U.S. DEPARTMENT OF ENERGY | Energy Efficiency & Renewable Energy

Presented by the Federal Energy Management Program

Instructed by the DOE National Labs and Other Consultants

Agenda

- Welcome and Introduction
- Enabling Legislation and How to Use
- Phase 1 – Acquisition Planning
- Phase 2 – Energy Service Company (ESCO) Selection
- Phase 3 – Negotiation and Award of Final Task Order
- Cost Elements of an ESPC
- Phase 4 – Design, Construction, and Acceptance
- Phase 5 – Performance Period
- Q&A/Discussion

Note: There will be a 15-minute break half way through the presentation

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FEMP Federal Financing Specialists (FFSs)

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

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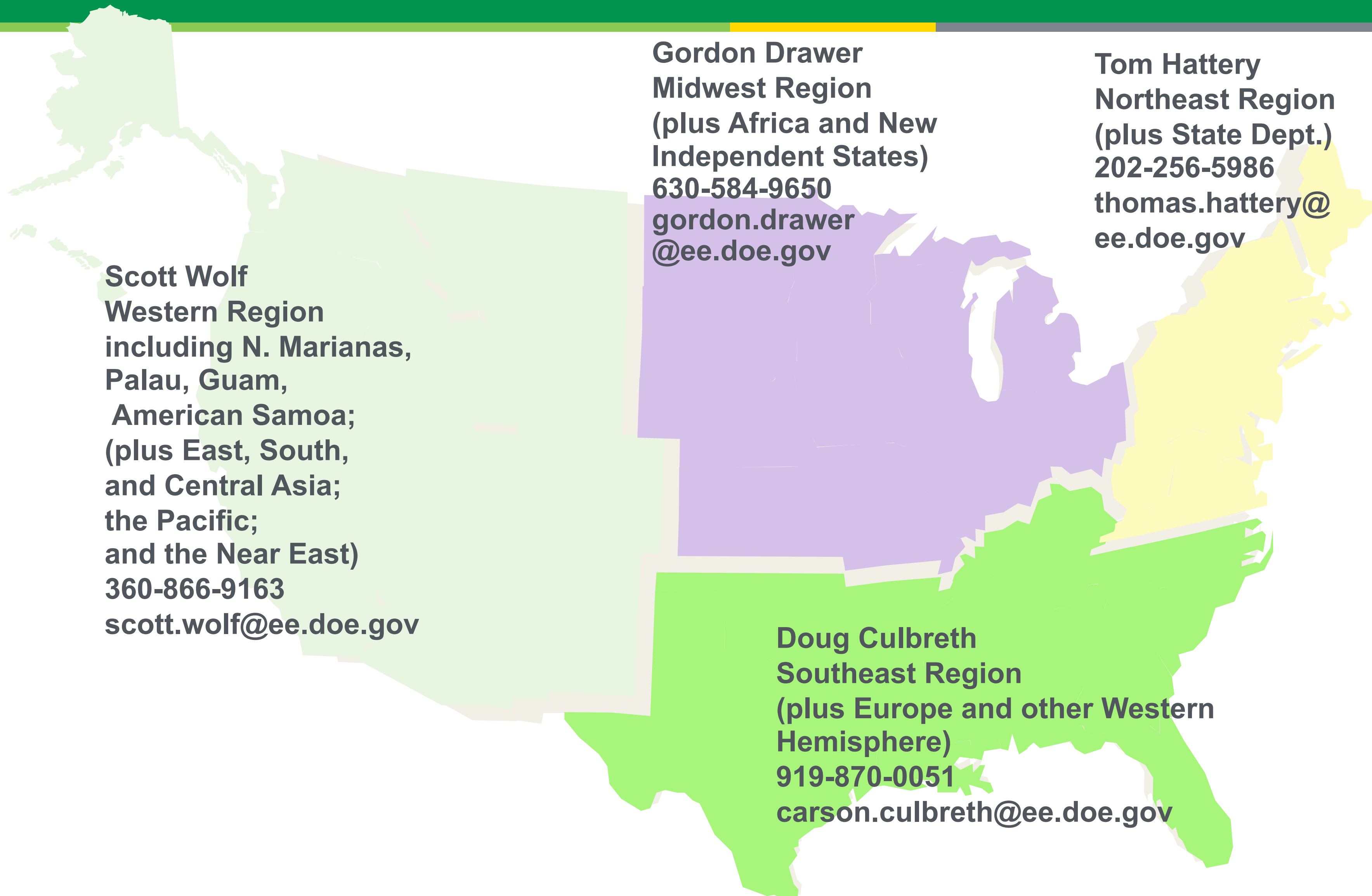

Free ESPC Workshops

- Comprehensive Super ESPC (three days)
  - Great way to gain confidence and get started. Next date:
    - July 13-15, Cleveland, OH
- ESPC Refresher Course
- DOE Specific ESPC Workshops:
    - July 20, Washington, DC
- ESPC User Group Meeting
    - August 15, Dallas, TX
- See FEMP's webpage for all workshop and Webinar training dates
  www1.eere.energy.gov/femp/news/events.html

Making the Decision

- Typically it is the Energy Manager, Facilities Manager or the Technical Team coming up with the need.
- Have an informal discussion with the Contracting Division about energy conservation requirements.
- Have a Team discussion with the FFS in your region.

