Options

Utility energy service contracts can be executed under any of three types of umbrella contracts or agreements, including areawide contracts (AWCs), basic ordering agreements (BOAs), and separate contracts.

### *Areawide Contracts*

The GSA has established more than 150 utility AWCs to procure utility services for Federal facilities around the country. AWCs are essentially indefinite-quantity, indefinite-delivery (IDIQ) contracts for public utility services. The AWC spells out general terms and conditions and authorizes any agency in the utility's service territory to place task orders for services offered under the contract. A task order describes the details and technical specifications of energy efficiency projects or other services to be delivered.

More information about the use of the GSA public utility areawide contracts is available online at http://www.gsa.gov/energy. The website contains a list of AWCs, an overview of their energy and water conservation activities, and their guidance materials for areawide users.

### *Basic Ordering Agreements*

Any agency can establish a BOA with its utility. BOAs are not contracts, but like areawide contracts, they establish general terms and conditions for future contracts. A task order placed under a BOA constitutes the contract and details the services to be delivered.

### *Separate Contracts*

The third option available for UESCs is establishing a separate contract between an ordering agency and a serving utility. Separate contracts, also known as standalone or site-specific contracts, can be used in the absence of an areawide contract, to cover any UESC project at any facility of a Federal agency served by a particular utility. See FAR Part 41.205 for requirements.

### *Interagency Agreements*

Federal agencies with facilities within the service area of other Federal agencies, such as Bonneville Power Authority or Tennessee Valley Authority, may enter into UESC

### Legislative History of Federal Agency Energy Conservation Requirements and Utility Energy Service Contracts Authority

The first major legislation regarding energy conservation for Federal facilities was the National Energy Conservation Policy Act, Public Law 95-619, enacted in 1978. The Energy Policy Act of 1992, Public Law 102-486, and the Energy Policy Act of 2005, Public Law 109-58, both substantially amended and expanded provisions relating to Federal facility energy use. The United States Code excerpt, 42 USC 1851-1862 reflects those laws and other relevant amendments through January 2006.

The Energy Independence and Security Act of 2007(EISA), Public Law 110-140, further amended and expanded law on Federal facility energy use.

Executive Order 13693: Planning for Federal Sustainability in the Next Decade, signed in March 2015, revoked Executive Order 13423, which rescinded previous executive orders.

Policy is augmented by agency rulemaking, executive directives other than executive orders, and legal opinions interpreting the law. Some of these important to the authority for using utility energy service contracts are also included in this enabling document compilation.

The official online source for the U.S. Code is the Government Printing Office. Unfortunately, it is several years behind. Alternative sites include the Cornell University Legal Information Institute website, from which excerpts were drawn for this publication.

The official online source for the Code of Federal Regulations is the Government Printing Office, and it is up-to-date.

agreements. They must comply with policies and procedures of the Economy Act, Subpart 17.5. See FAR Part 41.206 for requirements.

### Template for a Master Agreement

The master agreement template, on page 150, was developed through a collaboration of Edison Electric Institute (EEI), the Department of Defense (DOD), the Department of Energy (DOE), and the General Services Administration (GSA), and included Federal and utility technical, legal, and contracting experts. Written as a template for agencies to use in establishing their own UESCs, although now combined, there was one template for DOD agencies and a second template for civilian agencies. The master agreement template contains the essential "must-include" clauses for Federal contracts and is the most comprehensive compilation of contractual language for UESCs available. The master agreement template may be used for a basic ordering agreement, a separate contract, or as a master agreement underneath an umbrella contract.

## LEGISLATIVE AND EXECUTIVE ACTIONS

This section outlines the legislative and executive authorities that support contracting for utility services, along with regulations associated with procuring these services. Also provided is information on various policy memoranda prepared to assist both technical and contracting staff in the clarification of procurement requirements to secure available utility services.

The procurement of both utility commodities (electric, gas, and water) and utility services, which include installation of energy efficiency, water conservation, and renewable energy measures, has a significant history of legislative backing.

It is important to note that whenever new policy or legislation is put in place, the previous legislation and policy will automatically be overridden by the latest requirements.

### *The Energy Policy Act of 1992 (EPAct), Public Law 102-486*

EPAct contains provisions regarding energy-management requirements, budget treatment for energy conservation measures, incentives for Federal agencies, reporting requirements, new technology demonstrations, and agency surveys of energy-saving potential.

Prior to amendments enacted as part of EPAct, the National Energy Conservation Policy Act (NECPA) was the primary legislative authority directing Federal agencies to improve energy management in their facilities and operation. NECPA was passed in 1978 in response to the energy crises of the 1970s. In 1992, EPAct amended NECPA, requiring that each Federal agency achieve targeted reductions in energy consumption within a specific time period. Measured on a British thermal unit per gross-square-foot (Btu/GSF) basis and compared to a fiscal year (FY) 1985 baseline, Federal buildings were required to achieve a 10% reduction in energy consumption by FY 1995. In addition, EPAct amended Section 543 of NECPA to require a 20% reduction in BTU/GSF energy consumption by FY 2000, measured against the FY 1985 baseline.

EPAct also amended NECPA to include an additional energy-management requirement for Federal agencies. Section 543(b) of NECPA, as amended by EPAct, requires that "not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States, energy and water conservation measures with payback periods of less than 10 years," as determined by using Federal life cycle costing methods and procedures. However, this does not preclude the implementation of projects with payback periods of greater than 10 years.

EPAct Section 152 Subtitle F, Federal Agency Energy Management, amends Sections 542 to 550, Part 3, of the NECPA. These sections have been codified as 42 USC 8256. Section 546, part (c), provides specific information as it relates to utility incentive programs. The five key elements of this section are highlighted below.

1. Agencies are authorized and encouraged to participate in programs to increase energy efficiency and water conservation or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.
2. Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.
3. Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.
4. If an agency satisfies the criteria that generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.
5. Agencies (except the DOD) shall retain 50% of energy and water cost savings from appropriated funds for additional energy projects, including employee incentive programs.

Section 546, parts (a)–(c) are included in this book. Additional information on EPAct (Public Law 102-486), including its full text, is available online at https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf.

***Energy Savings and Water Conservation at Military Installations***

The legislation codified as 10 USC Sections 2911, 2913, and 2866 is part of a larger military construction and military family-housing bill. It applies to DOD facilities and is concerned with energy-saving and water conservation goals and plans at military facilities. The code stipulates that DOD facilities:

1. May enter into sole source procurement from gas or electric utilities to design and implement cost-effective demand management and conservation services.

2. Demonstrate an economic return on investment and will achieve energy savings over the life cycle of the equipment or system being repaired or replaced.

3. Shall retain all energy and water cost savings realized from appropriated energy and water projects, with one-half available for the implementation of additional DOD energy and water projects, while the other half is made available for use at the installation at which the savings were realized.

***Federal Acquisition Regulation, Part 41***

Section 201 of the Federal Property and Administrative Services Act of 1949 (*40 USC Section 481*) provides the statutory authority for the General Services Administration to acquire utility services. This act has been codified in the Code of Federal Regulations, Title 48, Part 41 of the Federal Acquisition Regulations (FAR Part 41). GSA has delegated to both DOD and the DOE the authority to acquire utility services.

FAR Part 41 covers the use of AWCs for the purchase of all types of utility services. An AWC is between GSA and a utility-service supplier to cover utility-service needs of Federal agencies within the franchised territory of the supplier. The basic scope of utility services includes electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, and high-temperature hot water.

Several key provisions in FAR Part 41 related to AWCs should be noted:

1. AWCs generally provide for ordering utility service at rates approved of and established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service, but these may require the approval of the regulatory body.

2. Acquired services are for facilities located in a utility's franchised territory or service area.

3. Specific services at specific facilities are requested and executed through delivery orders.

For more information, see the GSA document, *Procuring Energy Management Services with a GSA Areawide Contract,* at https://www.gsa.gov/portal/mediaId/240455/fileName/Procuring_Energy_Management_Services_with_the_GSA_Areawide_Contract_08-2015.action.

Specific questions regarding AWCs should be directed to energy@gsa.gov.

***Defense Federal Acquisition Regulation Supplement (DFARS), Part 241***

DFARS Part 241, Acquisition of Utility Services, which was revised in May 2016, states: "The contracting officer may enter into shared energy savings contract under 10 USC 2913 [DOD authority for UESCs] for a period *not to exceed 25 years.*"

Visit http://www.acq.osd.mil/dpap/dars/dfars/html/current/241_1.htm for more information.

## Legal Opinions

The legislation and executive actions that enable agencies to enter into UESCs can be interpreted in many ways. As a result, legal opinions from varying Federal agencies have been issued on this subject. Several legal opinions considered most pertinent to UESCs are included in this book.

## Agency Guidance

As a result of the vast array of legislation and associated regulations regarding UESCs, barriers have developed regarding interpretation of the intent of the legislation and the implementation of various regulations.

### *Alternative Financing Guidance Memoranda (AFGM)*

The Interagency Energy Management Task Force publishes AFGM. Through FEMP, DOE develops AFGM, which are then submitted to the task force for review and revision by a subcommittee. Final approval comes from the task force before the AFGM are made available for use by all agencies. These memoranda are patterned after Defense Energy Program Policy Memoranda (DEPPM) and focus on issues related to alternative financing. One aspect of developing these memoranda is to include, by reference, any legal opinions that might exist regarding the individual memorandum topic. Included in this book are:

- AFGM #001, which provides guidance on the issue of sole source
- AFGM #003, which provides guidance on the relationship of the anti-deficiency act to multi-year contracts
- AFGM #004, which provides guidance on Federal fund sources for multi-year contracts.

Additional memoranda that impact energy efficiency projects will continue to be developed.

## Resources and Contacts

Because it provides information about the authorities that enable agencies to enter into UESCs, this book empowers Federal agencies to reduce the use and cost of energy in the Federal sector. The Resources and Contacts sections of this book contain contacts, places to find more information, sample model agreements, and information about utility-related groups within FEMP. This information will assist you in initiating an energy and water efficiency project at your facility.

Reading this book is the first step; the next step is up to you.

# Legislation and Executive Actions

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## Past Legislative and Executive Order History (Summary)

- 1975: Energy Policy and Conservation Act
- 1977: Department of Energy (DOE) Organization Act
- 1978: National Energy Conservation Policy Act (NECPA)
- 1988: Federal Energy Management Improvement Act (FEMIA)
- 1991: Executive Order 12759
- 1992: Energy Policy Act of 1992 (EPAct 1992)
- 1994: Executive Order 12902
- 1999: Executive Order 13123
- 2001: Executive Order 13221
- 2005: Energy Policy Act of 2005 (EPAct 2005)
- 2007: Executive Order 13423
- 2007: Energy Independence and Security Act (EISA)
- 2015: Executive Order 13693

## Energy Policy Act of 1992 (P.L.102-486)

*42 USC Section 8256*

Following are relevant excerpts of the National Energy Conservation Policy Act (NECPA) as Amended by EPAct.

Sections 151, 152, and 541–544 are omitted from this document.

#### NECPA Title III, Section 546

**Incentives for Agencies**

(a) CONTRACTS. (1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under Title VIII [*42 USC 8287* et seq.] of this Act.

(2) Implementation. The Secretary shall, no later than 18 months after the date of the enactment of the Energy Policy Act of 1992 and after consultation with Director of the Office of Management and Budget, the Secretary of Defense, and the administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

Item (b) FEDERAL ENERGY EFFICIENCY FUND is omitted from this document.

(c) UTILITY INCENTIVE PROGRAMS. (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by each agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

Item (d) FINANCIAL INCENTIVE PROGRAM FOR FACILITY ENERGY MANAGERS and sections 549-551, 153-155, and Title VIII are omitted from this document.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 431*
*Energy Reduction Goals for Federal Buildings*

Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking the table and inserting the following:

| **Fiscal Year** | **Percentage Reduction** |
|---|---|
| 2006 | 2% |
| 2007 | 4% |
| 2008 | 9% |
| 2009 | 12% |
| 2010 | 15% |
| 2011 | 18% |
| 2012 | 21% |
| 2013 | 24% |
| 2014 | 27% |
| 2015 | 30% |

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 432*
*Management of Energy and Water Efficiency in Federal Buildings*

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:
`(f) Use of Energy and Water Efficiency Measures in Federal Buildings-
`(1) DEFINITIONS- In this subsection:
`(A) COMMISSIONING- The term `commissioning', with respect to a facility, means a systematic process--
`(i) of ensuring, using appropriate verification and documentation, during the period beginning on the initial day of the design phase of the facility and ending not earlier than 1 year after the date of completion of construction of the facility, that all facility systems perform interactively in accordance with--
`(I) the design documentation and intent of the facility; and
`(II) the operational needs of the owner of the facility, including preparation of operation personnel; and
`(ii) the primary goal of which is to ensure fully functional systems that can be properly operated and maintained during the useful life of the facility.
`(B) ENERGY MANAGER-
`(i) IN GENERAL- The term `energy manager', with respect to a facility, means the individual who is responsible for--
`(I) ensuring compliance with this subsection by the facility; and
`(II) reducing energy use at the facility.
`(ii) INCLUSIONS- The term `energy manager' may include--
`(I) a contractor of a facility;
`(II) a part-time employee of a facility; and
`(III) an individual who is responsible for multiple facilities.
`(C) FACILITY-
`(i) IN GENERAL- The term `facility' means any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government.
`(ii) INCLUSIONS- The term `facility' includes--
`(I) a group of facilities at a single location or multiple locations managed as an integrated operation; and

`(II) contractor-operated facilities owned by the Federal Government.
`(iii) EXCLUSIONS- The term `facility' does not include any land or site for which the cost of utilities is not paid by the Federal Government.
`(D) LIFE CYCLE COST-EFFECTIVE- The term `life cycle cost-effective', with respect to a measure, means a measure, the estimated savings of which exceed the estimated costs over the lifespan of the measure, as determined in accordance with section 544.
`(E) PAYBACK PERIOD-
`(i) IN GENERAL- Subject to clause (ii), the term `payback period', with respect to a measure, means a value equal to the quotient obtained by dividing--
`(I) the estimated initial implementation cost of the measure (other than financing costs); by
`(II) the annual cost savings resulting from the measure, including--
`(aa) net savings in estimated energy and water costs; and

`(bb) operations, maintenance, repair, replacement, and other direct costs.

`(ii) MODIFICATIONS AND EXCEPTIONS- The Secretary, in guidelines issued pursuant to paragraph (6), may make such modifications and provide such exceptions to the calculation of the payback period of a measure as the Secretary determines to be appropriate to achieve the purposes of this Act.
`(F) RECOMMISSIONING- The term `recommissioning' means a process--
`(i) of commissioning a facility or system beyond the project development and warranty phases of the facility or system; and
`(ii) the primary goal of which is to ensure optimum performance of a facility, in accordance with design or current operating needs, over the useful life of the facility, while meeting building occupancy requirements.
`(G) RETROCOMMISSIONING- The term `retrocommissioning' means a process of commissioning a facility or system that was not commissioned at the time of construction of the facility or system.
`(2) FACILITY ENERGY MANAGERS-
`(A) IN GENERAL- Each Federal agency shall designate an energy manager responsible for implementing this subsection and reducing energy use at each facility that meets criteria under subparagraph (B).
`(B) COVERED FACILITIES- The Secretary shall develop criteria, after consultation with affected agencies, energy efficiency advocates, and energy and utility service providers, that cover, at a minimum, Federal facilities, including central utility plants and distribution systems and other energy intensive operations, that constitute at least 75 percent of facility energy use at each agency.
`(3) ENERGY AND WATER EVALUATIONS-
`(A) EVALUATIONS- Effective beginning on the date that is 180 days after the date of enactment of this subsection and annually thereafter, energy managers shall complete, for each calendar year, a comprehensive energy and water evaluation for approximately 25 percent of the facilities of each agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each such facility is completed at least once every 4 years.
`(B) RECOMMISSIONING AND RETROCOMMISSIONING- As part of the evaluation under subparagraph (A), the energy manager shall identify and assess recommissioning measures (or, if the facility has never been commissioned, retrocommissioning measures) for each such facility.

`(4) IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES- Not later than 2 years after the completion of each evaluation under paragraph (3), each energy manager may--
`(A) implement any energy- or water-saving measure that the Federal agency identified in the evaluation conducted under paragraph (3) that is life cycle cost-effective; and
`(B) bundle individual measures of varying paybacks together into combined projects.
`(5) FOLLOW-UP ON IMPLEMENTED MEASURES- For each measure implemented under paragraph (4), each energy manager shall ensure that--
`(A) equipment, including building and equipment controls, is fully commissioned at acceptance to be operating at design specifications;
`(B) a plan for appropriate operations, maintenance, and repair of the equipment is in place at acceptance and is followed;
`(C) equipment and system performance is measured during its entire life to ensure proper operations, maintenance, and repair; and
`(D) energy and water savings are measured and verified.
`(6) GUIDELINES-
`(A) IN GENERAL- The Secretary shall issue guidelines and necessary criteria that each Federal agency shall follow for implementation of--
`(i) paragraphs (2) and (3) not later than 180 days after the date of enactment of this subsection; and
`(ii) paragraphs (4) and (5) not later than 1 year after the date of enactment of this subsection.
`(B) RELATIONSHIP TO FUNDING SOURCE- The guidelines issued by the Secretary under subparagraph (A) shall be appropriate and uniform for measures funded with each type of funding made available under paragraph (10), but may distinguish between different types of measures project size, and other criteria the Secretary determines are relevant.
`(7) WEB-BASED CERTIFICATION-
`(A) IN GENERAL- For each facility that meets the criteria established by the Secretary under paragraph (2)(B), the energy manager shall use the web-based tracking system under subparagraph (B) to certify compliance with the requirements for--
`(i) energy and water evaluations under paragraph (3);
`(ii) implementation of identified energy and water measures under paragraph (4); and
`(iii) follow-up on implemented measures under paragraph (5).
`(B) DEPLOYMENT-
`(i) IN GENERAL- Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop and deploy a web-based tracking system required under this paragraph in a manner that tracks, at a minimum--
`(I) the covered facilities;
`(II) the status of meeting the requirements specified in subparagraph (A);
`(III) the estimated cost and savings for measures required to be implemented in a facility;
`(IV) the measured savings and persistence of savings for implemented measures; and
`(V) the benchmarking information disclosed under paragraph (8)(C).
`(ii) EASE OF COMPLIANCE- The Secretary shall ensure that energy manager compliance with the requirements in this paragraph, to the maximum extent practicable--
`(I) can be accomplished with the use of streamlined procedures and templates that minimize the time demands on Federal employees; and

`(II) is coordinated with other applicable energy reporting requirements.
`(C) AVAILABILITY-
`(i) IN GENERAL- Subject to clause (ii), the Secretary shall make the web-based tracking system required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.
`(ii) EXEMPTIONS- At the request of a Federal agency, the Secretary may exempt specific data for specific facilities from disclosure under clause (i) for national security purposes.
`(8) BENCHMARKING OF FEDERAL FACILITIES-
`(A) IN GENERAL- The energy manager shall enter energy use data for each metered building that is (or is a part of) a facility that meets the criteria established by the Secretary under paragraph (2)(B) into a building energy use benchmarking system, such as the Energy Star Portfolio Manager.
`(B) SYSTEM AND GUIDANCE- Not later than 1 year after the date of enactment of this subsection, the Secretary shall--
`(i) select or develop the building energy use benchmarking system required under this paragraph for each type of building; and
`(ii) issue guidance for use of the system.
`(C) PUBLIC DISCLOSURE- Each energy manager shall post the information entered into, or generated by, a benchmarking system under this subsection, on the web-based tracking system under paragraph (7)(B). The energy manager shall update such information each year, and shall include in such reporting previous years' information to allow changes in building performance to be tracked over time.
`(9) FEDERAL AGENCY SCORECARDS-
`(A) IN GENERAL- The Director of the Office of Management and Budget shall issue semiannual scorecards for energy management activities carried out by each Federal agency that includes--
`(i) summaries of the status of implementing the various requirements of the agency and its energy managers under this subsection; and
`(ii) any other means of measuring performance that the Director considers appropriate.
`(B) AVAILABILITY- The Director shall make the scorecards required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.
`(10) FUNDING AND IMPLEMENTATION-
`(A) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as are necessary to carry out this subsection.
`(B) FUNDING OPTIONS-
`(i) IN GENERAL- To carry out this subsection, a Federal agency may use any combination of--
`(I) appropriated funds made available under subparagraph (A); and
`(II) private financing otherwise authorized under Federal law, including financing available through energy savings performance contracts or utility energy service contracts.
`(ii) COMBINED FUNDING FOR SAME MEASURE- A Federal agency may use any combination of appropriated funds and private financing described in clause (i) to carry out the same measure under this subsection.
`(C) IMPLEMENTATION- Each Federal agency may implement the requirements under this subsection itself or may contract out performance of some or all of the requirements.

`(11) RULE OF CONSTRUCTION- This subsection shall not be construed to require or to obviate any contractor savings guarantees.'.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 433*
*Section 433: Federal Building Energy Efficiency Performance Standards*

(a) Standards- Section 305(a)(3) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)(3)) is amended by adding at the end the following new subparagraph:
`(D) Not later than 1 year after the date of enactment of the Energy Independence and Security Act of 2007, the Secretary shall establish, by rule, revised Federal building energy efficiency performance standards that require that:
`(i) For new Federal buildings and Federal buildings undergoing major renovations, with respect to which the Administrator of General Services is required to transmit a prospectus to Congress under section 3307 of title 40, United States Code, in the case of public buildings (as defined in section 3301 of title 40, United States Code), or of at least $2,500,000 in costs adjusted annually for inflation for other buildings:
`(I) The buildings shall be designed so that the fossil fuel-generated energy consumption of the buildings is reduced, as compared with such energy consumption by a similar building in fiscal year 2003 (as measured by Commercial Buildings Energy Consumption Survey or Residential Energy Consumption Survey data from the Energy Information Agency), by the percentage specified in the following table:

| `Fiscal Year | Percentage Reduction |
|---|---|
| 2010 | 55 |
| 2015 | 65 |
| 2020 | 80 |
| 2025 | 90 |
| 2030 | 100 |

`(II) Upon petition by an agency subject to this subparagraph, the Secretary may adjust the applicable numeric requirement under subclause (I) downward with respect to a specific building, if the head of the agency designing the building certifies in writing that meeting such requirement would be technically impracticable in light of the agency's specified functional needs for that building and the Secretary concurs with the agency's conclusion. This subclause shall not apply to the General Services Administration.

`(III) Sustainable design principles shall be applied to the siting, design, and construction of such buildings. Not later than 90 days after the date of enactment of the Energy Independence and Security Act of 2007, the Secretary, after reviewing the findings of the Federal Director under section 436(h) of that Act, in consultation with the Administrator of General Services, and in consultation with the Secretary of Defense for considerations relating to those facilities under the custody and control of the Department of Defense, shall identify a certification system and level for green buildings that the Secretary determines to be the most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings. The identification of the certification system and level shall be based on a review of the Federal Director's findings under section 436(h) of the Energy Independence and Security Act of 2007 and the criteria specified in clause (iii), shall identify the highest level the Secretary determines is appropriate above the minimum level required for certification under the system selected, and shall achieve results at least comparable to the system used by and highest level referenced by the General Services Administration as of the date of enactment of the Energy Independence and Security Act of 2007. Within 90 days of the completion of each study required by clause (iv), the Secretary, in consultation with the Administrator of General Services, and in consultation with the Secretary of Defense for considerations relating to those facilities under the custody and control of the Department of Defense, shall review and update the certification system and level, taking into account the conclusions of such study.
`(ii) In establishing criteria for identifying major renovations that are subject to the requirements of this subparagraph, the Secretary shall take into account the scope, degree, and types of renovations that are likely to provide significant opportunities for substantial improvements in energy efficiency.
`(iii) In identifying the green building certification system and level, the Secretary shall take into consideration--
`(I) the ability and availability of assessors and auditors to independently verify the criteria and measurement of metrics at the scale necessary to implement this subparagraph;
`(II) the ability of the applicable certification organization to collect and reflect public comment;
`(III) the ability of the standard to be developed and revised through a consensus-based process;
`(IV) an evaluation of the robustness of the criteria for a high-performance green building, which shall give credit for promoting--
`(aa) efficient and sustainable use of water, energy, and other natural resources;
`(bb) use of renewable energy sources;
`(cc) improved indoor environmental quality through enhanced indoor air quality, thermal comfort, acoustics, day lighting, pollutant source control, and use of low-emission materials and building system controls; and
`(dd) such other criteria as the Secretary determines to be appropriate; and
`(V) national recognition within the building industry.
`(iv) At least once every 5 years, and in accordance with section 436 of the Energy Independence and Security Act of 2007, the Administrator of General Services shall conduct a study to evaluate and compare available third-party green building certification systems and levels, taking into account the criteria listed in clause (iii).

