The following text provides a transcription of ESPC Contracting and Negotiations webinar. The text is taken verbatim from audio presented by Tom Hattery of the Federal Energy Management Program (FEMP), Joyce Ziesler of Energetics, Inc. and Dustin Knutson of the National Renewable Energy Laboratory. Introduction provided by Bill Raup of the Federal Energy Management Program (FEMP).

Introduction – Bill Raup

Hello and welcome to the Energy Savings Performance Contracts on demand training. My name is Bill Raup and I am the DOE/FEMP Program Lead for the Energy Savings Performance Contact Program. ESPCs allow Federal agencies to accomplish energy savings projects without up-front capital costs and without special Congressional appropriations. More than 550 ESPC projects worth $3.6 billion were awarded to 25 Federal agencies and organizations in 49 states and D.C. as of March 2010. DOE/FEMP offers a series of ESPC on demand training – Introduction to ESPC, ESPC Pricing and Financing and ESPC Contracting and Negotiations. We also offer a three-day ESPC Comprehensive Workshop in several locations throughout the year. Please check the FEMP website for dates and locations. Additional resources are available on the website to help Federal agencies of all familiarity levels evaluate and implement ESPC projects. We hope you will utilize the convenience of this training method to its fullest intent. If you should need to ask a question or have issues of concern, please contact the Federal Finance Specialist in your region. Their contact information is provided for you during this training. Additional information and resources on all programs is also available on the website. After you have completed this training, you will have the opportunity to enter your contact information, answer a few training related questions and complete an evaluation form. Once you have completed these steps you will automatically receive a training certificate for completion of the course and FEMP will have a record of your attendance. Thank you for your participation and we hope that you enjoy the training.

Slide 1 – Tom Hattery

My name's Tom Hattery. I'm with the Department of Energy, the Federal Energy Management Program. I'm a contractot that does alternative financing, particularly energy-saving performance contracting for FEMP.

Slide 2 – Tom Hattery

These are specific webinars to try to address certain issues, but we obviously will be going over some of the basics at the beginning, so we will be – you see the agenda in front of you – we'll be going over how is this legal, the enabling legislation, and some of the planning you go through, the acquisition planning. This is heavily on the acquisition and the negotiation end of things. And we'll be going through to the entire procurement part and then also the after-construction, which we call through to the very end, to the performance period, those years that the installation of energy efficiency components have to work, according to the guarantee.

Slide 3 – Tom Hattery

So with us today are several instructors. Joyce Ziesler is a former contracting officer of many years in the federal government, and was our contracting officer for the super-ESPC program, our IDIQ contracts for a couple of years, and so a tremendous resource for us for training. Those of you who have really procurement-specific questions, very often where the rest of us might be a little fuzzy, she can really help you a lot on it. Dustin Knutson is with the National Renewable Energy Lab, and the way we've structured our support of ESPC, we have experts in a number of the Department of Energy labs, in various aspects of ESPC, and so Dustin is one of those experts, does a lot of training, and helping agencies with specific issues with their alternative finance projects. And just a moment to introduce myself again. What the Department of Energy did, what FEMP did when trying to make the ESPC program work, they found that it's enough of an exotic procurement vehicle that for the first few years it was very difficult to get very many projects done. You know, everybody's busy in government – for contracting officers, time is very, very tight – and to get people's minds around this new concept, it was difficult. So they hired a number of folks that we call "federal financing specialists" like myself. I'm not a technical guy. I'm not an engineer, but I know the program very thoroughly, and my job is to meet with agencies, help them from the very beginning, like we're doing today in an instruction-type nature, right through to sort of being your account manager for doing a project. So if you, at your agency, were to decide to do a project in my region, I would stick with you throughout the project, and I say account manager because my job, in addition to sort of managing the project, making sure it gets done on your behalf right, my job is also to bring the resources that FEMP has to help you. So if you have a specific question about solar energy, or about financing costs, or about some unusual piece of equipment and how you determine whether it's a reasonable cost, we have different people in different labs that specialize in these area that I can bring to the table when you're working on those, making those decisions. We won't tell you what to do, but our job is to tell you what the consequences of your decisions might be, one way or the other.

Slide 4 – Tom Hattery

As I mentioned, you heard me use the term region, so here are my counterparts, and we are divided up by region and then these contracts, as you may know – we'll be mentioning later – are international in scope. We also have divided up our responsibilities world-wide as well. But, you know, if you were ever to forget who or not know who's, you know, you're doing an Army project in Korea or a State Department project in France, or whatever, all you have to do is call any one of us and we will help you find the right federal financing specialist to help you.

Slide 5 – Tom Hattery

Again, as I mentioned earlier, part of our charge at the Department of Energy is to do as much appropriate education as we can. We have full three-day training courses in ESPC, but we have a number of other courses as well, as you see. The refresher course is for folks that have taken some training in ESPC before, and either they did it some time ago and now they're planning to do a project, or they're in the middle of a project and have some questions, and rather than just asking them one at a time, want to sit in on a day-long course to try to get back up to speed on what ESPC is all about. At the DOE, specific workshops are open to everybody, but there's a very small component of the total training that is DOE-specific, particularly geared to the fact that we have a lot of GOCOs, government-owned but contractor-operated sites. It add a different wrinkle when you have a non-fed component operating your facilities. And I go into that specific knowing that we probably have few DOE folks on this call, but there are other agencies that, from time to time, run into the same kind of formulation of having sites that are run by contractors, and I think that it would be particularly helpful to you folks. So, at any rate, we have all this training on our website, and plus you can contact your FFS if you have specific questions. In addition, from time to time, we have obviously limited resources, but we can do, from time to time a one-off training at an agency or a couple of agencies in an area. If there are 20-ish or so type people that you think might want to attend, we can try to arrange a training for you.

Slide 6 – Tom Hattery

So the first step, obviously, is to make a decision about doing an ESPC at all. That's really where the FFS job begins, is to meet with folks, you know, as the bullet says, typically energy manager. There's usually somebody at the site who's responsible for saving energy at the site, meeting statutory and executive order goals and so on, and those are the folks that start searching around, get on the website, or talking to companies or whatever, and find out about these opportunities and start exploring. So we're here not just to push ESPC, but we're here to help you explore all of the different alternatives and think through what your choices are.

Slide 7 – Tom Hattery

One of the things that we emphasize – and this is more Joyce's world, in terms of contracting – is that documentation is important. As you start these projects, it's very important for any facility-type folks to make sure you get your contracting officer involved at the very beginning, and then to document what your choices are, why you're making those choices, and then as you get into the actual procurement, you know, the details of the procurement. In that process, as I mentioned before, today we're going to be talking almost exclusively ESPC, but we do talk to folks about the other alternatives. You know, there are certainly situations where a power purchase agreement or a utility energy-savings contract would make more sense for your facility than doing an ESPC, and so we can meet with you and kind of give you – I don't want to say pros and cons – but more sort of the differences, the similarities and differences between the vehicles, to help you make a decision about what meets your needs. Oh, the one other point on that slide is the renewable energy screening. We will do that as a matter of course for you, but just to explain what that is, is that our national labs, also have, we have a great deal of data about regions in the country, and we get some basic utility data from you for your facility at the very beginning of a project. And we'll send that in and we'll give you, in a matter of a few weeks, a fairly cursory but a very helpful report on whether you have an opportunity for renewable energy. So it'll tell you thinks like what class wind is in your area, or how much does the sunshine in your area for solar power, or is there a lot of wooded areas in your area, so maybe a biomass project would be an opportunity for you.

Slide 8 – Tom Hattery

So we're assuming now, for the balance of today, that you have decided to move forward and do an ESPC.

Slide 9 – Tom Hattery

I'm going to go over a little bit – as I said at the beginning, even though this is a specific training today – it's always good to refresh, if you don't know already and to let folks know who don't know, that there is explicit legislation and regulations that both permit as well as guide the implementation of ESPC. Especially if you are in the procurement end of the business, you will notice very soon that we do some things in ESPC that would not be permissible did we not have specific enabling legislations.

Slide 10 – Tom Hattery

So I think this is somewhat repetitive of what I've already told you, but I think it's important for you, and we will help provide you with actual copies or references to the statutes and so on, so that you can have them at your fingertips should anyone challenge you about, well, hey, wait a minute, isn't this anti-deficient? Are you really allowed to do this? Then you can just pull out the clause of the statute that allows that particular activity.

Slide 11 – Tom Hattery

There are quite a few pieces of legislation that impact ESPC, but the basic ones are the National Energy Conservation Policy Act, which created the initial authorization and where still 42 USC 8287 is where still resides the enabling legislation that has been updated over time. Executive Order 13423 actually – and we'll have a slide on that a little bit later – but actually that's also been codified, so that's not just EO but also a statute now that's requiring it. EISA, Energy Independence and Security Act, updated ESPC and really gave a lot of impetus showing Congressional intent for maximum use of ESPC. We'll get into the Skaggs amendment and the FAR and the DOE 10 CFR 436. I'll just mention that now, is that the enabling legislation recognized that ESPC couldn't be done under normal Federal acquisition rules, and so it directed the Department of Energy to promulgate regulations consistent with FAR, to make ESPC work, and that's what we did back 10-plus years ago now. And so we often need to refer to those regulations if there's a question of, hey, the FAR tells me this but you're telling me it's legal? Well, very often we have to go to the, we call this the DOE Final Rule, and it went through the FAR Council and so on, so it had full approval and is legal acquisitions rules now. And we have a lot of these, every one of these things we have information on our website about, sometimes full copies, sometimes just excerpts, but those excerpts will obviously give you the citations so you can find the full copy if you need it, or go to your FFS and we can certainly provide a copy for you if you can't find the full text of something on the website.