MARKET RESEARCH

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- File documentation is very important!
- Contracting 101 still exists.
- After talking with your FFS consider your options.
- Request a Renewable Energy Screening,
- Discuss Power Purchase Agreements, UESCs along with ESPCs and consider listening in on our Alternative Finance Options webinar to hear the differences.
- Document your file with method you used to make the decision to go with an ESPC project.

- Congratulations!
- You have decided to move forward with your energy conservation project using the Energy Savings Performance Contracting option!

ENABLING LEGISLATION

AND

HOW TO USE IT

- It is important to know the legislation and special statutes which allow you to begin your procurement process without funding
- Use excerpts from the following to support your process and file documentation.

Enabling Legislation

- National Energy Conservation Policy Act (42 USC 8287), Title VIII Shared Energy Savings
- Executive Order 13423 (2007)
- Energy Independence and Security Act (2007) (H.R.6)
- Skaggs Amendment
- FAR 23.204 (Federal Acquisition Regulation)
- DOE 10 CFR 436

- Excerpts found on FEMP's ESPC Website (under "Resources")

A Closer look at 42 USC 8287

- Gives agencies the authority
- Provides that the contractor incurs all costs
- Provides for maximum 25-year term
- Requires annual energy audits (M&V)
- Directs that aggregate annual payments not exceed what agencies would have paid for utilities otherwise

EXECUTIVE ORDER 13423

- Reduce federal facility energy use per square foot by 3% per year, 2006 – 2015, relative to 2003
  - 30% total by end of 2015
- Increase use of renewable energy to:
  - not less than 5% in 2010 – 2012
  - not less than 7.5% in 2013 and thereafter
  - At least half from new sources each year
  - Double credit for renewables on agency property for agency use
- Reduce water use by 2% per year, 2008 – 2015 (or 16% by end of 2015), relative to 2007

New Executive Order 13514

- The new Executive Order 13514, October 2009, issued by the Obama administration, builds and expands the energy reduction and environmental requirements of Executive Order 13423 by making reductions of greenhouse gas emissions a priority of the Federal government, and by requiring agencies to develop sustainability plans focused on cost-effective projects and programs.

Provisions of the new Executive Order 13514

- 30% reduction in vehicle fleet petroleum use by 2020;
- 26% improvement in water efficiency by 2020;
- 50% recycling and waste diversion by 2015;
- 95% of all applicable contracts will meet sustainability requirements;
- Implementation of the 2030 net-zero-energy building requirement;
- Implementation of the stormwater provisions of the Energy Independence and Security Act of 2007, section 438; and
- Development of guidance for sustainable Federal building locations in alignment with the Livability Principles put forward by the Department of Housing and Urban Development, the Department of Transportation, and the Environmental Protection Agency.

Newest Legislation for ESPCs

- Energy Independence and Security Act of 2007 (EISA 2007) (Pub. L. No. 110-140, December 19, 2007)

- National Defense Authorization Act for Fiscal Year 2008 (Pub. L. No. 110-181, January 28, 2008)

More about EISA

- Subtitle B – Energy Savings Performance Contracting (Sections 511 – 518)
- Amends ESPC authorizing statute
  42 USC § 8287
- May use any combination of appropriated funds and private financing (Section 512)
- Shall not (arbitrarily, or by policy) limit the maximum contract term to less than 25 years or limit the total amount of private financing (Section 513)

EISA (cont.)

- Permanent reauthorization (Section 514)
- May sell or transfer energy generated on site from renewable energy sources or cogeneration in excess of Federal needs to utilities or non-Federal energy users (Section 515)
- Non-building applications (commissioned study) (Section 518)

FAR Part 23.204 – Energy Savings Performance Contracting

- Requires agencies to make maximum use of ESPC authority

- Reference to 10 CFR 436.34

DOE Final Rule (10 CFR Part 436)

- Implemented the Authority in Regulation
- Takes precedence over Federal Acquisition Regulations (FAR)
- Specifies procurement procedures and criteria for selecting ESCOs (already done by DOE's IDIQ)
- Allows unsolicited proposals
- Recommends standard terms & conditions
- Defines conditions of payment
- Addresses annual Measurement & Verification (M&V) requirements

Skaggs Amendment to Economy Act

- Allows funds to be transferred to DOE, without D&F, for assistance in achieving energy efficiency
  - Project Facilitation
  - Special Projects

Defense Authorization Act Issues

- Enhanced competition requirements for task or delivery orders above $5 million (sum of payments)
- Protestable over $10 million
- DOE-suggested contractor- (ESCO-) selection process
- Department of the Air Force Memorandum (March 26, 2007) concerning “fair opportunity to be considered”

