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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U.S. DEPARTMENT OF ENERGY
Energy Efficiency & Renewable Energy
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
  [website link]

[website link]
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.
• 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
Supporting your decision.

• 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)
- 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
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.
• 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


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
Enabling Legislation

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
Enabling Legislation

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
Phase 1: Project Planning

FFS & agency review process, explore opportunities, including renewables

Assemble acquisition team

Notify DOE COR of intent to respond

ESCO Joint Effort

Agency

Send notice of requirements to all ESCOs

Submit requested info to agency

ESCO — Energy Services Company

COR — Contracting Officer’s Representative

FFS — FEMP Federal Financing Specialist

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 SESPAC 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
  - Scrap the project, or
  - Consider starting over by issuing a revised set of requirements to the ESCOs
Phase 2

**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
Phase 2

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)
Phase 2

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

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
Prefering for Negotiations – Review Items

- Risk, Responsibility, and Performance Matrix
- Price Proposal
- M&V Plan
- Financing
- Subcontracting Plan
- Wage Determination
Phase 3

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
Phase 3

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

Savings

- One-time Savings: 2%
- Energy Cost Savings: 78%
- Energy-related Cost Savings: 20%

Payments

- One-time Payments: 2%
- Implementation Price: 32%
- Finance Procurement Price: 4%
- Interest: 26%
- O&M: 33%
- M&V: 2%
- Savings Retained: 8%

Data from Super ES PC 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 provided in 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 provided on Schedules TO-2 and TO-3.
5. If applicable, prior to post-acceptance performance period, implementation period allowable payments and energy savings are onetime amounts.
6. If applicable, provide a separate table showing proposed energy rates (i.e., $/kWh, $/kW, $/MBtu) for each post-acceptance performance period. Also, submit escalation rates applicable to 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.

<table>
<thead>
<tr>
<th>Task Order No.</th>
<th>Contractor Name</th>
<th>Project Site</th>
<th>(a) Estimated Cost Savings ($)</th>
<th>(b) Guaranteed Cost Savings ($)</th>
<th>(c) Contractor Payment ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation Period</td>
<td></td>
<td></td>
<td>117,095</td>
<td>117,000</td>
<td>117,000</td>
</tr>
<tr>
<td>Post-Acceptance Performance Period Year</td>
<td>(d) Estimated Annual Cost Savings ($)</td>
<td>(e) Guaranteed Annual Cost Savings ($)</td>
<td>(f) Annual Contractor Payments ($)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One</td>
<td>285,640</td>
<td>276,384</td>
<td>276,383</td>
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<td></td>
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<tr>
<td>Two</td>
<td>294,095</td>
<td>284,572</td>
<td>284,571</td>
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<tr>
<td>Three</td>
<td>294,596</td>
<td>285,226</td>
<td>285,225</td>
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<tr>
<td>Four</td>
<td></td>
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<tr>
<td>Five</td>
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<tr>
<td>Totals</td>
<td>4,022,293</td>
<td>3,741,531</td>
<td>3,741,519</td>
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</tbody>
</table>
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/SCADA in number of points, transformers in kVA, generators in kW. For lighting ECMs, specify baseline kW treated.
8. M&V expenses shall not include any performance-period expenses.

<table>
<thead>
<tr>
<th>Project Site:</th>
<th>Task Order No.:</th>
<th>Contractor Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tech Category (TC)</td>
<td>ECM No.</td>
<td>Equipment Description — Title</td>
</tr>
<tr>
<td>n/a</td>
<td>n/a</td>
<td>Project Development</td>
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<tr>
<td>TOTALS</td>
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<tr>
<td>Bonded Amount ($)</td>
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</table>

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 Capitalization

<table>
<thead>
<tr>
<th>Total Implementation Price (from TO-2 Total)</th>
<th>2,036,037</th>
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</thead>
<tbody>
<tr>
<td>Plus Financing Procurement Price ($)</td>
<td>187,702</td>
</tr>
<tr>
<td>Less Implementation Period Payments (from TO-1 (final) (c)) <em>(If proposed, must be fully documented)</em></td>
<td>117,095</td>
</tr>
<tr>
<td>Total Amount Financed (Principal)</td>
<td>2,106,644</td>
</tr>
<tr>
<td>Applicable Financial Index: US Treasuries</td>
<td>Source: Treasury Web</td>
</tr>
<tr>
<td>Term (Years): 13</td>
<td>Effective Through: COB 4/1/03</td>
</tr>
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</table>

### Annual Cash Flow (Post-Acceptance Performance Period)

<table>
<thead>
<tr>
<th>Term</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principal Repayment ($)</td>
<td>$ 84,805</td>
<td>$ 98,021</td>
<td>$ 123,453</td>
<td>$ 140,205</td>
<td>$ 158,400</td>
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<tr>
<td>Less incentives (i.e., REC, White Tag, etc.)</td>
<td></td>
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<tr>
<td>Net principal repayment before interest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest ($)</td>
<td>$ 146,793</td>
<td>$ 140,399</td>
<td>$ 132,629</td>
<td>$ 123,412</td>
<td>$ 112,976</td>
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<tr>
<td>Total Debt Service (a)</td>
<td>$ 231,598</td>
<td>$ 238,420</td>
<td>$ 256,082</td>
<td>$ 263,617</td>
<td>$ 271,376</td>
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### Post-Acceptance Performance Period Expenses

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<tr>
<th>Expenses</th>
<th>1.00</th>
<th>1.0305</th>
<th>1.0619</th>
<th>1.0943</th>
<th>1.1277</th>
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<tbody>
<tr>
<td>Management/Administration</td>
<td>$ 4,080</td>
<td>$ 4,204</td>
<td>$ 4,333</td>
<td>$ 4,465</td>
<td>$ 4,601</td>
</tr>
<tr>
<td>Operation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance</td>
<td>$ 1,600</td>
<td>$ 1,649</td>
<td>$ 1,699</td>
<td>$ 1,751</td>
<td>$ 1,804</td>
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<tr>
<td>Repair and Replacement</td>
<td>5000</td>
<td>5,153</td>
<td>5,310</td>
<td>5,472</td>
<td>5,638</td>
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</tbody>
</table>
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
<table>
<thead>
<tr>
<th>Project Site:</th>
<th>Task Order#</th>
<th>Contractor Name:</th>
<th>Project Square Footage (KSF):</th>
</tr>
</thead>
<tbody>
<tr>
<td>TC No.</td>
<td>ECM No.</td>
<td>ECM Energy baseline (MBtu/yr)</td>
<td>Electric energy savings (MBtu/yr)</td>
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**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.

<table>
<thead>
<tr>
<th>Project Site:</th>
<th>Task Order No:</th>
<th>Contractor Name:</th>
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<table>
<thead>
<tr>
<th>Time Period</th>
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<td>End of Year Twenty-five</td>
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PRIVATE SECTOR FINANCING
Phase 3

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
Phase 3

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
Phase 5

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
Phase 5

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
Phase 5

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