Slide 12 – Tom Hattery

So as I mentioned, the 8287 was the enabling legislation, but here are some of the fundamental components of it. As I said, it gives you the authority to do these things, which would not be legal otherwise. It provides that the contractor must incur all costs. Now, this is still a hard and fast rule of the ESPC, but it can be a little bit confusing because you can add appropriated funds over and above what you would normally think of as the avoided costs – and we'll get into that more later. But I just want to mention it now so that it doesn't become confusing to you, that we're telling you two different things. This statute provides that these contracts can be a maximum of 25 years long, and we usually term that to folks that the actual performance period, or the financed period, is about 23 or 23-1/2 years, because the clock starts ticking on the 25-year term the date that the order is signed, and the order is signed when you have about a 30 percent or so designed document, so you have to have final design and construction. So assuming that takes a year and a half, then that gives you basically 23-1/2 years for the finance term or the performance period. The other thing this statute explicitly requires is that a minimum of an annual energy audit, and we call that M&V, or measurement and verification – and we'll get into that more later – but it is really the heart of this financial tool, is this measurement and verification where you can prove, in any given point in time in the future, that you're having the avoided cost that matches or exceeds the invoice that you're getting from the contractor or ESCO. The last point here is that directed-to-aggregate annual payment not exceed what the agency would've paid. In other words, you can't say, well, we fell a little bit behind this year but the previous year we had excess savings so we're okay. So in any given year, your project has to be designed so that you save at least as much as you're paying to the contractor in that year.

Slide 13 – Tom Hattery

Executive Order 13423 is the one that I was mentioning, is now codified and statute, so it's actually required by law, not just by executive order. And I think most folks are familiar with at least the concept, if not the specifics, of the 30 percent savings over the 2003-based year, by 2015. One of the confusing things sometimes that happens to folks, because it was written in 2003, is when they look at the water reduction they think they can stick 2003 in there, and that's not the case. It's relative to 2007, so it really is pretty challenging to folks for water reduction as well. ESPCs can be used; as a matter of fact, the statute explicitly carves out water as a permissible conservation measure to include in these projects. So these projects are very, very useful. As a matter of fact, I don't think there's any agency that can meet these requirements without doing an ESPC or at least some alternative finance tool.

Slide 14 – Tom Hattery

We have another slide on this as well and I'm not going to spend a lot of time on it – it goes beyond the scope of ESPC to a large degree – except to say that the Obama Administration issues its Executive Order which, in addition to the one we just talked about, really focuses on greenhouse gas reduction, carbon reduction, and it's one of the things ESPC is very well designed to help with. However, the schedules that are required in our projects, the schedules that show the dollar savings, the BTU savings, the gallons of water savings, and so on, they don't call out greenhouse gas savings, so it's something that you have to request of your ESCO, that they provide you with that information, and they should be very good. It's a fairly simple process to calculate the impact on greenhouse gas emissions when you reduce energy in a particular utility service territory. And any time you do something like that, it really helps to identify the benefit of doing the project. So, you know, when you're trying to sell your project to senior officials or to yourself for that matter, you not only can see what it gets you towards your

30 percent energy reduction goal, but you can see what it does to get you toward your greenhouse gas reduction goal.

Slide 15 – Tom Hattery

Yeah, so this is more the provisions of that, and as you can see, it's fleets and a number of other things that really aren't directly related to ESPC. The only thing I will comment further on this slide is that you can see that it has goals that are very tough to meet, and again, in any time, it's not possible to meet these goals with just appropriations, but particularly in these times when the budget problems are what they are, it's really going to depend on these alternative finance vehicles to make this happen, reach these goals.

Slide 16 – Tom Hattery

There are a couple of pieces of legislation that have happened fairly recently. One is very good and one is not so good for us. One is the EISA and the other is National Defense Authorization Act, which I'll get into a little bit later, but I want to alert you that when we talk about it, it applies – even though it was the NDAA – it applies to all civilian agencies as well.

Slide 17 – Tom Hattery

Okay. So the EISA was, as I had mentioned a few slides back, it really, in my mind, one of the things to mention about it is that it really showed congressional intent, that they really want ESPCs to be used, used comprehensively. So the first thing that they did was they made the authority permanent. They also noted that there were a number of times that agencies had some appropriations. You know, maybe you've got $100,000 in your budget to replace a boiler or something like that, or you've got this program of replacing lights in your facility. And what this says is that it explicitly tells us, now we are allowed to use those funds in the ESPC to make the ESPC more comprehensive and, in other words, include more energy efficiency components than could just be included if it was only financed with the avoided costs of those measures themselves. This last bullet on this page, again, reiterates what I was saying about Congressional intent. Congress also heard that there were some agencies that had folks that were saying, well, you know, I'm doing a calculation of return on investment and I found out that if this boiler has a 30-year payback, even though it's very efficient and going to save a lot of fuel, when I put my green eyeshades on and give you the return on investment for the project, it makes the ROI look so much worse, and so we're just going to have a policy across our agency that we're not going to do any projects that are longer than 15 years in term. And Congress was saying, no, you're missing the point of doing ESPCs. The point of doing ESPCs is that we don't have enough appropriations, and yet we have national policies that say we need to put in place energy efficiency as quickly as possible, as so we are prohibiting agencies from having an arbitrary term of less than the maximum we are giving you. And that same clause also limited the total amount of, size of the project, so you can't say, well, you're not going to do any projects that are larger than $10 million or whatever. Now, this doesn't mean that, for your specific case, for your specific project, you can't say, it doesn't make sense for us to do more than a 15-year project. I mean, maybe you have long-term plans that you're going to be tearing down buildings, and you know that's going to happen sometime 10 years from now or whatever, and if you know you're going to tear a building down in 10 years, you would not do a project where you're financing an upgrade to that building that takes more than 10 years to finance. So this just applies to an agency-wide policy.

Slide 18 – Tom Hattery

I mentioned permanent authorization already. I will say, though, that the reason it needed permanent authorization was when this was first passed, the policy-makers weren't sure that they were going to like the program or that it was going to be necessary for the long term, and so it was extended a couple of times before limited extension. But it is a very popular program on the Hill and it did receive permanent authorization in the EISA legislation. The next bullet is applicable in, not a majority of cases, but where it is, I think it's a very useful thing. It says that, prior to this you could build on-site generation but you couldn't build it big enough that you were exporting electricity from your site. And the reason this is useful is, in particular, where a site is building out. And we have a project that I've been working on where a campus of federal buildings is being built out, and since we couldn't sell electricity offsite, the cash flow didn't work to build a full generating capacity at the beginning. So we had to build a little bit of it, and then build out the site more, and then put a little bit more generating capacity, and so on, and we're doing it in three or four stages. It would have been much more economical could we have built the full generating capacity of the build-out of the campus, sell the excess to the grid, and then as the campus is built out we would reduce what's sold to the grid until it's fully built out and you're consuming all of the electricity on-site. But that's what this new authorization will allow. The final bullet on this slide is, I think, a very interesting issue for the future of ESPC, and basically Congress told DOE to explore the applicability of mobile sources, which we have done with the Department of Defense to a great degree and found that there are tremendous opportunities, not only for saving fuel, but for operating in a much more effective way. So if an airplane can actually fly farther, or a tank go farther on the same tank of fuel, obviously there are great benefits to that in addition to what FEMP is concerned about, which is saving energy. So that's not permitted today but we are moving along a path of trying to get that permitted, and I think at least if the opportunity shows that it would be a good thing to do.

Slide 19 – Tom Hattery

Okay. Regulations, as I said before, reflect the statute that require the maximum use of ESPC, and CFR 436, as I mentioned, is the DOE final rule.

Slide 20 – Tom Hattery

I should mention, too, that the DOE final rule is, as I said much earlier, getting pretty long in the tooth now. It still is the guiding regulation and it still is very, very useful, but we have had a lot of lessons learned in the process over the years, and we hope to update the DOE final rule fairly soon. Bullet 2 there, takes precedence over FAR. Again, if you're doing a project, and particularly if you're a procurement person and you recognize that, hey, I've done federal procurement for 20 years and I know that FAR doesn't allow this, well, the first thing we've got to do is check with the final rule, and if the final rule says it is allowed, then it takes precedence over FAR. The next bullet is not super-relevant to today because this really goes to selecting

ESCOs from scratch. What we are talking about here, for the most part, I using the Department of Energy Super ESPC program, and very often I get the very basic question, "What does super-ESPC mean?" And basically it's our IDIQ. We did a full SECA competition for selecting our 16 companies that are available with IDIQ contracts. They had to do a full proposal on a federal site and were evaluated, obviously both for quality as well as price. And so it's these procedures that had to be met in that process. So today, when you do a super-ESPC project, you simply need to follow the procedures for selecting an IDIQ holder, using fair consideration, and then you're issuing a task order under our IDIQ. The next few bullets, I think, are self-explanatory. I will, again, repeat that last bullet, that M&V is required everywhere and it's something that, in addition to it being required in the statutes and in the DOE final rule, it's something that we at DOE, when we help you do a project, we are going to look over the M&V protocol very carefully, both to protect you and your agency, that you have an audit-proof project, as well as to protect the integrity of our program, that if anything is ever audited years from now for a project that was put in, that we can show through the M&V that, in fact, the avoided cost is being sustained in order to make those payments to the ESCO.