Getting Started with your ESPC Project

Aspects of “New” Super ESPCs

- Each indefinite-delivery, indefinite-quantity (IDIQ) contract has a maximum ceiling of $5 billion
- DOE awarded IDIQs to 16 ESCOs
- No geographic boundary limitations
- All energy conservation measures (ECMs) – conventional, emerging, and renewable technologies – covered under one contract

Development of Super ESPC Task Orders

- Phase 1: Project Planning
- Phase 2: ESCO Selection
- Phase 3: Negotiation and Award of TO
- Phase 4: Design, Construction, and Acceptance
- Phase 5: Performance Period

PHASE 1 - Project Planning

Optional:
site visits

Acquisition Planning (First Steps)

- Assemble acquisition team, define roles
- Develop contractor selection plan
  - e.g., will preliminary down-selection occur?
- Create site requirements document for ESCOs
  - Note: requirements document will provide “0” dollars but not anti-deficient
- Engage FEMP Federal Financing Specialist (FFS)
- Pursue Interagency Agreement (IAA) for support of Project Facilitator (PF)

Putting the Acquisition Team Together

- Who is the Project Champion?
- Discuss roles and responsibilities
- Don’t forget to include the Project Facilitator and the Federal Financing Specialist

Roles and Responsibilities of the Tech Team

- Technical/Engineer/Facility Manager
  - Usually "project champion"
  - Responsible for meeting mandated energy reduction goals
  - Engages FFS to begin discussions/planning
  - Prepares requirements document and relays to CO
  - Works with CO in ESCO selection process

It is necessary to bring the Contracting Officer in on the deal early in Phase 1!

- Contracting Officer
  - Receives requirements document from technical
  - Prepares initial Acquisition plan
  - Sends notice of requirements to all ESCOs
  - Evaluates responses (in coordination with technical)
  - Selects ESCO

Selecting the ESCO

Send notice of Preliminary Requirements to all ESCOs

IDIQ — Indefinite-delivery, indefinite-quantity (contract)

Defense Authorization Act – Enhanced Competition Requirements

- For awards over $5 million, ordering agency must:
  - Give clear statement of requirements to all IDIQ holders
  - Provide reasonable response period
  - Include significant selection evaluation factors, including price
  - Develop written statement documenting best-value selection
  - Provide post award debriefings
- Protests are allowed if value is over $10 million

ESCO Selection:
Contractor-Initiated Method

- ESCO alerts agency of desire to submit proposal
- Agency must notify other Super ESCOs and identify requirements
  - Requirements: desired ECMs, buildings, etc.
- Other ESCOs can then submit proposals
- Agency, using "fair consideration," issues statement selecting one based on best value
  - Post-selection de-briefing; protests allowed if > $10M

ESCO Selection:
Government-Initiated Option

- Agency sends notice to all 16 ESCOs with requirements and selection criteria
  - Requirements: e.g., buildings, ECMs to include
  - Selection criteria: e.g., technical approach, past performance, price (required)
  - Agency may host site visits for interested ESCOs
- One or more ESCOs submit proposals
- Agency, using "fair consideration," issues statement selecting one based on best value
  - Here—not at award—is where protest could occur

Requirements Documents

- Generated by technical/project manager
  - Backup legislation
  - Project “wish list”
  - Unfunded
- Received by Contracting Officer
  - Prepares notice to all ESCOs
  - Identifies evaluation factors
  - Defines method of selection
- Not anti-deficient—special legislation

The Preliminary Assessment

- Must comply with IDIQ contract requirements (Sec. H.4) and give sufficient information for a decision
- Key elements:
  - A narrative summary of proposed project
  - Description of ECMs
  - Estimates of proposed energy and cost savings
  - M&V approach (general)
  - Risk, Responsibility and Performance Matrix
  - Financial schedules

PA Review – Key Considerations

- Is the proposed scope sufficiently comprehensive?
- Does this meet (or can it be adjusted to meet) the majority of our needs?
- Is it a good deal for the government?
- Can our agency and the ESCO have a good long-term partnership?

PA Review – Technical Issues

- Are ECM descriptions and projected energy savings reasonable?
- Is M&V approach appropriate?
- Is estimated annual cost savings reasonable and consistent with technical approach?
- Are contract term and total cost acceptable?

Evaluating ESCO's Technical Approach

- Things to consider:
  - Technical strengths, management approach, etc.
  - Comprehensiveness/depth of proposed scope
  - Responsiveness to your agency needs and desired ECMs and approach
- Invite ESCOs to make presentations
  - This may help in selecting among few finalists

Evaluating ESCO's Past Performance

- Review ESCOs' qualification statements:
  - www1.eere.energy.gov/femp/financing/superespcs_espcescos.html
- Request data on ESCOs' past performance
  - Ask ESCOs or FFS to I.D. ESCOs' recent SESPC projects
    - Then contact those sites directly

Evaluating the Price Estimate

- Components:
  - Project development
  - ECMs
  - Indirect costs and profit
  - Financing costs
  - Performance period services

To Proceed or Not to Proceed

IF NO:

- You can return is satisfactory
  - Scrap the project, or
  - Consider starting over by issuing a revised set of requirements to the ESCOs

IF YES:

- **You can accept one of the proposals and provide feedback to the ESCO**
  - Feedback to address deficiencies and desired changes
  - These items to be addressed in the Investment-Grade Audit and Final Proposal
- **All other PAs are returned to the issuing ESCOs**

Prior to Issuing Notice of Intent …

- Verify ordering capacity (via DOE FFS)
  - Probably just a formality, but …
- Confirm intent to proceed with all site and other affected personnel

The Notice of Intent to Award (NOI)

- Signifies selection of ESCO and formalizes decision to proceed
- Specifies timeframe for completion of Investment Grade Audit and Final Proposal
- Outlines pre-award requirements
- Includes any other conditions of commitment

AFTER Issuing NOI …

- ESCO's project development costs may be claimed and recovered if NOI is issued but TO is not awarded (recourse from FAR, not IDIQ contract)

After ESCO Selection

- Notify FFS of contractor selection
- FFS enters project profile into the FEMP Central Database
- FFS/ESCO/Project Manager set a date for Investment Grade Audit (IGA) kickoff meeting

Phase 3

Negotiations and Award of Task Order

Start TO RFP, share draft for comments, issue TO RFP

Phase 3 – Key Agency Activities

- IGA Kickoff Meeting
  - Akin to initial proposal (IP) kickoff meetings under old IDIQs – first sit down with chosen ESCO
  - Project facilitator can lead
- Preparing the RFP
  - Project facilitator has template and can lead this activity
- Reviewing the Final Proposal
  - Understanding the Finance Schedules
  - Price Reasonableness Determination
  - Conducting Negotiations

IGA Kickoff Meeting

- Project manager schedules with FFS, PF, and ESCO
- Typically PF conducts kickoff meeting
- Acquisition team and any key decision makers should attend
- Develop milestones
  - e.g., completion of RFP (agency) and submission of final proposal (ESCO)
- Discussion of site's "wish list" and energy reduction goals
- Set up communication protocols

Preparing the RFP

- Technical
  - e.g., lighting levels and heating/cooling standards
- Contracting
  - e.g., invoicing requirements, subcontracting plan
- Other
  - e.g., access and security requirements

Reviewing the Final Proposal

- CO/COR call meeting of Acquisition Team
- Roles and responsibility for review
  - Technical Proposal
  - Price Proposal

Preparing for Negotiations – Review Items

- Risk, Responsibility, and Performance Matrix
- Price Proposal
- M&V Plan
- Financing
- Subcontracting Plan
- Wage Determination

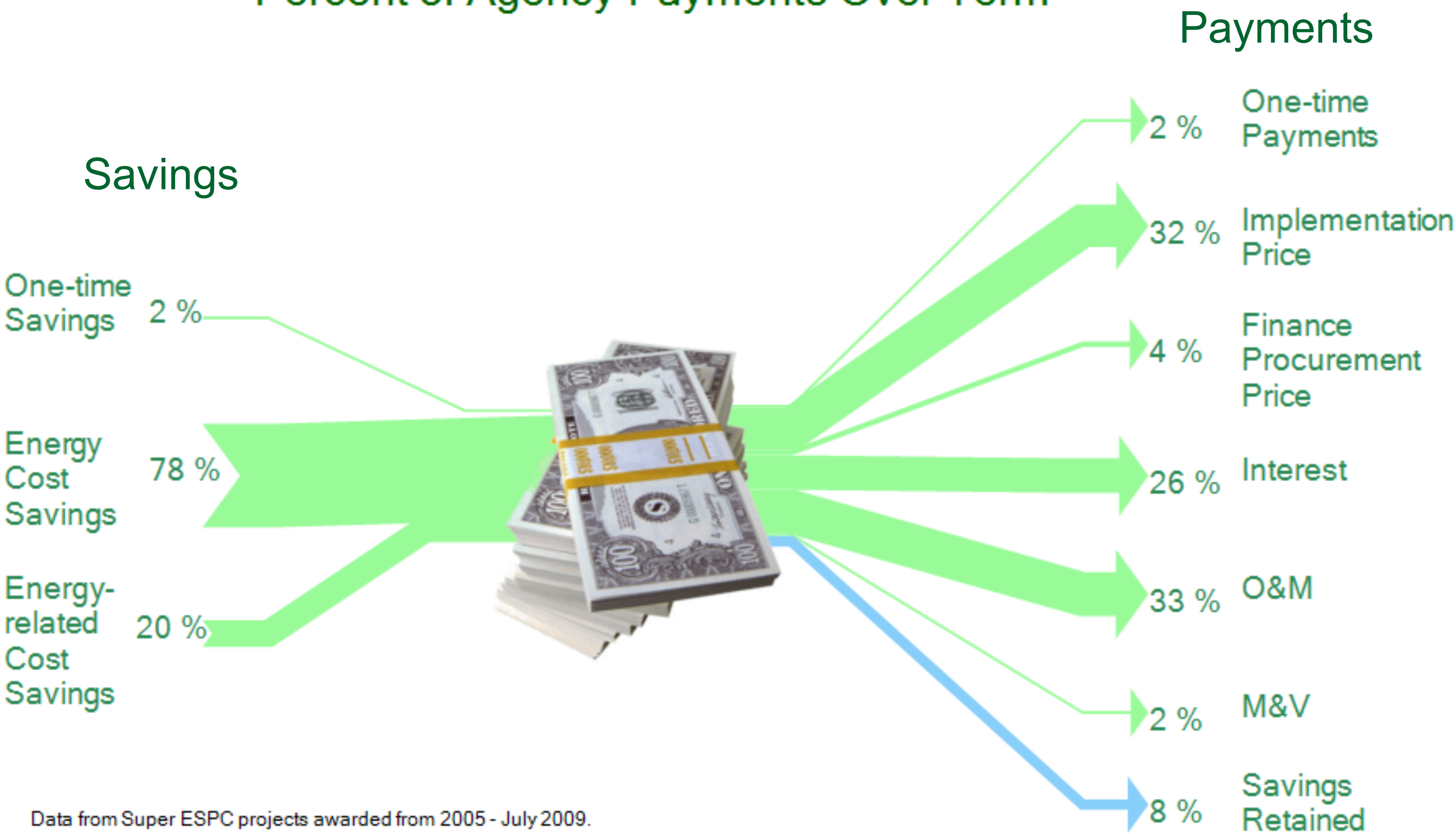
Preparing for Negotiations (cont.)