`(v) The Secretary may by rule allow Federal agencies to develop internal certification processes, using certified professionals, in lieu of certification by the certification entity identified under clause (i)(III). The Secretary shall include in any such rule guidelines to ensure that the certification process results in buildings meeting the applicable certification system and level identified under clause (i)(III). An agency employing an internal certification process must continue to obtain external certification by the certification entity identified under clause (i)(III) for at least 5 percent of the total number of buildings certified annually by the agency.
`(vi) With respect to privatized military housing, the Secretary of Defense, after consultation with the Secretary may, through rulemaking, develop alternative criteria to those established by subclauses (I) and (III) of clause (i) that achieve an equivalent result in terms of energy savings, sustainable design, and green building performance.
`(vii) In addition to any use of water conservation technologies otherwise required by this section, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost-effective.'.
(b) Definitions- Section 303(6) of the Energy Conservation and Production Act (42 U.S.C. 6832(6)) is amended by striking `which is not legally subject to State or local building codes or similar requirements.' and inserting `. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.'.
(c) Revision of Federal Acquisition Regulation- Not later than 2 years after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require Federal officers and employees to comply with this section and the amendments made by this section in the acquisition, construction, or major renovation of any facility. The members of the Federal Acquisition Regulatory Council (established under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421)) shall consult with the Federal Director and the Commercial Director before promulgating regulations to carry out this subsection.
(d) Guidance- Not later than 90 days after the date of promulgation of the revised regulations under subsection (c), the Administrator for Federal Procurement Policy shall issue guidance to all Federal procurement executives providing direction and instructions to renegotiate the design of proposed facilities and major renovations for existing facilities to incorporate improvements that are consistent with this section.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 434*
*Management of Federal Building Efficiency*

(a) Large Capital Energy Investments- Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:
`(f) Large Capital Energy Investments-
`(1) IN GENERAL- Each Federal agency shall ensure that any large capital energy investment in an existing building that is not a major renovation but involves replacement of installed equipment (such as heating and cooling systems), or involves renovation, rehabilitation, expansion, or remodeling of existing space, employs the most energy efficient designs, systems, equipment, and controls that are life cycle cost effective.
`(2) PROCESS FOR REVIEW OF INVESTMENT DECISIONS- Not later than 180 days after the date of enactment of this subsection, each Federal agency shall--
`(A) develop a process for reviewing each decision made on a large capital energy investment described in paragraph (1) to ensure that the requirements of this subsection are met; and
`(B) report to the Director of the Office of Management and Budget on the process established.
`(3) COMPLIANCE REPORT- Not later than 1 year after the date of enactment of this subsection, the Director of the Office of Management and Budget shall evaluate and report to Congress on the compliance of each agency with this subsection.'.
(b) Metering- Section 543(e)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(e)(1)) is amended by inserting after the second sentence the following: `Not later than October 1, 2016, each agency shall provide for equivalent metering of natural gas and steam, in accordance with guidelines established by the Secretary under paragraph (2).'.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 441*
*Public Building Life-Cycle Cost*

(For the purpose of conducting life-cycle cost calculations, Section 441 increases the time period from 25 years, in prior law, to 40 years.)

Section 544(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)(1)) is amended by striking `25' and inserting `40'.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 512*
*Financing Flexibility*

Section 801(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)) is amended by adding at the end the following:
`(E) FUNDING OPTIONS- In carrying out a contract under this title, a Federal agency may use any combination of--
`(i) appropriated funds; and
`(ii) private financing under an energy savings performance contract.'. [applicable to UESC as well]

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 513*
*Promoting Long-Term Energy Savings Performance contracts and Verifying Savings*

Section 801(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)) (as amended by section 512) is amended--
(1) in subparagraph (D), by inserting `beginning on the date of the delivery order' after `25 years'; and
(2) by adding at the end the following:
`(F) PROMOTION OF CONTRACTS- In carrying out this section, a Federal agency shall not--
`(i) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years; [applicable to UESC]or
`(ii) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures.
`(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING-
`(i) IN GENERAL- In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 543(f) shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy savings, and any other evaluation of costs and savings needed to implement the guarantee of savings under this section.
`(ii) MODIFICATION OF EXISTING CONTRACTS- Not later than 18 months after the date of enactment of this subparagraph, each Federal agency shall, to the maximum extent practicable, modify any indefinite delivery and indefinite quantity energy savings performance contracts, and other indefinite delivery and indefinite quantity contracts using private financing, to conform to the amendments made by subtitle B of title V of the Energy Independence and Security Act of 2007.'.

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 515*
*Definition of Energy Savings*

Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended--
(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and indenting appropriately;
(2) by striking `means a reduction' and inserting `means--
`(A) a reduction';
(3) by striking the period at the end and inserting a semicolon; and
(4) by adding at the end the following:
`(B) the increased efficient use of an existing energy source by cogeneration or heat recovery;
`(C) if otherwise authorized by Federal or State law (including regulations), the sale or transfer of electrical or thermal energy generated on-site from renewable energy sources or cogeneration, but in excess of Federal needs, to utilities or non-Federal energy users; and
`(D) the increased efficient use of existing water sources in interior or exterior applications.'.

[Section 515 extends the definition of energy savings reduction to include increased use of an existing energy source by cogeneration or heat recovery, use of excess electrical or thermal energy generated from onsite renewable sources or cogeneration, and increased energy-efficient use of water resources]

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

*EISA Section 516*
*Retention of Savings*

Section 546(c) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)) is amended by striking paragraph (5).

[Section 516 permits agencies to retain the full amount of energy and water cost savings obtained from utility incentive programs.]

## Energy Independence and Security Act (EISA) of 2007 (P.L. 110-140)

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*EISA Section 523*
*Standard Relating to Solar Hot Water Heaters*

Section 305(a)(3)(A) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)(3)(A)) is amended--
(1) in clause (i)(II), by striking `and' at the end;
(2) in clause (ii), by striking the period at the end and inserting `; and'; and
(3) by adding at the end the following:
`(iii) if lifecycle cost-effective, as compared to other reasonably available technologies, not less than 30 percent of the hot water demand for each new Federal building or Federal building undergoing a major renovation be met through the installation and use of solar hot water heaters.'.

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2866*
*Water Conservation at Military Installations*

(a) Water conservation activities.
(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.
(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that--
(A) relate to the management of water demand or to water conservation; and
(B) as determined by the Secretary, are cost effective for the Federal Government.
(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.
(4) (A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.
(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.
(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.
(b) Use of financial incentives and water cost savings.

(1) Financial incentives received from utilities for management of water demand or water conservation under subsection (a)(2) shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(2) Water cost savings realized under subsection (a)(3) shall be used as follows:

(A) One-half of the amount shall be used for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the water cost savings.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for--

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(3) The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 [*31 USCS § 1105*] a separate statement of the amounts available for obligation under this subsection in that fiscal year.

(c) Water conservation construction projects.

(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this *title [10 USCS § 480*].

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2911*
*Energy Performance Goals and Plan for Department of Defense*

(a) Energy performance goals.
(1) The Secretary of Defense shall submit to the congressional defense committees the energy performance goals for the Department of Defense regarding transportation systems, support systems, utilities, and infrastructure and facilities.
(2) The energy performance goals shall be submitted annually not later than the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31 [*31 USCS § 1105*] and cover that fiscal year as well as the next five, 10, and 20 years. The Secretary shall identify changes to the energy performance goals since the previous submission.

(b) Energy performance plan. The Secretary of Defense shall develop, and update as necessary, a comprehensive plan to help achieve the energy performance goals for the Department of Defense.

(c) Special considerations. For the purpose of developing and implementing the energy performance goals and energy performance plan, the Secretary of Defense shall consider at a minimum the following:
(1) Opportunities to reduce the current rate of consumption of energy.
(2) Opportunities to reduce the future demand and the requirements for the use of energy.
(3) Opportunities to implement conservation measures to improve the efficient use of energy.
(4) Opportunities to pursue alternative energy initiatives, including the use of alternative fuels in military vehicles and equipment.
(5) Cost effectiveness, cost savings, and net present value of alternatives.
(6) The value of diversification of types and sources of energy used.
(7) The value of economies-of-scale associated with fewer energy types used.
(8) The value of the use of renewable energy sources.

(9) The potential for an action to serve as an incentive for members of the armed forces and civilian personnel to reduce energy consumption or adopt an improved energy performance measure.

(d) Selection of energy conservation measures.
(1) For the purpose of implementing the energy performance plan, the Secretary of Defense shall provide that the selection of energy conservation measures, including energy efficient maintenance, shall be limited to those measures that--
(A) are readily available;
(B) demonstrate an economic return on the investment;
(C) are consistent with the energy performance goals and energy performance plan for the Department; and
(D) are supported by the special considerations specified in subsection (c).
(2) In this subsection, the term "energy efficient maintenance" includes--
(A) the repair of military vehicles, equipment, or facility and infrastructure systems, such as lighting, heating, or cooling equipment or systems, or industrial processes, by replacement with technology that--
(i) will achieve energy savings over the life cycle of the equipment or system being repaired; and
(ii) will meet the same end needs as the equipment or system being repaired; and
(B) improvements in an operation or maintenance process, such as improved training or improved controls that result in energy savings.

(e) Goal regarding use of renewable energy to meet electricity needs. It shall be the goal of the Department of Defense--
(1) to produce or procure not less than 25 percent of the total quantity of electric energy it consumes within its facilities and in its activities during fiscal year 2025 and each fiscal year thereafter from renewable energy sources (as defined in section 203(b) of the Energy Policy Act of 2005 (*42 U.S.C. 15852(b)*)); and
(2) to produce or procure electric energy from renewable energy sources whenever the use of such renewable energy sources is consistent with the energy performance goals and energy performance plan for the Department and supported by the special considerations specified in subsection (c).

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2912*
*Availability and Use of Energy Cost Savings*

(a) Availability. An amount of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts entered into under section 2913 of this title *[10 USCS § 2913],* shall remain available for obligation under subsection (b) until expended, without additional authorization or appropriation.

(b) Use. The Secretary of Defense shall provide that the amount that remains available for obligation under subsection (a) and the funds made available under section 2916(b)(2) of this title *[10 USCS § 2916*(b)(2)] shall be used as follows:
(1) One-half of the amount shall be used for the implementation of additional energy conservation measures at buildings, facilities, or installations of the Department of Defense or related to vehicles and equipment of the Department, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings referred to in subsection (a).
(2) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for--
(A) improvements to existing military family housing units;
(B) any unspecified minor construction project that will enhance the quality of life of personnel; or
(C) any morale, welfare, or recreation facility or service.

(c) Treatment of certain financial incentives. Financial incentives received from gas or electric utilities under section 2913 of this title *[10 USCS § 2913]* shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(d) Congressional notification. The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 [*31 USCS § 1105*] a separate statement of the amounts available for obligation under this section in that fiscal year.

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2913*
*Energy Savings Contracts and Activities*

(a) Shared energy savings contracts.
(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department of Defense as well as the private sector.
(2) In carrying out paragraph (1), the Secretary of Defense may--
(A) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;
(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;
(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and
(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.
(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) Participation in gas or electric utility programs. The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) Acceptance of financial incentive, goods, or services. The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) Agreements with gas or electric utilities.
(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.
(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.
(3) Subject to the availability of appropriations, repayment of costs advanced under paragraph (2) shall be made from funds available to a military department for the purchase of utility services.
(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(e) Congressional notification of cancellation ceiling for energy savings performance contracts. When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of $ 7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this *title [10 USCS § 480*].

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2914*
*Energy Conservation Construction Projects*

(a) Projects authorized. The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(b) Congressional notification. When a decision is made to carry out a project under this section, the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this *title [10 USCS § 480*].

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2915*
*New Construction: Use of Renewable Forms of Energy and Energy Efficient Products*

(a) Use of renewable forms of energy encouraged. The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects (including military family housing projects) where use of such form of energy is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title *[10 USCS § 2911]* and supported by the special considerations specified in subsection (c) of such section.

(b) Consideration during design phase of projects.
(1) The Secretary concerned shall require that the design of all new facilities (including family housing) shall include consideration of such form of energy systems using solar energy or other renewable forms of energy.
(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c) Determination of cost effectiveness.
(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such an energy system can be recovered over the expected life of the facility.
(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (*42 U.S.C. 8254(a)*).

(d) Exception to square feet and cost per square foot limitations. In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(e) Use of energy efficiency products in new construction.
(1) The Secretary of Defense shall ensure, to the maximum extent practicable, that energy efficient products meeting the requirements of the Department of Defense are used in new facility construction by or for the Department carried out under chapter 169 of this *title [10 USCS §§ 2801* et seq.] if such products are readily available and their use is consistent with the energy performance goals and energy performance plan for the Department developed under section 2911 of this title *[10 USCS § 2911]* and supported by the special considerations specified in subsection (c) of such section.
(2) In determining the energy efficiency of products, the Secretary shall consider products that--
(A) meet or exceed Energy Star specifications; or
(B) are listed on the Federal Energy Management Program Product Energy Efficiency Recommendations product list of the Department of Energy.

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2916*
*Sale of Electricity from Alternate Energy and Cogeneration Production Facilities*

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (*16 U.S.C. 2601* et seq.).

(b) (1) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.
(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2911(a) of this title *[10 USCS § 2911*(a)], including minor military construction projects authorized under section 2805 of this *title [10 USCS § 2805*] that are designed to increase energy conservation.

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this *title [10 USCS § 480*].

**History:**

(Added Aug. 28, 1984, P.L. 98-407, Title VIII, Part A, § 810(a), 98 Stat. 1523; Nov. 30, 1993, P.L. 103-160, Div A, Title XXVIII, Subtitle A, § 2802, 107 Stat. 1884; Nov. 18, 1997, P.L. 105-85, Div A, Title III, Subtitle E, § 371(b)(2), 111 Stat. 1705; Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1031(a)(49), 117 Stat. 1602; Oct. 17, 2006, P.L. 109-364, Div B, Title XXVIII, Subtitle E, § 2851(b)(1), (3)(B), 120 Stat. 2494.)

**History; Ancillary Laws and Directives:**

References in text:

The "Public Utility Regulatory Policies Act of 1978", referred to in this section, is Act Nov. 9, 1978, P.L. 95-617, 92 Stat. 3117, which appears generally as *16 USCS §§ 2601* et seq. For full classification of such Act, consult USCS Tables volumes.

**Amendments:**

1993. Act Nov. 30, 1993, in subsec. (b), designated the existing provision as para. (1), and added para. (2); and added subsec. (c).

1997. Act Nov. 18, 1997, transferred this section, formerly *10 USCS § 2483*, to Chapter 169 and redesignated it as *10 USCS § 2867*.

2003. Act Nov. 24, 2003, in subsec. (c), inserted "or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title".

2006. Act Oct. 17, 2006, transferred this section, enacted as *10 USCS § 2867*, to Chapter 173, and redesignated it as *10 USCS § 2916;* and, in subsec. (b)(2), substituted "2911(b)" for "2865(a)".

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2922a*
*Contracts for Energy or Fuel for Military Installations*

(a) Subject to subsection (b), the Secretary of a military department may enter into contracts for periods of up to 30 years--
(1) under section 2917 of this *title [10 USCS § 2917*]; and
(2) for the provision and operation of energy production facilities on real property under the Secretary's jurisdiction or on private property and the purchase of energy produced from such facilities.

(b) A contract may be made under subsection (a) only after the approval of the proposed contract by the Secretary of Defense.

(c) The costs of contracts under this section for any year may be paid from annual appropriations for that year.

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2922b*
*Procurement of Energy Systems using Renewable Forms of Energy*

(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible, suited to supplying the energy needs of the military department under the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this *title [10 USCS § 2911*], and supported by the special considerations specified in subsection (c) of such section.

(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2915 of this *title [10 USCS § 2915*].

## National Defense Authorization Act of 2007 (P.L. 110-3)

*10 USC Section 2922f*
*Preference for Energy Efficient Electric Equipment*

(a) In establishing a new requirement for electric equipment referred to in subsection (b) and in procuring electric equipment referred to in that subsection, the Secretary of a military department or the head of a Defense Agency, as the case may be, shall provide a preference for the procurement of the most energy efficient electric equipment available that meets the requirement or the need for the procurement, if providing such a preference is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this *title [10 USCS § 2911*] and supported by the special considerations specified in subsection (c) of such section.

(b) Subsection (a) applies to the following electric equipment:
(1) Electric lamps.
(2) Electric ballasts.
(3) Electric motors.
(4) Electric refrigeration equipment.

# Federal Acquisition Regulations, Part 41

## Acquisition of Utility Services

### Subpart 41.1—General

**41.100 Scope of part.**

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(b) for services that are excluded from this part.)

**41.101 Definitions.**

As used in this part,

"Areawide contract" means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an "Authorization" form for requesting service, connection, disconnection, or change in service.

"Authorization" means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

"Connection charge" means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

"Delegated agency" means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.103(b)).

"Federal Power and Water Marketing Agency" means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

"Franchise territory" means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

"Intervention" means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

"Multiple service locations" means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

"Rates" may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, *e.g.,* facilities use charges.

"Separate contract" means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

"Termination liability" means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see "Connection charge").

"Utility service" means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of Part 41 to other services (*e.g.,* rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

**41.102 Applicability.**

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.206);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned equipment and real property; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize Part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

**41.103 Statutory and delegated authority.**

(a) Statutory authority.

(1) The General Services Administration (GSA) is authorized by 40 U.S.C. 501 to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by 40 U.S.C. 501 to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DoD) is authorized by 10 U.S.C. 2304 and 40 U.S.C. 113(e)(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 7251, *et seq*.) to acquire utility services. DOE is authorized

by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority*. GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DoD and DOE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in 41.301(a). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

## Subpart 41.2 — Acquiring Utility Services

### 41.201 Policy.

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, *e.g.,* consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

**41.202 Procedures.**

(a) Prior to executing a utility service contract, the contracting officer shall comply with Parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with Parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

(1) GSA areawide contracts (see 41.204).

(2) Separate contracts (see 41.205).

(3) Interagency agreements (see 41.206).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—

(1) By issuing a purchase order in accordance with 13.302; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule.

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract.

**41.203 GSA assistance.**

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.

(b) Agencies seeking assistance shall provide upon request by GSA the information listed in 41.301.

**41.204 GSA areawide contracts.**

(a) *Purpose*. GSA enters into areawide contracts (see 41.101) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) Features.

(1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and

conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41.201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of paragraph (c)(1) of this section apply.

(c) Procedures for obtaining service.

(1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—

(i) Service is available from more than one supplier, or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government. If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41.202(a)). The determination required by paragraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41.301(a).

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.

(3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts*. A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification*. Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

**41.205 Separate contracts.**

(a) In the absence of an areawide contract or interagency agreement (see 41.206), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

(1) The number of available suppliers.

(2) Any special equipment, service reliability, or facility requirements and related costs.

(3) The utility supplier's rates, connection charges, and termination liability.

(4) Total estimated contract value (including costs in paragraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required.

(6) Any unusual characteristics of services required.

(7) The utility's wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41.205(b), 41.301, and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41.103), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

**41.206 Interagency agreements.**

Agencies shall use interagency agreements (*e.g.,* consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at Subpart 17.5, Interagency Acquisitions under the Economy Act.

## Subpart 41.3—Requests for Assistance

**41.301 Requirements.**

(a) Requests for delegations of GSA contracting authority assistance with a proposed contract as provided in 41.203, and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the:

General Services Administration
Center for Energy Management
301 7th Street, SW., Room 4004
Washington, DC 20407.

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance shall contain the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.

(2) A copy of any service proposal or proposed contract.

(3) Copies of all current published or unpublished rates of the utility supplier.

(4) Identification of any unusual factors affecting the acquisition.

(5) Identification of all available sources or methods of supply, an analysis of the cost-effectiveness of each, and a statement of the ability of each source to provide the required service, including the location and a description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

(1) The date initial service is required.

(2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (*e.g.,* demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(3) Known or estimated time schedule for growth to ultimate requirements.

(4) Estimated ultimate maximum demand and ultimate monthly consumption.

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge, *e.g.,* tariff provisions or policies.

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable:

(1) A copy of the most recent 12-months' service invoices.

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (*e.g.,* demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

## Subpart 41.4—Administration

### 41.401 Monthly and annual review.

Agencies shall review utility service invoices on a monthly basis and all utility accounts with annual values exceeding the simplified acquisition threshold on an annual basis. Annual reviews of accounts with annual values at or below the simplified acquisition threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

### 41.402 Rate changes and regulatory intervention.

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see 41.301).

(c) Pursuant to 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see 41.401).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

## Subpart 41.5—Solicitation Provision and Contract Clauses

**41.501 Solicitation provision and contract clauses.**

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at 52.241-1, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

(1) 52.241-2, Order of Precedence—Utilities;
(2) 52.241-3, Scope and Duration of Contract;
(3) 52.241-4, Change in Class of Service;
(4) 52.241-5, Contractor's Facilities; and
(5) 52.241-6, Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions—

(1) 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed $250,000").

(2) 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241-9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (d)(6) and (d)(4) of this section).

(4) 52.241-10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

(5) 52.241-11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241-13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

(e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR.

## Subpart 41.6—Forms

### 41.601 Utility services forms.

(a) If acquiring utility services under other than an areawide contract, a purchase order or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(b) The contracting officer shall incorporate the applicable rate schedule in each contract, purchase order or modification.

## Subpart 41.7—Formats

### 41.701 Formats for utility service specifications:

(a) The following specification formats for use in acquiring utility services are available from the address specified at 41.301(a) and may be used and modified at the agency's discretion:

(1) Electric service.
(2) Water service.
(3) Steam service.
(4) Sewage service.
(5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of equipment and real property and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

### 41.702 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.301(a) and may be used at the agency's discretion:

(1) Electric service.
(2) Gas service.
(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

## Emergency Economic Stabilization Act of 2008 (P.L. 110-343)

*Title I, Energy Production Incentives*
*Allows public utilities to use investment tax credits (ITCs) extended through December 31, 2016.*

TITLE I: ENERGY PRODUCTION INCENTIVES
Subtitle A: Renewable Energy Incentives

Sections 103(e)and 103(f)(1)&(2)

(e) PUBLIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—
(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—
(A) Paragraph (1) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).
(B) Paragraph (2) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(f) EFFECTIVE DATE.—
(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

## Executive Order 13693: Planning for Federal Sustainability in the Next Decade

Signed March 19, 2015

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to maintain Federal leadership in sustainability and greenhouse gas emission reductions, it is hereby ordered as follows:

Section 1. Policy. Executive departments and agencies (agencies) have been among our Nation's leaders as the United States works to build a clean energy economy that will sustain our prosperity and the health of our people and our environment for generations to come. Federal leadership in energy, environmental water, fleet, buildings, and acquisition management will continue to drive national greenhouse gas reductions and support preparations for the impacts of climate change. Through a combination of more efficient Federal operations such as those outlined in this Executive Order (order), we have the opportunity to reduce agency direct greenhouse gas emissions by at least 40 percent over the next decade while at the same time fostering innovation, reducing spending, and strengthening the communities in which our Federal facilities operate.

It therefore continues to be the policy of the United States that agencies shall increase efficiency and improve their environmental performance. Improved environmental performance will help us protect our planet for future generations and save taxpayer dollars through avoided energy costs and increased efficiency, while also making Federal facilities more resilient. To improve environmental performance and Federal sustainability, priority should first be placed on reducing energy use and cost, then on finding renewable or alternative energy solutions. Pursuing clean sources of energy will improve energy and water security, while ensuring that Federal facilities will continue to meet mission requirements and lead by example. Employing this strategy for the next decade calls for expanded and updated Federal environmental performance goals with a clear overarching objective of reducing greenhouse gas emissions across Federal operations and the Federal supply chain.

Sec. 2. Agency Greenhouse Gas Emission Reductions. In implementing the policy set forth in section 1 of this order, the head of each agency shall, within 90 days of the date of this order, propose to the Chair of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) percentage reduction targets for agency-wide reductions of scope 1 and 2 and scope 3 greenhouse gas emissions in absolute terms by the end of fiscal year 2025 relative to a fiscal year 2008 baseline. Where appropriate, the target shall exclude direct emissions from excluded vehicles and equipment and from electric power produced and sold commercially to other parties as the primary business of the agency. The proposed targets shall be subject to the review and approval of the Chair of CEQ in coordination with the Director of OMB under section 4(b) of this order.

(d) include in the renewable electric energy portion of the clean energy target established in subsection (b) of this section renewable electric energy as defined in section 19(v) of this order and associated with the following actions, which are listed in order of priority:

(i) installing agency-funded renewable energy on site at Federal facilities and retaining corresponding renewable energy certificates (RECs) or obtaining equal value replacement RECs;

(ii) contracting for the purchase of energy that includes the installation of renewable energy on site at a Federal facility or off site from a Federal facility and the retention of corresponding RECs or obtaining equal value replacement RECs for the term of the contract;

(iii) purchasing electricity and corresponding RECs or obtaining equal value replacement RECs; and

(iv) purchasing RECs;

(e) include in the alternative energy portion of the clean energy target established in subsection (b) of this section alternative energy as defined in section 19(c) of this order and associated with the following actions, where feasible:

(i) installing thermal renewable energy on site at Federal facilities and retaining corresponding renewable attributes or obtaining equal value replacement RECs where applicable;

(ii) installing combined heat and power processes on site at Federal facilities;

(iii) installing fuel cell energy systems on site at Federal facilities;

(iv) utilizing energy from new small modular nuclear reactor technologies;

(v) utilizing energy from a new project that includes the active capture and storage of carbon dioxide emissions associated with energy generation;

(vi) implementing other alternative energy approaches that advance the policy set forth in section 1 and achieve the goals of section 2 of this order and are in accord with any sustainability, environmental performance, and other instructions or guidance established pursuant to sections 4(e) and 5(a) of this order; and

(vii) including in the Department of Defense (DOD) accounting for alternative energy for this subsection, fulfillment of the requirements for DOD goals established under section 2852 of the National Defense Authorization Act for Fiscal Year 2007 as amended by section 2842 of the National Defense Authorization Act for Fiscal Year 2010;

(k) implement performance contracts for Federal buildings by:

(i) utilizing performance contracting as an important tool to help meet identified energy efficiency and management goals while deploying life-cycle cost-effective energy efficiency and clean energy technology and water conservation measures;

(ii) fulfilling existing agency performance contracting commitments towards the goal of $4 billion in Federal performance-based contracts by the end of calendar year 2016; and
(iii) providing annual agency targets for performance contracting for energy savings to be implemented in fiscal year 2017 and annually thereafter as part of the planning requirements of section 14 of this order;

Barack Obama
The White House
March 19, 2015.

# Legal Opinions

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## Authority for Extended Utility Agreements

*May 9, 2000, Memorandum from Richard Butterworth, General Services Administration*

**U.S. General Services Administration**
**Office of General Counsel**

*May 9, 2000*

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| MEMORANDUM FOR: | Mark V. Ewing<br>Director<br>Center for Energy Management<br><br>Virgil W. Ostrander<br>*Director*<br>Public Utilities |
| FROM: | Richard R. Butterworth, Jr.<br>Senior Assistant General Counsel<br>Real Property Division (Lr) |
| SUBJECT: | Authority for Extended Utility Agreements |

The General Services Administration (GSA) is making a concerted effort to reduce its energy consumption. In order to reach its energy conservation goals, GSA has been evaluating a number of contracting options for energy management and demand-side management. Some of the measures being contemplated have payback periods over ten (10) years. It is clear that GSA has ten-year contracting authority for utility services under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. Sec. 481(a)(3). You have asked, however, if GSA has the authority to enter into energy management contracts that extend beyond ten years. I believe GSA does have this authority.