Slide 21 – Tom Hattery

Skaggs Act – this is sort of getting down into the weeds a little bit, but basically, because of separation of powers, the President submits a budget and then Congress gets it, and they say, well, Mr. President, we don't really like how you've gotten money allocated. We're going to shift money from this agency to that agency, and then they pass the budget, and then it's back in the hands of the President, the Administration to do it. You know, Congress frowns on the executive branch transferring money from one agency to another, because that could forte the legislative will, and so any time you do that, basically, you need to have a determination in finding to show why it's necessary, and it all has to be recorded in writing and so on. But Congress, through the Skaggs amendment, gave explicit authorization for agencies to transfer funds to the Department of Energy for technical assistance with alternative finance projects. So when we do an ESPC, one of the things that we do is that we provide a project facilitator and we require it any time you use our IDIQ contract. Again, we require it both to make sure you get a good project as well as to protect the integrity of our program. And we provide that person – these guys are, it's a stable of contractors, middle IDIQ holders – we manage them, we do the selection process, and we assign somebody to your site. We pay for that person through the first phase of your project out of DOE FEMP program funds, but then beyond that, we're required to be cost-reimbursed by you, and we have a little interagency agreement to transfer funds over. But the Skaggs act is what allows us to transfer those funds over without any muss or fuss.

Slide 22 – Tom Hattery

Ah, the lovely Defense Authorization Act. Well, you had all these questionable procurement practices that you've seen in the news, in Iraq and so on, and so Congress got very concerned about it and wanted to toughen up the competition processes in procurement. And this has happened before with ESPC where legislation has passed without, in my view, any contemplation of ESPC. You know, ESPC is a tiny ant compared to all of these other procurements that are going on. But because the terminology in this statute said "multiple award contracts," and the ESPC program is based on a multiple award contract, our legal folks have said that this does apply to our IDIQ and, therefore, to selecting one of those 16 IDIQ holders. So basically, if your total contract value is in excess of $5 million, you are required, no matter whether you're a Defense agency or a civilian agency – and the requirements are the same; it has a Defense section and then it says for all other agencies, and it word-for-word repeats the requirements – you're required to give every one of the multiple award contract holders a fair opportunity to submit a competing proposal and price must be a consideration. And it did one other thing, and that is that if the total contract value is over $10 million, whereas before these were never protestable, now they are protestable. So keep that in mind. And we always recommend that even if you think your project's not going to pass one of these thresholds, that ESPC is sufficiently flexible that you're going to want to assume that it will, and the total contract value includes not only the installation cost, but all of the other contracted-for costs through the term of the project. So, if you have a $4 million installation cost, you may well, in addition, have annual service costs. If you say, we're going to put in an EMCS and we've never had an EMCS operator, so we want to take future savings and pay for the contractor providing EMCS operator every year for the next 20 years of this contract, in addition to which, the biggest enchilada I didn't mention yet, which is the financing cost. So you wrap all those costs together over a 25-year deal and it's pretty easy to get up to one of these thresholds. And you don't want to have your project being hobbled together, thinking it's only a couple million dollars, and come to find out, hey, we've got these great opportunities but we didn't follow the right procurement procedure and so we have to cut it off at this dollar amount. So we recommend that you go through the full procurement procedure, to allow yourselves to go beyond the $10 million amount. We will help you with suggested ESCO selection and process, so the FFSs also have other agencies' solicitations and can make that available to you so you can decide what is best for your agency and your situation. I mean, different agencies have different needs. I'm working a lot with the Bureau of Prisons, for example, and obviously their are concerned for having multiple contractors do walkthroughs is a lot different from GSA's concern of having multiple contracts come through a general office building.

Slide 23 – Joyce Ziesler

Okay. Well, good morning everyone. And let's just pause a moment at this slide to contemplate where our contracting officers are concerned, and getting started with an ESPC project. Because the foundation that Tom has laid for us all, in terms of the statutes are the who's who, so far as FEMP is concerned, our DOE core team, and folks like Tom and his other peers, then your facility or your energy manager no doubt are the ones that are going to be generating this concept and putting together some information for you. It's important that you, as the contracting officer, then know and become familiar with the special statutes and the legislation that Tom has just gone over with you in more detail, than we typically have in our intro webinar and so forth. And the reason that is, as we were doing file documentation, no doubt you have a file contents list. So consider what we're doing right now at this time, is building that Tab 1. We're going forward with our requirements. On the technical side of the house, they are the ones that are the most concerned about the Executive Order 13423 as well as that 13514. And that's because in operating and maintaining the equipment that they currently have, they know what is going on with that equipment in terms of greenhouse gases, the BTUs, the kilowatts, you know, those kinds of energy-related measurement that the current equipment is using. Now, your FFS, like Tom, is going to work with those folks to this point in helping them get started with a project concept, that market research that occurs. It's important that you contracting officers are privy to that information as well, so you can document your contract folder with that information. So your technical team or your technical side of the house then has all of that information, and they're going to help you contracting officers get started down this path with your ESPC, along with Tom. So you have legislation and statute and the DOE final rule, all of that at your fingertips to cut and paste for each step along the way that may be a little bit different, or somewhat different than your procurement or acquisition as usual. Good, sound contracting practices still apply when you're going forward with these contracts, and many of the FAR clauses or provisions are not applicable to the ESPC, but many are. So it's your responsibility to marry up this special statute and legislation with the ESPC and final contracting practices.

Slide 24 – Joyce Ziesler

Tom has gone over some of this with you, but let's just again pause for a moment to think about, okay, we're going to do this ESPC project. We have indefinite delivery, indefinite quantity contracts. Each of the contracts have a maximum filling of $5 billion. Now, if all that sounds like a lot of money, remember this is a multiple-awarded contract, multi-year contract, so over the course of the next three to five years, $5 billion, if you have some very large projects – especially in renewable energy, considering that – $5 billion can be eaten up by several large projects. So we did award 16 contracts up to different companies, so that you have your choice. You can do a sub or a mini-competition, if you will, amongst the 16. Now, this means that you don't have to go out to the industry in general, but are contained and can be contained to the 16 ESCOs for your projects. As Tom mentioned before, there's no geographical boundaries or limitations. There are some particular procurement considerations for your overseas. If you have that capability, the State Department, the Defense Department, and the Defense, as I used to work for, Defense as well, I always refer to the Status of Forces Agreements, for instance. So you may have some limitations there, although there's no geographical limitations in doing your projects. So all of the contractors are capable and qualified to do all of the energy conservation measures that are listed in the IDIQs, and they're conventional, emerging technologies, renewable technologies, all under one contract. As you're doing your past performance or your qualifications of your ESCOs as you go into this planning stage, know that we have qualifications sheets on the FEMP website for each of our 16 ESCOS. There is a generic IDIQ also out on the Web for you to print off and to refer to. So a lot of resources out on that FEMP web page would be really good, in the beginning, to start perusing that website to just see what tools are there, and then talking with Tom and your technical person, or let's call them your project manager or your champion, that's going to be going forward with the project. So you're going to start right now working as a team.

Slide 25 – Joyce Ziesler

Under our IDIQs and our process, we have five phases. Phase 1, let's call that an acquisition-planning for us contracting officers. And the technical team is planning the project; you're planning the acquisition. And the Phase 2, we're going to go over some ESCO selection processes with you. Phase 3 is the negotiation and award of the task order, Phase 4 is the design, construction, and acceptance of the project, and Phase 5 is the long-term performance period.

Slide 26 – Joyce Ziesler and Dustin Knutson

So in this Phase 1, the acquisition or project planning, I'm going to turn it over to Dustin.

Thank you Joyce. As Tom mentioned, at this point you should already have reviewed the various contracting mechanisms available to you, and made the determination that ESPC is the appropriate mechanism for your site to help your goals.

Slide 27 – Dustin Knutson

The first step is to engage your Federal Financing Specialist to explore the renewable energy resources and energy efficiency opportunities available at your site. This is the time to discuss your energy reduction goals and site-specific requirements that you would like the energy service company or ESCO, as we refer to, to address. Next, you will solicit the help of others to be members of your acquisition planning team, create a site-specific requirements document, and send a Notice of Opportunity letter to the Energy Service Companies to gauge their interest. Energy Service Companies will respond by notifying the Department of Energy's contracting officer's representative of their intent to respond and submit the requested information back to you at the agency.

Slide 28 – Dustin Knutson

Ensuring that any parties could be affected by your project, have a representative on the acquisition team would be a considered a best practice in advanced planning and communication for your ESPC. Your acquisition planning meeting should occur with the support of your Federal Finance Specialist, who can help guide you through the process of developing a contractor selection plan and a site requirements documents, which will describe your approach to contractor selection, down selection procedures if any, and specify contract language to ensure the agency is not anti-deficient in their approach. The FFS will also help guide you in soliciting the support of the DOE-required project facilitator, who will walk you through the contract development process as you interact with your ESCO, and who will help you with your project as it moves forward through the investment grade audit, project acceptance, and the first year of measurement and verification after project acceptance.