- Technical comments submitted to CO
  - Analysis of risks and responsibilities
  - Comfort with savings estimates
  - Satisfaction with M&V methods
- Price proposal comments
  - Based on Financial Schedules
  - Agency must conduct price reasonableness determination

Conducting Negotiations

- In person meetings preferable
  - But some will be done by e-mail and phone
- Use of PF is permitted as support
- Discussion on technical and pricing
- Stickiest issues usually surround pricing and M&V
  - FEMP can provide some assistance on former, usually lots on latter

Percent of Agency Payments Over Term



Data from Super ESPC projects awarded from 2005 - July 2009.
Figures may not add to exactly 100% due to rounding.

Price Reasonableness Determination—Using the Financial Schedules

- TO-1: Estimated Cost Savings; Guaranteed Cost Savings; and Contractor Payments
  - Year-by-year financial picture
  - Implementation period savings
  - What are the cost elements and how to support and defend?
  - Escalation rates
  - Implementation period payments

SCHEDULE TO-1 (final)
GUARANTEED COST SAVINGS AND CONTRACTOR PAYMENTS

IMPORTANT INFORMATION
(1) This schedule is not to be altered or changed in any way. Please note any clarifications in the comments/explanations area below.
(2) The first year post-acceptance performance period estimated annual cost savings reflect technical proposal and engineering estimates as p TO-4.
(3) The guaranteed annual cost savings are based on the site-specific M&V plan.
(4) The total of contractor payments (columns c and f) represents the TO price and should be supported by information submitted in and provid Schedules TO-2 and TO-3.
(5) If applicable, prior to post-acceptance performance period, implementation period allowable payments and energy savings are onetime amo
(6) If applicable, provide a separate table showing proposed energy rates (i.e., $/kWh, $/kW, $/MBtu) for each post-acceptance performance pe derived using the National Institute of Standards and Technology Handbook 135 and Annual Supplement. Also, submit escalation rates ap energy-related O&M savings (including water and sewer):____% per year.
(7) [Reserved]
(8) [Reserved]
(9) [Reserved]
(10) If selected, the contractor shall complete the installation of all proposed ECMs not later than ______ months after TO award.

Task Order No.:	Contractor Name:	Project Site:	
	(a) Estimated Cost Savings ($)	(b) Guaranteed Cost Savings ($)	(c) Contractor Payment ($)
Implementation Period	117,095	117,000	117,000
Post-Acceptance Performance Period Year	(d) Estimated Annual Cost Savings ($)	(e) Guaranteed Annual Cost Savings ($)	(f) Annual Contractor Payments ($)
One	285,640	276,384	276,383
Two	294,095	284,572	284,571
Three	294,596	285,226	285,225
Four ~			
Five			
Totals	4,022,293	3,741,531	3,741,519

Financial Schedules (cont.)

