Memorandum of Record

Energy Savings Performance Contract (ESPC)

Process Improvement Working Group Meeting

Department of Energy, Room 4A-104
1000 Independence Ave, SW
August 26, 2009
9:00 a.m. – 12:00 p.m.

Introductions and FEMP Update

Ab Ream, Federal Energy Management Program (FEMP), welcomed everyone in attendance and asked all attendees in the room and on the telephone to introduce themselves. The meeting attendees are shown in Attachment A.

Skye Schell, FEMP, welcomed the group and noted the importance of the meeting and its town-hall type forum. He stated that the participants should not develop a clear group consensus, but rather that the meeting goal was to gather suggestions from individuals for performing the Energy Savings Performance Contracts (ESPC) process in a more efficient manner.

Presentation on Quality Assurance for Energy Savings Performance Contracts

Ab Ream gave a PowerPoint presentation titled "Quality Assurance for Energy Savings Performance Contracts—Process Improvement" describing how the ESPC process can be improved and the challenge of maintaining quality throughout the ESPC project life-cycle. On July 17, 2009, Cathy Zoi, Assistant Secretary for Energy Efficiency and Renewable Energy, issued a memorandum for Implementing Reforms for Department of Energy's (DOE's) use of ESPCs, including ESCO competition, process improvement, life-cycle support, financing costs, risk management, and climate change. The most important aspect is that ESPCs need support throughout their life-cycle to ensure their basic guarantees.

There are many links in the chain of quality for ESPC projects, including multiple stakeholders, advanced technology, and lengthy terms which impact the complicated, multi-step process. Since an ESPC is a multi-stakeholder agreement with so many links, Energy Savings Companies (ESCOs) must realize their ability to influence the quality of project metrics such as energy savings, is greatest at the initial stages of a project, and diminishes rapidly during the term of the project. By the time the project is operational, ESCO's quality assurance depends primarily on the onsite operations and maintenance, and measurement and verification.

Mr. Ream addressed the difference between the current or "before" ESPC process to the new proposed streamlined ESPC process. The proposed process will reduce the DOE ESPC project cycle-time (up to 37 months) to a goal of 18 months. Since the ESPC process is linear, every step is on the critical path and needs to be completed in order and in a timely fashion to ensure the streamlined process is successful.

Assistant Secretary Zoi's memorandum also required the development of a process to ensure that all 16 ESCOs that have been awarded DOE IDIQ ESPC contracts be made aware of each proposed task order at DOE sites and are encouraged to submit a proposal or Preliminary Assessment. Communication is a key factor to support the process, and Mr. Ream introduced

the FedConnect system as a possible option to facilitate better communication among ESCOs and DOE. FedConnect has the advantage of being an established system with built in security and it avoids the common problems associated with e-mail. The system, however, would require some training to use and it is not completely bug-free.

Mr. Ream solicited the input of the participants either verbally or in writing, including the suitability of FedConnect, the proposed 18 month process model, and other possible process improvements.

Participant Open Comment Period

Mr. Ream opened the floor to the meeting participants to comment on issues, problems, and suggestions regarding the DOE ESPC process.

Daryl Berg, DOE, opened the comment period with known issues, including personnel turnover and related issues, high security at DOE sites competing priorities and resources, and laws and policy that change over time. To mitigate these issues, it is important to set the conditions for success and establish contingency plans. Establishing roles and responsibilities for project team members, providing back-up support for when personnel are unavailable, and creating contract administration plans will enhance communication and facilitate the transition of project team members.

An ESCO participant stated the importance of decision maker (management) buy-in on a project from the very beginning, rather than near project award. Early management approval does not happen often enough and large amounts of resources, both time and money, are wasted when projects are cancelled at a late date. DOE should ensure that the "Notice of Intent to Award" is actually *an intent to award*. Paul Ross, DOE, stated that the agency point of contact should be a decision maker at the highest possible level.