Slide 29 – Dustin Knutson

There are a few critical actions that should occur when putting together your acquisition team and holding your initial meetings. First, the team must decide on a project champion who will spearhead the ESPC effort and keep the team on schedule. A site energy manager or facilities director typically lead the effort, but it can also be led by a project manager, contracting officer's representative, or anyone with a passion to see the project through to completion. At the initial acquisition team meeting, team members should agree on the roles and responsibilities of each team member, and set a schedule and agenda for the next meeting, to include updates on actions that must occur prior to the next meeting. Your FFS and project facilitator should also be involved in your acquisition team meetings, as well your project kick-off meeting, and can help you ensure that you are covering all the bases necessary as you move forward.

Slide 30 – Dustin Knutson

Typical roles and responsibilities of the technical team include initiating the project by designating a project champion, gathering data on mandated energy reduction goals and progress to date, and engaging the FFS to discuss opportunities. The technical team should also gather an inventory of any maintenance backlogs, equipment in need of repair or replacement, and desired energy efficiency or facility improvement. This wish list, so to speak, should become part of the requirements document the technical team creates, and delivers to a contracting officer for distribution to the ESCOs. This is often the first step in development a working relationship between the technical team and the contracting team. This time should be used to develop a good foundation for teamwork, based on understanding of each party's needs and roles, and to set clear expectations with respect to approval authority and communication with the ESCO. Thus, the team should plan to take whatever time is necessary to develop a common understanding of goals so that they can move forward as a unified group.

Slide 31 – Dustin Knutson

The contracting officer and contracting team share equal responsibility with the technical team in maintaining a coordinated effort based upon common understanding and goals. It is advisable that the contracting officer be brought onboard early in the developmental process. The contracting officer and technical team will receive the requirements document from the technical team, and should take the time to listen carefully to the needs of the technical team described in that document. The language of facilities maintenance and equipment repair is often foreign when compared to the language of government contracting and vice versa, so it is important to ensure the wording used in the document is clear and understood in the same way by both teams. Revisions may be necessary to accomplish this goal prior to submitting the Notice of Opportunity to the ESCO. The contracting team will prepare their initial acquisition plan using the requirements provided by the technical team, and the two teams should agree on an evaluation approach to be used. Once letters are sent out and responses are received back from the ESCOs, the contracting team should coordinate with the technical team to select the ESCO. In the next phase, the process of ESCO selection will be discussed in more depth, and for that I'll turn it back to Joyce.

Slide 32 – Joyce Ziesler

So we have selecting the ESCO at this Phase 2 because you're laying the foundation, you're doing your acquisition planning, you have your team together, roles and responsibilities have been identified, and one of the main responsibilities in this pre-award phase of your project is to the contracting officer to decide and to go forward with a process of selecting the ESCO. So as Dustin said, let's take a more detailed look at that.

Slide 33 – Joyce Ziesler

This schematic shows who's doing what in this phase. As you can see, the lion's share is to the agency, so we are going to have some activity now by our contractors and our ESCOs. As you stem forward and notice the preliminary requirements to the ESCOs – and we'll talk about that in a bit more detail – you're going to review preliminary assessments, you're going to select the ESCO, and you're going to notice what we call the Notice of Intent to Award.

Slide 34 – Joyce Ziesler

Again about the Defense Authorization Act that has enhanced the competition requirements, for civilian as well as the Defense agencies for awards over $5 million, so giving a little bit more closer look to that, as to what we need to do under the ESPC. We need to give out clear statements of requirements to all the IDIQ holders, facilities data, whatever your acquisition team decides is appropriate in terms of requirements, provide a reasonable response period. You don't have to be out there for 30 days like you would for a regular procurement in its initial stages, but you do need to include significant selection evaluation factors, including price, and that's all in accordance with the Defense Authorization Act. You need to develop a written statement documenting the best value selection, as you would with any other contractor selection, and provide post-award or debriefings, meaning that you need to provide a time after your contractor selection to notify the unsuccessful offers that another contractor has been selected. You need to give some debriefing points, and provide debriefing opportunity in accordance with the FAR – I believe it's about 10 days out – and then you could then announce to your successful offer of their selection. Protests are allowed if the value is over $10 million, and I'll talk about that in a future slide.

Slide 35 – Joyce Ziesler

There are two methodologies in the IDIQ for selecting the contractor. One is a contractor-initiated methodology, meaning unsolicited proposal where the ESCO would tell the agency that they would like to submit a proposal on an energy conservation project. If you decide to go so forth, then the justification for other than full and open competition would apply, but if you want to consider that to be an unsolicited proposal and go forward by notifying the other ESCOs that you are interested in an energy project, then you need to come up with your requirements and desired energy conservation measures, how many buildings, and so forth, and give those other ESCOs the opportunity to express an interest. Other ESCOs, then, could submit a proposal, and using the fair consideration, you would issue the statement selecting one best, based on the best value. So the post-selection, debriefing protest is allowed at this point if it's over $10 million. Now, we all know that protests can occur any time during a project or contract, but this is the most likely place the protest would occur; hopefully not, but this is the most likely place. But the secret or the fair consideration, if you've been transparent and you have been upfront with your requirements, then protests probably will not and should not occur.

Slide 36 – Joyce Ziesler

So for the second methodology, the government-initiated option, you, the agency, will send a notice to all 16 ESCOs with requirements and selection criteria. It was the recommendation by the Golden Field Office, who administers the IDIQs, that perhaps what you might want to do initially is send out a Notice of Interest. By that method of expressing an interest, you may actually short-list the number of ESCOs that really want to participate in giving you a preliminary assessment. But with the requirements and selection criterion, then you are going to want to consider the buildings and the energy conservation measures that you know of that should be included; the selection criterion, which is weighted greater; the technical approach; the past performance; or the price. Of course, price is required under that Defense Authorization Act, that it be considered. Agencies may host site visits. The Clause H3 in the IDIQ gives more detail on both of these methodologies. One of the approaches that you could use would be to have the number of ESCOs that are interested to do a walkthrough or a site visit, but that isn't totally necessary for all, just like Tom's example of the Bureau of Prisons. Most likely they would not want 16, 10, whatever number of ESCOs who are interested in doing the project actually walking through a federal prison, so most likely they would want a down selection process to one. So they're going to have to explain that and be explicit in their approach of the number of ESCOs that are going to be selected as a result of this preliminary assessment or this initial approach to contractor selection. So one or more, perhaps, of the ESCOs will submit the proposal, depending on which methodology you use. Again, here's a reference to a fair consideration, that you're going to issue a statement selecting one based on the best value, and again here, not at awarded, most likely where protest would or could occur.

Slide 37 – Joyce Ziesler

How about that requirements document? Since you don't have a complete, independent government estimate, a site data package, then something less than those that we're used to having at the conception and inception of a procurement or an acquisition, this is going to be somewhat less, but it still needs to be comprehensive. Again, the backup legislation is going to help you, meaning that in that 42 USC 8287 there is a statement there that these contractors have to incur all costs of putting the project in place. So that's one of the areas that is not present under a conventional type of procurement or acquisition. So you need to come up with a wish list. It doesn't have to be so comprehensive but you do have to alert your 16 ESCOs that this is the project as you know it, giving facilities data on your wish list, and also realizing, in that sub-bullet, that this is unfunded. You're going to get your requirements document, perhaps a document called a Purchase Request, that's going to show zero dollars because, in accordance with the statutes, then appropriated dollars do not have to be up-front to start the planning or the project process. So this requirements document, then, is an internal document from your technical side of the house to the contracting division. So you, the contracting office, then, based on this requirements document, is going to prepare the notice to all of the ESCOs, you're going to identify the evaluation factors, and I would get my technical team to help me with some of that, as I have done that in the past. It's like exactly what kind of evaluation do we want to apply, and what should be weighted greater than another. For instance, in the slide before, technical was first, past performance was second, and price was third and, in my opinion, that's a good mix and that's the balance that it should be. But you may consider something different, and your acquisition team as well as your facilities or engineer group might have a different idea. So the bottom line there, for your requirements document and starting forward with this unfunded purchase request, means you're not anti-deficient, there's special legislation, cut-and-paste from the 42 USC 8287, that particular subparagraph, and documented in your file folder.