- TO-2: Implementation Price by ECM
  - Shows direct expense by ECM
    - Including M&V costs
  - Indirects and profit are per entire project

SCHEDULE TO-2
IMPLEMENTATION PRICE BY ENERGY CONSERVATION MEASURE

IMPORTANT INFORMATION:

1) This schedule is not to be altered or changed in any way. Please note any clarifications in the comments/explanations area below.
2) Implementation expense shall include only direct costs for each ECM and no post-acceptance performance period expenses. Indirect expenses and profit will be applied to the sum of direct expenses for all ECMs and project development to calculate total implementation price (d) for the project.
3) Contractor shall attach adequate supporting information detailing total implementation expenses.
4) Contractor shall propose bonded amount representing the basis of establishing performance and payment bonds per Section H of the contract, as required.
5) Attached supporting information shall be presented to identify portions of ECM or project expenses included in proposed bonded amount.
6) Proposed bonded amount is assumed to include indirect expenses and profit applied to implementation expenses above, unless otherwise specified by contractor.
7) For the following ECMs, enter the *total installed capacity of new equipment* in the units specified (e.g., chillers-150); chillers and packaged units in tons, VFDs in hp, boilers and furnaces in input Btu/hr, BAS/EMCS in number of points, transformers in kVA, generators in kW. For lighting ECMs, specify baseline kW treated.
8) M&V expense shall not include any performance-period expenses.

Project Site:	Task Order No.:	Contractor Name:

Tech Category (TC)	ECM No.	Equipment Description — Title	ECM Size	M&V Expense	Implementation Expense		(c) Profit $	(d)
					(a) Direct	(b) Indirect		Implementation Price: Totals (a)+(b)+(c) = (d)
n/a	n/a	Project Development	n/a	$	$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
					$			
TOTALS					$	$	$	$
Bonded Amount ($)								

Explanations/Comments:

Financial Schedules (cont.)

- **TO – 3: Performance Period Cash Flow**
  - Implementation price (from TO-2)
  - Financing procurement price
  - Index rate and added premium
  - Debt service (like mortgage amortization schedule)
  - Performance-period costs
    - e.g., O&M, repair and replacement, M&V

SCHEDULE TO-3 — POST-ACCEPTANCE PERFORMANCE PERIOD CASH FLOW

Project Site:	Task Order No:	Contractor Name:

Project Capitalization		Applicable Financial Index: US Treasuries	Issue Date: 3/15/2003
Total Implementation Price (from TO-2 Total)	2,036,037	Term (Years): 13	Source: Treasury Web
Plus Financing Procurement Price ($)	187,702	Index Rate: 5.10%	Effective Through: COB 4/1/03
Less Implementation Period Payments (from TO-1 (final) (c))*(If proposed, must be fully documented)*	117,095	Added Premium (adjusted for tax incentives): 1.90%	
Total Amount Financed (Principal)	2,106,644	Project Interest Rate: 7.00%	

Term	1	2	3	4	5
Annual Cash Flow (Post-Acceptance Performance Period)					
Debt Service					
Principal Repayment ($)	$ 84,805	$ 98,021	$ 123,453	$ 140,205	$ 158,400
Less incentives (i.e., REC, White Tag, etc.)					
Net principal repayment before interest					
Interest ($)	$ 146,793	$ 140,399	$ 132,629	$ 123,412	$ 112,976
Total Debt Service (a)	$ 231,598	$ 238,420	$ 256,082	$ 263,617	$ 271,376
Post-Acceptance Performance Period Expenses	1.00	1.0305	1.0619	1.0943	1.1277
Management/Administration	$ 4,080	$ 4,204	$ 4,333	$ 4,465	$ 4,601
Operation					
Maintenance	$ 1,600	1,649	1,699	1,751	1,804
Repair and Replacement	5000	5,153	5,310	5,472	5,638

Financial Schedules (cont.)

- **TO – 4: First Year Estimated Annual Cost Savings**
  - Energy baselines per ECM
  - Estimated savings by energy source (and O&M) per ECM
  - Simple payback per ECM
  - Mostly of interest to the techies, but provides insight into relative value of different ECMs to whole deal
    - ECMs with shorter than average payback help the total package deal (i.e., allows more energy efficiency or shortens term).

- **Why focus on the first year?**
  - Savings estimates expressed in terms of cost savings they'll produce with today's (or only slightly escalated) rates

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

IMPORTANT INFORMATION:

1) Project Square Footage (in 1000 SF) - Include only building square footage affected by installed ECMs in project.
2) For column (a) insert estimated energy baseline by ECM and total project in MBtu based on IGA, and proposal data.
3) For column (c1), annual electric demand savings (kW/yr) is the sum of the monthly demand savings
4) Energy conversion factors for MBtu: MBtu=10^6 Btu; Electricity — 0.003413 MBtu/kWh; Natural Gas — 0.1 MBtu/therm ; #2 Oil — 0.128 MBtu/gal.
5) Specify "Other" energy savings in (e)(1) and (e)(2) as applicable. Include energy type ____; energy units ______; and MBtu conversion factor _____ MBtu/ _____ (unit)
6) This schedule is not to be altered or adapted in any way. Please note any clarifications in the comments/explanations area below.