The Office of General Counsel has issued a number of opinions that deal with this matter. Most recently, I issued an opinion to Ed Loeb, Director, Federal Acquisition Policy Division. In that memorandum, I stated that FAR Part 41 was not limited to regulated monopolistic utility services and could be applied to any company that provided services within the broad definition of "utility services." Further, I concluded that demand-side management or energy management services could be acquired as utility services under FAR Part 41. See Attachment A, Memorandum of Richard Butterworth, April 21, 1999.

As part of that opinion, I reference an earlier opinion issued by this office on the application of the Anti-Deficiency Act. Obviously, contracts entered into under the authority of 40 U.S.C. Sec. 481 (i.e., ten-year contracts) do not need to be funded up front, and contracts under 42 U.S.C. Sec. 8287 are specifically exempted from the requirement to fund cancellation charges. Therefore, contracts under these two authorities do not violate the Anti-Deficiency Act where there is only year-to-year funding.

The final area of concern is contracts that are entered under the authority of 42 U.S.C. Sec. 8256. This provision authorizes Federal agencies to enter contracts with utilities for energy conservation, accepting "financial incentives, goods, or services," 41 U.S.C. Sec. 8256(c)(2). According to the legislative history of this provision, Congress contemplated that agencies would be permitted to participate in utility incentive programs "to the same extent permitted other customers of the utility," H.R. Rep. No. 474(V), 102d Cong., 2d Sess. 42 (1992), reprinted in 1992 U.S.C.C.A.N. 2224. Therefore, to the extent a utility offers financing and multi-year contracting to its other customers, GSA may avail itself of these programs. Such agreements must be pursuant to a utility incentive program, must increase energy efficiency, and must be generally available to other customers of the utility. However, this provision does not indicate any limitation on the term of such agreements or contracts.

In a memorandum dated July 24, 1994, Harmon Eggers of this office reviewed the authority granted in 42 U.S.C. Sec. 8256. In reviewing this authority, he determined that the broad authority contained therein constitutes "contract authority," which is "a form of budget authority that permits contracts and other obligations to be entered into in advance of an appropriate or in excess of amounts otherwise available in a revolving fund." U.S. General Accounting Office, Principles of Federal Appropriations Law 2-4 to 2-6 (2d Ed. 1991). Therefore, 42 U.S.C. Sec. 8256 operates much the same as 40 U.S.C. Sec. 481 by granting multi-year authority; however, unlike 40 U.S.C. Sec. 481, 42 U.S.C. Sec. 8256 contracts are not limited to a certain number of years. In fact, the contract under review in the 1994 memorandum had a 14-year term. See Attachment B.

In conclusion, I believe 42 U.S.C. Sec. 8256 grants GSA multi-year contracting authority separate and apart from the ten-year authority in the Property Act. Therefore, I believe GSA is authorized to enter contracts as part of utility incentive programs for terms greater than ten years. For the same reasons that contracts entered under 40 U.S.C. Sec. 481 are not subject to the Anti-Deficiency Act, agreements reach under 42 U.S.C. Sec. 8256 are also not subject to the Act.

## Acquisition of Demand-Side Management (DSM) Services

*April 21, 1999, Memorandum from Richard Butterworth, General Services Administration*

This memorandum serves as an attachment for the Authority for Extended Utility Agreements memorandum from Richard Butterworth dated May 9, 2000.

**U.S. General Services Administration**
**Office of General Counsel**

*April 21, 1999*

MEMORANDUM FOR: Edward C. Loeb
Director
Federal Acquisition Policy Division (MVR)

FROM: Richard R. Butterworth, Jr.
Senior Assistant General Counsel
Real Property Division (LR)

SUBJECT: Acquisition of DSM Services

After having reviewed the comments from other agencies, and reviewing your request, I will respond to the two presented questions: (1) whether demand-side management services (DSM) or energy management services (EMS) can be acquired as utility services under Part 41 of the FAR; and (2) whether Part 41 only applies to regulated monopolistic utility services. I will take the second question first.

I believe it is fairly clear that Part 41 applies to more than regulated monopolistic utility services. The FAR does not define "utility services" this narrowly. Instead the definition focuses on the service provided ("furnishing electricity, natural or manufactured gas, water, steam, hot water, or high temperature hot water…" 41.101. This definition is consistent with the determination of GAO, which held that "it is the nature of the product or service provided and not the nature of the provider of the product or services that governs the application of 10 U.S.C. § 481(a)(3)." 62 Comp. Gen. 569 at 575. Therefore, it does not matter whether the company providing the service is regulated or monopolistic, as long as the service falls within the broad definition of utility services. GSA has, in fact, procured both telephone and gas services from non-monopolistic sources under this authority.

The more complicated question is whether DSM or EMS services can be considered utility services for the purposes of Part 41. In the same decision referenced above, GAO held that "the concept of what product or service constitutes a utility service is not static for the purpose of statutory construction, but instead is flexible and adaptive, permitting statutes to be construed in light of the changes in technologies and methodologies for providing the product or service." Id. Therefore, as service practices and products change in the industry, the authority should be interpreted so that these innovations would be included.

Traditionally, electrical services meant simply the provision of power. However, even in the most fundamental sense, other services or products have been included in the definition. Utilities have often provided construction services in order for a new or renovated facility to receive the generated power. Utilities have often agreed to maintain or upgrade equipment utilized in the transmission and distribution of power. These services are ancillary to the provision of power and have therefore been readily included in the definition of utility services.

In the last ten years, utilities have sought alternatives to building new generation facilities in order to meet power demands. One of those methods has been through programs of demand-side management, where instead of focusing on the generation of power to meet the demands of customers, the company focuses on adjusting the demands of its customers. These programs have included energy surveys of facilities, interruptible rates, and incentives to encourage customers to use more energy efficient products. Public Utility commissions embraced these measures and agreed to include tariffs for these services and allowed companies to recover their costs for the programs. These programs have been important to companies because the energy savings resulting from these programs allow them to forego costly power plant construction costs. In that sense, energy savings are almost the same as power generation. Therefore, DSM services which are provided by utility companies as a method of meeting their demand load are part of the overall provision of utility services.

Although we have previously responded to your questions on the Anti-Deficiency Act, I will reiterate that acquisitions for utility services under 40 U.S.C. § 481 do not need to be funded up front. Contracts under 42 USC § 8287 are specifically exempted from the requirement to fund cancellation charges. Agencies are authorized under 42 USC § 8256(c)(2) to enter into contracts with utilities for energy efficiency purposes, accepting “financial incentives, goods, or services.” To the extent a utility offers financing and multi-year contracting to its other customers, GSA may avail itself of these programs. 42 U.S.C. § 8256(c)(1). We do not believe acquisitions under authorities for commodities can be afforded this opportunity.

In conclusion, to the extent that DSM or EMS programs are closely linked to energy savings, they can be included in the broad definition of utility services. Normally, decisions to incur these costs are based on payback periods, whereby the costs for the products are compared with the projected energy savings over time. As long as the product has an acceptable payback period, the measure can be procured. I believe the ability to carry out this analysis is essential to concluding that the measure is linked to power generation and therefore is a utility service, as opposed to a capital improvement project. Furthermore, if the service were being provided pursuant to a tariff by a regulated utility, I would certainly include those services under the definition of utility services.

## Legal Authority for Region 9 Utility Incentive Program Agreement with Southern Edison Company

*July 29, 1991, Memorandum from Harmon R. Eggers, General Services Administration*

This memorandum serves as an attachment for the Authority for Extended Utility Agreements memorandum from Richard Butterworth dated May 9, 2000.

**General Services Administration**
**Office of General Counsel**
**Washington, DC 20405**

*July 29, 1994*

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| MEMORANDUM FOR: | Sharon A. Roach<br>Associate General Counsel<br>Real Property Division (LR) |
| FROM: | Harmon R. Eggers<br>Deputy Associate General Counsel<br>Real Property Division (LRA) |
| SUBJECT: | Legal authority for Region 9 utility incentive program agreement with Southern California Edison Company |

Issue

The issue has been raised regarding the authority of the General Services Administration (GSA) to enter into agreements related to programs designed to increase the energy efficiency of Federal buildings. Region 9 is currently negotiating with Southern California Edison Company (SCEC) for the provision of energy conservation measures (ECMs) in the Chet Holifield Federal Building in Laguna Niguel, California. In addition, a question has been raised as to whether such ECMs are subject to the prospectus approval requirements of the public Buildings Act.

Background

It is the understanding of this office that SCEC is currently the provider of utility services to this facility under an areawide utility contract. We further understand that the provision of the ECMs being proposed by SCEC is a tariffed service offered under a program authorized by the California Public Utilities Commission and that participation in this program is not restricted to the Federal Government and is generally available to customers of SCEC.

The agreement being negotiated sets forth the parameters for the provision of this service to GSA and provides for a subsidy from SCEC to GSA offsetting the total cost of the ECMs. The proposed agreement contemplates that SCEC shall perform feasibility studies, engineering services and other ancillary services associated with the implementation of the proposed ECMs, including provision and installation of energy saving equipment and the training of Government personnel. The proposed agreement also contemplates that the proposed ECMs will be paid for through a monthly service charge on the agency's bill. Payment for the services rendered by SCEC will be determined in accordance with the ENVEST equipment services tariff approved by the California Public Utilities Commission. It is anticipated that Real Property Operations (BA-61) funds will be used for these payments. The term of the proposed agreement is 14 years. See ENVEST Pilot Agreement dated March 8, 1994; Draft ENVEST Integrated Solutions Proposal dated June 1994; and Draft ENVEST Customer Agreement dated July 15, 1993 (hereafter collectively referred to as "SCEC's ENVEST Proposal").

Discussion

Pursuant to the Energy Policy and Conservation Act, Pub.L. 94-163, 89 Stat. 871, 42 U.S.C. § 6201 et seq., as amended by the Energy Policy Act of 1992, Pub.L. 102-486, 106 Stat. 2776, (hereinafter collectively referred to as "the Act"), GSA and other Federal agencies are directed to implement programs which reduce energy consumption in Federal facilities. The Act establishes specific requirements for reduced energy consumption through increased efficiency and conservation. 42 U.S.C. § 8253.

In order to enable agencies to comply with these requirements, the Act authorizes participation in various programs, broadly defined in the Act at subchapters III and VII. 41 U.S.C. §§ 8253, 8256, 8287. GSA was granted additional authority to receive and expend, in addition to amounts appropriated for Federal energy management improvement programs, rebates, other cash incentives or other income related to energy savings. 40 U.S.C. §§ 490(f)(7) and 490g.[1]

Subchapter VII

Subchapter VII of the Act, 42 U.S.C. § 8287, authorizes Federal agencies to enter into Energy Savings Performance Contracts. The terms of these contracts are outlined in the subchapter. Implementation of subchapter VII, however, requires the promulgation of regulations by the Department of Energy (DOE). 42 U.S.C. § 8287(b)(1)(B). Although published in the Federal Register for comment, Doe has yet to issue these regulations in final form.[2] In the absence of the DOE implementing regulations, it is impossible for Federal agencies to enter into Energy Savings Performance Contracts under Subchapter VII. For this reason, this subchapter cannot provide legal authority for the agreement contemplated by Region 9.

Subchapter III

Subchapter III of the Act authorizes Federal agencies to participate in "utility incentive programs" (UIPs) in order "to increase energy efficiency and for water conservation of the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities." 42 U.S.C. § 8256(c)(1). The Act

[1] Although codified in the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 490(f)(7) originated in the Energy Policy Act of 1992, Pub.L. 102-486, Title I, §153, 106 Stat. 2851. In accordance with 40 U.S.C. §§ 390(f)(7) and g, GSA is authorized to receive and expend the full amount of any rebates or other cash incentives related to energy savings.

[2] At a meeting with representatives of DOE on June 6, 1994, GSA was informed that the regulations were unlikely to be issued in the near future. In fact, a timeline of one to two years from that date was considered realistic by the DOE representatives.

further encourages Federal agencies to "enter into negotiations with utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities" used by agencies. 42 U.S.C. § 8256(c)(3). According to the legislative history of the Act, Congress contemplated that Federal agencies would be allowed to participate in UIPs "to the same extent permitted other customers of the utility." H.R. Rep. No. 474(V), 102d Sess. 42 (1992), reprinted in 1992 U.S.C.C.A.N. 2224.

The energy conservation measures proposed, as well as the other terms of the agreement being negotiated with SCES, fall within a UIP as described by the Act. See, 42 U.S.C. §§ 8256(c) and 8253(d); SCEC's ENVEST Proposal.

As discussed above, Congress has authorized agency participation in UIPs generally available to customers of utilities to the same extent as other customers of the offering utility. 42 U.S.C. § 8256(c)(1). The broad authority contained in 42 U.S.C. § 8256(c)(1)-(4) constitutes "contract authority", which is "a form of budget authority that permits contracts and other obligations to be entered into in advance of an appropriation or in excess of amounts otherwise available in a revolving fund." Contract authority "provides the authority to enter into binding contracts but not the funds to make payments under them. Therefore, contract authority must be funded…by subsequent appropriation (called a "liquidating appropriation') or by the use of receipts or offsetting collections authorized for that purpose." U.S. General Accounting Office, Principles of Federal Appropriations Law 2-4 to 2-6 (2d Ed. 1991).

In the present case, Real Property Operations (BA-61) funds provided under current and future GSA appropriations acts will be used to liquidate GSA's obligations under the SCEC UIP. Further, the provisions of the Act codified at 40 U.S.C. § 490(f)(7) which allows GSA to "receive amounts from rebates or other cash incentives related to energy savings," to deposit such amounts in the Federal Buildings Fund, and to obligate such monies for energy management improvement programs, provides authority for the receipt and utilization of the subsidy contemplated by the proposed agreement with SCEC. In addition, GSA has authority under the Act to receive the goods and services contemplated under the proposed agreement, including, but not limited to, energy related equipment, its installation, and personnel training. 42 U.S.C. § 8256(c)(2)-(4); 40 U.S.C. § 490(f)(B).

The expenditure of the funds as contemplated by the proposed agreement with the SCEC is necessary for the incidental to compliance with the energy conservation requirements of the Act, 42 U.S.C. § 8253. Therefore, this constitutes a necessary and proper expense for utility services which properly may be funded with GSA's Real Property Operations (BA-61) appropriations.

Applicability of Prospectus Requirements

The authority to participate in utility incentive programs and to accept rebates, cash or other financial incentives, goods and services in accordance with 42 U.S.C. §§ 8256(c) and 40 U.S.C. § 490(f)(7) and g is not subject to the prospectus requirements in section 7 of the Public Buildings Act of 1959, 40 U.S.C. § 606(a).[3] In accordance with 40 U.S.C. §§ 490(f)(7)(D) and g, any rebates or other cash incentives received and deposited into the Federal Buildings Fund are available for obligation in addition to amounts appropriated for energy management improvement programs and without regard to the requirement in 40 U.S.C. § 490(f)(2) that such obligations be authorized in GSA's annual appropriations acts. Accordingly, the approval of a prospectus is not a prerequisite to the appropriation or obligation of rebates and other cash or financial incentives received by GSA for energy management improvement programs. Such funds constitute an authorized and legal augmentation of GSA's Federal Buildings Fund appropriations.

Likewise, in accordance with 42 U.S.C. § 8256(c), Congress specifically has authorized agencies to participate in utility incentive programs conducted by utilities and generally available to customers of such utilities. Participation in such programs will provide one of the means for GSA to satisfy the energy performance requirements for Federal buildings mandated by Congress in 42 U.S.C. § 8253. As explained above, the broad authority contained in 42 U.S.C. § 8256(c)(1)-(4) constitutes "contract authority" which properly may be funded by GSA's Real Property Operations (Ba-61) appropriations as a necessary and proper expense for utility services. Therefore, we do not believe that the prospectus requirements of the Public Buildings Act are applicable to contracts entered into under 42 U.S.C. § 8256(c). The mere fact that ECMs accomplished under the foregoing statutory authorities may involve alterations to a Federal building does not transform them into a repairs and alterations project that is subject to the prospectus approval requirements of the Public Buildings Act.

In any event, we believe that if GSA proposes to incorporate energy conservation measures into a building that will result in the obligation of GSA appropriated funds in excess of the applicable prospectus threshold, it would be prudent for GSA to provide notice to the appropriate Congressional committees.

<u>Conclusion</u>

For the reasons stated above, GSA is authorized to enter into the agreement currently being negotiated by Region 9 for energy conservation measures at the Chet Holifield Federal Building in Laguna Niguel, California.[4]

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[3] 40 U.S.C. § 606(a) is essentially a restriction on the appropriation of funds by Congress for projects within the scope of that section; it does not prohibit expenditures for such projects if appropriations are made available by Congress notwithstanding the restrictive language in § 606(a). Furthermore, it does not restrict GSA's authority to enter into contracts.

[4] In addition, subchapter III provides authority for such audits and preliminary agreements as have already been performed or entered into as precursor to the agreement with SCEC currently being negotiated. 42 U.S.C. 8256(c) and 8253 (d).

## Definition of Demand Side Management Services

*December 17, 1998, Memorandum from Larry Oliver, Department of Energy*

**Department of Energy**
**Washington, D.C.**

December 17, 1998

MEMORANDUM TO: Mary Anne Sullivan

FROM: Larry Oliver

SUBJECT: Definition for Demand Side Management Services

In consultation with the Director of the Federal Energy Management Program (FEMP), DOE lawyers at the Golden Field Office and FEMP utility and ESPC experts at NREL, it was determined that Demand Side Management (DSM) is a concept that is no longer current. A more inclusive concept that is more consistent with section 152(f) of EPAct is "Utilities Incentives." In that regard FEMP proposes that the following definition be used:

Utility incentives are any financial incentives, goods, or services offered by the utility that achieve energy or water goals or utility and related cost savings at Federal building and facilities, including, but not limited to, rebates or incentives, advanced financing of project costs, design and implementation of utility related projects, energy management services, facilities alterations, installation of technologies and energy savings devices, water conservation devices, and renewables by the utilities, and operation and maintenance of utility, water, energy efficiency and demand management projects.

Not all types of utility incentives are included under DSM services. For instance, some homeowners may want energy efficiency equipment or products installed because of efficiencies important to the owners, as opposed to the utilities to reduce demand. Government agencies will not be able to enjoy a utility incentive unless there is a measured performance that achieves energy, water, utility cost and related cost savings at Federal buildings or facilities.

For comparison purposes, listed below are examples of other definitions of DSM services.

1. Definition found in several Security and Exchange Commission Rulemakings:

[A] broad range of activities relating to the business of energy management and demand-side management, including the following: Energy audits, facility design and process enhancements, construction, maintenance and installation of, and training client personnel to operate, energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs, development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment, and general advice on programs. [Upon additional consideration, the commission has concluded that "energy conservation services" may not be broad enough to cover the types of activities intended to be exempted under this category. The term "energy management services" more accurately reflects the scope of the exempted activity.] (brackets added).

These rulemakings involve the exemption of acquisition by registered public-utility holding companies of securities of non-utility companies engaged in energy-related and gas-related activities under the Public Utility Holding company Act of 1935.

2. Executive Order 12902 dated March 10, 1994, Energy Efficiency and Water Conservation at Federal facilities.

Sec. 104. The term "demand side management" refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

At our December 14 meeting an issue was raised regarding employee training or "conservation seminars" as being possible areas for "fraud, waste and abuse". Our office, along with attorneys from the Golden Field Office, FEMP and the NREL contractors had substantial discussions today and yesterday to identify what the concern is. For instance, we don't know if the concern is whether a certain percentage of a "Utility Incentive" program will involve training as it may, or whether the concern is that DOE employees will attend training seminars and the cost of the training will be treated as costs under "Public Utility Services Contracts." The only written explanation of the concerns is provided in an updated memorandum written by GC-61:

The E.E. program will not benefit if it uses a broad definition of demand side management services that clearly should be considered "public utility services" such as <u>utility conservation seminars</u>, which nonetheless may be viewed as demand side management services. (emphasis added).

If the concern is "utility conservation seminars" or other employee training, we do not believe that this could happen unless there is deliberate fraud. The way the process works is that a utility offers a financial incentive to its customers. Federal agencies are encouraged to participate in the financial incentive offered on the same basis as other customers of the utility. The relevant provision of section 152(f) provides as follows:

"(c) UTILITY INCENTIVE PROGRAMS. – (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

This provision is essentially composed of five elements. There must be a utility incentive program that: (1) provides utility service applicable to Federal buildings or facilities and (2) is available to other customers of the utility, and (3) increases energy efficiency or (4) increases water conservation, or (5) reduces the demand for gas, water or electricity. Use of the conjunctive "and" between elements 1 and 2 means that these elements must always be present in conjunction with elements 3, 4, and 5, singularly, in combination, or in the aggregate, before a Federal agency may participate in the utility incentive program. A conservation seminar, "or other training vehicle," standing alone, will not qualify as a utility incentive.

Services provided at a "utility seminar" or other training vehicle would not qualify as public utility services under Section 152(f) of EPAct. Those concerns are not appropriate for section 152(f) contracts.

Finally, we are concerned about substantive changes in the application and scope of section 152(f) to cover only DSM services. The application of incentives under section 152(f) is clearly not limited to DSM services. Federal agencies may also negotiate with utilities "to design cost-effective conservation incentive programs to address the unique needs of facilities utilized by such agency."

## Statutory Exception from Competition in DSM Utility Contracts

*July 7, 1994, Memorandum from Anne Troy, Department of Energy*

**Department of Energy**
**Washington, D.C.**

July 7, 1994

MEMORANDUM TO: Mr. Philip Winter
General Services Administration (GSA)

THROUGH: Mary Ann Masterson
Deputy Assistant General Counsel for Procurement and Financial Assistance

FROM: Anne Troy
Office of Procurement and Financial Assistance
GS 61

SUBJECT: Statutory Exception From The Competition In Contracting Act's Full and Open Competition Requirement In Demand Side Management Utility Contracts

You asked for assistance in determining whether the language in § 152 of the Energy Policy Act, Public Law 102-458, (EPAct) provides this agency with the authority to "sole source" utility service contracts to obtain demand side management (DSM) services. We conclude that the language contained in § 152 does meet the criteria of one exception to the Competition in Contracting Act of 1984 (CICA). CICA requires, with certain limited exceptions, full and open competition in government contracting. One of the exceptions to that requirement is contained in 41 U.S. C. § 253 (c) (5), which provides that a civilian agency may use other than competitive procedures when "a statute expressly authorizes or requires that the procurement be made . . . from a specified source." <u>See also</u> the Federal Acquisition Regulation, FAR 6.302-5 (a) (2).[5]

Section 152 of EPAct provides as follows:

(c) UTILITY INCENTIVE PROGRAMS – Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by

(d) gas, water, or electric utilities and generally available to customers of such utilities.

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[5] The Federal Acquisition Regulation requires that contracts awarded using this authority will be supported by a written Justification and Approval (J&A).

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

Plain Language. In our opinion, § 152's plain language contains an express authorization for an agency to participate in DSM contracts and permits them to accept any financial incentive or to enter into negotiations regarding these incentive programs. This language appears to provide express authority for an agency to directly approach a utility concerning DSM services, including the capability to award a noncompetitive contract to that utility without the use of full and open competition.

Navy Concurrence. Moreover, of some significance, our opinion is shared by the Naval Facilities Engineering Command (NAVFAC) which, with the other military service departments, relies upon virtually identical language in the FY 93 Defense Authorization Act[6] (attachment 1) to obtain DSM services directly from gas or electric utilities. In a legal opinion (attachment 2) discussing this issue, the counsel from NAVFAC states, ". . . [c]hanges made to 10 U.S.C. 2865 by the FY 93 Defense Authorization Act . . . clearly authorize military departments to obtain DSM services directly from gas or electric utilities. . . . We need only execute a J&A citing 10 U.S.C. 2865 (d) (3) as authority. FAR 6.302-5 provides that full and open competition is not required where a statue expressly provides that an acquisition be made from a specified source, i.e., the servicing gas or electric utility."

Statutory Intent. In a recent telephone conversation with the NAVFAC counsel who authored the attached opinion, he stated that NAVFAC continued to adhere to the above stated position and that a NAVFAC field office, SOUTHWESTDIV, had used the statutory exception to sole source a contract for DSM services from a San Diego utility. The counsel also reminded me that the language contained in EPAct had been purposefully adopted from the language in the Defense Authorization Act for the same

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[6] Public Law 102-484 at section 2801, states:

(d) The Secretary of Defense shall permit and encourage each military department . . . to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation.

(2) The Secretary may authorize any military installation to accept any financial incentive, goods, or service generally available from gas or electric utility, to adopt technologies and practices that the Secretary determines are cost effective for the Federal Government.

(3) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

reasons that the military services had earlier advocated, i.e., they wanted broad authority to obtain DSM services from utilities without using time-consuming and complex competitive procurement procedures. As the counsel stated to me, the purpose of the language was to facilitate and ease the process. If read any other way, the provisions would serve no purpose since agencies are compelled to use competitive procedures in any case.

General Accounting Office Opinions. Lastly, we rely upon certain General Accounting Office (GAO) opinions which have interpreted the specified source exceptions and permitted agencies to use other than competitive procedures. For instance, in Monterey City Disposal Service, Inc., 85-2 CPD 261, aff'd, B-218624-2, B-218880.2, 85-2 DPD 306,[7] the Comptroller General concluded that the specified source exception to CICA was applicable where, under the Solid Waste Disposal Act, 42. U.S.C. § 6961, federal agencies were required to comply with local requirements respecting the control and abatement of solid waste "in the same manner, and to the same extent, as any person is subject to such requirements." In that case, the city of Monterey required that all inhabitants of the city have their solid waste collected by the city's franchise. The Navy argued that there was no express congressional intent in section 6961 of the Solid Waste Disposal Act to permit sole source contracting. The Comptroller General rejected this argument and appeared to rely primarily on interpreting the plain language of the Solid Waste Disposal Act.

If you have any further questions on this matter, please contact this office at 202-586-1900.

Attachments

[7] The GAO opinion was affirmed in Parola V. Weinberger, 848 F.2d 956 (1988).