Slide 38 – Joyce Ziesler

The preliminary assessment. You may call it an initial proposal, or you may have some other title, but we have called it a preliminary assessment of the project that you are proposing. Now, in the IDIQ there are contract requirements, in a section of Clause H.4, that you must give sufficient information to the ESCOs and they, in turn, must give you sufficient information for you to make a decision that you could quantify, qualify, and analyze their submission. The key elements that that section H.4 provides is a narrative summary of the proposed project, meaning a management approach, a narrative, as to how that particular ESCO is going to handle the project that you have given; a description of the ECMs that they propose to install; what type of equipment; the size of the equipment; a good description. You're not going to have drawings or a full design at this point, but they should be able to describe to you their approach to a design of a system. Take, for instance, a geothermal heat pump system. They may be recommending a particular type of geothermal heat pump, for instance, a closed loop versus an open loop; what size in terms of tonnage for geothermal heat pumps. The same with your chillers and your boilers. They should be able to give you, not a lengthy but a pretty good description of the ECMs that are going to be going into your project. The estimates of the proposed energy and cost savings; the M&V approach, in general terms, remembering that in this preliminary assessment, you don't know exactly the ECM perhaps, and his full parameters, but an approach to a lighting system, for instance. And this M&V approach is not going to be project-wide; it's going to be per ECM. So in your description of the ECMs that you're going to receive from your ESCOs, then they're going to give you an M&V approach for that particular ECM. We also have an attachment to the Risk, Responsibility, and Performance matrix as an attachment to the IDIQ, and that's very important in terms of their approach, the risks that they're willing to take, the responsibility that they envision that they have, and then the performance of the equipment as well as the services. Last but certainly not least is a set of financial schedules; we call them Task Order Schedules. There's five of them, and so that's also an attachment. Now, one thing to bring to your attention when you review the IDIQ, and in particular this section, or Clause H4. There is a suggestion in that contract that the offer or the assessment be returned in approximately 20 pages. Don't be misled by that in terms of, you know, it has to be 20 pages. It can certainly be more. You are responsible and you need to make a determination as to approximately the size of the preliminary assessment you want returned. If you have three or four ECMs, for instance, then your preliminary assessments are going to be much smaller than if you have six or seven, for instance, because that description of ECMs need to be detailed enough that you can get a pretty good idea as to what your ESCO is proposing. The Risk and Responsibility matrix, again, is an attachment and required. It's about six pages long. As I said before, there's five Task Order Schedules, four are required for this preliminary assessment, so that's another four pages. So do the math, be reasonable if you're going to limit the number of pages. Most certainly you don't want a 200-page preliminary assessment, but in being reasonable and having some control over the size of this, you probably want to consider that.

Slide 39 – Joyce Ziesler

Some key considerations. Is the proposed scope sufficiently comprehensive? Well, that's a pretty generic term there, so let's think about that just a moment. To what degree does the ESPC project that's being proposed help the technical side of the house meet the goals of those executive orders? That's something that I think is key when you're looking at the scope of the project. Does this meet that, or can it be adjusted to meet the majority of your needs, meaning that during an investment-grade audit stage, which is coming up in our Phase 3, but, you know, can it be adjusted, then, to meet some of those executive order mandates? Is it a good deal for the government? Of course, we're concerned about the dollar value, the amount of savings under the ESPC, but don't lose sight that the real goal here is to reduce energy consumption or greenhouse gases. So when that is in the mix, then you need to be as concerned, if not more so, about the deal for the government should be in those terms. And if the savings are going to cover the investment of your equipment to meet those goals, then that is, in my opinion, a good deal for the government. So, can your agency and the ESCO have a good long-term partnership? Hopefully, you are going to be able to get a pretty good idea as to a relationship that you can have with these ESCOs. Now, if you have multiple offers or preliminary assessments, by all means have a face-to-face discussion with them about their preliminary assessment. You can't have it just with one, unless you have down-selected to one, so if you have discussions with one, in other words, then you're going to want to have the same opportunity with all. Very often, body language approaches, their willingness to partner with you on some key issues – you know, there's some things to be considered along with this partnership, remembering that it's a very long-term contract by comparison to the convention type of contracting, so you need to be careful as far as a relationship is concerned. Not just their technical expertise, but are they a good contractor personality-wise that are a good mix for you.

Slide 40 – Joyce Ziesler

So the technical issues. Are the ECMs descriptions, and project energy savings reasonable, meaning does it make sense? Is the M&V approach appropriate? If you have some very sophisticated ECMs that's going to go in, then, as you've learned from our previous webinars, there are four options – A, B, C, and D. Option A is the one, that stipulation of the usage and hours and so forth, so it might not be appropriate for a cogeneration plant, for instance, or a landfill gas. So that's what we mean by, is the approach appropriate for a particular ECM? Remember that you're going to have an M&V approach for each of the ECMs, so your technical division, your project facilitators – these are going to be looking at that to make comments to the contracting officer, whether or not the M&V approach and option is reasonable for that particular ECM. So, is the estimated annual cost savings reasonable and consistent with the technical approach? Are your expectations, in other words, reached as a result of going over the price analysis and your cost savings for your project? Are the contract term and total cost acceptable? Is it within the parameters of legislation up to 25 years – but if you don't have to extend it that far, then of course you would not want to finance your project up to 23, 24 years. So, is the contract term and the total cost of the project acceptable?

Slide 41 – Joyce Ziesler

In the evaluating the ESCO's technical approach, here are some things to consider, and again, I say you can invite the ESCO to make presentations.

Slide 42 – Joyce Ziesler

In evaluating this past performance, for contracting officers sometimes that can be a bit problematic. The legacy contracts, as well as any of the newly awarded contracts under the current IDIQs, are under the contractor's performance database, so that's one resource. Also in the ESCO's qualification statements on the Defense website that I told you about, you can request data from ESCO's past performance – you can ask them, of course; they're going to give you the best of the best – or you can go to the FFSs to identify projects most recently by those contractors that are offering up preliminary assessments, and then you can contact those sites directly. Be sure ask a consistent or a standard questionnaire to each of the contracting officers or CORs at those sites, so that you're getting apples-to-apples comparison for your potential ESCO.

Slide 43 – Joyce Ziesler

Evaluating the price estimate on the preliminary assessment. You're going to want to take a look at the project development cost for those ECMs that you have on your wish list that you presented to them, the type of ECMs that you have, indirect cost and profit of the entire project, the financing cost, and the performance period services.

Slide 44 – Joyce Ziesler

At the decision point. After reviewing the preliminary assessments, if none of them are satisfactory, meaning for all of the effort that's involved, if they don't help you reach a lion's share, perhaps of your mandated goals, then scrap the project, and you could even consider starting over if you have more information or, you know, you want to add more facilities, bundling sites, for instance. Some of our campuses, government campuses, are really quite large, so it might make more sense for the size of your project to increase. Or, if it's a big project in the beginning and you want to revise the requirements of the ESCOs to a smaller project, then scrap this one and start all over again. It's good to lay a good foundation, because it's important in the future years to come that you have done your due diligence and decided what is the best foot forward.

Slide 45 – Joyce Ziesler

So, if the project looks pretty good to you, there's an ESCO that you can live with, basically, for the next 15, 20 years, then give feedback to address the deficiencies and desired changes that you want in their preliminary assessment, setting the stage then for our next phase, in terms of the investment-grade audit. This is going to be a more lengthy process and, as I said, an investment-grade or engineering stage of the project, and this is going to be incorporated into your final proposal. All of the other preliminary assessments are to be returned to the issuing ESCOs. If you are accepting electronic copies, be sure the ESCOs understand that, and what type of methodology you're going to use to delete the preliminary assessment from your database. Unlike a traditional type of contracting, it is not advisable or acceptable to keep the unsuccessful offers in the preliminary assessment stage.

Slide 46 – Joyce Ziesler

So prior to issuing a Notice of Intent to Award, meaning that you want to go forward with your project, it is necessary for you to verify the ordering capacity, and you can do that through your Federal Finance Specialist. Golden Field Office has a need-to-know for that, so that they can keep in line with their maximum ceiling under their IDIQs, and then confirm the Intent to Proceed with all site and other affected personnel. You have your acquisition plan in place, so this is the next stage – a milestone, perhaps, in your acquisition planning, so be sure that you're updating that acquisition plan, your timeline for your resources as you go forward with the Notice of Intent to Award.

Slide 47 – Joyce Ziesler

What is this Notice of Intent to Award, you may ask? It signifies the selection. In other words, you have notified your unsuccessful offer that an ESCO other them have been selected. So what you would send to your selected ESCO, then, is this Notice of Intent to Award. It's the more formalized decision that you want them to proceed with the project. It specifies a timeframe for completion of the investment-grade audit and final proposal. That may change from the preliminary assessment, but that's what you're going to discuss later on. It outlines the pre-award requirements, and also includes any other conditions of commitment on the government's part, as well as any commitment made in the preliminary assessment by the ESCO.

Slide 48 – Joyce Ziesler

After issuing the Notice of Intent to Award, then the ESCO's project development call may be claimed or recovered, if the Notice of Intent is issued but the task notice is not award. Now, the recourse for this is through the FAR, not the IDIQ contract. There are no provisions in the IDIQ contract for the ESCO to process a claim. It may very well be on the part of your site or your agency to describe this to your ESCO, but typically we don't see this very much, because typically the contracting office and the site goes forward with an award.

Slide 49 – Joyce Ziesler

So after notifying the Federal Funding Specialist of the contractor selection, they're going to enter it into Defense central database because we track all projects, their dollar values, the stage that they're in, and so forth, so that we have a pretty good idea of timelines and project development. Your Federal Funding Specialist, your ESCO, your project manager are going to set a date – let's not leave out the project facilitator at this stage because your team of these folks are going to move forward and set a date for the investment-grade audit kick-off meeting. So all parties are involved, your acquisition team is put back together, and a date is set for this kick-off meeting. Most likely, it is the first time of sitting down face-to-face with your contractor.

Slide 50 – Joyce Ziesler

Our next phase then is negotiations and award of the task order.

Slide 51 – Joyce Ziesler

So in this phase, we're going to have that IDA kickoff meeting that I have eluded to. We're going to start a task order RFP. It may seem like an odd place to be doing RFP, but I'll explain. Your contractor's going to do the investment grade audit and just pause it a moment then to look at the rest of the activities during this phase. It's a very busy phase, but don't be daunted by all of the blogs. And we're just going to go step by step here to get you through this particular phase.