Project Site: Task Order#: Contractor Name: Project Square Footage (KSF):

TC No. Att 2	ECM No.	a. ECM energy baseline (MBtu/yr)	b1. Electric energy savings (kWh/yr)	b2. Electric energy savings ($/yr)	c1. Electric demand savings (kW/yr)	c2. Electric demand savings ($/yr)	d1. Natural gas savings (MBtu/yr)	d2. Natural gas savings ($/yr)	e1. Other savings (MBtu/yr)	e2. Other savings ($/yr)	f. b1+d1+e1 Total energy savings (MBtu/yr)	g.=b2+c2+d2 +e2 Total energy cost savings ($/yr)	h. Other energy-related and O&M cost savings ($/yr)	i. Water savings (1000 gal/yr)	j. Water savings ($/yr)	k=g+h+-j Estimated annual cost savings ($yr)	l. Implementation price ($)	m=l/k Simple Payback (yrs.)
TOTALS																		

Explanations/Comments:

Financial Schedules (cont.)

- **TO-5: Annual Cancellation Ceiling Schedule**
  - Usually ~ 105% of outstanding debt for that year (should not include lost profit or service costs)
  - The exact principal balance of the loan (by month) is often attached to expedite loan payoff in the event of termination for convenience (T for C)
  - Per FAR, T for C would be negotiated
- **Alternative to TO-5's cancellation premium is "make-whole" provision**
  - This compensates lender if project is terminated and interest rates have gone down
  - Good way to lower borrowing rate

Termination for Convenience/Modifications

- **Partial Termination for Convenience**
  - Terminated by ECM or facility
  - Recommend terminating longer-payback ECMs
  - Otherwise, partial termination may extend TO term

- **Complete Termination for Convenience**
  - Negotiated settlement not to exceed Annual Cancellation Ceiling in Schedule TO-5

SCHEDULE TO-5

ANNUAL CANCELLATION CEILING SCHEDULE

IMPORTANT INFORMATION:

(1) Cancellation Ceilings for each time period specified below establish the maximum termination liability for that time period, and includes the remaining unamortized principal on total amount financed for each time period specified above plus any prepayment charges. Actual total termination costs will be negotiated.

(2) The contractor may attach a monthly Financing Termination Liability Schedule.

(3) In the event of TO cancellation or termination for convenience, FAR 52.217-2 or 52.249.2 will apply.

Project Site:	Task Order No:	Contractor Name:

Time Period	Cancellation Ceiling
Installation Acceptance	
End of Year One	
End of Year Two	
End of Year Three	
End of Year Four	
End of Year Five	
End of Year Six	
End of Year Seven	
End of Year Eight	
End of Year Nine	
End of Year Ten	
End of Year Eleven	
End of Year Twelve	
End of Year Thirteen	
End of Year Fourteen	
End of Year Fifteen	
End of Year Sixteen	
End of Year Seventeen	
End of Year Eighteen	
End of Year Nineteen	
End of Year Twenty	
End of Year Twenty-one	
End of Year Twenty-two	
End of Year Twenty-three	
End of Year Twenty-four	
End of Year Twenty-five	

PRIVATE SECTOR FINANCING

Financed Costs of Project

Amount financed =

- (Project development expense) **+** (ECM design/construction expense) **+** (Markup)
- Plus financing procurement price (FPP)
- *Minus* any payments from one-time savings (usually in implementation period)

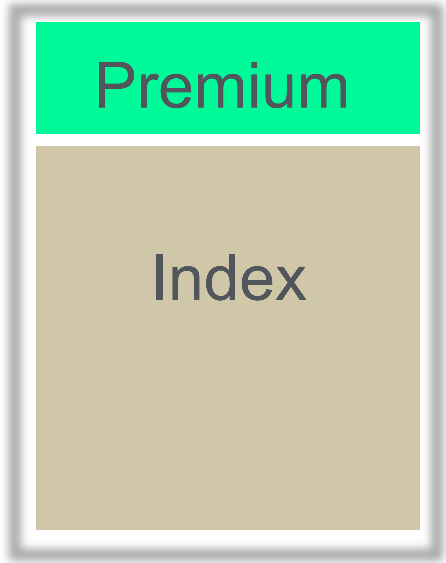
Financing Procurement Price (FPP)

- **Includes costs for:**
  - Capitalized construction-period interest (main component)
  - Effort to arrange financing
  - Payment and performance bonds
  - Hedges to lock rates in advance of financial closings
    - We do not recommend the use of hedges!

Note: These are pass-through costs and do not include profit for the ESCO

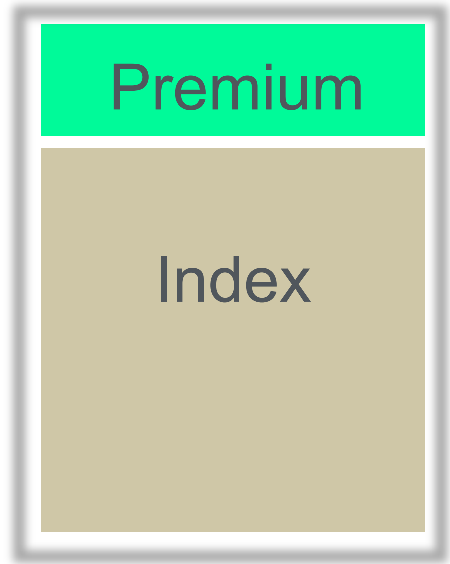
Components of the Interest Rate

- **Index interest rate**
  - Represents the prevailing cost of money in the financial markets
  - Changes day to day
  - Any standard index can be used (e.g., like-term U.S. Treasury Securities)
- **Web sources for rates**
  - www.bloomberg.com
  - www.federalreserve.gov/releases/h15/current