## Rebates

*October 18, 1991, Memorandum from Kathy D. Izell, Department of Energy*

**Department of Energy**
**Washington, D.C.**

October 18, 1991

MEMORANDUM FOR: Robert Brockman, Branch Chief (AD-151)
Public Utilities Branch
Office of Organization, Resources and Facilities Management

FROM: Kathy D. Izell, Attorney-Advisor (GC-34)
Office of the Assistant General Counsel for Procurement and Finance

SUBJECT: Rebates

Utility companies are increasingly issuing rebates to their customers who purchase and utilize energy efficient equipment that help the utility companies to control the rate of demand growth and defer the building of costly power plants and the attendant transmission and distribution facilities. In the past DOE has accepted credits to its bills from utility companies in instances when energy rebates were being offered. However, currently utility companies wish to send a check to DOE as it does to its other customers rather than issue a credit to DOE on the DOE bill.

Your office has requested that this office provide a legal opinion concerning the ability of the Department of Energy (DOE) to accept such rebates from utilities and the proper mechanism for recording such rebates. This legal opinion does not address the instances where DOE utilizes its authority under Title VIII of the National Energy Conservation Policy Act entitled “Shared Energy Savings” to enter into arrangements.

In accordance with 31 U.S.C. 3302, all funds received for the use of the United States must be deposited into the general fund of the Treasury as miscellaneous receipts. Violation of this statute constitutes an augmentation of appropriations.

However, there are two exceptions to this general legal proposition. One of the exceptions is a revolving fund. When establishing a revolving fund, Congress authorizes an initial capital contribution to the fund, the continuous provision of a service, and the financing of future services by the income generated by the activity itself. Thus, payments to a revolving fund are recredited to the fund account and available for obligation for the same activity.

The second exception to the general legal proposition involves repayments to appropriations account that represent either reimbursements or refunds. Reimbursements are sums received by the Federal Government as a repayment for commodities sold or services furnished either to the public or to another Government account, which are authorized by law to be credited directly to a specific appropriation and fund account. General Accounting Office, Glossary of Terms Used in the Federal Budget Process, p. 74 (March 1981).

Refunds are defined in the General Accounting Office, Glossary of Terms Used in the Federal Budget Process, page 73 (March 1981) as "returns of advances or recoveries of erroneous disbursements from appropriation or fund accounts that are directly related to, and reductions of, previously recorded payments from the account." Refunds in Title VII, Section 12.2(2) of the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies are defined as: "repayments for excess payments and are to be credited to the appropriation or fund accounts from which the excess payments were made. …[R]efunds must be directly related to previously recorded expenditures and are reductions of such expenditures," Further, the Treasury Department-General Accounting office Joint Regulation No. 1 set forth as Appendix B To Title VII of the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies explain the concept of refunds as "Refunds to appropriations … represent amount collected from outside sources made in error, overpayments, or adjustments for previous amounts disbursed…"

DOE Order 2200.6, Change 2, adopts the same approach by utilizing the following description. "Refunds to appropriations are amounts received that represent the return to DOE of excess payments made to others. Refunds result from overpayments, payments made in error, or adjustments for previous amounts disbursed, including returns of authorized advances and rebates. Unlike reimbursements, refunds are directly related to previously recorded disbursements. Thus, the recovery of an erroneous payment or overpayment qualifies as a refund to the specific appropriation originally charged and is deposited therein, rather than to the General Fund of the Department of the Treasury."

Given the forgoing, the issue becomes whether or not these utility rebates would constitute "refunds to appropriations". There are a number of Comptroller General decisions relevant to this issue. The Comptroller has held that the moneys paid to the Federal Government under a guarantee-warranty clause as an adjustment in the contract price constituted a "refund" (34 Comp. Gen 145 (1954)), and the Comptroller General has held that moneys credited to the agency account under a price redetermination clause constituted a "refund" (33 Comp. Gen. 176 (1954)). Most recently in Matter of: Rebates from Travel Management Center Contractors, the Comptroller General examined numerous General Services Administration (GSA) contracts with Travel Management Centers (TMC) wherein the TMCs were to give to GSA rebates or credits in the commissions the TMCs received from transportation or lodging establishments with whom they book reservations. Three methods were used to effect payment to TMCs for Federal employee travel: (1) TMC is paid by contractor (Diners Club) that had issued a credit card to a Government employee pursuant to a contract with GSA; (2) TMC is paid by Diners club on behalf of GSA under GSA's Government Travel Systems accounts; or (3) TMC is paid directly pursuant to Government Transportation Requests. The Comptroller General found that in all three cases these rebates or credits constituted a "refund" regardless of which of the costs were ultimately paid by the Federal Government. Therefore, the payments or credits paid by the TMC to GSA could be deposited to the credit of the appropriation against which the employee travel was initially charged. (65 Comp. Gen. 601, May 30, 1986).

In the case of these utility rebates, the rebates are essentially discounted prices for utility service and constitute refunds to the federal Government. DOE Order 2200.6, Change 2, states that refunds should be deposited into the same appropriation account as that from which the previously recorded disbursements were made. Then the refunds become immediately available for expenditure. The Order further states that when preparing the SF-133, “Report on Budget Execution”, refunds should be netted against the obligations and outlays of the appropriation account.

In summary, the check from the utility company can be issued directly to the DOE. The rebate should be deposited to the specific appropriation originally charged, and the accounting procedures of DOE Order 2200.6, Change 2 should be followed.

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# Agency Guidance

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## Promoting ESPCs and UESCs in the Federal Government

*August 3, 2007, Executive Office of the President, Council on Environmental Quality*

**EXECUTIVE OFFICE OF THE PRESIDENT**
**COUNCIL ON ENVIRONMENTAL QUALITY**
**Washington, D.C. 20503**

August 3, 2007

**MEMORANDUM**

TO: HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES

FROM: JAMES L. CONNAUGHTON, CHAIRMAN

SUBJECT: SUBSTANTIALLY INCREASING FEDERAL AGENCY USE OF ENERGY SAVINGS PERFORMANCE CONTRACTING

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Keeping America competitive requires investment in more affordable, efficient, clean, and lower carbon use of energy. In the Federal government, one of our best opportunities to retrofit the energy systems needed to achieve Executive Order and legal requirements is through greater use of private government-wide Energy Savings Performance Contracting (ESPC) and Utility Energy Savings Contracting (UESC) programs administered by the Department of Energy's Federal Energy Management Program (FEMP). Therefore, the heads of executive departments and agencies are directed to take appropriate actions to significantly increase their use of the ESPC/UESC tool to accomplish their energy related goals. Executive departments and agencies already have the contracting flexibility to use ESPCs and UESCs to complete projects, particularly in cases where direct funding is not available or sufficient, and agency procurement and contracting officials should be assessing every opportunity to use these tools.

Agencies shall inform the Assistant Secretary for Energy Efficiency Renewable Energy at the Department of Energy (akarsner@ee.doe.gov) within 45 days from the date of this memorandum, on their initial assessment of opportunities for use of ESPCs and UESCs at their facilities to achieve results. Based on this feedback, FEMP will assist each agency in establishing energy efficiency investment targets, a percentage of which shall be through ESPCs and UESCs. Your target and the percentage that is ESPC or UESC will be a function of size and actual opportunity. It is projected that agencies must invest an amount equivalent to 20 percent of their annual energy costs on efficiency enhancements in order to meet our goals. ESPCs/UESCs shall account for at least half of this total, or at least 10% of annual energy costs. Agencies already investing more than 10% shall continue. Exemptions to these requirements shall be addressed on a case-by-case basis.

Background

Since 1985, Federal agencies have invested almost $7 billion in energy efficiency improvements from all sources. Half, or $3.5 billion, of this investment has come from ESPCs and UESCs. Total investments to date are estimated to have saved between $800 million and $1.16 billion just last year. Cumulative savings to date could be as high as $8.5 billion, saving 4.5 trillion Btu. Despite these successes, ESPCs and UESCs are not as widely used in the Federal community as they should be. Contracts are typically too small and take too long to implement. With an industry investment capacity capable of meeting our demand, there is much room for growth in use of this tool.

With the passage of the Energy Policy Act of 2005 last August, President Bush committed America to reducing our dependence on foreign energy supplies, to setting aggressive energy conservation goals and to increase our share of cleaner, more efficient, and lower carbon use of energy. On January 24, 2007, President Bush signed Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. This order sets a series of aggressive goals, including goals for improved energy efficiency, reduced greenhouse gas emissions, increased alternative energy purchases, and improved water conservation.

To help accomplish Presidential and legal requirements, it is incumbent upon each Federal agency to lead the way – and to lead by example in the wise use of our energy resources and elimination of inefficient energy practices. Achieving these goals requires that Federal agencies look beyond appropriated funds to further accomplish their energy objectives and by using market-based solutions found through the use of innovative performance contracting programs that fund the investments upfront allowing the government to pay for improvements through the guaranteed savings obtained.

Congress established the ESPC program in 1992, and reauthorized it through 2016 with EPAct 2005, as a way to improve the Government's energy efficiency projects that can yield guaranteed savings. ESPCs and UESCs are tools to help agencies achieve their goals. They provide a flexible, cost effective, market-based way for agencies to reduce consumption of conventional fossil fuels – and to do so without incurring the up-front capital costs normally associated with projects of this nature.

Agencies have long been using the ESPC and UESC programs to implement energy efficiency, water reduction, and renewable energy improvements. During FY 2005, 20 orders awarded through the DOE/FEMP Super ESPC programs as well as projects awarded by DoD. Project investment from these projects totaled approximately $96.8 million, providing the Federal government with an opportunity to save more than 726.4 billion Btu each year. Through a decentralized approach, DoD awarded the largest number of contracts/delivery orders with 15 ESPC projects in FY 2005. Of the 40 UESCs awarded in FY 2005, 32 were implemented by DoD. Contracts were put in place to perform infrastructure upgrades and purchase new equipment to help installations reduce energy and water consumption.

According to preliminary data for FY 2006, investment in energy efficiency is increasing, totaling $668 million from all sources. ESPCs were the primary contributor to an overall increase of $163 million from FY 2005, or a 32 percent increase.

## Procuring Energy Management Services with the GSA Utility Areawide Contract: A Practical Guide to Procuring Energy Management Services through a GSA Areawide Contract

*General Services Administration*

The latest document is available at https://www.gsa.gov/portal/mediaId/240455/fileName/Procuring_Energy_Management_Services_with_the_GSA_Areawide_Contract_08-2015.action .

## UESC Guidance Memorandum

*March 23, 2004, Colonel Charles Guta & Joseph Plunkett, Department of the Army*

**DEPARTMENT OF THE ARMY**
**US ARMY CONTRACTING AGENCY SOUTHERN REGION HEADQUARTERS**
**1301 ANDERSON WAY SW.**
**BUILDING 130**
**FT McPHERSON, GA 30330-1096**

March 23, 2004

**SFCA-SR**

**MEMORANDUM FOR SEE DISTRIBUTION**

SUBJECT: Utility Energy Service Contract (UESC) Guidance

1. Reference memorandum, SFIM-OP, Installation Management Agency, September 15, 2004, subject: Energy Savings Performance Contracts (ESPCs) and Utility Energy Savings Contracts (UESCs)/Demand Side Management (DSM) (encl 1). The Installation Management Agency supports continued energy savings initiatives and encourages all installations to expand, promote and accelerate the use of UESCs to meet the Army's Energy Reduction Goals.

2. In support of the UESC initiative, the Army Contracting Agency Southern Region (ACASR), Installation Management Agency Southeast Region (IMA SERO) and Department of Energy (DOE) have formed a partnership to promote the use of energy savings initiatives and facilitate the acquisition process. Accordingly, IMA SERO Director of Public Works (DPW) Offices are encouraged to contact their local ACASR Directorate of Contracting (DOC) for support in acquiring the utility services.

3. An UESC provides the services and/or products necessary to establish more energy efficient facilities. As depicted in the enclosed Utility Energy Service Contracts: Enabling Documents; the goal of an UESC is to reduce the use and cost of energy in the federal sector by advancing energy efficiency, water conservation, and the use of solar and other renewable energy sources. The benefits gained from an UESC include: streamlined procurement processes; flexible contracts; relationships with long-standing entities; payments through utility bills; flexibility in measurement and verification; one-stop-shopping for turnkey projects; and water savings initiatives may be a part of the project.

4. To provide further information and understanding of an UESC and the implementation process, the following documentation is enclosed for your information. Familiarization with these documents is strongly encouraged.

a. Utility Energy Service Contracts: Enabling Documents, dated October 2001 (encl 2) – An electronic copy can be downloaded at http://energy.gov/node/760666.

b. Federal Energy Management Program Videotape (encl 3)

c. UESC Process (encl 4) – This chart provides a description of the typical steps in an UESC project development.

d. Draft Master Contract (encl 5) – This draft master contract is very similar to a Basic Ordering Agreement Contract, or Indefinite Delivery Indefinite Quantity contract, in that a master contract does not contain any specific UESC project work. A master contract describes the basic terms and conditions under which the government and the serving utility company will interact in developing and executing UESC projects and specifies a dollar ceiling amount for the master contract. UESC projects are developed and executed through individual project task (deliver) orders under the master contract. Having a master contract in place reduces the complexity of the individual project task order under the same master contract. A master contract might be executed using a General Services Administration (GSA) Areawide Contract. This document (master contract) is nothing more than an order issued under a GSA Areawide Utility Contract. Under GSA authority, the master contract can have a term as long as ten years. The dollar ceiling amount for the master contract is a mutually agreeable number based on total potential for UESC projects at the installation.

e. Draft Exhibit C, Authorization for Energy Management Services (encl 6) – This sample UESC contract was written as an Exhibit C under a GSA Areawide Utility contract. This format may be sued when the government contemplates only a single UESC project at the installation. The Exhibit C contract contains all the details of the interaction between the government and the serving utility company, including the UESC project description and pricing. If more than one UESC project is anticipated, it may be beneficial for the government to enter into a master contract.

5. To date, UESCs have been successfully awarded by the DOCs at Fort Gordon, Fort Knox, and Fort Rucker. The below list contains the points of contact located at the Directorate of Contracting and Director of Public Works Offices at each of these locations. These individuals can address specific questions pertaining to the UESC process.

| INSTALLATION | ACASR DOC | DPW |
|---|---|---|
| Fort Gordon | Mr. Jim Bodine<br>(706) 791-1823<br>bodinej@gordon.army.mil | Mr. Glenn Stubblefield<br>(706) 791-6184<br>stubble@gordon.army.mil |
| Fort Knox | Mr. Steven Fries<br>(502) 624-8043<br>steven.fries@knox.army.mil | Mr. Gary Meredith<br>(502) 624-8358/1053<br>gary.meredith@knox.army.mil |
| Fort Rucker | Mr. Richard Bledsoe<br>(334) 255-2013<br>bledsoer@rucker.army.mil | Mr. Tommy Baldwin<br>(334) 255-2215<br>baldwint@rucker.army.mil |

6. For additional information, you may contact the SE Region Point of Contact, Mr. Steve Jackson, (404) 464-0703, email: jacksons@forscom.army.mil or ACASR Point of Contact, Ms. Vickie Jordan, (404) 464-0472, email: Vickie.jordan@us.army.mil.

6 Encls

As

CHARLES J. GUTA
Colonel, AC
Director
Army Contracting Agency – Southern Region
Principal Assistant Responsible for Contracting

JOSEPH H. PLUNKETT
Director
Installation Management Agency,
Southeast Region

## ESPC and UESC: Demand Side Management Memorandum

*September 15, 2003, Major General Anders Aadland, Department of the Army*

**DEPARTMENT OF THE ARMY**
**INSTALLATION MANAGEMENT AGENCY**
**2511 JEFFERSON DAVIS HIGHWAY**
**ARLINGTON, VA 22202-3926**

September 15, 2003

**SFIM-OP**

**MEMORANDUM FOR SEE DISTRIBUTION**

SUBJECT: Energy Savings Performance Contracts (ESPC) and Utility Energy Saving Contracts (UESCs)/Demand Side Management (DSM)

1. Reference memorandum, SFIM-SE-PW-O, Installation Management Agency, Southeast Region, May 5, 2003, subject: IMA Policy for Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)/Demand Side Management (DSM) (encl).

2. IMA supports continued energy saving initiatives (ESPC, UESC etc.,) and encourages all installations to expand, promote and accelerate the use of these tools to meet the Army's Energy Reduction goals.

3. The Energy Policy Act of 1992 authorized federal agencies to use private sector financing from Energy Service Companies (ESCO), with the stipulation that the ESCO be compensated from the savings generated. All such initiatives must result in a net decrease in energy consumption in order to be considered viable. Reduced energy consumption should equate to reduced energy cost.

4. IMA recognizes the contractual obligations to ESCOs, and considers payments to them as "must fund" bills. Since the contract costs and energy consumption costs are funded in the same "J" account, there should always be sufficient funds to pay ESPC/UESC/DSM obligations. "J" account is always 100% funded. Installations must ensure all ESCO costs are obligated in the "J" account.

5. The IMA point of contact for this action is Mr. Muthu Kumar, Public Works Branch, Operations Division, 703-602-1540; DSN: 332-1540; e-mail: muthukumar@hqda.army.mil

Encl

ANDERS B. ADDLAND
Major General, GS
Director

FEMP
FEDERAL ENERGY MANAGEMENT PROGRAM

## Performance Assurance for Multi-Year Contracts Under the Utility Incentive Program

Section 152(f) of the Energy Policy Act of 1992 (EPAct) – Public Law 102-486 – authorized and encouraged Federal agencies to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities. Additionally, Title 10 Section 2913 and 10 USC 2866 (a) authorizes and encourages defense facilities to participate in utility programs for the management of electricity demand, and energy and water conservation.

Since these contracts are for utility services under section 201 of the Federal Property and Administrative Services Act of 1949, the only financial requirement on Federal agencies is the obligation of the annual costs for such contracts during each year that the contract is in effect. There is no statutory requirement for annual measurement and verification of the energy, water, or cost savings, or a contractual guarantee of those savings as there is for energy savings performance contracts in Section 801 of the EPAct. However, prudent Federal energy program management requires that the continuing performance of the equipment secured and techniques applied under these contracts be assured to accomplish the expected energy and/or water usage and cost reductions.

An action plan to assure the specified performance and efficiency of the equipment installed, and the expected level of operations and maintenance necessary to assure achievement of the annual estimated savings throughout the contract period, is a reasonable expectation. This is considered the recommended level of prudent program management for these contracts.

### Background

- Need — The energy reduction goals set forth in the Energy Policy Act and Executive Order 13423: *Strengthening Federal Environmental, Energy, and Transportation Management,* necessitates that agencies have the ability to develop alternatively financed projects and implement contracts that achieve energy and water efficiency. The need for prudent Federal program management through assurance of specified performance of these contracts must be balanced against the cost of such efforts so that optimal savings are achieved.

- Goal Objective — A definitive statement on this issue contained in one memorandum is needed to provide clarification to agency field personnel so they can more readily take advantage of the opportunities to implement alternatively financed energy-efficiency and water-conservation utility contracts.

- Relevant Authorities — Section 152 of EPAct, which amends Section 546 (c) of the National Energy Conservation Policy Act (NECPA) 42 U.S.C. 8256, Section 201 of the Federal Property and Administrative Services Act of 1949, 40 USC Section 481 (a)(3), and 10 U.S.C. 2913, are the relative statutes in question. Additional relevant authorities are listed under "Related Documents" at the end of this memorandum.

- Agency Specific Requirements — Individual agencies may have specific programmatic requirements for the implementation of these contracts, and any such requirements would supersede any general guidance.

### Findings

Through the Federal Property Act, Congress provided contract authority to the General Services Administration (GSA) (and those agencies to which the GSA has re-delegated that authority) to enter into contracts for utility services, for a term of 10 years, without obligating funds for the total cost of the contract. The intent of the statute is to allow agencies to enter into a cost-effective, long-term contract for public utility services while only having sufficient budget authority to obligate its first year's annual cost under the agreement.

Since the authority pertains specifically to public utility services, care must be taken to assure that the energy and water conservation projects entered into under these contracts be limited to actions that fall under the intent of the term "public utility services." Research into relevant findings of the Comptroller General and the General Accounting Office indicate that the definition of "public utility services" is flexible and adaptive, and should be broadly interpreted. The Department of Energy Office of General Counsel has determined that the provision of multi-year energy and water conservation management, and demand side management projects, including project financing and transferring title of equipment, falls under the definition of public utility services. In order to assure that the primary purpose of the contract is to reduce energy and water cost and use, the Office of General Counsel has provided conditions that such contracts must fulfill in order to be considered as "qualified" utility energy service contracts for DOE facilities. One of these provisions is that energy or water savings must be sufficient to pay all costs under the contract. This, in turn, leads to the need for some measurement and verification of the project's performance and some level of assurance that the savings proposed are, in fact, realized.

Federal contracts contain provisions for unforeseen and uncontrollable acts that may affect the contract. Provisions in alternatively financed utility energy service contracts (UESC) should allow negotiated settlement in the event of uncontrollable actions such as severe weather, war, etc., and allow the parties to recognize the fact that the future is never predictable. Similarly, the performance assurance measures of these contracts should provide reasonable expectations that are within the power of the utility to achieve.

As the Overview of the Measurement and Verification for Federal Energy Projects Guidelines Version 2.2 states, "The challenge of M&V [measurement and verification] is to balance M&V costs and savings certainty with the value of the conservation measures." Stated another way, the level of performance assurance and its associated costs must be worth the level of certainty of cost savings that the customer agency feels is necessary. Each alternatively-financed UESC should have a performance assurance plan to accomplish this. Such plans should make sure that each energy conservation measure and combination of measures is separately evaluated to identify the appropriate level of needed performance assurance activity based on the technical complexity, potential savings magnitude, and specific situation. The following guidance is offered as a context in which each agency and facility manager can make the best judgment based on the specific facts and considerations.

*FEMP Recommendations*

This memorandum is being issued to recommend a prudent level of performance assurance for alternatively-financed UESC entered into by Federal agencies.

In order to assure the necessary fiscal responsibility consistent with sound program management, alternatively-financed UESCs should include some plan for continued action during the contract to assure continued accomplishment of expected performance.

The minimal performance assurance plan recommended by the Federal Energy Management Program (FEMP) for alternatively financed UESC energy conservation measures is:

- Start-up performance verification (based on measured data)
- Performance verification at the end of warranty period (based on measured data)
- Operations and maintenance training (required in the more common instance where the agency continues to operate and maintain installed equipment)
- Provision of continuing training throughout the contract period as specified in the contract as determined by the needs of the facility
- Periodic inspections and verification of appropriate operation and maintenance performance
- Performance discrepancy resolution

The performance assurance for more complex and/or significant projects should also include consideration of ongoing metering and continuous commissioning. The use of a periodic re-commissioning or continuous commissioning protocols can verify that the equipment operation and related services are being provided in a way to assure that the desired performance is maintained. Obviously, agencies may choose to develop more rigorous performance assurance plan requirements that fit their specific needs.

The performance assurance actions needed to validate expected performance should be reasonable and within the power of the utility to honor. Every effort, such as the use of representative sampling, should be made to minimize the extent and cost of performance assurance. Ultimately, the appropriate performance assurance and rigor of the M&V method necessary to cost effectively assure compliance with that specified in the contract must be at the discretion of the individual contracting officer.

### Likely Uses of this Guidance

This guidance provides Federal agencies with a level of recommended performance assurance for alternatively-financed, utility-company-provided energy and water services consistent with prudent fiscal management. As in all contract matters, the individual agencies and their contracting officers must make the final decision as to the specific contract requirements that they deem appropriate to their unique situation and are in compliance with agency specific guidelines.

### Related Documents

Utility Energy Service Contract Guide: A Resource for Contracting Officers Working on UESC Projects at http://energy.gov/node/760641.

M&V Guidelines: Measurement and Verification for Federal Energy Projects at http://energy.gov/node/1413841.

## Sole Source Justification

*Alternative Financing Guidance Memorandum (AFGM) #001*

**Authority to Sole Source Utility Service Contracts as referenced in section 152 of the Energy Policy Act (EPAct) of 1992.**

### Issue

Clarification on whether section 152 of EPAct provides the statutory exception from the Competition in Contracting Act's full and open competition requirement for demand-side-management utility contracts.

### Policy in Brief

Section 152(f) of Public Law 102-468, the Energy Policy Act of 1992 (EPAct), which amends section 546 of the National Energy Conservation Policy Act, states the following:

(c) Utility Incentive Programs

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

## Background

***Need****:* As agencies strive to meet the energy reduction goals set forth in EPAct and Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, the ability to quickly develop projects and implement contracts in crucial. Agencies have been unclear concerning their authority to establish sole source contracts with their franchised and/or serving utility for demand-side management services, and this lack of clarity can result in significant delays. Field personnel have requested clarification from their agencies' headquarters several times on this issue and many memoranda have been issued in response to these requests over the past four years (see Related Documents below).

***Goal/Objective****:* A definitive statement on this issue contained in one memorandum provides clarification to agency field personnel so they can quickly take advantage of opportunities to implement energy-efficiency and water conservation utility contracts of this nature.

***Relevant Authorities****:* Section 152 of EPAct is the language in question. Additional relevant authorities are listed under "Related Documents" at the end of this memorandum. As stated earlier, memoranda requesting clarification on this issue have been issued by several agencies including the Department of Energy (DOE), the General Services Administration (GSA), and the Department of Defense (DOD); these are also cited under "Related Documents."

## Findings

The number of utilities offering incentive programs to the Federal Government has significantly increased over the past few years. Deregulatory changes occurring in the electric utility industry, the likelihood of competition among utilities in the near future, and the increase in customer service offered by all utilities make these programs more attractive than ever before. It is in the Government's best interest to take advantage of these incentives while they are available.

These programs provide the Government with a means to accomplish many significant goals: (1) to increase energy efficiency and to conserve water and manage electricity demand, (2) to reduce the utility funds needed to operate and maintain Federal facilities, and (3) to provide agencies with another avenue for achieving the 30% energy-reduction goal set in Executive Order 12902.

## Guidance Statement

This memorandum is being issued to clarify the existing language in Section 152 of EPAct with regard to whether agencies have the legal authority to enter into sole-source contracts with their franchised and/or serving utility for utility incentive programs.

In the DOE memorandum dated July 7, 1994, from Anne Troy through Mary Ann Masterson to Mr. Philip Winter with the subject "Statutory Exception from the Competition in Contracting Act's Full and Open Competition Requirement in Demand

Side Management Utility Contracts," DOE's General Counsel found that Section 152 of Public Law 102-468, Energy Policy Act of 1992, provides the authority to "sole-source" utility service contracts to obtain demand-side management services. It concluded that the language contained in Section 152 does meet the criteria of one exception to the Competition in Contracting Act of 1984 (CICA). That exception is contained in 41 USC (253(c)(5), which provides that a civilian agency may use other than competitive procedures when "a statute expressly authorizes or requires that the procurement be made . . . from a specified source."