Slide 52 – Joyce Ziesler

The first thing then, as I said before, the IDA kickoff meeting. This may be the first time that you have sat down face-to-face with your selected ESCO to discuss the things that were included in the preliminary assessment that you like. There may be some that need to be added. Your project facilitator who has been engaged to continue with you through the rest of the project development process and task order and award and the thirteen-month MMV activities has been engaged through an inner agency agreement with the Golden Field Office for a fee. The Skaggs Amendment, if you remember from that piece of legislation that Tom described to you, applies to engaging your project facilitator, as they are under contract with the Golden Field Office. Their contracts also are IDIQs and your task order project is competed amongst the project facilitators. So preparing the RFP, the project facilitator has the template that the program and our core team has developed, and they can lead you through that activity. Actually, I think, for the most part, they complete it for you and then consult with you to make sure that all the points and clauses are acceptable. You may have some addition for that, but your project facilitator can also help you make that determination. Then you're going to review the final proposal, understanding the finance schedule, leading up to and including the price reasonable determination, and you're going to discuss – conduct the negotiation.

Slide 53 – Joyce Ziesler

So in this IDA kickoff meeting, remember your acquisition plan and contract officers have that with you to discuss with the team that's going to be at this kickoff meeting. Your project manager's going to schedule it, along with your federal finance specialist, your project facilitator and the contractor. And typically the PF does conduct or they have a template agenda that they'll share with you, and they can conduct the kickoff meeting. The acquisition team, hopefully all are present, and any key decision makers that can have input to the project or have approval, authority of the procurement going forward need to be in attendance, if at all possible. Develop new milestones if required. When you complete the RFP, then you could – right up to the task order award and beyond, then you can make adjustments in your acquisition plan. Discuss the applied solution list and energy reduction goals and those executive orders that we had mentioned before. Don't forget the 13514 because your ESCO is gonna want to provide greenhouse gas and carbon reduction calculations and dated to you so that you can take that forward to your executive-level management to demonstrate how you're meeting the requirements of that legislation. Set up communication protocols. What we typically see are biweekly calls by the key or the core team working on the procurement, which typically would include your project facilitator, your ESCO, your contracting officer, your technical side of the house on these telephone calls. Now, contracting officers. What you're going to hear are mostly a technical term and maybe some engineering terms that you might not understand, but I always participated in the biweekly calls. It was amazing to me as to how much I did absorb from these expert, and it helped me in going forward with my price reasonable determination, meaning – I'll give the example again of geothermal heat pumps. There's several different kinds. So if your engineers or your technical folks decide on one particular geothermal heat pump versus another, it's good to know that so that if there is a price element in there that needs to be justified, you're very much aware as to why one is better for your site over another.

Slide 54 – Joyce Ziesler

So in preparing this template or this RFP, you're going to be paying attention to the technical such as lighting levels, the heating and cooling standards. It's gonna be different, for instance, from our DEO labs and sites as it would be under a general administration building. Or perhaps in the VA, you're gonna want to determine what kind of lighting levels you need and the heating and cooling standards for your veterans homes, as well as the hospital. Schools is another type of building or facility perhaps that would need a different set. Our IDIQs have default language, and so you need to consider that default language as to meeting your needs then for the ECM standardization and levels. Contracting. You need to pay attention to the invoice requirements and subcontracting plan. The – again, there are default language in the IDIQ. There is a master subcontracting plan. The IDIQ does require that you have a site-specific contracting plan. So let me just say too with that subcontracting plan, who are you going to need to, at your site, include in that? That would be your small business administration point of contact. So you are going to team with them to come up with a site-specific subcontracting plan and document that in your file. So in the contracting also under the invoice requirements, under the G section, you're going to want to identify the contracting officer, their points of contact. You're going to want to identify the contracting officer representative and their contract – contact rather. Excuse me. And then also the invoicing methodology that your site or your agency requires. So any other causes that may be needed can be inserted in the RFP. Access and security department is another concern by many agencies. Also, in the I section of the IDIQ, if there are any agency-specific contract clauses that need to be inserted, you can insert them by reference as any of the far references are. Or you can insert them in their full text in the I section. That's just to give an example.

Slide 55 – Joyce Ziesler

So reviewing the final proposal, the contracting officer and the COR will call a meeting with the acquisition team. You're going to assign roles and responsibilities for review of the technical proposal, as well as the price proposal.

Slide 56 – Joyce Ziesler

And the preparation for negotiation. Once you get to this stage and having your biweekly calls, hopefully there aren't going to be too many surprises as you are going forward to put together a pre-negotiation memorandum. There are going to be cost elements and responsibility, liability elements in that risk, responsibility and performance metrics. So you're going to make an assignment of some person or resource to review that. You're going to have someone, if you're lucky, to have a price analyst who are going to go over your price proposal, and probably your technical side of the house are also going to be concerned with the price proposal. The MMV plan is more to your technical team, but contracting should be aware of just the impact that the MMV options have on the cost of that MMV and so that you can go forward with your price reasonable determination. The financing portion of it. And we'll describe that in – later on in debriefing. The subcontracting plan that you and your small business contact or your SBA has come up with. And then the wage determinations that apply to these projects are the Davis-Bacon Act during the constructions and implementation period. And then for the performance period is the Service Contract Act.

Slide 57 – Joyce Ziesler

Technical comments are submitted to the contracting officer. Now, let me just say that your project facilitator, your lab core team are experts, are all going to be offering comments. It's going to be compiled typically by your project facilitator, and they're going to submit that to you, the contracting the officer. So they're going to do the analysis of that risk and responsibility. Be comfort with the savings estimate over the entire project and a satisfaction with MMV methods or options that are in the final proposal 'cause at this stage, we don't have just the approach. We actually have a plan, an MMV plan. So your technical folks are going to need to scrutinize that carefully and offer comments to the contracting officer. The price proposal comments, again, if you have a price analyst, that's a good source to go over the financial schedule and the written or the narrative price proposal. I'd like to remind contracting officers that the order of precedence applies in accordance with FAR as to the written word versus the – any attachments. So that the task order financial schedules are an attachment. So any narrative or any comment in the biweekly call of a commitment by the ESCO or the government needs to be documented and put in the folder so that that goes into a negotiation or a pre-negotiation memorandum. So you need to go forward then with these comments in making your pre-negotiation memorandum and then, ultimately, your price reasonable determination based on your negotiation.

Slide 58 – Joyce Ziesler

So in conducting the negotiations, whatever you prefer. I like to negotiate in person. For instance, I find that I don't have as much interaction, immediate feedback perhaps or animation, if you will, by phone as I would if it was in person. But anything that your agency or your site prefers or policy dictates, then, by all means, is acceptable. You can use your project facilitator as a support to your team, but they are not allowed, of course, to conduct the negotiations. Discussions on technical and pricing can be done in advance and entered into your pre-negotiation memorandum. The stickiest issues usually surround the pricing, of course, in MMV. I'm gonna add to that personally. I think the risk, responsibility and performance metrics needs to be carefully reviewed and considered by the team. Anything that the government is taking on is a cost to the project or – and should be assessed as to whether it's in the government's best interest to take on that risk or responsibility versus the contractor doing it. So remember that the contractors' fees, as well as the investment cost is paid from savings. So if it's reasonable that the risk and the responsibility is taken by the ESCO and the savings will pay for it, then it may be in the government's best interest to do that.

Slide 59 – Joyce Ziesler

This is a favorite slide, actually, because back the – this data up, there are matrices on each of these data elements here, as demonstrated on this slide. I wish that I had had such a resource, if you will, when I was doing my price analysis and price reasonable determination because it can help you through many of the elements, the cost elements of your project such as that MMV cost, such as the operation and maintenance. Look at the interest percentage. This is based on the total investment cost or project cost. How much of the savings has been retained? So when you approach a price reasonable determination and start looking into these cost elements, this, I think, will be very helpful to you. At the bottom line there, I, in fine print, notice that this data was taken from projects awarded from 2005 through July of 2009. So it's relatively recent. So any updates to this your project facilitator will be able to have access and help you make further assessments of any of these percentages of the agency payments over the term.

Slide 60 – Joyce Ziesler

So when using the financial schedule, approaching this price reasonable determining, the schedule number one is the estimated cost savings and guaranteed cost savings and the contractor payments. So you can read the bullets there. The one that I want to point out probably most of all is the escalation rate. That's going to be in the notes contained at the heading of this task order schedule. The escalation rates then are set by your ESCO, so your technical team we do have experts out at the labs that can assess the escalation rates and help you, that that is certainly one of the things to – cost elements, rather, to be looking to in your pre-negotiation memorandum and, ultimately, to justify in your price reasonable determination.

Slide 61 – Joyce Ziesler

Here is the snapshot of that task order schedule one. That note six is the escalation rate that I just mentioned. Now, pay attention to that note one backing up there. This is kinda fine print, but the example then, the IDIQ, that's out on the Web. You'd be able to read it more clearly. But these schedules cannot be altered or changed in any way by your ESCOs or by the government site. It is a requirement under the IDIQ that these schedules – we have standardized this information, and it's important when going through the review process that everything is standardized in that there's consistency in the information. Note ten then shows you how many months the project is going to take to install, allowing for some wriggle room there. You may want to discuss at the investment rate audit stage as to any additional ECMs. The more complex ECMs could change that number. Remember to change your milestone in your acquisition plan to fit the needs of the construction and implementation period with that kind of explanation. Your implementation period payment is shown here. That also needs a justification. Remember from the Energy Independence and Security Act that appropriated dollars can be used in conjunction with the privately finance funding. So you need to perhaps cut and paste that EISA provision, that you can use appropriated dollars in conjunction with these projects. And just looking at the columns down below then, to quickly go through, that D column is the estimated amount that your ESCO is going to determine that the equipment that they are installing is going to provide that kind of energy savings. Moving over to column E, however, the guaranteed amount that they're willing to do on that estimated amount is typically around 85 or 90% of that performance. So it's not – that also gives some wriggle room in terms of maybe less then some degradation perhaps over term of the equipment as calculated there. So with that in mind, they're going to guarantee right out about 85 or 90% of the estimated. Moving over to the column labeled F, the annual contractor payments, what we see typically is one dollar less than the guaranteed savings. That helps pay off the investment and the contractor services more quickly than if you were to retain a greater portion of the guaranteed savings.