The group discussed the topic that responsibility is more important than process. Management that monitors and enforces the process, and a high-level project champion are important for project success. The DOE Project Facilitator helps guide projects from start to finish. An ESCO participant stated that the key to a successful project is good project management and having objectives that are mission based or project based and not simply meeting a government energy reduction goal. Having a person or team that "owns" the project will force them to have a stake in the completion of the ESPC and will, therefore, get the job done.

Tom Hattery, DOE Federal Financing Specialists (FFS), requested ESCO input to the standard agenda for project kick-off meetings. Mr. Hattery also requested comments regarding whether a new form for agencies to specify their decision making process would be useful. Formalizing the steps in the process and including these key personnel in the project team from the beginning would give them a stake or ownership in the project, and make ESPCs seem less exotic.

An ESCO participant asked how we prevent agencies from sitting on projects since there is no penalty for government inaction, as the ESCO assumes the risk during the project development period. The participants discussed how and why projects can get started without adequate

authority to ensure completion, and agreed that early buy-in from decision makers is important. This requires identifying the decision makers and presenting them the ESPC project parameters. ESCOs can provide quality concept assessments to help the agency form a project plan. Mr. Ross stated that, in general, contracts officers could be better at project management, and that ESCOs could help the COs with the process.

Mr. Hattery said that agencies need clarity regarding what constitutes a financially viable project, and would benefit from reassurance that a particular ESPC project is a good deal for the government. Mr. Schell stated that the Preliminary Assessment provides a fairly defined project, and is a good stage for evaluation. The challenge is that since the project cycle-time is lengthy, aspects such as Energy Conservation Measures (ECMs) and financing rates can change. The final project can look a great deal different than it did initially, so it is important to keep decision makers on board from start to finish. There are missed energy savings and energy cost savings associated with delaying ESPC projects.

DOE Project Facilitators (PFs) serve as third-party advocates for the ESPC project to guide and monitor the project planning and implementation. The PF is a liaison between the agency and the ESCO, who facilitates the project start and discussion of concerns, and develops a checklist to ensure that specific items are addressed and agreed upon by both sides. The PF helps keep both the agency and the ESCO engaged in the project. It is important that a PF advocates for the *project* not for the ESCO or the agency, although the PF is paid for by the government agency.

There is an issue with DOD ESPC projects. ESCO payments are classified as "must pays" which influences the decision of whether or not to pursue an ESPC project. Adding "must pays" to an officers' record hurts their promotion potential even though in the long run an ESPC can lower the amount of "must pays" by reducing utility bills. It was noted that the specific ESPC process under review is for DOE sites only, although the process, if proven successful in DOE, will be introduced to the federal government at large.

An ESCO participant noted that DOE sites have the most tasks in the proposed ESPC process, so FEMP should solicit input from sites that have implemented ESPC projects. Security issues can be a source of project delays at secure DOE sites where ESCOs must depend on the onsite management and operations contractors for essential tasks.

Mr. Ream stated that the DOE ESPC Review Board provides the authority for implementing projects, is focused on ensuring success, and is an example of process improvement. Feedback from ESCO participants included:

- The current situation with the review board is a much more positive experience with measures in place to speed up the project timeline.
- DOE sites are concerned about the requirements for Review Board approval.
- DOE sites are making decisions to not do projects that are similar to projects that have already been done, so some projects do not make it to the Review Board.
- When sites decide to cancel a project even when a similar project has been approved, the Review Board should work with the site to get the ESCOs compensated for work performed before cancellation.

- The Review Board process helps weaker projects to improve or terminate.
- The Review Board is well represented by different disciplines; however, members sometimes raise questions in disciplines other than their areas of expertise.

Mr. Schell said that for project cancellations, the Review Board should ensure that the cancellation decision is well thought out. Mr. Berg noted that even though a contracting officer is acting in the role of their position, the individual is personally responsible for their decisions. Mr. Berg also noted that the 45 days for Review Board evaluation compares favorably to other procurement processes. Mr. Ream stated that DOE has worked hard to get the right technical expertise on the Review Board and are in the process of rewriting the Review Board charter, including how the meetings are conducted.