As recently as December 13, 1996, a memorandum was issued by the DOE from Lawrence Oliver to John Archibald reiterating the statement that the language in section 152 of EPAct does provide sufficient legal authority for agencies to established sole-source contracts with their utility for utility incentive program service contracts. This DOE memorandum responded to a request for a legal opinion in order to gain approval for a specific utility project.

Since DOE is tasked with promulgating regulations under the Energy Policy Act, the memoranda referenced above clearly provide the guidance and legal interpretation needed to allow representatives in all civilian agencies to act in accordance with EPAct.

Likewise, the language in 10 USC 2865 and in the DOD Defense Energy Program Policy Memorandum 94-1 of December 20, 1993, provides the military departments and defense agencies with clear authorization to "sole source" with their franchised and/or serving utilities for these types of services.

In summary, ample justification exists for Federal agencies, both civilian and military to enter into sole-source agreements with their franchised and/or serving utilities for any financial incentives, goods, and services provided under their incentive programs.

### Likely Uses of This Guidance

This guidance allows Federal agencies to use existing or new utility contract authority for energy services where competition is not required but may be used when desired. This allows agencies to participate in energy efficiency and water conservation programs conducted by gas, water, or electric utilities that are generally available to customers of such utilities.

### Related Documents

1. Executive Order 12902, L&AP Book, p. 45–56
2. 42 USC 8256 (also NECPA, Title VIII, Section 546), L&AP Book p. 73–74
3. 10 USC 2865, L&AP Book p. 81-83
4. DOD memo for 021A from 09CB1, dated 29 Jan 93, L&AP Book p. 13-14
5. GSA memo for Ida Ustad from Edward Broyles, dated 29 Apr 93, L&AP Book p. 5-7
6. DOD – DEPPM 94-1, 20 Dec 93, L&AP Book p. 85-92
7. DOE memo for Philip Winter, GSA, from Anne Troy through Mary Anne Masterson, dated 7 July 94, L&AP Book, p. 10-12
8. GSA memo for Ida Ustad from Edward Broyles, dated 7 Nov 94, L&AP Book p. 9

9. GSA memo for Eric Dunham from Amy Brow, dated 11 Apr 95, L&AP Book p. 15-17
10. DOE memo for Larry Oliver from Ralph Oser, dated 12 Dec 96
11. DOE memo for John Archibald from Lawrence Oliver, dated 13 Dec 96

### Points of Contact

For the latest list of UESC contacts, visit http://energy.gov/node/850686.

FEMP
FEDERAL ENERGY MANAGEMENT PROGRAM

## Source of Funds

*Alternative Financing Guidance Memorandum (AFGM) #004*

### Federal Fund Sources to be Used to Pay for Multi-Year Contracts under the Utility Incentive Program

#### Issue

Where must funds for payments of multi-year contracts for utility services come from?

#### Policy in Brief

Section 152(f) of the Energy Policy Act of 1992 (EPAct) authorized and encouraged Federal agencies to participate in utility incentive programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water or electric utilities.

Since these contracts are for utility services under Section 201 of the Federal Property Act, the only requirement on Federal agencies is the obligation of the annual costs for such contracts during each year that the contract is in effect. The payment of the costs associated with those contracts can come from whatever fund sources the agency determines it can use for utility services under their utility contract authority.

#### Background

***Need:*** As agencies strive to meet the energy reduction goals set forth in Public Law 102-486, the Energy Policy Act of 1992, and *Executive Order 13123, Greening the Government Through Efficient Energy Management*, the ability to quickly develop projects and implement contracts is crucial. Agencies have been unclear concerning the fund sources that can be used to pay for long term, alternatively financed energy and water efficiency contracts offered by their franchised and/or serving utility companies.

***Goal/Objective:*** A definitive statement on this issue contained in one memorandum to provide clarification to agency field personnel so they can more quickly take advantage of the opportunities to implement energy-efficiency and water conservation utility contracts.

***Relevant Authorities:*** Section 152f of EPAct is the statute that authorizes and encourages Federal agencies to use utility incentive programs; Section 201 of the Federal Property Act is the statutory authority for the purchase of utility services; and Title 10 Section 2865 provides additional guidance to the Department of Defense for entering into agreements with utility companies for cost effective demand and conservation incentive programs.

Section 155 of EPAct as implemented by regulation provides strict guidance on the payment of costs incurred in the implementation of energy savings performance contracts (ESPC). Specifically the annual payment for such a contract may not exceed the cost savings for that year, and payment must be made from energy or energy related cost savings.

While there is no similar restriction in statute concerning the payment of costs under utility incentive programs, many agencies have followed the guidance for ESPC payment for utility contracts. In some cases use of the flexibility of utility services contract payment from funds not directly associated with energy or energy related cost savings and/or in excess of annual savings could reduce the contract term and financing costs, and be in the best financial interest of the Federal Government.

### Findings

Section 203(a)(3) of the Federal Property Act is such a specific statute. Through it, Congress provided contract authority to the General Services Administration (GSA) (and those agencies to which the GSA has re-delegated that authority) to enter into contracts for utility services, for a term of 10 years, without obligating funds for the total cost of the contract. The intent of the statute is to allow agencies to enter into a cost-effective long-term contract for public utility services while only having sufficient budget authority to obligate its first year's annual cost under the agreement.

Section 2865 (d)(4)(B) of Title 10 of the United States Code states that "subject to the availability of funds, repayment of costs advanced under subparagraph (A) {financing costs} shall be made from funds available to a military department for the purchase of utility services."

### Guidance Statement

This memorandum is being issued to clarify the question of which fund sources can be used by an agency to pay for utility incentive programs.

In summary, there is no statutory restriction on the type of funds to be used to pay for utility incentive programs or that the amount be equal to or less than the annual savings. Agencies can use any fund sources that the agency determines it can use to pay for utility services. These funds can include those that are used to pay for the elements of associated cost savings generated from the contract, such as personnel and capital cost savings.

### Likely Uses of this Guidance

This guidance clarifies the fact that the choice of fund sources is not constrained by statute. The contracting officers of each agency have the discretion to use any funds, deemed appropriate for use by that agency to pay for utility services, to pay for multi-year contracts under the utility incentive program.

### Related Documents

1) Public Law 102-486,
2) Executive Order 13123

### *Points of Contact*

For the latest list of UESC contacts, visit http://energy.gov/node/850686.

## Department of Defense Rebate Guidance

*DoD Financial Management Regulation Volume 12, Chapter 12*

The document outlines financial management policy and procedures for the identification, retention, and use of energy and water cost savings as detailed in Title 10, United States Code (U.S.C.), Chapter 169, Section 2866 and Chapter 173, Sections 2912, 2913, 2914, 2915, and 2916.

## Solar Investment Tax Credit

*Frequently Asked Questions*

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 into law (P.L. 110-343). This legislation contains a number of tax incentives designed to encourage both individuals and businesses to make investments in solar energy, including 8-year extensions of the section 48 business solar investment tax credit (ITC) and the section 25D residential solar ITC. The following is a brief summary of the provisions directly and indirectly benefiting the solar industry, and answers to frequently asked questions about how the provisions operate.

**Provisions Directly Benefiting the Solar Industry:**

Business Solar Investment Tax Credit (IR Code §48). The bill extends the 30% ITC for solar energy property for eight years through December 31, 2016. The bill allows the ITC to be used to offset both regular and alternative minimum tax (AMT) and waives the public utility exception of current law (i.e., permits utilities to directly invest in solar facilities and claim the ITC). The five-year accelerated depreciation allowance for solar property is permanent and unaffected by passage of the eight-year extension of the solar ITC.

Residential Solar Investment Tax Credit (IR Code §25D). The bill extends the 30% ITC for residential solar property for eight years through December 31, 2016. It also removes the cap on qualified solar electric property expenditures (currently $2,000), effective for property placed in service after December 31, 2008. The bill allows individual taxpayers to use the credit to offset AMT liability, and to carry unused credits forward to the next succeeding taxable year. The $2,000 monetary cap on solar water heating property was not lifted and remains in effect.

New Clean Renewable Energy Bonds ("CREBs"). The bill authorizes $800 million of new clean renewable energy bonds to finance facilities that generate electricity from renewable resources, including: solar, wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewables and trash combustion facilities. This $800 million authorization will be allocated as follows: 1/3 will be used for qualifying projects of State/local/tribal Governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. The bill also extends the termination date for existing CREBs by one year. Thus, State and local Governments, public power providers and electric cooperatives will be allowed to issue CREBs to finance new renewable electric power facilities, including solar installations, through December 31, 2009.

**Provisions Indirectly Benefiting the Solar Industry:**

Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to $1.80 per square foot of building floor area for property installed in commercial buildings as part of: (i) interior lighting systems, (ii) heating, cooling, ventilation, and hot water systems, or (iii) the building envelope. Expenditures must be certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to certain established standards. The bill extends the energy efficient commercial buildings deduction for five years, through December 31, 2013.

Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds, "Qualified Energy Conservation Bonds" (QECBs) to finance State and local Government initiatives designed to reduce greenhouse emissions. QECBs can be issued to finance capital expenditures incurred for: (1) reducing energy consumption by at least 20%; (2) implementing green community programs; and (3) rural development involving the production of electricity from renewable resources. The bonds can also be used to finance research facilities and provide research grants for, among other things, technologies to reduce peak use of electricity. There is a national limitation of $800 million, allocated to States, municipalities and tribal Governments.

Research and Development Tax Credit. The bill would extend the research and development tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceed its base amount for that year. The R&D tax credit expired December 31, 2007. The provision would be extended retroactively to January 1, 2008 and through the end of 2009. In addition, the proposal would increase the alternative simplified credit from 12% to 14% for the 2009 tax year, and repeal the alternative incremental research credit for the 2009 tax year. The proposal is effective for amounts paid or incurred after December 31, 2007. Thus, research expenditures incurred by the solar energy industry would qualify for the credit.

**Frequently Asked Questions**:

1. When is the extension of the ITC effective for commercial property?

    Answer: The extension of the ITC for commercial solar property is effective on the date of enactment, October 3, 2008. Since the existing credit was not scheduled to expire until December 31, 2008, this means that the credit has been seamlessly extended through 12/31/2016.

2. What is the effective date for the allowance of the sec. 48 commercial ITC against AMT liability?

> Answer: The allowance of the sec. 48 ITC against AMT liability is effective for taxable years beginning after the date of enactment. For most taxpayers, this will mean that the credit against AMT is effective beginning on January 1, 2009. However, business taxpayers have flexibility in choosing their fiscal year for tax purposes. If a taxpayer uses a fiscal year that runs from November 1 - October 31st, it would mean that they can begin using the credit against AMT beginning November 1, 2008, rather than having to wait until January 1, 2009.

3. What is the effective date for waiver of the public utility exception?

> Answer: This provision is effective for periods after February 12, 2008, in taxable years ending after such date.

4. When is the ITC effective for residential solar energy efficiency property?

> Answer: The extension of the ITC for residential solar energy efficiency property is effective on the date of enactment, October 3, 2008. Since the existing section 25D credit was not scheduled to expire until December 31, 2008, this means that the credit has been seamlessly extended through 12/31/2016.

5. What property qualifies for the section 25D residential ITC?

> Answer: The credit applies to "qualified solar water heating property," (defined as "property to heat water for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer if at least half of the energy used by such property is derived from the sun), and to "qualified solar electric property" (defined as property which uses solar energy to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer).

6. Does the elimination of the $2,000 cap on the section 25D residential credit apply to solar thermal property?

> Answer: No. The elimination of the $2,000 cap applies only for qualified solar electric property expenditures.

7. What is the effective date of the elimination of the $2,000 cap for solar electric property expenditures?

> Answer: The elimination of the $2,000 cap for solar electric property expenditures is effective for property placed in service after December 31, 2008. State laws dictate when in-state property is placed-in-service.

8. If I begin a residential installation now, can the lifted cap apply to this project?

Answer: That depends on whether the installation is completed after December 31, 2008. Section 25D(e)(8)(A) provides in general that an expenditure with respect to an item shall be treated as made when the original installation of the item is completed. In other words, the taxpayer may claim the credit as of the date that the installation of the residential solar electric property is completed and the property is placed into service. If an installation is begun in 2008, but the property is not placed into service until after December 31, 2008, the taxpayer may claim the credit for 30% of the expenditures made with regard to the installation.

9. Why was the $2,000 cap not lifted for residential solar water heating projects?

Answer: Although House and Senate staff agreed to lift the $2,000 cap for solar water heating projects, members of the Solar Thermal Division of SEIA voted overwhelming to maintain the cap.

10. What is the effective date for allowance of the solar ITC against the AMT?

Answer: The provision allowing individual taxpayers to use the solar ITC against AMT liability is effective for taxable years beginning after December 31, 2007. Thus, individual taxpayers who are required to pay alternative minimum tax liability (rather than regular tax liability) for the 2008 tax year may take a credit of up to $2,000 (the maximum credit amount for solar residential property placed in service during 2008) against the AMT liability. For the 2009 tax year, filers will be eligible to apply the full 30% ITC against the AMT liability.

11. Were the bonus depreciation provisions enacted as part of the Economic Stimulus Package earlier this year that are currently set to expire on 12/31/08 extended as part of the Emergency Economic Stabilization Act?

Answer: No, the bonus depreciation rules were not extended. Bonus depreciation should not be confused with the five-year accelerated depreciation of solar property under Section 48.

# UESC Contracts

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## List of Areawide Contracts

The General Services Administration (GSA) maintains a list of areawide public utility contracts. Updated regularly, the list outlines the utility company, contract number, utility service(s), geographic contract coverage, expiration date, and a point of contact.

The GSA Areawide Public Utility Contract Listing is available online at https://www.gsa.gov/real-estate/facilities-management/utility-services/areawide-public-utility-contracts.

## Davis-Bacon Wage Determinations

The Davis-Bacon Wage Determinations contained on this website are wage determinations issued by the U.S. Department of Labor under the *Davis-Bacon and related Acts*.

The Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on Federally-funded or assisted construction projects. It is the responsibility of the Federal agency that funds or financially assists Davis-Bacon covered construction projects to ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contracts(s).

# Basic Ordering Agreement

**BASIC ORDERING AGREEMENT**
**BETWEEN**
**THE UNITED STATES OF AMERICA AND**
**AT, __________________, ___________________, ______________**

This Basic Ordering Agreement (BOA) is entered into by the United States of America, hereinafter called the "Government", represented by the Contracting Officer, ______________________ and the **Utility Company, hereinafter** called the "Contractor". The terms "order" and "contract" are considered to be interchangeable. The effective date of this agreement is the date of execution by the Government, as shown below. <u>This document is not a contract</u>.

The terms and conditions hereinafter set forth are hereby agreed upon by the parties hereto for incorporation into negotiated firm-fixed price type contracts, between the parties, entered into on or after the date of this document, and prior to its expiration.

This BOA may be terminated in its entirety by either party upon thirty (30) calendar days written notice to the other party. This BOA, including the clauses hereof, may be amended only by mutual agreement of the parties, and shall be revised as necessary to conform to the requirements of the Federal Acquisition Regulation, Defense Acquisition Regulation and Navy Acquisition Procedures Supplement. Modification of this BOA shall not retroactively affect orders previously issued.

The period during which orders may be placed against this BOA may not exceed ten years. The basic term is three years and the Contracting Officer may grant extensions for up to two years, with no single extension exceeding one year.

In WITNESS WHEREOF, the parties hereto, hereby execute this agreement.

**Utility Company**

By:
(signature)

Title

Date

UNITED STATES OF AMERICA

By:
(signature)

Title

Date

# UESC Sample Documents

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## Instrument of Assignments

# INSTRUMENT OF ASSIGNMENT

Re: Task Order ______ issued under Contract ______ dated __________ pursuant to Areawide Contract ___________ dated ____________ (as amended, modified, supplemented and renewed from time to time in accordance therewith, together with all exhibits, schedules, annexes and other attachments thereto, all of which together constitute the "Contract") (the "**Contract**"), between _________ and Federal Agency Name

Issued by: Federal Agency Name

________________________

________________________

FOR VALUE RECEIVED, the undersigned, _________________ ("**Assignor**") does hereby assign, set over and transfer to ___________________ ("**Assignee**") all rights, title and interest to all monies due, or to become due Seller from the United States of America, or from any agency or department thereof, accruing under the Contract.

Payment of all invoices should be made to:

| By Wire: | By Mail: |
|---|---|
| _________________________ | __________________________ |
| _________________________ | __________________________ |
| _________________________ | __________________________ |

Assignee shall not be responsible for the performance of any of the covenants or obligations in the Contract.

__________________________________

By: ________________________________________

Name: ______________________________________

Title: _______________________________________

Date: _______________________________________

I, ____________, certify that I am (Assistant) Secretary of Seller and that _________ who signed this Instrument of Assignment on behalf of Seller was ______ of Seller; that this Instrument of Assignment was duly signed for and on behalf of Seller by authority of its governing body and is within the scope of its corporate powers.

IN WITNESS WHEREOF I have affixed my hand and the seal of Seller this ___day of [insert month], 200_.

________________________________________
Secretary
(Seal)

## ACCEPTANCE OF ASSIGNMENT

Assignment of monies due or to become due Seller from the United States of America, Department of the _________________________ under the Contract is hereby accepted.

By: ________________________________________

Name: ______________________________________

Title: _______________________________________

Date: _______________________________________

## UESC Utility-ESCO Agreement

# ENERGY CONSERVATION MEASURE UTILITY/ENERGY SERVICE COMPANY PROJECT DEVELOPMENT/DESIGN AGREEMENT

This Agreement is effective as of the date of the latest signature of the two parties, by and between utility (the "Company"), an name of State corporation, having its principal office at address of utility company and ________________________ (the "Contractor"), ______________________________ with offices located at __________________________________________________. Company and Contractor are hereinafter individually referred to as "Party" and collectively referred to as "Parties".

## 1. Purpose:

The purpose of this Agreement is to establish a "pre-contract" relationship between the Parties and to establish an advance agreement on certain terms, principles risk relationships, treatment of costs and sharing of project margin associated with developing energy conservation measures for the Company's customer(s). "Pre-contract" refers to Phase I and II project development activities that lead to and include proposal completion in accordance with the agreement in Exhibit A and utility Areawide Agreement. Once a Delivery/Task Order is issued by the Government, the terms and conditions of the subcontract between Company and Contractor will apply to the Parties.

## 2. Acknowledgement:

The Company is a state regulated public utility whose service territory includes federal government facilities intended to be addressed in contracts and subcontracts resulting from this Agreement, and the Contractor is experienced in the business of providing products and services designed to reduce consumers' energy costs.

The Company is the named recipient of that certain Energy Conservation Measure ("ECM") Agreement referenced in Exhibit A, issued by the United States of America between the Company and the United States Government, relating to refurbishing and upgrading United States Government facilities located within the service territory of the Company.

## 3. Relationship of the Parties:

The Parties agree that the relationships between the Parties is non-exclusive and relates only to those projects listed in Exhibit A and any further projects resulting therefrom. The Parties agree that in addition to providing project development and design services, the Contractor will serve as general contractor for project execution to assist the Company in fulfilling its obligations under the agreement at Exhibit A and any resulting Delivery/Task Orders for energy conservation projects. The Parties agree that the Contractor may directly communicate with the Government for routine project development and design coordination in conjunction with the Company. The Contractor will not be allowed to provide written correspondence to the Government unless expressly permitted by the Company. All substantive agreements and commitments with the Government entered by the Contractor will only be permitted by express written permission of the Company. Activities and communication allowed by the Contractor with permission of Company include, but is not limited to developing projects, developing energy conservation proposals, making arrangements for, and negotiation of, the resulting Delivery/Task Orders, execution of any necessary agreements according to the terms set forth by applicable regulation and policy which are in the Contractor's judgment reasonable and necessary conditions, and managing projects on behalf of the Company. The Parties further agree that the Contractor will provide management and communication processes, to the satisfaction of the Company, to provide adequate project management controls for the Company.

Each party shall act as an independent contractor and not as an agent for, partner of, or joint venture with the other Party. No other relationship outside of that contemplated by the terms of this Agreement shall be created. Neither Party may obligate the other to any extent except as **explicitly set forth herein.**

## 4. Margin Sharing:

The Contractor agrees to present cost data as illustrated in Exhibit B, attached hereto. The term "Total Implementation Price" shall be the sum of: (A) direct costs such as professional fees which shall include costs for professional services such as detailed feasibility studies, design, training, commissioning, monitoring, and maintenance of installed ECMs; (B) direct costs associated with subcontractors, labor, equipment, and material in connection with the implementation of ECMs, as well as other miscellaneous costs; (C) indirect costs and turn-key overhead; and (D) profit, agreed as a percentage mark-up applied to the sum of (A), (B), and (C) above. Categories (C) and (D) compensate both the Company and Contractor for sharing the risks and rewards of implementing ECMs in a Delivery/Task Order.

"Contractor fees" such as professional services cost estimates will be based on the Contractor's Professional Service Rates, subject to negotiation and acceptance by the Government.

The Company will arrange, enter into and administer third-party financing agreements for projects developed under this Agreement. At the Company's request, the Contractor will assist in arranging such agreements on behalf of the Company.

Overhead and profit will be shared between Company and Contractor based on the relative risk-and-return preferences of each Party, for each proposal. The agreed sharing of overhead and profit between the Company and Contractor for each proposal and resulting Delivery/Task Order may vary based on the types of ECMs installed. The Contractor will prepare Exhibit B based upon the agreed sharing ratio for each given proposal.

Maintenance services will be priced by Contractor as outsourced or in-house services and added to the project price. Overhead and Profit will be applied to these costs and shared between Company and Contractor as defined in **Exhibit B.**

## 5. Proprietary Information:

All information furnished by the Parties (including, without limitation, drawings and specifications) relating to energy services shall be deemed confidential, and the Parties shall not disclose any such information to any other person or entity, other than the Federal Government, or use such information for any purpose other than performing energy services, unless such disclosure is pursuant to an order of a court or other tribunal of competent jurisdiction. All such information shall be returned to the originator upon completion of the work or termination or cancellation of this Agreement or resulting contract. These provisions shall be in addition to any confidentiality provisions contained in any Confidentiality and Nondisclosure Agreement entered into between the Parties. In the event of conflict, the provision of that separate Confidentiality and Nondisclosure Agreement shall control. Before such disclosure, the disclosing Party shall give prompt notice to the non-disclosing Party so that the non-disclosing Party can defend against such disclosure.

## 6. Limitation on Liability:

6.1 The Contractor will exercise due care in project development and design. In no event shall either the Contractor or the Company be liable to the other Party for any special, indirect, incidental, consequential, punitive, or similar damages or penalties whatsoever or for loss of profits or revenues, whether any action therefore is based in contract, in tort (including negligence and strict liability), in warranty, or otherwise.

6.2 The Contractor's total liability to the Company for damages or injury to persons or property that may be caused by or arise through developing and designing projects or performing any obligation under this Agreement shall be limited only to losses caused by Contractor's negligence or intentional misconduct and only to the extent of the Contractor's insurance coverage as defined in Exhibit C hereto. The Contractor shall indemnify and hold Company harmless from against all Third Party Claims. This Agreement shall not deprive the Parties from rights they may have against any other entity or person.

6.3 The Contractor will comply with Federal Acquisition Regulation Clause 52.228-5, entitled, Insurance-Work on a Government Installation. In addition, Contractor shall furnish insurance certificate to Company in compliance with Exhibit C.

## 7. General:

7.4 7.1 In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unreasonable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portion of this Agreement unless the result would be manifestly inequitable or unconscionable.

7.2 The provisions of this Agreement shall be binding upon and inure to the benefit of Contractor and Company and their respective successors and permitted assigns.

7.3 The validity, construction and enforcement of, and the remedies under, this Agreement shall be governed by the law of the State of and, to the extent applicable the United States of America, provided any choice of law provision of the applicable state shall not apply if the choice of law provision would require the laws of another state or jurisdiction to govern the Agreement.

7.5 Either Party may, at its option, terminate this Agreement any time by 30-day written notice to the other Party.

IN WITNESS WHEREOF, and in order to express their agreement to be bound to the terms of this Agreement, Company and Contractor have executed this Agreement on the dates set forth below their signatures.

***Name of Utility Company***

| | |
|---|---|
| ______________________ | ______________________ |
| Signature | Signature |
| ______________________ | ______________________ |
| Printed Name | Printed Name |
| ______________________ | ______________________ |
| Title | Title |
| ______________________ | ______________________ |
| Date | Date |

# Sample Subcontracting Plan

**"SAMPLE"**

# SUBCONTRACTING PLAN

# FOR

# SMALL BUSINESS,

# SMALL DISADVANTAGED BUSINESS,

# HUBZONE SMALL BUSINESS AND

# WOMEN-OWNED SMALL BUSINESS CONCERNS

SUBMITTED BY:________________________________________________________

GSA CONTRACT NO.:___________________________________________________

DATE OF PLAN:_______________________________________________________

**GSA**
**(REVISED 10/04)**

## SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, HUBZONE SMALL BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS SUBCONTRACTING PLAN

**(Commercial Products Plan)**

Pursuant to Chapter 2, Section 211. Section 8(d) of the Small Business Act, this plan is submitted for the consideration of:

Public Utilities Division, Public Buildings Service
General Services Administration
(Contracting Activity)

by

______________________________________________________________

(Offeror)

This commercial products plan will be in effect for the period:

______________________________ (Offeror's Fiscal Year) and covers all the offeror's planned subcontracting on a company-wide or division-wide basis (offeror to indicate which).

1. TOTAL PROCUREMENT DOLLARS PLANNED TO BE SUBCONTRACTED: $________________

| | |
|---|---|
| Purchased Power for Resale | $________________ |
| Fuels (Gas, Oil, Coal & Nuclear) | $________________ |
| Operation & Maintenance | $________________ |
| Capital Improvement Projects | $________________ |

Purchased Power for Resale and/or Fuels information is to be provided for information purposes only and need not be included in the "TOTAL PROCUREMENT DOLLARS PLANNED TO BE SUBCONTRACTED."