Slide 62 – Joyce Ziesler

Financial schedule number two is the implementation price by ECM. It shows the direct expense by the ECM, meaning the cost of the equipment, the installation cost by the subcontractors perhaps, and then including any MMV costs that may need to be done on any of the ECMs during this implementation period. A good example of that, for instance, would be if you're having wind turbans installed, perhaps a prototype or a model would need to be metered or monitored for as much and up to a year perhaps during this period. So any measurement of verification of that equipment would need to be calculated as a direct expense to that particular ECM.

Slide 63 – Joyce Ziesler

This is a bit difficult to read, but this is where the individual or the specific ECM direct cost on your project is going to be listed and described. Notice that there is a direct charge column for each of the ECMs, but the profit and indirects are assessed for the entire project. This equates to the total implementation project of your – cost of your project. The bondage amount is the payment and performance bond, so insurance, if you will, and then we provide room for any explanation of the ECM, then any of the notes above.

Slide 64 – Joyce Ziesler

The performance period cash flow or this task order schedule three is a very comprehensive schedule for your contracting officers to assess because it gives the finance procurement price, it gives that direct cost and the index rate and added premium by the financier, the debt service and the performance period cost.

Slide 65 – Joyce Ziesler

Here's a snapshot of that. As you can see, there's a lot of information on this particular schedule. This is the one that I would typically start with when I was going forward with my pre-negotiation memorandum and, ultimately, my price reasonable determination 'cause it has a lot of the cost elements. That implementation price is taken from schedule number two plus the finance procurement price. And I'm going to describe that a bit more to you, but for right now, for this discussion, now that it is the construction period financing, as well as your payment and performance bonds. It is a flow-through cost to the government and is not subject to indirect and profit. This implementation period payment that you saw on task order schedule number one is also calculated in here, so it would be the implementation price plus your finance procurement price less your implementation period payment to equate to the total amount that's going to be financed. Moving across the schedule to the next set of columns, you're going to see the index. I'm not going to go into depth to explain much of this because we have future slides that will go into greater detail, but just in more explanation of the schedule. And notice that the far right column then gives the issue date, the source of the quote and then an effective date. That effective date is very important to your milestone because you need to move quickly perhaps or at least in a timely way, schedule your resources to review so that you can take advantage of this quoted index and added premium so that it could greatly affect your project if there is a delay and the index rate changes significantly, which we know how volatile the soft market can be. So be aware that that effective date – highlight that and pay particular attention. And as you look through, look at year one, for instance, in the section below. It's over the term, the annual cash flow, that year one is the one that is going to be assessed and determined over the term for your price reasonableness because of the fact that it has this first-year cost. Notice that there's no operation by the contractor, any cost assessed with that, so you would look back to your risk, responsibility and performance metrics to see just what the government has agreed to. So you can see how all of these attachments and cost elements tie to one another. There is maintenance associated with the ESCO services and costs, and there's also repair and replacement assessed on this particular project.

Slide 66 – Joyce Ziesler

This task order schedule number four, the first-year estimate, annual cost savings assesses the baseline per ECM for your project. Extremely important that all parties agree as to the methodology of determining that baseline because it is the basis that the guaranteed savings is built upon. So estimated savings by the energy source, the simple payback term is listed on there, and mostly of interest are – to the techie that provided insight to the contracting officer to the differences between the ECMs and the whole project as a whole. So there's the bottom line. By focusing on that first year, as I mentioned, on schedule number three, it's going to play into the schedule number four for your savings estimate expressed in terms of cost savings.

Slide 67 – Joyce Ziesler

This is very difficult to read on these slides. It's almost impossible to give a clear vision of this, but this is the schedule number four. This is what it looks like. So moving from the left to the right, you're going to see your ECMs listed by their technology category. You're going to see their current energy usage in terms of the units such as kilowatts and BTUs, natural gas, you know, all of those are going to be listed individually. And moving across, then your ESCO is going to determine the estimated savings and then they're going to guarantee a portion of that. Like I said, about 85 or 90%. Moving right across to the simple payback, that far right column that is very difficult to read on this slide.

Slide 68 – Joyce Ziesler

Schedule number five is going to be present in your final proposal because it is an annual cancellation ceiling schedule. And typically what we see is 100% of the outstanding debt for sure, but about a 5% fee for the ESCO and the financier to process the – a cancellation. No inclusion of profit or service cost, anticipated profit. Just like with any other procurement, we don't pay for that in terms of any loss profit or the service cost. The exact principle balance of the loan by month is often presented and included in your final proposal. What the legislation requires is an annual cancellation ceiling. But the termination for convenience should be negotiation and proceeded in accordance with the FAR. And then the alternative to the task order schedule's cancellation premium is a provision. I did that for one of my projects and it saved a considerable amount of the basis point. This is – compensates the lender if the project is terminated and the interest rates have gone down during the course of its performance. And it's a good way to lower the borrowing rate. As I said, I did that before. The calculation or the algorithm used is for the net present value of money, and it does work. You just need to be confident that your facility is going to be mission-oriented throughout the term of the contract.

Slide 69 – Joyce Ziesler

So termination for convenience of modification. You can engage in a partial termination. We have seen a few of these. It's not really all that great for your project to terminate in a partial way because it could extend the term of your contract for the remaining ECMs, especially if you have paid off the lesser or the greater savings ECMs. So you need to be careful in consideration with the money that perhaps you have to pay off the or terminate the contract as to what ECMs are most effective for you. A complete termination for convenience would be negotiated and analyzed in any other way in accordance with the FAR starting with that annual cancellation ceiling.

Slide 70 – Joyce Ziesler

This is a snapshot of what that schedule looks like. So as you can see from your one through twenty-five, the cancellation ceiling, this is what's required again, that month-to-month cancellation ceiling can be attached to this particular schedule.

Slide 71 – Joyce Ziesler

Now we're going to go into the private sector financing to educate you a little bit on how that all works.

Slide 72 – Joyce Ziesler

So in the finance cost of the project, the amount financed equals – is equal to the project development expense plus the indirects and profits, the finance procurement price minus any of the one-time savings or that amount in the implementation period payment.

Slide 73 – Joyce Ziesler

So this finance procurement price that I eluded to before includes the cost for the construction period entrance, which is the main component. Then the effort to arrange the financing is also included in that payments and performance bond and then hedges to lock any rates in advance of the financial closing. We do not recommend the use of the hedges because we have found that it hasn't been cost effective to project who engaged in that. So it's our recommendation that you don't lock into the rates. And your project facilitator can explain that in greater detail to you if you are considering that. Note that all of this under the finance procurement price heading, if you remember from schedule number three, that their pass-through costs do not include profit or indirects for the ESCO.

Slide 74 – Joyce Ziesler

Components of the interest rate includes the current or prevailing money on the commodity. It represents – it changes day to day. That's why I say the effective date of your quote is important for you to pay attention to and your milestone and any index rate that can be used, we often see US treasury or security. Here's some Web sources for you to peruse and take a look at just to familiarize yourself. And access it a few days in a row or even week to week to see how the rates are changing and how that could possibly affect your project.

Slide 75 – Joyce Ziesler

So the premium is the basis points that are added to the index rate. Remembered that this is a fixed-price contract, so this premium is the lender's assessment, meaning your financier, of the risk of the project. This is a loan to a corporation, not the government, so the risk is assessed in that regard. Risk is a function of both the Eksos and the credit worthiness and the project's performance risk, meaning it's a good thing to check out the ESCO, Dunn and Bradstreet, Standard's and Poor's, some of those sites prior to even selecting your ESCO. That past performance and review that you're going to do of your offers is important at this stage.

Slide 76 – Joyce Ziesler

So in reviewing the financier's proposal, we have standardized the process for you some years ago. We have provided a form called an Investor Deal Summary, and they in turn – your ESCO's going to send that out to multiple financiers. It's a profile of your project. You're going to receive a standard finance offer from the financier, and then we have a selection memorandum that is submitted by your ESCO.

Slide 77 – Joyce Ziesler

So the Investor Deal Summary includes – it's a common basis, and it includes all the financial info, the risk, responsibility and performance metrics, profiles the key target dates for the project, meaning the term, the construction period and the performance period, the MMV plan or information that you have. So this is the common solicitation that your ESCO is required to send to multiple financiers.