An ESCO participant asked what is causing project delays, and said that it is important to quantify the cost of delay to the agencies as well as ESCOs. Project delays result in missed energy and energy cost savings, missed seasonal data collection and equipment installation, changes in interest rates, and lost operational benefits. Publishing energy and energy cost savings data would highlight agencies' successes.

An ESCO participant asked whether the DOE ESPC fast track process only relates to agency initiated projects, and not ESCO initiated projects. The participants discussed that the process was not intended to exclude ESCO initiated projects, but the process presumes a site data package, which presumes a government initiated project.

An important topic for DOE is how to achieve a process that enables reasonable price comparison. DOE needs to develop a model for price comparisons that can be used by DOE and other agencies. Conversely, ESCOs are concerned that procedures to directly compare ESCOs' prices will require standardized project specifications that will stifle creativity and commoditize ESPCs. The participants discussed that direct cost comparisons will be challenging as ESCOs have different proficiencies and may propose different technological solutions. ESCOs should not be compelled to submit a particular type of technology or project. It was also noted that technologies and ECMs may evolve and change during project development, making earlier cost comparisons less meaningful. Other issues such as utility rate changes, incentive and rebate programs, and NIST Energy Price Indices and Discount Factors changes could make early price comparisons misleading. It could be difficult for ESCOs to provide an accurate cost estimate for a project that is in the Preliminary Assessment stage. Plan and specification construction projects and ESPC projects have unique processes, and early price comparison blurs the distinctions. A blended third approach may not improve the ESPC process.

Historically, ESPCs are a partnership between the government and the ESCOs, with ESCOs providing knowledge and expertise. ESCOs have had significant input early in the ESPC project development process. As all 16 ESCOs are, by definition, qualified to provide ESPC services, early price comparisons could homogenize the process, and eliminate innovation.

Another concern for the ESCO participants is the effect of 16 ESCOs on industry overhead rates. For all 16 ESCOs to prepare bids and proposals for every potential ESPC project adds indirect costs industry wide. Eventually the extra costs will be passed on to government customers in the

form of higher overhead rates. The government will be essentially buying 16 designs for one project. Creating a two step "down selection" process will reduce initial bid and proposal investments. "Down selecting" from 16 ESCOs to two or three ESCOs interested in competing for the project, will increase ESCO interest in bidding. Competing against a smaller number of ESCOs provides a fair business opportunity, rather than an unreasonable 1 in 16 gamble. Mr. Berg asked the ESCO participants to evaluate an ESCO selection process in the context of "If the government used this selection process, and my ESCO was not selected, would I protest?" Many ESCO participants indicated that they favored a two step "down selection" process.

An ESCO participant asked if this meeting is focused on an ESPC process for DOE sites, are there plans for DOE sites to look at ESPC projects again. Mr. Schell responded that DOE sites and programs continue to look into the ESPC process as a means to achieve required energy savings, but a program like the Transformational Energy Action Management (TEAM) Initiative is not certain yet.

An ESCO participant inquired whether FedConnects could have two primary points of contact for each ESCO, to provide back-up coverage and prevent date sensitive information from being delayed. FedConnect currently only allows for one contact. Several concerns were noted with FedConnect becoming a primary form of communication due to system inefficiencies and the possibility of delays. The participants discussed alternatives including a wider email distribution list and establishing a link to the FEMP (or Golden Field Office) website when new information is available.

Mr. Ream said that participants could submit any additional comments to him in writing and requested topics for the next ESPC Process Improvement Working Group Meeting scheduled for October 1, 2009.

One topic suggested was how to raise the visibility of ESPCs and increase the accountability of sites to do ESPCs projects.

Another suggestion was a brainstorming session on how to reduce financing costs. Inviting financing firms to the next meeting would be beneficial. ESCOs can solicit financing offers, but can force the financiers to make financing offers for ESPC projects.
For additional suggestions for next meeting, questions, or concerns please contact Ab Ream at ab.ream@ee.doe.gov.

Next Scheduled ESPC Process Improvement Working Group Meetings

- October 1, 2009
- January 13, 2010
- April 14, 2010
- July 14, 2010