SUBCONTRACTING GOALS: The following goals for small, small disadvantaged, women-owned small business, HUBZone small business, veteran-owned small business and service disabled veteran-owned small business concerns are expressed in terms of percentages of the total planned subcontracting dollars stated in 1. above.

**GOALS**

| | PERCENT | DOLLARS |
|---|---|---|
| Small Business Concerns (SB) (Includes SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and Service-Disabled VOSB) | _______% | $________________ |
| Small Disadvantaged (SDB) Concerns | _______% | $________________ |
| Women-Owned Small Business (WOSB) Concerns | _______% | $________________ |
| HUBZone Small Business (HUBZone SB) Concerns | _______% | $________________ |
| Veteran-Owned Small Business (VOSB) Concerns | _______% | $________________ |
| Service-Disabled Veteran-Owned Small Business Concerns | _______% | $________________ |

3. The principal products and services planned to be subcontracted and identification of the types of business concerns are as follows:

Type of Business Concern
(Check appropriate column(s) for each product or services)

| **Subcontracting Products/Services** | **SB** | **SDB** | **HUBZone** | **WOSB** | **Other than SB*** |
|---|---|---|---|---|---|
| | | | | | |
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| | | | | | |

*Other than SB includes large business, non-profit organizations, state and local governments.

4. Describe the method used to develop subcontracting goals.

5. Describe the method used to identify potential sources for solicitation purposes; *e.g*., existing company source lists is Central Contractor Registration (CCR) will become the Dynamic Small Business Search function, for more information view : http://pro-net.sba.gov. National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged, HUBZone and women-owned small business trade associations.

6. Indirect Costs {check one):

[ ] have been included [ ] have not boon included

If indirect costs have been included, describe below the method used to determine the proportionate share of indirect costs to be incurred with (i) small business, (ii) small disadvantaged business, (iii) HUBZone small business and (iv) women-owned small business concerns.

7. The following individual employed by the company will administer the subcontracting program:

Name: ______________________________

Title: ______________________________

Address: ______________________________

______________________________

Telephone Number: ______________________________

E-Mail Address: ____________________________________________

The subcontracting plan administrator's duties are as follows (e.g., ensuring preparation and submittal of subcontracting reports, monitoring attainment of goals, searching out small, small disadvantaged, HUBZone and women-owned small business concerns and including them in solicitations, providing for buyer training in the subcontracting program, maintaining out small, small disadvantaged, HUBZone and women-owned small business source lists, etc.):

List Duties:

8. Describe the efforts the offeror will (i) make to assure that small, small disadvantaged HUBZone and women-owned small business concerns will have an equitable opportunity to compete for subcontracts (e.g., attendance at small, minority and women-owned business conferences and trade fairs contacts with small, minority and women-owned business development organizations and trade associations, arranging solicitations so as to facilitate participation of small, small disadvantaged, HUBZone and women-owned small business concerns, internal buyer training, discussing subcontracting opportunities with such concerns, providing financial and/or technical assistance to such concerns, etc.}:

List Efforts:

9. The offeror assures that the clause entitled "Utilization of Small Business Concerns" will be included in all subcontracts, that offer further subcontracting opportunities, and all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) will be required to adopt a plan similar to this plan.

10. The offeror assures that it will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form 294, Subcontracting Report for Individual Contracts, and/or Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and/or 295.

11. The offer or agrees to maintain the following types of records to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists, and a description of its efforts to locate small, small disadvantaged, HUBZone and women-owned small business concerns and award subcontracts to them.

(a) Source lists, guides, and other data that small, small disadvantaged, HUBZone and women-owned small business concerns.

Organizations contacted in an attempt to locate sources that are small, small disadvantaged, HUBZone and women-owned small business concerns.

(c) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating whether small business concerns were solicited and if not, why not; and, if applicable, the reason award was not made to a small, small disadvantaged, HUBZone and women-owned small business concerns.

(d) Records of outreach efforts to contact trade associations, business development organizations, and conferences and trade fairs to locate small, small disadvantaged, HUBZone and women-owned small business sources.

(e) Records of internal guidance and encouragement provided to buyers through workshops, seminars, training; and monitoring performance to evaluate compliance with the program's requirements.

(f) Other: ______________________________________________

______________________________________________

______________________________________________

## Sample Payment Schedules

The following provides a sample payment schedule for UESC-funded projects. The samples provide payment summaries for annual, semi-annual, quarterly, and monthly payment options.

The payment schedules provided below are based on the following financial assumptions:

| | |
|---|---|
| Total Rate: | 6.55% |
| Reinvestment Rate: | 2.00% |
| Total Draws: | $937,911.00 |
| Capitalized Finance Charges: | $25,053.05 |
| Total Amount Financed: | $962,964.05 |

| Month | Payment Date | Total Draw Amount | Interest Income | Interest Expense | Escrow Balance |
|---|---|---|---|---|---|
| 1 | 01-Sep-08 | $785,709.00 | $ - | $ - | $177,255.05 |
| 2 | 01-Oct-08 | - | 295.43 | 5,256.18 | 172,294.30 |
| 3 | 01-Nov-08 | - | 287.16 | 5,256.18 | 167,325.27 |
| 4 | 01-Dec-08 | - | 278.88 | 5,256.18 | 162,347.97 |
| 5 | 01-Jan-09 | - | 270.58 | 5,256.18 | 157,362.37 |
| 6 | 01-Feb-09 | 152,202.00 | 271.01 | 5,431.38 | 0.00 |
| **Totals** | | **$937,911.00** | **$1,403.05** | **$26,456.10** | |

## Annual Payment Schedule

| Payment | Payment Date | Payment | Decrease | Increase | Balance | Termination Amount |
|---|---|---|---|---|---|---|
| | 01-Sep-08 | | | | | $1,001,482.61 |
| | 01-Oct-08 | | | | | 1,001,482.61 |
| | 01-Nov-08 | | | | | 1,001,482.61 |
| | 01-Dec-08 | | | | | 1,001,482.61 |
| | 01-Jan-09 | | | | | 1,001,482.61 |
| | 01-Feb-09 | | | | $962,964.05 | 1,001,482.61 |
| 1 | 01-Mar-09 | $152,202.00 | $147,296.23 | $4,905.77 | 815,667.82 | 848,294.53 |
| | 01-Apr-09 | | (4,452.19) | 4,452.19 | 820,120.00 | 852,924.80 |
| | 01-May-09 | | (4,476.49) | 4,476.49 | 824,596.49 | 857,580.35 |
| | 01-Jun-09 | | (4,500.92) | 4,500.92 | 829,097.41 | 862,261.31 |
| | 01-Jul-09 | | (4,525.49) | 4,525.49 | 833,622.90 | 866,967.82 |
| | 01-Aug-09 | | (4,550.19) | 4,550.19 | 838,173.10 | 871,700.02 |
| | 01-Sep-09 | | (4,575.03) | 4,575.03 | 842,748.12 | 876,458.05 |
| | 01-Oct-09 | | (4,600.00) | 4,600.00 | 847,348.12 | 881,242.05 |
| | 01-Nov-09 | | (4,625.11) | 4,625.11 | 851,973.23 | 886,052.16 |
| | 01-Dec-09 | | (4,650.35) | 4,650.35 | 856,623.59 | 890,888.53 |
| | 01-Jan-10 | | (4,675.74) | 4,675.74 | 861,299.32 | 895,751.30 |
| | 01-Feb-10 | | (4,701.26) | 4,701.26 | 866,000.58 | 900,640.61 |
| 2 | 01-Mar-10 | 152,202.00 | 147,475.08 | 4,726.92 | 718,525.50 | 747,266.52 |
| | 01-Apr-10 | | (3,921.95) | 3,921.95 | 722,447.45 | 751,345.35 |
| | 01-May-10 | | (3,943.36) | 3,943.36 | 726,390.81 | 755,446.45 |
| | 01-Jun-10 | | (3,964.88) | 3,964.88 | 730,355.70 | 759,569.92 |
| | 01-Jul-10 | | (3,986.52) | 3,986.52 | 734,342.22 | 763,715.91 |
| | 01-Aug-10 | | (4,008.28) | 4,008.28 | 738,350.51 | 767,884.53 |
| | 01-Sep-10 | | (4,030.16) | 4,030.16 | 742,380.67 | 772,075.90 |
| | 01-Oct-10 | | (4,052.16) | 4,052.16 | 746,432.83 | 776,290.14 |
| | 01-Nov-10 | | (4,074.28) | 4,074.28 | 750,507.11 | 780,527.39 |
| | 01-Dec-10 | | (4,096.52) | 4,096.52 | 754,603.63 | 784,787.77 |
| | 01-Jan-11 | | (4,118.88) | 4,118.88 | 758,722.50 | 789,071.41 |
| | 01-Feb-11 | | (4,141.36) | 4,141.36 | 762,863.87 | 793,378.42 |
| 3 | 01-Mar-11 | 152,202.00 | 148,038.03 | 4,163.97 | 614,825.83 | 639,418.86 |
| | 01-Apr-11 | | (3,355.92) | 3,355.92 | 618,181.75 | 642,909.03 |
| | 01-May-11 | | (3,374.24) | 3,374.24 | 621,556.00 | 646,418.24 |
| | 01-Jun-11 | | (3,392.66) | 3,392.66 | 624,948.66 | 649,946.60 |
| | 01-Jul-11 | | (3,411.18) | 3,411.18 | 628,359.83 | 653,494.23 |
| | 01-Aug-11 | | (3,429.80) | 3,429.80 | 631,789.63 | 657,061.22 |
| | 01-Sep-11 | | (3,448.52) | 3,448.52 | 635,238.15 | 660,647.68 |
| | 01-Oct-11 | | (3,467.34) | 3,467.34 | 638,705.49 | 664,253.71 |
| | 01-Nov-11 | | (3,486.27) | 3,486.27 | 642,191.76 | 667,879.43 |
| | 01-Dec-11 | | (3,505.30) | 3,505.30 | 645,697.06 | 671,524.94 |
| | 01-Jan-12 | | (3,524.43) | 3,524.43 | 649,221.49 | 675,190.35 |
| | 01-Feb-12 | | (3,543.67) | 3,543.67 | 652,765.15 | 678,875.76 |
| 4 | 01-Mar-12 | 152,202.00 | 148,638.99 | 3,563.01 | 504,126.16 | 524,291.21 |
| | 01-Apr-12 | | (2,751.69) | 2,751.69 | 506,877.85 | 527,152.97 |
| | 01-May-12 | | (2,766.71) | 2,766.71 | 509,644.56 | 530,030.34 |
| | 01-Jun-12 | | (2,781.81) | 2,781.81 | 512,426.37 | 532,923.42 |
| | 01-Jul-12 | | (2,796.99) | 2,796.99 | 515,223.36 | 535,832.30 |
| | 01-Aug-12 | | (2,812.26) | 2,812.26 | 518,035.62 | 538,757.05 |
| | 01-Sep-12 | | (2,827.61) | 2,827.61 | 520,863.24 | 541,697.77 |
| | 01-Oct-12 | | (2,843.05) | 2,843.05 | 523,706.28 | 544,654.53 |
| | 01-Nov-12 | | (2,858.56) | 2,858.56 | 526,564.84 | 547,627.44 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 01-Dec-12 | | (2,874.17) | 2,874.17 | 529,439.01 | 550,616.57 |
| | 01-Jan-13 | | (2,889.85) | 2,889.85 | 532,328.87 | 553,622.02 |
| | 01-Feb-13 | | (2,905.63) | 2,905.63 | 535,234.49 | 556,643.87 |
| 5 | 01-Mar-13 | 152,202.00 | 149,280.51 | 2,921.49 | 385,953.98 | 401,392.14 |
| | 01-Apr-13 | | (2,106.67) | 2,106.67 | 388,060.65 | 403,583.07 |
| | 01-May-13 | | (2,118.16) | 2,118.16 | 390,178.81 | 405,785.96 |
| | 01-Jun-13 | | (2,129.73) | 2,129.73 | 392,308.54 | 408,000.88 |
| | 01-Jul-13 | | (2,141.35) | 2,141.35 | 394,449.89 | 410,227.88 |
| | 01-Aug-13 | | (2,153.04) | 2,153.04 | 396,602.93 | 412,467.04 |
| | 01-Sep-13 | | (2,164.79) | 2,164.79 | 398,767.72 | 414,718.43 |
| | 01-Oct-13 | | (2,176.61) | 2,176.61 | 400,944.33 | 416,982.10 |
| | 01-Nov-13 | | (2,188.49) | 2,188.49 | 403,132.81 | 419,258.13 |
| | 01-Dec-13 | | (2,200.43) | 2,200.43 | 405,333.25 | 421,546.58 |
| | 01-Jan-14 | | (2,212.44) | 2,212.44 | 407,545.69 | 423,847.52 |
| | 01-Feb-14 | | (2,224.52) | 2,224.52 | 409,770.21 | 426,161.02 |
| 6 | 01-Mar-14 | 152,202.00 | 149,965.34 | 2,236.66 | 259,804.87 | 270,197.07 |
| | 01-Apr-14 | | (1,418.10) | 1,418.10 | 261,222.98 | 271,671.89 |
| | 01-May-14 | | (1,425.84) | 1,425.84 | 262,648.82 | 273,154.77 |
| | 01-Jun-14 | | (1,433.62) | 1,433.62 | 264,082.44 | 274,645.74 |
| | 01-Jul-14 | | (1,441.45) | 1,441.45 | 265,523.89 | 276,144.85 |
| | 01-Aug-14 | | (1,449.32) | 1,449.32 | 266,973.21 | 277,652.14 |
| | 01-Sep-14 | | (1,457.23) | 1,457.23 | 268,430.44 | 279,167.66 |
| | 01-Oct-14 | | (1,465.18) | 1,465.18 | 269,895.62 | 280,691.45 |
| | 01-Nov-14 | | (1,473.18) | 1,473.18 | 271,368.80 | 282,223.55 |
| | 01-Dec-14 | | (1,481.22) | 1,481.22 | 272,850.02 | 283,764.02 |
| | 01-Jan-15 | | (1,489.31) | 1,489.31 | 274,339.33 | 285,312.90 |
| | 01-Feb-15 | | (1,497.44) | 1,497.44 | 275,836.77 | 286,870.24 |
| 7 | 01-Mar-15 | 152,202.00 | 150,696.39 | 1,505.61 | 125,140.37 | 130,145.99 |
| | 01-Apr-15 | | (683.06) | 683.06 | 125,823.43 | 130,856.37 |
| | 01-May-15 | | (686.79) | 686.79 | 126,510.22 | 131,570.63 |
| | 01-Jun-15 | | (690.53) | 690.53 | 127,200.75 | 132,288.78 |
| | 01-Jul-15 | | (694.30) | 694.30 | 127,895.06 | 133,010.86 |
| | 01-Aug-15 | | (698.09) | 698.09 | 128,593.15 | 133,736.88 |
| | 01-Sep-15 | | (701.90) | 701.90 | 129,295.06 | 134,466.86 |
| | 01-Oct-15 | | (705.74) | 705.74 | 130,000.79 | 135,200.82 |
| | 01-Nov-15 | | (709.59) | 709.59 | 130,710.38 | 135,938.79 |
| | 01-Dec-15 | | (713.46) | 713.46 | 131,423.84 | 136,680.79 |
| | 01-Jan-16 | | (717.36) | 717.36 | 132,141.19 | 137,426.84 |
| | 01-Feb-16 | | (721.27) | 721.27 | 132,862.47 | 138,176.96 |
| 8 | 01-Mar-16 | 133,587.67 | 132,862.47 | 725.21 | - | - |
| | **Total:** | **$1,199,001.67** | | | | |

## Semi-Annual Payment Schedule

| Payment | Payment Date | Payment | Decrease | Increase | Balance | Termination Amount |
|---|---|---|---|---|---|---|
| | 01-Sep-08 | | | | | $1,001,482.61 |
| | 01-Oct-08 | | | | | 1,001,482.61 |
| | 01-Nov-08 | | | | | 1,001,482.61 |
| | 01-Dec-08 | | | | | 1,001,482.61 |
| | 01-Jan-09 | | | | | 1,001,482.61 |
| | 01-Feb-09 | | | | $962,964.05 | 1,001,482.61 |
| 1 | 01-Mar-09 | $76,101.00 | $71,195.23 | $4,905.77 | 891,768.82 | 927,439.57 |
| | 01-Apr-09 | | (4,867.57) | 4,867.57 | 896,636.39 | 932,501.84 |
| | 01-May-09 | | (4,894.14) | 4,894.14 | 901,530.53 | 937,591.75 |
| | 01-Jun-09 | | (4,920.85) | 4,920.85 | 906,451.38 | 942,709.44 |
| | 01-Jul-09 | | (4,947.71) | 4,947.71 | 911,399.10 | 947,855.06 |
| | 01-Aug-09 | | (4,974.72) | 4,974.72 | 916,373.82 | 953,028.77 |
| 2 | 01-Sep-09 | 76,101.00 | 71,099.13 | 5,001.87 | 845,274.69 | 879,085.68 |
| | 01-Oct-09 | | (4,613.79) | 4,613.79 | 849,888.48 | 883,884.02 |
| | 01-Nov-09 | | (4,638.97) | 4,638.97 | 854,527.46 | 888,708.55 |
| | 01-Dec-09 | | (4,664.30) | 4,664.30 | 859,191.75 | 893,559.42 |
| | 01-Jan-10 | | (4,689.75) | 4,689.75 | 863,881.51 | 898,436.77 |
| | 01-Feb-10 | | (4,715.35) | 4,715.35 | 868,596.86 | 903,340.73 |
| 3 | 01-Mar-10 | 76,101.00 | 71,359.91 | 4,741.09 | 797,236.95 | 829,126.43 |
| | 01-Apr-10 | | (4,351.59) | 4,351.59 | 801,588.54 | 833,652.08 |
| | 01-May-10 | | (4,375.34) | 4,375.34 | 805,963.87 | 838,202.43 |
| | 01-Jun-10 | | (4,399.22) | 4,399.22 | 810,363.09 | 842,777.62 |
| | 01-Jul-10 | | (4,423.23) | 4,423.23 | 814,786.32 | 847,377.78 |
| | 01-Aug-10 | | (4,447.38) | 4,447.38 | 819,233.70 | 852,003.05 |
| 4 | 01-Sep-10 | 76,101.00 | 71,629.35 | 4,471.65 | 747,604.35 | 777,508.52 |
| | 01-Oct-10 | | (4,080.67) | 4,080.67 | 751,685.02 | 781,752.42 |
| | 01-Nov-10 | | (4,102.95) | 4,102.95 | 755,787.97 | 786,019.49 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 01-Dec-10 | | (4,125.34) | 4,125.34 | 759,913.31 | 790,309.85 |
| | 01-Jan-11 | | (4,147.86) | 4,147.86 | 764,061.17 | 794,623.62 |
| | 01-Feb-11 | | (4,170.50) | 4,170.50 | 768,231.67 | 798,960.94 |
| 5 | 01-Mar-11 | 76,101.00 | 71,907.74 | 4,193.26 | 696,323.94 | 724,176.90 |
| | 01-Apr-11 | | (3,800.77) | 3,800.77 | 700,124.71 | 728,129.70 |
| | 01-May-11 | | (3,821.51) | 3,821.51 | 703,946.22 | 732,104.07 |
| | 01-Jun-11 | | (3,842.37) | 3,842.37 | 707,788.59 | 736,100.14 |
| | 01-Jul-11 | | (3,863.35) | 3,863.35 | 711,651.94 | 740,118.02 |
| | 01-Aug-11 | | (3,884.43) | 3,884.43 | 715,536.37 | 744,157.83 |
| 6 | 01-Sep-11 | 76,101.00 | 72,195.36 | 3,905.64 | 643,341.01 | 669,074.65 |
| | 01-Oct-11 | | (3,511.57) | 3,511.57 | 646,852.58 | 672,726.68 |
| | 01-Nov-11 | | (3,530.74) | 3,530.74 | 650,383.32 | 676,398.65 |
| | 01-Dec-11 | | (3,550.01) | 3,550.01 | 653,933.33 | 680,090.66 |
| | 01-Jan-12 | | (3,569.39) | 3,569.39 | 657,502.71 | 683,802.82 |
| | 01-Feb-12 | | (3,588.87) | 3,588.87 | 661,091.58 | 687,535.24 |
| 7 | 01-Mar-12 | 76,101.00 | 72,492.54 | 3,608.46 | 588,599.04 | 612,143.00 |
| | 01-Apr-12 | | (3,212.77) | 3,212.77 | 591,811.81 | 615,484.28 |
| | 01-May-12 | | (3,230.31) | 3,230.31 | 595,042.11 | 618,843.80 |
| | 01-Jun-12 | | (3,247.94) | 3,247.94 | 598,290.05 | 622,221.66 |
| | 01-Jul-12 | | (3,265.67) | 3,265.67 | 601,555.72 | 625,617.95 |
| | 01-Aug-12 | | (3,283.49) | 3,283.49 | 604,839.21 | 629,032.78 |
| 8 | 01-Sep-12 | 76,101.00 | 72,799.59 | 3,301.41 | 532,039.63 | 553,321.21 |
| | 01-Oct-12 | | (2,904.05) | 2,904.05 | 534,943.67 | 556,341.42 |
| | 01-Nov-12 | | (2,919.90) | 2,919.90 | 537,863.58 | 559,378.12 |
| | 01-Dec-12 | | (2,935.84) | 2,935.84 | 540,799.41 | 562,431.39 |
| | 01-Jan-13 | | (2,951.86) | 2,951.86 | 543,751.28 | 565,501.33 |
| | 01-Feb-13 | | (2,967.98) | 2,967.98 | 546,719.25 | 568,588.02 |
| 9 | 01-Mar-13 | 76,101.00 | 73,116.82 | 2,984.18 | 473,602.43 | 492,546.53 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 01-Apr-13 | | (2,585.08) | 2,585.08 | 476,187.51 | 495,235.01 |
| | 01-May-13 | | (2,599.19) | 2,599.19 | 478,786.70 | 497,938.17 |
| | 01-Jun-13 | | (2,613.38) | 2,613.38 | 481,400.08 | 500,656.08 |
| | 01-Jul-13 | | (2,627.64) | 2,627.64 | 484,027.72 | 503,388.83 |
| | 01-Aug-13 | | (2,641.98) | 2,641.98 | 486,669.70 | 506,136.49 |
| 10 | 01-Sep-13 | 76,101.00 | 73,444.59 | 2,656.41 | 413,225.11 | 429,754.11 |
| | 01-Oct-13 | | (2,255.52) | 2,255.52 | 415,480.63 | 432,099.85 |
| | 01-Nov-13 | | (2,267.83) | 2,267.83 | 417,748.46 | 434,458.40 |
| | 01-Dec-13 | | (2,280.21) | 2,280.21 | 420,028.67 | 436,829.82 |
| | 01-Jan-14 | | (2,292.66) | 2,292.66 | 422,321.33 | 439,214.18 |
| | 01-Feb-14 | | (2,305.17) | 2,305.17 | 424,626.50 | 441,611.56 |
| 11 | 01-Mar-14 | 76,101.00 | 73,783.25 | 2,317.75 | 350,843.25 | 364,876.98 |
| | 01-Apr-14 | | (1,915.02) | 1,915.02 | 352,758.27 | 366,868.60 |
| | 01-May-14 | | (1,925.47) | 1,925.47 | 354,683.74 | 368,871.09 |
| | 01-Jun-14 | | (1,935.98) | 1,935.98 | 356,619.73 | 370,884.51 |
| | 01-Jul-14 | | (1,946.55) | 1,946.55 | 358,566.27 | 372,908.93 |
| | 01-Aug-14 | | (1,957.17) | 1,957.17 | 360,523.45 | 374,944.39 |
| 12 | 01-Sep-14 | 76,101.00 | 74,133.14 | 1,967.86 | 286,390.31 | 297,845.92 |
| | 01-Oct-14 | | (1,563.21) | 1,563.21 | 287,953.52 | 299,471.66 |
| | 01-Nov-14 | | (1,571.75) | 1,571.75 | 289,525.27 | 301,106.28 |
| | 01-Dec-14 | | (1,580.33) | 1,580.33 | 291,105.59 | 302,749.82 |
| | 01-Jan-15 | | (1,588.95) | 1,588.95 | 292,694.54 | 304,402.32 |
| | 01-Feb-15 | | (1,597.62) | 1,597.62 | 294,292.17 | 306,063.85 |
| 13 | 01-Mar-15 | 76,101.00 | 74,494.66 | 1,606.34 | 219,797.51 | 228,589.41 |
| | 01-Apr-15 | | (1,199.73) | 1,199.73 | 220,997.24 | 229,837.13 |
| | 01-May-15 | | (1,206.28) | 1,206.28 | 222,203.52 | 231,091.66 |
| | 01-Jun-15 | | (1,212.86) | 1,212.86 | 223,416.38 | 232,353.03 |
| | 01-Jul-15 | | (1,219.48) | 1,219.48 | 224,635.86 | 233,621.29 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 01-Aug-15 | | (1,226.14) | 1,226.14 | 225,862.00 | 234,896.48 |
| 14 | 01-Sep-15 | 76,101.00 | 74,868.17 | 1,232.83 | 150,993.83 | 157,033.58 |
| | 01-Oct-15 | | (824.17) | 824.17 | 151,818.00 | 157,890.72 |
| | 01-Nov-15 | | (828.67) | 828.67 | 152,646.67 | 158,752.54 |
| | 01-Dec-15 | | (833.20) | 833.20 | 153,479.87 | 159,619.07 |
| | 01-Jan-16 | | (837.74) | 837.74 | 154,317.61 | 160,490.32 |
| | 01-Feb-16 | | (842.32) | 842.32 | 155,159.93 | 161,366.33 |
| 15 | 01-Mar-16 | 76,101.00 | 75,254.09 | 846.91 | 79,905.85 | 83,102.08 |
| | 01-Apr-16 | | (436.15) | 436.15 | 80,342.00 | 83,555.68 |
| | 01-May-16 | | (438.53) | 438.53 | 80,780.53 | 84,011.75 |
| | 01-Jun-16 | | (440.93) | 440.93 | 81,221.46 | 84,470.32 |
| | 01-Jul-16 | | (443.33) | 443.33 | 81,664.79 | 84,931.39 |
| | 01-Aug-16 | | (445.75) | 445.75 | 82,110.55 | 85,394.97 |
| 16 | 01-Sep-16 | 76,101.00 | 75,652.81 | 448.19 | 6,457.73 | 6,716.04 |
| | 01-Oct-16 | | (35.25) | 35.25 | 6,492.98 | 6,752.70 |
| | 01-Nov-16 | | (35.44) | 35.44 | 6,528.42 | 6,789.56 |
| | 01-Dec-16 | | (35.63) | 35.63 | 6,564.06 | 6,826.62 |
| | 01-Jan-17 | | (35.83) | 35.83 | 6,599.89 | 6,863.88 |
| | 01-Feb-17 | | (36.02) | 36.02 | 6,635.91 | 6,901.35 |
| 16 | 01-Mar-17 | 6,672.13 | 6,635.91 | 36.22 | - | - |
| | **Total:** | **$1,224,288.13** | | | | |