Slide 78 – Joyce Ziesler

To put this back in turn is also a standardized form called the Standard Finance Offer so that the content is consistent and that -the ESCO has apples-to-apples offer from the financiers to consider just like we would from them on other procurements. So it ensures that the offers are comparable. And the required content for the Standard Finance Offer is a narrative description of the packet, itemization of the total amount financed, period of time that the offer will be honored. You're gonna have an effective date for that as well. And then any other terms that they may want to mention. In other words, they may even offer that make-hold language and they would quote the basis points or the savings that the government would have if you want to consider doing the make-hold language. And your ESCO should present that to you if there is some creative or innovative way to offer the government a lesser added premium than they would otherwise.

Slide 79 – Joyce Ziesler

Your ESCO selects the financiers. That's not a government's deal, but it should be transparent to you as to how they have come about in selecting the financier for your project. So what they have to submit in the final proposal is the selection and certification of the financing deal in the memorandum. Your final proposal and task order schedules are the basis on the selected offer and the final proposal should include the Investor Deal Summary, the Standard Finance Offer for the selected offerer and a certification as to the methodology your ESCO went through to select the financier.

Slide 80 – Joyce Ziesler

So in finalizing the task order, revise the RFP in accordance with the negotiation, draft the award documents, review the attachments and then award the task order. And at this point then, we will turn it over to our lab expert, and that's Dustin.

Slide 81 – Dustin Knutson

Thank you Joyce. Phase four is similar to phase one in that the acquisition team should reconvene at this time to discuss roles, responsibilities, schedules and key contract documents. We divide phase four into two parts for purposes of instruction. Part one will be discussed first on the next slide.

Slide 82 – Dustin Knutson

In the design portion of phase four, the key event is the post-award conference. At this time, the agency will review ESCO proof of insurance and payment and performance bonds. The team will review the design plans, equipment selections and the construction schedule, setting appropriate milestones and plans to achieve them. The agency should also seek to clarify what is expected from the ESCO regarding submittals and deliverables. Upon verification of the requirements to begin construction, the agency will issue to the ESCO an official notice to proceed with constructions and installation.

Slide 83 – Dustin Knutson

During part two of phase four, the construction period, the agency will complete monitoring of the installation of equipment and should designate an individual to report any requests for changes to the contracting officer. It is important for the agency to have a single point of contact with soul authority to issue changes and that ESCO and the subcontractors are made aware that no modifications or change orders are authorized without the approval of the designated individual. This individual is typically the contracting officer or the contracting officer's represented if assigned the authority by the contracting officer. The same person will be responsible for collecting submittals from the ESCO during constructions. Again, ESPCs are fixed-price design/build contracts, and any changes to the construction plans would need to be proceed and negotiated as a modification to the contract. Thus, change orders should be rare in ESPCs. Prior to the acceptance of ECMs, it's recommended that equipment be monitored and performed successful for a test period of a predetermined amount of time. Thirty- to sixty-day test periods where equipment must perform continuously as designed are not uncommon for some equipment, and if issues surface, the clock would be reset after adjustments are made. This practice helps the agency build confidence that the equipment will perform for the life of the contract as intended. The commissioning plan should be followed during the final testing of equipment for verification of proper performance as designed, and the post-installation reports should always proceed final acceptance. The agency may elect to accept ECMs on an ECM by ECM basis, as Joyce referred to, called partial acceptance. In order to capture savings during the construction period, they may be used as a pre-performance period payment against the principle value of the ESPC. This practice can save the government from paying additional interest expense and may help the agency pay off the contract sooner than would be possible otherwise. One example of partial acceptance that commonly takes place in ESPCs is the installation and acceptance of a lighting ECM prior to installation and acceptance of ECMs like boilers or chillers. ECMs may be accepted on a partial acceptance basis, but the contract is not considered accepted on the whole until all ECMs have been installed, measured and verified and a final notice of acceptance is signed. At that time, all punch list items should be resolved all equipment properly commissioned. In phase five we will discuss the activities that will take place from the point of final acceptance to final closeout of the contract.

Slide 84 – [No audio]

Slide 85 – Dustin Knutson

When circumstances occur during the life of the contract that affect the ESPC, the agency and ESCO should be prepared in advance. The agency should also keep good documentation for reporting purposes and to be prepared in the event of personnel turnover. So in this module in phase five, we'll discuss performance period and some of the events that may require attention. Some of the topics that we will cover in the performance period include the time of payment and invoices, MMV reports, what happens in the event that a shortfall in savings occur, when modifications to the contract might occur, the cases of partial or complete termination of contract and contract closeout.

Slide 86 – Dustin Knutson

The agency should expect their first invoice approximately 30 days after final acceptance. Thereafter, the agency should expect to pay after the verification of savings on an annual basis, as documented the annual MMV reports. The agency may elect to pay the annual amount divided over a period of twelve months so as to make monthly payments for accounting purposes or may elect to pay monthly based on a monthly amortization schedule, if so desired. Most commonly, agencies will pay once annual at the beginning of the year to reduce the total amount of interest accumulated in comparison to paying annually in arrears. Typically an annual true-up occurs at the time of the MMV report in order to account for minor fluctuations in savings due to weather or other circumstances that may have slightly affected savings. In the case of major adjustments are necessary due to saving shortfalls or otherwise, reduction in the next year's payment by the amount of the shortfall, if any, could be a feasible mitigation strategy in many cases.

Slide 87 – Dustin Knutson

The measurement and verification report is critical in order for payment to occur. By statute, payments cannot exceed savings. Therefore, savings must be verified and documented prior to payment. Savings may also be measured more frequently than on an annual basis at the request of the agency and upon agreement with the contractor. The agency, contracting officer's representative or other designated official such as a facility manager or energy manager should verify savings and review the annual MMV reports and then report the results to the contracting officer. The contracting officer should maintain a file of annual MMV reports and comments for their records. The agency may also elect to capture additional contract documentation to use as a desk reference and life-of-contract plan for guidance in the event that personnel turnover occurs or employees have a need for internal training. And this is something FEMP can help you with as an agency.

Slide 88 – Dustin Knutson

In the event that a shortfall in the contractually agreed upon savings for the project occurs, there's several potential mitigation strategies. However, one must first understand what constitutes a shortfall. ECMs are measured individually according to the agreed upon measurement and verification option in the MMV plan and contract. Any one particular ECM may slightly under perform or over perform, but a shortfall does not occur, unless the entire project, which is a combination of all the EMCs in the contract reflects combined savings less than the guaranteed amount. For purposes of example, this means that if a boiler or a chiller under performs according to its assigned MMV option, but the other ECMs save enough such that the annual amount of savings is still greater than the guarantee, no shortfall has technically occurred. Agencies should work with their ESCOs to mitigate any under performing ECMs that may be discovered through their MMV reports or other more frequent measurements, however, to ensure that the agency realizes savings to the maximum potential whenever feasible. The project facilitator will review the post-installation MMV report with the agency, and additional assistance can be made available through FEMP to assist the agency in interpretation of MMV reports if needed. The ultimate responsibility for performance resides with the ESCO, regardless of who takes on the operations and preventative maintenance responsibilities. What this means is that if the agency agrees to the responsibility of O&M and R&R, the ESCO should monitor successful completion and seek to resolve any issues with the agency if they believe maintenance has not occurred or was completed improperly. If the ESCO takes on the responsibility of O&M and R&R, the agency should also have a qualified energy manager or an engineer periodically witness the work being completed the ESCO. As mentioned before, if a shortfall is discovered, commensurate reduction of subsequent contractor payments may serve as a mitigation strategy or if circumstances warrant, the ESCO may remedy a shortfall by installing additional equipment upon agreement with the agency.

Slide 89 – Dustin Knutson

If a modification to the contract becomes necessary due to changes in site mission, space usage or a reduction or increase in usage, for example, renegotiation of the debt service term, realignment of the task order schedules and changes to the interest rate may be necessary. It is important to consider the maximum amount of years allowable for ESPC in such instances so that the twenty-year limit is not exceeded. And you heard Joyce refer to this as well. As discussed earlier, change orders are rare in the ESPC due to the nature of the contracting mechanism as a design/build/fix price contract. In circumstances that could not have been easily or reasonably foreseen by the ESCO such as a change in mission within a facility, modifications may be necessary.

Slide 90 – Dustin Knutson

In the event that complete termination becomes necessary such as for the demolition of a facility or a group of facilities, the agency should refer to the task order schedule five to view the remaining outstanding capital investment and premium to be paid to close the contract. Partial termination may also occur, for example, in the event that a portion of the ECMs are affected by a shutdown or change in mission and the contract term is not affected beyond statutory limits. Partial termination is completed as a modification to the contract.

Slide 91 – Dustin Knutson

Lastly, contract closeout occurs when the agency has received its final MMV report and verified the savings guarantee has been satisfied. The agency sends the contractor a letter stating that that service is complete through the final payment and sends the DEO Golden Field Office a performance evaluation of the ESCO. All savings beyond contract closeout are realized by the agency. The agency can then enjoy the benefit of the equipment and reduced energy cost in the subsequent months and the years to come. If the agency wishes to continue with any maintenance contracts for installed equipment beyond the closeout of the ESPC, the agency could use the appropriate contracting mechanism and procedures according to the Federal Acquisition Regulations to do so. On behalf of the FEMP EPCS training team, thank you for your attention on this webinar on contracting and negotiations for ESPCS.

Slide 92 – Joyce Ziesler and Tom Hattery

If you have any questions that do come to mind after this session has closed, by all means, contact your federal finance specialist or send electronic questions to Susan, and she will disperse those accordingly to the expert or the representative that can best answer it for you. Thanks again everyone.

Thanks everybody.