The Premium

- Premium — Basis points added to index rate (1% = 100 basis points)
- Premium covers
  - Lender's costs (legal fees, administration, etc.)
  - Lender's perception of risk
    - Remember: this is a loan to a corporation, not the gov't.
    - Risk is function both of ESCO's creditworthiness and project's performance risk



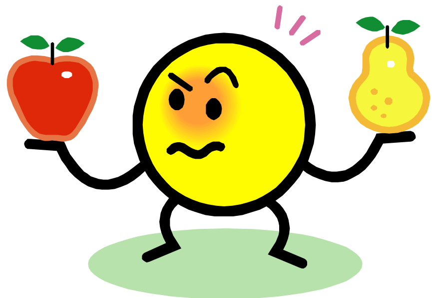
Reviewing the Financier's Proposal

- Investor's Deal Summary
- Standard Finance Offer
- Selection Memorandum

Investor’s Deal Summary

- ESCO prepares Investor’s Deal Summary (IDS) and sends it to financiers to solicit offers
- IDS establishes a common basis for solicitations
- Required content
  - All financial info
  - Risk, Responsibility, and Performance Matrix
  - Key target dates
  - M&V info

Standard Finance Offer



- Financiers make offers using Standard Financing Offer (SFO)
- Ensures that offers are comparable
- Required contents
  - Narrative description of financing package
  - Itemization of total amount financed
  - Period of time that offer will be honored
  - Other terms

Selection and Certification of the Financing Deal

- ESCO selects financier and provides a certified selection memo documenting rationale for choice
- Final proposal (and TO schedules) are based on selected offer
- Final proposal includes IDS, SFO for the selected offer, and Certified Selection Memorandum
- Selected financing offer in final proposal is evaluated by FEMP ESPC Team (PF and Lab reviewer)

Finalizing the Task Order

- Revise RFP
- Draft award document
- Review attachments
- Award TO

PHASE 4

DESIGN, CONSTRUCTION, AND ACCEPTANCE

Phase 4 – Part 1 (Design)

- Post-award conference
  - Proof of insurance
  - Payment & performance bonds
- Review of designs & equipment selections
- Notice to proceed with construction/installation
- Discussion on the Submittals and Deliverable List
  - Don't forget to discuss construction milestones

Phase 4 – Part 2 (Construction)

- Need to identify agency person to monitor the installation/construction
- Person reports changes to the CO
- Person receives submittals from ESCO
- Commissioning plan and post-installation report (first M&V report) should precede acceptance
- Acceptance of installed ECMs

Phase 5

Performance Period Through Closeout

Performance Period through Closeout

- Payment stream
  - usually annual at beginning of year to save interest costs
- Invoices
  - backup documentation
- Regular (at least annual) M&V reporting
- What happens if shortfall occurs?
- Modifications/change orders
- Partial/complete termination
- Closeout

Invoice/Payment Stream

- For annual invoices
  - First invoice—30 days after acceptance
  - Every 365 days thereafter
  - Support documentation required?
    - Standard payments do not require backup
    - Review of annual M&V report should precede payment

Utilizing the Measurement and Verification Report

- Frequency – Generally annual but can be more frequent (esp. in early years)
- Identify and document who is responsible for review
- Reviewer reports results to CO
- Provide desk reference and guidance

Managing a Shortfall

- What constitutes a shortfall?
  - Guaranteed savings not met (for whole project, not necessarily each ECM), per M&V plan
- Who interprets the M&V Report?
  - COTR or other assigned personnel
  - FEMP PF assists with post-installation and first year reports
- How does shortfall affect the payment stream?
  - Usually with commensurate reduction of subsequent contractor payment(s)
  - In some instances, ESCO will remedy shortfall with repair or installation of additional equipment

Modifications and Change Orders

- When is a modification to the TO required?
  - Change in site's mission
  - Reduction/increase in site's usage
- What happens to the financial schedules and interest rate?
  - Renegotiation of debt service term
  - Realignment of schedules and interest rate
- When is a change order required?
  - Rarely – these are design/build fixed-price contracts
  - Exception: differing site conditions that could not reasonably have been foreseen by ESCO

Partial or Complete Termination

- Relevant schedule: TO – 5
  - Represents outstanding capital investment on entire project plus premium for ESCO and financier's cost to close out
- Partial termination can occur when:
  - Buildings are being shut down
  - Excess savings allows for buyout of ECM
  - Other?
- Complete termination
  - Shutdown of site or demolition of covered buildings

Closeout

- Verify that the final M&V Report has been received and that the savings guarantee has been met
- Send contractor a letter stating that the debt service has been satisfied via the last payment
- Submit the final Past Performance Evaluation to DOE Golden Field Office Contracting Officer

Questions and Answers