## Quarterly Payment Schedule

| Payment | Payment Date | Payment | Decrease | Increase | Balance | Termination Amount |
|---|---|---|---|---|---|---|
| | 01-Sep-08 | | | | | $1,001,482.61 |
| | 01-Oct-08 | | | | | 1,001,482.61 |
| | 01-Nov-08 | | | | | 1,001,482.61 |
| | 01-Dec-08 | | | | | 1,001,482.61 |
| | 01-Jan-09 | | | | | 1,001,482.61 |
| | 01-Feb-09 | | | | $962,964.05 | 1,001,482.61 |
| 1 | 01-Mar-09 | $38,050.50 | $33,144.73 | $4,905.77 | 929,819.32 | 967,012.09 |
| | 01-Apr-09 | | (5,075.26) | 5,075.26 | 934,894.58 | 972,290.36 |
| | 01-May-09 | | (5,102.97) | 5,102.97 | 939,997.55 | 977,597.45 |
| 2 | 01-Jun-09 | 38,050.50 | 32,919.68 | 5,130.82 | 907,077.87 | 943,360.98 |
| | 01-Jul-09 | | (4,951.13) | 4,951.13 | 912,029.00 | 948,510.16 |
| | 01-Aug-09 | | (4,978.16) | 4,978.16 | 917,007.16 | 953,687.44 |
| 3 | 01-Sep-09 | 38,050.50 | 33,045.17 | 5,005.33 | 883,961.99 | 919,320.47 |
| | 01-Oct-09 | | (4,824.96) | 4,824.96 | 888,786.95 | 924,338.43 |
| | 01-Nov-09 | | (4,851.30) | 4,851.30 | 893,638.24 | 929,383.77 |
| 4 | 01-Dec-09 | 38,050.50 | 33,172.72 | 4,877.78 | 860,465.52 | 894,884.14 |
| | 01-Jan-10 | | (4,696.71) | 4,696.71 | 865,162.23 | 899,768.72 |
| | 01-Feb-10 | | (4,722.34) | 4,722.34 | 869,884.57 | 904,679.95 |
| 5 | 01-Mar-10 | 38,050.50 | 33,302.38 | 4,748.12 | 836,582.19 | 870,045.48 |
| | 01-Apr-10 | | (4,566.34) | 4,566.34 | 841,148.53 | 874,794.48 |
| | 01-May-10 | | (4,591.27) | 4,591.27 | 845,739.80 | 879,569.40 |
| 6 | 01-Jun-10 | 38,050.50 | 33,434.17 | 4,616.33 | 812,305.63 | 844,797.86 |
| | 01-Jul-10 | | (4,433.83) | 4,433.83 | 816,739.47 | 849,409.05 |
| | 01-Aug-10 | | (4,458.04) | 4,458.04 | 821,197.50 | 854,045.40 |
| 7 | 01-Sep-10 | 38,050.50 | 33,568.13 | 4,482.37 | 787,629.37 | 819,134.55 |
| | 01-Oct-10 | | (4,299.14) | 4,299.14 | 791,928.52 | 823,605.66 |
| | 01-Nov-10 | | (4,322.61) | 4,322.61 | 796,251.13 | 828,101.17 |
| 8 | 01-Dec-10 | 38,050.50 | 33,704.30 | 4,346.20 | 762,546.83 | 793,048.70 |
| | 01-Jan-11 | | (4,162.23) | 4,162.23 | 766,709.07 | 797,377.43 |
| | 01-Feb-11 | | (4,184.95) | 4,184.95 | 770,894.02 | 801,729.78 |
| 9 | 01-Mar-11 | 38,050.50 | 33,842.70 | 4,207.80 | 737,051.32 | 766,533.37 |
| | 01-Apr-11 | | (4,023.07) | 4,023.07 | 741,074.39 | 770,717.36 |
| | 01-May-11 | | (4,045.03) | 4,045.03 | 745,119.42 | 774,924.20 |
| 10 | 01-Jun-11 | 38,050.50 | 33,983.39 | 4,067.11 | 711,136.03 | 739,581.47 |
| | 01-Jul-11 | | (3,881.62) | 3,881.62 | 715,017.65 | 743,618.35 |
| | 01-Aug-11 | | (3,902.80) | 3,902.80 | 718,920.45 | 747,677.27 |
| 11 | 01-Sep-11 | 38,050.50 | 34,126.39 | 3,924.11 | 684,794.06 | 712,185.82 |
| | 01-Oct-11 | | (3,737.83) | 3,737.83 | 688,531.89 | 716,073.17 |
| | 01-Nov-11 | | (3,758.24) | 3,758.24 | 692,290.13 | 719,981.74 |
| 12 | 01-Dec-11 | 38,050.50 | 34,271.75 | 3,778.75 | 658,018.38 | 684,339.12 |
| | 01-Jan-12 | | (3,591.68) | 3,591.68 | 661,610.06 | 688,074.47 |
| | 01-Feb-12 | | (3,611.29) | 3,611.29 | 665,221.35 | 691,830.21 |
| 13 | 01-Mar-12 | 38,050.50 | 34,419.50 | 3,631.00 | 630,801.85 | 656,033.93 |
| | 01-Apr-12 | | (3,443.13) | 3,443.13 | 634,244.98 | 659,614.78 |
| | 01-May-12 | | (3,461.92) | 3,461.92 | 637,706.90 | 663,215.18 |
| 14 | 01-Jun-12 | 38,050.50 | 34,569.68 | 3,480.82 | 603,137.22 | 627,262.70 |
| | 01-Jul-12 | | (3,292.12) | 3,292.12 | 606,429.34 | 630,686.51 |
| | 01-Aug-12 | | (3,310.09) | 3,310.09 | 609,739.43 | 634,129.01 |
| 15 | 01-Sep-12 | 38,050.50 | 34,722.34 | 3,328.16 | 575,017.09 | 598,017.78 |
| | 01-Oct-12 | | (3,138.63) | 3,138.63 | 578,155.73 | 601,281.96 |
| | 01-Nov-12 | | (3,155.77) | 3,155.77 | 581,311.50 | 604,563.96 |
| 16 | 01-Dec-12 | 38,050.50 | 34,877.51 | 3,172.99 | 546,433.99 | 568,291.35 |
| | 01-Jan-13 | | (2,982.62) | 2,982.62 | 549,416.61 | 571,393.27 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 01-Feb-13 | | (2,998.90) | 2,998.90 | 552,415.51 | 574,512.13 |
| 17 | 01-Mar-13 | 38,050.50 | 35,035.23 | 3,015.27 | 517,380.27 | 538,075.48 |
| | 01-Apr-13 | | (2,824.03) | 2,824.03 | 520,204.31 | 541,012.48 |
| | 01-May-13 | | (2,839.45) | 2,839.45 | 523,043.76 | 543,965.51 |
| 18 | 01-Jun-13 | 38,050.50 | 35,195.55 | 2,854.95 | 487,848.20 | 507,362.13 |
| | 01-Jul-13 | | (2,662.84) | 2,662.84 | 490,511.04 | 510,131.48 |
| | 01-Aug-13 | | (2,677.37) | 2,677.37 | 493,188.41 | 512,915.95 |
| 19 | 01-Sep-13 | 38,050.50 | 35,358.51 | 2,691.99 | 457,829.90 | 476,143.10 |
| | 01-Oct-13 | | (2,498.99) | 2,498.99 | 460,328.89 | 478,742.05 |
| | 01-Nov-13 | | (2,512.63) | 2,512.63 | 462,841.52 | 481,355.18 |
| 20 | 01-Dec-13 | 38,050.50 | 35,524.16 | 2,526.34 | 427,317.36 | 444,410.06 |
| | 01-Jan-14 | | (2,332.44) | 2,332.44 | 429,649.80 | 446,835.79 |
| | 01-Feb-14 | | (2,345.17) | 2,345.17 | 431,994.97 | 449,274.77 |
| 21 | 01-Mar-14 | 38,050.50 | 35,692.53 | 2,357.97 | 396,302.45 | 412,154.54 |
| | 01-Apr-14 | | (2,163.15) | 2,163.15 | 398,465.60 | 414,404.22 |
| | 01-May-14 | | (2,174.96) | 2,174.96 | 400,640.56 | 416,666.18 |
| 22 | 01-Jun-14 | 38,050.50 | 35,863.67 | 2,186.83 | 364,776.88 | 379,367.96 |
| | 01-Jul-14 | | (1,991.07) | 1,991.07 | 366,767.96 | 381,438.68 |
| | 01-Aug-14 | | (2,001.94) | 2,001.94 | 368,769.90 | 383,520.70 |
| 23 | 01-Sep-14 | 38,050.50 | 36,037.63 | 2,012.87 | 332,732.27 | 346,041.56 |
| | 01-Oct-14 | | (1,816.16) | 1,816.16 | 334,548.43 | 347,930.37 |
| | 01-Nov-14 | | (1,826.08) | 1,826.08 | 336,374.51 | 349,829.49 |
| 24 | 01-Dec-14 | 38,050.50 | 36,214.46 | 1,836.04 | 300,160.05 | 312,166.46 |
| | 01-Jan-15 | | (1,638.37) | 1,638.37 | 301,798.43 | 313,870.37 |
| | 01-Feb-15 | | (1,647.32) | 1,647.32 | 303,445.74 | 315,583.57 |
| 25 | 01-Mar-15 | 38,050.50 | 36,394.19 | 1,656.31 | 267,051.55 | 277,733.61 |
| | 01-Apr-15 | | (1,457.66) | 1,457.66 | 268,509.21 | 279,249.58 |
| | 01-May-15 | | (1,465.61) | 1,465.61 | 269,974.82 | 280,773.81 |
| 26 | 01-Jun-15 | 38,050.50 | 36,576.89 | 1,473.61 | 233,397.93 | 242,733.85 |
| | 01-Jul-15 | | (1,273.96) | 1,273.96 | 234,671.90 | 244,058.77 |
| | 01-Aug-15 | | (1,280.92) | 1,280.92 | 235,952.82 | 245,390.93 |
| 27 | 01-Sep-15 | 38,050.50 | 36,762.59 | 1,287.91 | 199,190.22 | 207,157.83 |
| | 01-Oct-15 | | (1,087.25) | 1,087.25 | 200,277.47 | 208,288.57 |
| | 01-Nov-15 | | (1,093.18) | 1,093.18 | 201,370.65 | 209,425.48 |
| 28 | 01-Dec-15 | 38,050.50 | 36,951.35 | 1,099.15 | 164,419.30 | 170,996.07 |
| | 01-Jan-16 | | (897.46) | 897.46 | 165,316.76 | 171,929.43 |
| | 01-Feb-16 | | (902.35) | 902.35 | 166,219.11 | 172,867.87 |
| 29 | 01-Mar-16 | 38,050.50 | 37,143.22 | 907.28 | 129,075.89 | 134,238.92 |
| | 01-Apr-16 | | (704.54) | 704.54 | 129,780.43 | 134,971.65 |
| | 01-May-16 | | (708.38) | 708.38 | 130,488.81 | 135,708.37 |
| 30 | 01-Jun-16 | 38,050.50 | 37,338.25 | 712.25 | 93,150.56 | 96,876.59 |
| | 01-Jul-16 | | (508.45) | 508.45 | 93,659.01 | 97,405.37 |
| | 01-Aug-16 | | (511.22) | 511.22 | 94,170.23 | 97,937.04 |
| 31 | 01-Sep-16 | 38,050.50 | 37,536.49 | 514.01 | 56,633.75 | 58,899.10 |
| | 01-Oct-16 | | (309.13) | 309.13 | 56,942.87 | 59,220.59 |
| | 01-Nov-16 | | (310.81) | 310.81 | 57,253.68 | 59,543.83 |
| 32 | 01-Dec-16 | 38,050.50 | 37,737.99 | 312.51 | 19,515.69 | 20,296.32 |
| | 01-Jan-17 | | (106.52) | 106.52 | 19,622.22 | 20,407.11 |
| | 01-Feb-17 | | (107.10) | 107.10 | 19,729.32 | 20,518.50 |
| 33 | 01-Mar-17 | 19,837.01 | 19,729.32 | 107.69 | - | - |
| | **Total:** | **$1,237,453.01** | | | | |

## Monthly Payment Schedule

| Payment | Payment Date | Payment | Decrease | Increase | Balance | Termination Amount |
|---|---|---|---|---|---|---|
| | 01-Sep-08 | | | | | $1,001,482.61 |
| | 01-Oct-08 | | | | | 1,001,482.61 |
| | 01-Nov-08 | | | | | 1,001,482.61 |
| | 01-Dec-08 | | | | | 1,001,482.61 |
| | 01-Jan-09 | | | | | 1,001,482.61 |
| | 01-Feb-09 | | | | $962,964.05 | 1,001,482.61 |
| 1 | 01-Mar-09 | $12,683.50 | $7,777.73 | $4,905.77 | 955,186.32 | 993,393.77 |
| 2 | 01-Apr-09 | 12,683.50 | 7,469.77 | 5,213.73 | 947,716.54 | 985,625.20 |
| 3 | 01-May-09 | 12,683.50 | 7,510.55 | 5,172.95 | 940,205.99 | 977,814.23 |
| 4 | 01-Jun-09 | 12,683.50 | 7,551.54 | 5,131.96 | 932,654.45 | 969,960.63 |
| 5 | 01-Jul-09 | 12,683.50 | 7,592.76 | 5,090.74 | 925,061.69 | 962,064.16 |
| 6 | 01-Aug-09 | 12,683.50 | 7,634.20 | 5,049.30 | 917,427.49 | 954,124.59 |
| 7 | 01-Sep-09 | 12,683.50 | 7,675.87 | 5,007.63 | 909,751.61 | 946,141.68 |
| 8 | 01-Oct-09 | 12,683.50 | 7,717.77 | 4,965.73 | 902,033.84 | 938,115.19 |
| 9 | 01-Nov-09 | 12,683.50 | 7,759.90 | 4,923.60 | 894,273.94 | 930,044.90 |
| 10 | 01-Dec-09 | 12,683.50 | 7,802.25 | 4,881.25 | 886,471.68 | 921,930.55 |
| 11 | 01-Jan-10 | 12,683.50 | 7,844.84 | 4,838.66 | 878,626.84 | 913,771.92 |
| 12 | 01-Feb-10 | 12,683.50 | 7,887.66 | 4,795.84 | 870,739.18 | 905,568.75 |
| 13 | 01-Mar-10 | 12,683.50 | 7,930.72 | 4,752.78 | 862,808.47 | 897,320.80 |
| 14 | 01-Apr-10 | 12,683.50 | 7,974.00 | 4,709.50 | 854,834.46 | 889,027.84 |
| 15 | 01-May-10 | 12,683.50 | 8,017.53 | 4,665.97 | 846,816.93 | 880,689.61 |
| 16 | 01-Jun-10 | 12,683.50 | 8,061.29 | 4,622.21 | 838,755.64 | 872,305.87 |
| 17 | 01-Jul-10 | 12,683.50 | 8,105.29 | 4,578.21 | 830,650.35 | 863,876.36 |
| 18 | 01-Aug-10 | 12,683.50 | 8,149.53 | 4,533.97 | 822,500.82 | 855,400.85 |
| 19 | 01-Sep-10 | 12,683.50 | 8,194.02 | 4,489.48 | 814,306.80 | 846,879.07 |
| 20 | 01-Oct-10 | 12,683.50 | 8,238.74 | 4,444.76 | 806,068.06 | 838,310.78 |
| 21 | 01-Nov-10 | 12,683.50 | 8,283.71 | 4,399.79 | 797,784.35 | 829,695.72 |
| 22 | 01-Dec-10 | 12,683.50 | 8,328.93 | 4,354.57 | 789,455.42 | 821,033.64 |
| 23 | 01-Jan-11 | 12,683.50 | 8,374.39 | 4,309.11 | 781,081.03 | 812,324.27 |
| 24 | 01-Feb-11 | 12,683.50 | 8,420.10 | 4,263.40 | 772,660.93 | 803,567.37 |
| 25 | 01-Mar-11 | 12,683.50 | 8,466.06 | 4,217.44 | 764,194.87 | 794,762.67 |
| 26 | 01-Apr-11 | 12,683.50 | 8,512.27 | 4,171.23 | 755,682.60 | 785,909.91 |
| 27 | 01-May-11 | 12,683.50 | 8,558.73 | 4,124.77 | 747,123.87 | 777,008.82 |
| 28 | 01-Jun-11 | 12,683.50 | 8,605.45 | 4,078.05 | 738,518.42 | 768,059.16 |
| 29 | 01-Jul-11 | 12,683.50 | 8,652.42 | 4,031.08 | 729,866.00 | 759,060.64 |
| 30 | 01-Aug-11 | 12,683.50 | 8,699.65 | 3,983.85 | 721,166.35 | 750,013.01 |
| 31 | 01-Sep-11 | 12,683.50 | 8,747.13 | 3,936.37 | 712,419.22 | 740,915.99 |
| 32 | 01-Oct-11 | 12,683.50 | 8,794.88 | 3,888.62 | 703,624.34 | 731,769.31 |
| 33 | 01-Nov-11 | 12,683.50 | 8,842.88 | 3,840.62 | 694,781.46 | 722,572.71 |
| 34 | 01-Dec-11 | 12,683.50 | 8,891.15 | 3,792.35 | 685,890.31 | 713,325.92 |
| 35 | 01-Jan-12 | 12,683.50 | 8,939.68 | 3,743.82 | 676,950.62 | 704,028.65 |
| 36 | 01-Feb-12 | 12,683.50 | 8,988.48 | 3,695.02 | 667,962.15 | 694,680.63 |
| 37 | 01-Mar-12 | 12,683.50 | 9,037.54 | 3,645.96 | 658,924.61 | 685,281.59 |
| 38 | 01-Apr-12 | 12,683.50 | 9,086.87 | 3,596.63 | 649,837.74 | 675,831.25 |
| 39 | 01-May-12 | 12,683.50 | 9,136.47 | 3,547.03 | 640,701.27 | 666,329.32 |
| 40 | 01-Jun-12 | 12,683.50 | 9,186.34 | 3,497.16 | 631,514.93 | 656,775.52 |
| 41 | 01-Jul-12 | 12,683.50 | 9,236.48 | 3,447.02 | 622,278.45 | 647,169.58 |
| 42 | 01-Aug-12 | 12,683.50 | 9,286.90 | 3,396.60 | 612,991.55 | 637,511.21 |
| 43 | 01-Sep-12 | 12,683.50 | 9,337.59 | 3,345.91 | 603,653.96 | 627,800.12 |
| 44 | 01-Oct-12 | 12,683.50 | 9,388.56 | 3,294.94 | 594,265.41 | 618,036.02 |
| 45 | 01-Nov-12 | 12,683.50 | 9,439.80 | 3,243.70 | 584,825.61 | 608,218.63 |
| 46 | 01-Dec-12 | 12,683.50 | 9,491.33 | 3,192.17 | 575,334.28 | 598,347.65 |
| 47 | 01-Jan-13 | 12,683.50 | 9,543.13 | 3,140.37 | 565,791.14 | 588,422.79 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 48 | 01-Feb-13 | 12,683.50 | 9,595.22 | 3,088.28 | 556,195.92 | 578,443.76 |
| 49 | 01-Mar-13 | 12,683.50 | 9,647.60 | 3,035.90 | 546,548.32 | 568,410.26 |
| 50 | 01-Apr-13 | 12,683.50 | 9,700.26 | 2,983.24 | 536,848.07 | 558,321.99 |
| 51 | 01-May-13 | 12,683.50 | 9,753.20 | 2,930.30 | 527,094.86 | 548,178.66 |
| 52 | 01-Jun-13 | 12,683.50 | 9,806.44 | 2,877.06 | 517,288.42 | 537,979.96 |
| 53 | 01-Jul-13 | 12,683.50 | 9,859.97 | 2,823.53 | 507,428.45 | 527,725.59 |
| 54 | 01-Aug-13 | 12,683.50 | 9,913.79 | 2,769.71 | 497,514.67 | 517,415.26 |
| 55 | 01-Sep-13 | 12,683.50 | 9,967.90 | 2,715.60 | 487,546.77 | 507,048.64 |
| 56 | 01-Oct-13 | 12,683.50 | 10,022.31 | 2,661.19 | 477,524.46 | 496,625.44 |
| 57 | 01-Nov-13 | 12,683.50 | 10,077.01 | 2,606.49 | 467,447.45 | 486,145.35 |
| 58 | 01-Dec-13 | 12,683.50 | 10,132.02 | 2,551.48 | 457,315.43 | 475,608.05 |
| 59 | 01-Jan-14 | 12,683.50 | 10,187.32 | 2,496.18 | 447,128.11 | 465,013.24 |
| 60 | 01-Feb-14 | 12,683.50 | 10,242.93 | 2,440.57 | 436,885.19 | 454,360.60 |
| 61 | 01-Mar-14 | 12,683.50 | 10,298.84 | 2,384.66 | 426,586.35 | 443,649.81 |
| 62 | 01-Apr-14 | 12,683.50 | 10,355.05 | 2,328.45 | 416,231.30 | 432,880.56 |
| 63 | 01-May-14 | 12,683.50 | 10,411.57 | 2,271.93 | 405,819.73 | 422,052.52 |
| 64 | 01-Jun-14 | 12,683.50 | 10,468.40 | 2,215.10 | 395,351.33 | 411,165.39 |
| 65 | 01-Jul-14 | 12,683.50 | 10,525.54 | 2,157.96 | 384,825.79 | 400,218.82 |
| 66 | 01-Aug-14 | 12,683.50 | 10,582.99 | 2,100.51 | 374,242.80 | 389,212.51 |
| 67 | 01-Sep-14 | 12,683.50 | 10,640.76 | 2,042.74 | 363,602.04 | 378,146.12 |
| 68 | 01-Oct-14 | 12,683.50 | 10,698.84 | 1,984.66 | 352,903.20 | 367,019.33 |
| 69 | 01-Nov-14 | 12,683.50 | 10,757.24 | 1,926.26 | 342,145.97 | 355,831.80 |
| 70 | 01-Dec-14 | 12,683.50 | 10,815.95 | 1,867.55 | 331,330.01 | 344,583.21 |
| 71 | 01-Jan-15 | 12,683.50 | 10,874.99 | 1,808.51 | 320,455.02 | 333,273.22 |
| 72 | 01-Feb-15 | 12,683.50 | 10,934.35 | 1,749.15 | 309,520.67 | 321,901.50 |
| 73 | 01-Mar-15 | 12,683.50 | 10,994.03 | 1,689.47 | 298,526.64 | 310,467.70 |
| 74 | 01-Apr-15 | 12,683.50 | 11,054.04 | 1,629.46 | 287,472.60 | 298,971.50 |
| 75 | 01-May-15 | 12,683.50 | 11,114.38 | 1,569.12 | 276,358.22 | 287,412.55 |
| 76 | 01-Jun-15 | 12,683.50 | 11,175.04 | 1,508.46 | 265,183.17 | 275,790.50 |
| 77 | 01-Jul-15 | 12,683.50 | 11,236.04 | 1,447.46 | 253,947.13 | 264,105.02 |
| 78 | 01-Aug-15 | 12,683.50 | 11,297.37 | 1,386.13 | 242,649.76 | 252,355.75 |
| 79 | 01-Sep-15 | 12,683.50 | 11,359.04 | 1,324.46 | 231,290.72 | 240,542.35 |
| 80 | 01-Oct-15 | 12,683.50 | 11,421.04 | 1,262.46 | 219,869.69 | 228,664.47 |
| 81 | 01-Nov-15 | 12,683.50 | 11,483.38 | 1,200.12 | 208,386.31 | 216,721.76 |
| 82 | 01-Dec-15 | 12,683.50 | 11,546.06 | 1,137.44 | 196,840.25 | 204,713.86 |
| 83 | 01-Jan-16 | 12,683.50 | 11,609.08 | 1,074.42 | 185,231.17 | 192,640.42 |
| 84 | 01-Feb-16 | 12,683.50 | 11,672.45 | 1,011.05 | 173,558.72 | 180,501.07 |
| 85 | 01-Mar-16 | 12,683.50 | 11,736.16 | 947.34 | 161,822.56 | 168,295.47 |
| 86 | 01-Apr-16 | 12,683.50 | 11,800.22 | 883.28 | 150,022.35 | 156,023.24 |
| 87 | 01-May-16 | 12,683.50 | 11,864.63 | 818.87 | 138,157.72 | 143,684.03 |
| 88 | 01-Jun-16 | 12,683.50 | 11,929.39 | 754.11 | 126,228.33 | 131,277.46 |
| 89 | 01-Jul-16 | 12,683.50 | 11,994.50 | 689.00 | 114,233.82 | 118,803.18 |
| 90 | 01-Aug-16 | 12,683.50 | 12,059.97 | 623.53 | 102,173.85 | 106,260.80 |
| 91 | 01-Sep-16 | 12,683.50 | 12,125.80 | 557.70 | 90,048.05 | 93,649.97 |
| 92 | 01-Oct-16 | 12,683.50 | 12,191.99 | 491.51 | 77,856.06 | 80,970.30 |
| 93 | 01-Nov-16 | 12,683.50 | 12,258.54 | 424.96 | 65,597.53 | 68,221.43 |
| 94 | 01-Dec-16 | 12,683.50 | 12,325.45 | 358.05 | 53,272.08 | 55,402.96 |
| 95 | 01-Jan-17 | 12,683.50 | 12,392.72 | 290.78 | 40,879.36 | 42,514.53 |
| 96 | 01-Feb-17 | 12,683.50 | 12,460.37 | 223.13 | 28,418.99 | 29,555.75 |
| 97 | 01-Mar-17 | 12,683.50 | 12,528.38 | 155.12 | 15,890.61 | 16,526.23 |
| 98 | 01-Apr-17 | 12,683.50 | 12,596.76 | 86.74 | 3,293.85 | 3,425.60 |
| 99 | 01-May-17 | 3,311.82 | 3,293.85 | 17.98 | - | - |
| | **Total:** | **$1,246,294.82** | | | | |

# Resources

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FEMP FEDERAL ENERGY MANAGEMENT PROGRAM

## Reference Guide

The Federal Energy Management Program (FEMP) helps Federal personnel explore the possibilities of working with utilities by providing educational and informational tools.

FEMP helps Federal agencies and their utility companies work together to save energy and dollars at Federal facilities. FEMP supports agencies and their utilities by promoting Federal/utility partnerships, supplying alternative financing information, sponsoring utility-related training, removing regulatory barriers, providing information on utility restructuring and its effects on Federal agencies, and more.

FEMP's financing team provides policy guidance and technical and contracting assistance related to private-sector funding for Federal energy efficiency, renewable energy, and water conservation projects.

### For More Information

Tracy Niro
FEMP Utility Program Lead
202-431-7601

### FEMP Website

Check out the latest FEMP information at femp.energy.gov.

### Workshops

FEMP offers UESC projects workshops targeted to Federal facility and energy managers, procurement personnel, and management and legal staff.

For more information about these workshops, visit https://www4.eere.energy.gov/femp/training/.

### Federal Utility Partnership Working Group (FUPWG)

FUPWG exists to establish partnerships and facilitate communication between Federal agencies, utilities, and energy service companies. The group works to develop strategies to facilitate cost-effective energy efficiency, water conservation, and renewable energy projects at Federal sites. FUPWG helps to identify how all utilities can work with Federal agencies to meet the Federal requirements.

FUPWG meets two times a year to exchange information on recent utility incentive program success stories, current FEMP programs and products, individual agency energy-management programs, and reports from various working groups. Both Federal and utility representatives are welcome. For more information about FUPWG, visit http://energy.gov/node/850661.

## Utility Services List

Utility Services List (Services Typically Available at No Cost)

- Rebates/incentives
- Rate analysis and load management assistance
- Technical assistance and/or design review
- Commissioning
- Electronic data transfer
- Metering peak shaving
- Real time pricing
- Interruptible programs
- Renewable energy
- Power quality and reliability assistance
- Web access to utility account data

## Lessons Learned

Federal Energy Management Program

# Utility Energy Service Contracts

# Lessons Learned

## Negotiating Financing

Lowering Finance Rates

Water Conservation

U.S. Department of Energy
Energy Efficiency and Renewable Energy
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# Contents



## Acknowledgments

The Federal Energy Management Program (FEMP) thanks Steve Allenby, Millard Carr, Mary Colvin, Laurie Cordell, Jeffrey Eckel, Bruce Gross, Brad Gustafson, Keith Kline, Kate McMordie, William Sandusky, Stephanie Tanner, Karen Thomas, and Philip Voss for sharing their experiences and lessons learned.

# Introduction

The use of utility energy service contracts (UESCs) has evolved over the past 10 years. The following recommended best practices were generated by a growing group of innovative energy managers in many successful projects. While each specific Federal facility and its relationship with its utility company is unique, considering the experience of these pioneers can make future UESCs easier to implement and more successful. Six sections of this document relate to project finance issues. The last two sections concern competition between franchised utility companies and best practices for water conservation.

# Financing UESCs

## Understanding Financing Factors

Financing is a significant part of the cost of undertaking a UESC project, and experience shows that there are several techniques the Federal government can utilize to reduce the financial transaction costs and interest. This section describes practices that some agencies have used to keep costs as low as possible.

Interest rates are based on the sum of an index rate on the date the transaction is signed and a "premium" or "adders," usually measured in basis points, where 100 basis points is equal to 1%. The premium reflects the costs of obtaining the financing under prevailing market conditions, financial risk, and profit for the finance company. The result is a premium that has typically added 100 to 250 basis points (1.0% to 2.5%) to the base index rate. The utility company will incur cost obtaining competitive financing.

**Factors that affect risk and finance rate**

- Term of financing
- Amount of financing
- Utility bond rating/financial status of contractors
- Perceived performance risk
- Contractual provisions
- Pertinence to agency mission
- Type/complexity of project
- Lower perceived risk to the finance company

When financing is included, the utility's financing transaction cost should be included in the project cost and listed as a line item on the pricing summary sheet. Financial transaction costs (and the margin to cover them) have been decreasing as an increasing number of Federal agencies use the same basic contractual forms and clauses and as finance companies become more familiar with the constraints and uniqueness of financing Federal energy projects. All other things being equal, using standard, acceptable contract terms and conditions reduces the perception of risk, shortens approval time, and reduces transaction costs.

## Financial Market Fluctuations

Until recently, the base index for UESC finance rates was the U.S. Treasury bill (T-bill) rate for a time period approximating that of the loan. In 2001, the finance community indicated that the international "swap rate" was preferred because it best reflected the cost of money on the markets where these projects must compete for financing. The financial market for UESC projects is very different from consumer loan markets (e.g., home mortgages). This is a very limited, structured market. If the finance company is required to use a T-bill rate and it is lower than the prevailing swap rate (which better reflects the market where the project will get financed), the difference will probably be erased by a larger spread. To track T-bill and swap rates (listed under "interest rate swaps") for different maturity periods, see the Federal Reserve website at http://www.federalreserve.gov/releases/h15/data.htm.

You cannot influence the value of an index rate. But whatever the agreed-upon index rate, the best business practices discussed in this document could help you to reduce the incurred premium or adders as well as other financial transaction costs.

## Ten Ways to Lower Perceived Risk and Finance Rates

Federal agencies have used various methods to lower perceived project risk and finance rates. In an increasing number of cases, as credit tightens, several of these guidelines are prerequisites to obtain private financing. Individual finance companies have their own experience and perception of the importance of specific contract clauses. The following generalizations should be discussed during the negotiation of each project.

### 1. Time is money

You will save money anywhere you can reduce processing time and facilitate quick closure of your deal. First, a short turn-around reduces the administrative cost for your utility and the subcontractors' project development teams. Delays also affect the interest rate. In the past, a finance company could hold a rate for a week or two without charge, but given current market volatility, you will need to consult with your finance company. Finally, and most importantly, the sooner the project is implemented, the sooner it begins saving energy and money for your facility. Every day of delay is an opportunity lost for cost savings. Chronic late payments can also result in compensating increased interest rates, so it is important to the entire program to make sure that payments are made on time.

#### Shopping for the best rates

At least one utility active in this market has conducted its own competitive process to establish a list of pre-qualified finance firms for Federal energy projects. Each time a new project is designed and ready to finance, a standard form is used to share project data with the pre-qualified firms, who can give a quick response to the utility looking for the best value for construction and term financing. A recent $3 million project elicited quotes that varied by about 100 basis points, with final term financing at 7%. Savings compared to the highest interest rate quoted were approximately $580,000 over a 10-year term.

### 2. Communicate with finance companies

As the contractor, it may be inappropriate to discuss the financing of a specific project with anyone other than the utility company. However, most finance companies are happy to discuss the rates, adders, and costs associated with financing projects. This provides an opportunity to explore ways to reduce risk and obtain the lowest possible rate for a specific project. Many agencies leave all communication up to the utility or contractor, but there is no prohibition against asking the utility to have its selected finance company attend project negotiation meetings to answer questions and provide financing clarity. Most UESC payments flow directly to the finance company, and those finance costs often represent more than half the total project costs for the government. Consequently, it makes good business sense to get acquainted with the details of financing and ensure that you have done all you can to ensure the best possible rate for your project. Ask your finance company to identify financial costs separately and to clarify the specific rate impact of significant individual contract terms and conditions. You can then evaluate the importance of those clauses individually. Similarly, ask for a break-out of the net present value of the finance company's fee, both at closing and during the payment period, to enable you to compare it with similar projects.

### 3. Compare rates

Once the basic parameters of your project (size, type of equipment, expected annual savings) are known, it is possible to get rate comparisons by calling the firms active in this market. A relatively small number of reputable finance organizations specialize in energy projects at Federal facilities. Formal competition for financing (particularly for smaller projects) may result in administrative costs that exceed the value of the competition. Consider a comparison of rates rather than formal competition. Ask your utility for a comparison of rates for recent project financing of similar dollar amounts. The Federal Energy Management Program (FEMP) can provide guidance based on other projects and can help you to identify sources for comparison.

#### Why Bother?

What are a few basis points worth over the term of your loan? The amount depends on the capital investment financed and the length of the term, but it can be significant. For example, with a 10-year term, an increase of just 30 basis points from 7.0% to 7.3% has the following impacts:

Investment Value Increased Cost* over the term for 30 basis points

$1.5 million project $ 83,780

$4.5 million project $251,340

$6.0 million project $363,100

*These dollars could be better spent on facilities improvements.

### 4. Use standard terms and conditions

Contract clauses and formats that are unfamiliar to the finance company can increase risk because they are different from what has been tried and proven. They may also lead to significant increases in transaction costs and longer timetables for execution. To keep costs low, try to use the standard terms and conditions and contractual forms already established for UESCs in the area-wide energy services annex and model agreements with your utility and finance company.

### 5. Negotiate buy-down and prepayment formulas in advance

Standard language for buy-down, prepayment, and termination (for convenience or otherwise) with pre-negotiated terms and conditions can, in some cases, hold finance costs down. If these terms are not clearly set forth in the contract, it will significantly increase risk and could cause the government serious problems with future contract administration.

## 6. Structure appropriate measurement and verification

Cost-effective measurement and verification of energy efficiency improvement and savings, coupled with a performance guarantee, is strongly recommended and can be achieved through alternatives to a contractual cost-savings guarantee. Finance companies reportedly establish the interest rate primarily on the basis of the experience and expertise of the utility and its subcontractors, relying on their credibility to evaluate the risk of specific technologies. While the margin for specific technologies set by the utility can be reduced by negotiating reasonable measurement and verification criteria, interest rates should not be affected by the complexity of the energy conservation measures.

## 7. Include explicit language minimizing risk to the finance company

A payment structure that minimizes risk to the finance company is the central element of reducing perceived risk and obtaining a lower interest rate. To keep rates low, include clear terms for how and when payments will be made, demonstrated ability to comply with those terms, and standard clauses to protect the finance company from offsets and future claims related to performance (assignment of claims).

### Additional Savings

Savings may be possible by ensuring that the payment stream to the finance company will not be affected by performance guarantees.

### Example

In a Department of Defense project, contract language helped ensure that the payment stream to the finance company would not be interrupted even though the utility included an energy savings performance guarantee in the contract. This reportedly helped obtain a discount of nearly 100 basis points (1%) in financing. The project was signed in 1999 for $15 million at 7.0% interest. The estimated benefit to the government of a 100 basis point reduction in interest, given the 10-year term and total investment, was near $2 million.

## 8. Avoid unnecessary hedge costs: do not buy an interest rate "lock"

To keep government costs (and the long-term interest rate) low, it is not necessary to require a guaranteed or fixed interest rate long before the date of award. Instead, a formula based on an index rate (e.g., T-bill or swap rate) and adders should be negotiated and set forth in the contract, stating how the final rate will be established on or near the day the delivery order contract is signed. The finance company should set the interest rate as close to the actual contract date as possible, in order to reduce the risk of rising rates and eliminate the hedge cost.

## 9. Bundle energy conservation measures

Bundling many energy conservation measures (ECMs) together can result in lower rates and more conservation for each dollar invested. Bundling also offers the facility other benefits by reducing contract and administrative burdens and optimizing energy savings. More ECMs and greater facility improvements can be included when those with longer-term payback periods are bundled with and offset by those with quick payoff terms. Just as some finance companies are bundling projects to attract lower interest rates from a portfolio risk management perspective, facility managers can also spread out the perceived performance risk by combining many ECMs.

### 10. Show that the project is important for the facility and that the facility is expected to have a strong mission during the contract period

Most finance companies look on a Federal government contract as a secure investment. However, any uncertainty about the future operation of the facility can increase the perceived risk of premature contract termination and finance costs, or put the deal in jeopardy during negotiations. To decrease perceived risk, ensure that the finance company understands that this project is an important asset for the facility and that the facility is expected to have an ongoing mission that will outlive the project's contract period. Provide documentation, if necessary.

## Using Annual Payments to Decrease the Total Interest Paid

The annual payment option allows the government to pay for an entire fiscal year (12 months) of payments in advance. This method is attractive to finance companies and may also fit Federal budget and finance constraints, saving the government a substantial amount of interest expense. Savings are generated because the financing is amortized quicker, and less interest accrues over the term of the project financing. But note one important feature: the interest rate used for a monthly amortization is lower than that used for an annual amortization (mathematically known as the bond equivalent yield). However, even with the slightly increased interest rate, interest payments over the payment period are less than monthly payments. The net effect is that total interest payments decrease, depending on the term, by 8% to 14%.

In some cases, finance companies prefer that the annual payment be made on December 1 so they are assured that the agency will have received its annual appropriation. The two examples show approximate savings for different amounts and contract periods.

**Example 1**

Finance term: 120 months (10 years)

Project amount: $10 million

Monthly interest rate: 8%

Monthly payment: $121,327/month

Annual interest rate: 8.3%

Annual payment: $1,394,758/year

Total monthly payments: $14,559,310

Total annual payments: $13,947580

Savings from annual payment: $611,730

Interest savings: 13.5%

**Example 2**

Finance term: 240 months (20 years)

Project amount: $20 million

Monthly interest rate: 8%

Monthly payment: $167,288/month

Annual interest rate: 8.3%

Annual payment: $1,923,112/year

Total monthly payments: $40,149,122

Total annual payments: $38,462,252

Savings from annual payment: $1,686,870

Interest savings: 8.3%

# Recommended Buy-Down/Buy-Out Prepayment Approaches

Most project contracts for energy services allow the government to prepay the financing obligation at any time during the term of the contract in accordance with a preestablished termination schedule. When underwriting a long-term debt obligation, an investor or lender is committing its assets to an investment that is expected to provide a fixed rate of return over the term of the contract. If the investment is prepaid, the investor or lender must take the prepayment proceeds and reinvest them in another financial instrument that will, hopefully, ensure the same rate of return, regardless of current market conditions.

Historically, the Federal finance marketplace has experienced few terminations for convenience or prepayments. Because of this, there should be little, if any, premium paid by the government for its right to prepay. However, to the extent that the government begins to consistently and systematically prepay, and particularly should prepayments be based on lower market interest rates, then it is likely that a premium of between 25 and 50 basis points would be charged for the prepayment right. The government can obviously reduce its costs associated with prepayments (such as the termination liability premium, interest rate premium, or make-whole penalties) by limiting prepayments to actual terminations for convenience.

## Minimizing Prepayment Costs

An alternative to paying a premium rate (thus having increased monthly payments over the entire term of the financing) provides a means of protecting against a possible prepayment shortfall. Customers and borrowers typically choose to use a formula that reflects the current interest rate at the time a prepayment is made. This ensures that prepayment is not paid for as an additional assessment to the monthly payment, but rather in the form of the actual cost at the time of the event. Thus, the government does not pay an increased interest rate for an option that may never be exercised.

The Federal finance marketplace has several other ways to minimize prepayment cost to the government. Some finance companies have substantially reduced the effective risk of prepayment, without charging the government an interest rate premium or the use of a make-whole formula by aggregating Federal transactions into portfolios. In this case, the number of projects financed spreads the potential of prepayment and the perceived financial risk over all projects. Another way that prepayments can be accepted without adding a premium or penalty is by allowing the finance company to reinvest the money for the benefit of the government and use the accrued interest and principal to shorten the term of the transaction.

Projects for single transactions that are not financed as part of a larger portfolio may indeed receive a lower interest rate if a make-whole formula is inserted into the contract. Some finance companies offer a lower financing rate if a make-whole clause is used, others do not. The make-whole premium will not compensate the government for the benefit enjoyed by the finance company should the prepaid funds be reinvested at a higher rate, but will cost the government money if rates have fallen. The make-whole clause may limit future flexibility because it does not allow refinancing if rates go down during the contract term. The formula, in contrast with a fixed amortization schedule, is designed to protect an investor should the government elect to prepay a finance obligation at a time when interest rates (treasuries or swap rates) are lower than when the financing was originally initiated. The formula offers investors or lenders protection for yield maintenance. At the same time, it allows the government to take advantage of a substantially lower interest rate. The impact of the make-whole provision should be evaluated in detail in order to decide on which prepayment strategy is the best.

### Recommended Prepayment Formula Clause

The following is a draft clause that could be considered a way to establish a mutually agreeable prepayment formula if that course of action is believed to be the best for the specific situation (if swap rate is used, the reference should replace that of Treasury bill).

This task order provides that if the government prepays the task order at any time during the term, the government agrees to give the contractor thirty (30) days prior written notice and to pay a yield maintenance amount plus the un-amortized principal balance of the total funding amount plus accrued interest. The yield maintenance amount shall be equal to the difference, if positive, between (1) the net present value of the payments remaining to be paid through the term of the payment period, and (2) the un-amortized principal balance of the total funding amount. The calculation of the net present value shall assume that each remaining payment is made on the relevant payment due date and shall be discounted to the effective date of the prepayment at an interest rate equal to the sum of (i) the yield-to-maturity of a United States Treasury obligation having a term most closely approximating the average life of the un-amortized principal balance of the total funding amount, and (ii) one-half of one percent (1/2%). Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities.

In the event the government terminates or cancels the task order for any reason whatsoever after acceptance (including, without limitation, termination pursuant to the clause entitled “Termination for Convenience of the Government”), the Government agrees to pay the sum of (x) the yield maintenance amount calculated as described above and (y) the unamortized principal balance of the total funding amount plus accrued interest. The government acknowledges and agrees that the payment of such amounts are reasonable and allowable costs with respect to the task order.”

## Competition between Franchised Utility Companies

There is no legal requirement to compete for utility incentive services provided by the “established source” utility company to a Federal facility in the utility’s franchised service territory. The Energy Policy Act of 1992 states that there should be no restriction on the Federal facilities directly availing themselves of the same service as any other customer. However, if there is more than one serving utility company offering utility energy service (for example, a gas company and an electric company), the Federal Acquisition Regulations and good fiscal management would require the government to evaluate each utility and select the one that provides the best value. This evaluation can be as simple as a discussion of the experience, expertise, and specific offer of each, to limit the administrative costs on both public and private sectors, or as rigorous as a formal competitive procurement process. The decision to compete and the level of competition are completely at the discretion of the Federal facility, based on the specific situation and unique constraints and opportunities. It is also strongly recommended that the utility company be required to competitively select the technical subcontractors to do the actual work and that the subcontracting plan comply with the Federal utility contract requirements (either General Services Administration [GSA] area-wide or other delegated authority contract).

# Water Conservation Best Practices

Federal sites across the country are incorporating water-efficiency measures as part of their overall comprehensive UESC projects. As it becomes more difficult to secure internal funding for efficiency projects, working with your local utility can be a very effective way to implement a comprehensive program that incorporates water-efficiency measures.

## Why Water Conservation?

The rising cost of water and sewer services is one reason sites should include water-efficiency measures as part of their overall efficiency program. There's a reason that water has become a national priority. A recent government survey showed at least 36 states are anticipating local, regional, or statewide water shortages by 2013 (U.S. EPA). For the first time, water efficiency goals have been established through Executive Order 13423. Agencies are required to reduce water consumption intensity by 16 percent by the end of fiscal year 2015 based on 2007 consumption levels.

Water-efficiency technologies often have short payback periods of six years or less. Many water-conservation measures not only save water but save energy as well, used in both heating and pumping. Utilities and sites are discovering that incorporating water conservation as part of an energy program helps to buy down the overall cost of the project. In one case, a utility was able to include an additional 15% of mechanical work by implementing water-efficiency measures in comprehensive energy projects at Federal sites.

## Water-Efficiency Improvement Best Management Practices

FEMP developed "Water-Efficiency Improvement Best Management Practices" (BMPs) to encourage agencies to continue striving to achieve the BMPs to reduce Federal water consumption.

Use these highly recommended BMPs as a guideline for incorporating water conservation in your comprehensive UESC projects:

1. Water Management Planning
2. Information and Education Programs
3. Distribution System Audits, Leak Detection, and Repair
4. Water-Efficient Landscaping
5. Water-Efficient Irrigation
6. Toilets and Urinals
7. Faucets and Showerheads
8. Steam Boiler Systems
9. Single-Pass Cooling Equipment
10. Cooling Tower Management
11. Commercial Kitchen Equipment
12. Laboratory and Medical Equipment
13. Other Water-Intensive Processes
14. Alternative Water Sources

These BMPs can be found at http://energy.gov/node/849666.

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# Alternative Financing Options at a Glance

| | ESPCs | DOE ESPCs | UTILITY CONTRACTS |
|---|---|---|---|
| **AUTHORIZATION** | EPAct 42 USC 8287;<br>10 CFR 436 | EPAct 42 USC 8287;<br>10 CFR 436 | EPAct, 42 USC 8256;<br>10 USC 2913;<br>10 USC 2866;<br>48 CFR 41;<br>48 CFR 16 |
| **COMPETITION** | Competitive (Competition in Contracting Act (CICA) applies FedBizOpps required | Competitive (FedBizOpps not required for delivery orders) | Exempt from CICA, sole source to utility; utility competitively selects subcontractors |
| **CONTRACTING PARTY** | Contract with energy services company (ESCO) | Contract with energy services company (ESCO) | Contract with utility |
| **PERFORMANCE** | Guaranteed performance required | Guaranteed performance required | Performance Assurance Plan |
| **TERM** | 25-years maximum | 25-years maximum | 25 years maximum |
| **PAYMENTS** | Invoice | Invoice | Utility bill or invoice |
| **QUALIFIED** | Use of qualified contractors list required | Multiple contractors selected list required | Use of qualified contractors list not required |
| **MEASUREMENT & VERIFICATION** | M&V and annual energy audit required | M&V and annual energy audit required | M&V and annual energy audit negotiable |
| **OPERATION & MAINTENANCE** | O&M typically included | O&M typically included | O&M negotiable |
| **CONTRACT COORDINATION** | Agency coordinates contract | Agency coordinates contract through DOE or lead agency | Agency coordinates contract |
| **CONTRACTOR RELATIONSHIP** | Typically no existing relationship is in place with ESCO | Typically no existing relationship is in place with ESCO | Relationship with utility usually well established |
| **TIME & RESOURCE REQUIREMENTS** | Time and resource intense process | Streamlined selection process | Reduced time and resources needed for selection process (close scrutiny of specifications and proposal evaluation required) |

## Links to Other Resources

### UESC Case Studies

Case studies about the successful use of Utility Energy Service Contracts (UESCs) by Federal agencies: http://energy.gov/node/1008131.

### Measurement and Verification

While implementing measurement and verification (M&V) strategies in energy performance contracts is not required in UESCs as it is in the Super ESPCs, it is recommended that some level of M&V be included in these contracts. The contractor verifies that energy cost savings have been achieved. The challenge of M&V is to balance M&V costs with the value of increased certainty in the cost savings from the conservation measure: http://energy.gov/node/1413841.

### Metering Guidance

The focus of this guide is to provide the Federal energy managers with information and actions aimed at understanding metering and working to achieve potential energy savings and benefits: http://energy.gov/node/987271.

### Commissioning Guide

The goals of commissioning are to provide a safe and healthy facility; improve energy performance and minimize energy consumption; reduce operating costs; ensure adequate operation and maintenance staff training; and improve systems documentation This guidebook demonstrates how different types of commissioning, such as retrocommissioning and continuous commissioning, can be incorporated into a variety of building types and applications: http://energy.gov/node/727996.

### Operation and Maintenance Best Practices

Effective operation and maintenance (O&M) is one of the most cost-effective methods for ensuring reliability, safety, and energy efficiency. This guide highlights O&M practices that save an estimated 5% to 20% on energy bills without a significant capital investment: http://energy.gov/node/907671.

## Tax Incentives Update

On Oct. 3, 2008, the President signed into law legislation to extend many of the energy efficiency tax incentives first enacted in 2005 but that expired at the end of 2007 or that were scheduled to expire at the end of 2008. The bill also includes extensions of a variety of renewable energy tax incentives. The energy efficiency provisions include:

- An extension of the commercial buildings tax deduction to the end of 2013.
- An extension of the tax credit for efficient furnaces, boilers, air conditioners, water heaters, and insulation and window upgrades to existing homes (covering improvements installed in 2009 but not 2008).
- A one-year extension of the new energy-efficient home tax credit to the end of 2009.
- Three-years of manufacturer tax credits for sales of high-efficiency refrigerators, clothes washers, dishwashers, and dehumidifiers (2008-2010).
- A new tax credit for plug-in hybrid vehicles purchased starting in 2008 and extending until shortly after the number of qualifying vehicles reaches 250,000. (The credit for passenger vehicles and light truck ranges from $2,500-$7,500.)
- A new 10 percent investment tax credit for combined heat and power systems (through 2016) with at least 60 percent efficiency and with up to 50-megawatt capacity.
- An extension of fuel cell and microturbine credits to the end of 2016.
- Accelerated depreciation for smart meters and smart grid systems to be depreciated over 10 years (instead of 20-year recovery period applicable under MACRS).
- Extension of an existing bonding program for green buildings and sustainable design, and establishment of a new energy conservation bond program that would help local and state governments fund energy conservation efforts.

The bill pays for these provisions by restricting several oil and gas industry tax breaks and tightening some provisions on the sale of stocks.

- Clean Energy in My State
  http://apps1.eere.energy.gov/states/

- ENERGY STAR: Federal Tax Credits for Energy Efficiency
  http://www.energystar.gov/index.cfm?c=products.pr_tax_credits

# Contacts

## U.S. Department of Energy Contacts

For the latest list of UESC contacts, visit https://www.energy.gov/femp/contacts-utility-program-and-utility-energy-service-contracts.

## Utility Partner Contacts

For the latest list of utility partner contacts, visit https://www.energy.gov/femp/utility-program-utility-partners.

Federal Energy Management Program

For more information, visit:
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