

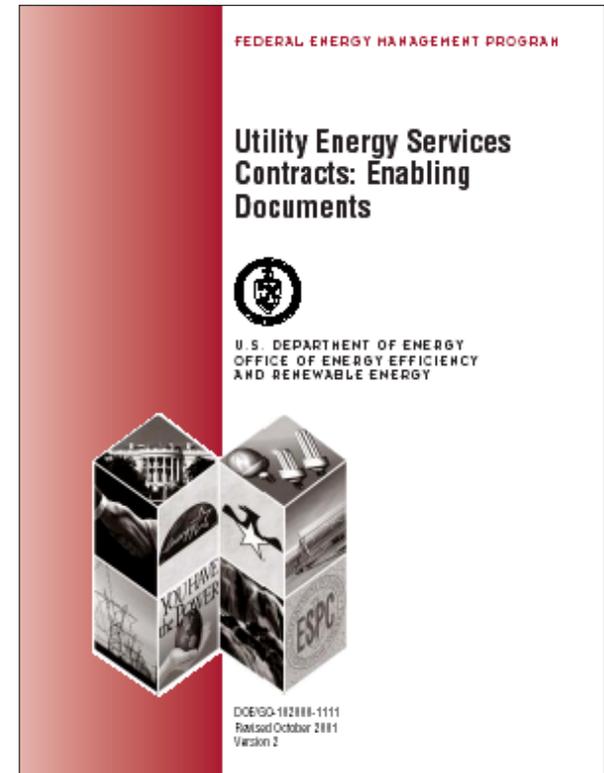


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# Enabling Documents Update

San Diego, CA  
November 28, 2007



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&  
Karen Thomas



- ❖ Legislative & Executive Actions
- ❖ Legal Opinions
- ❖ Agency Guidance
- ❖ Contracts
- ❖ Sample Documents
- ❖ Resources



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## **Enabling Legislation for Utility Programs**





## Section 152(f) - Utility Incentive Programs

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### Agencies:

- ❖ Are authorized and encouraged to participate in utility programs generally available to customers
- ❖ May accept utility financial incentives, goods, and services generally available to customers
- ❖ Are encouraged to enter into negotiations with utilities to design cost effective programs to address unique needs of facilities used by agency

(Codified as 42 USC 8256, P.L. 102-486)



## Executive Order 13423: Strengthening Federal Environmental, Energy, and Transportation Management

<b>Energy Efficiency</b>	reduce consumption intensity 30% by 2015
<b>Greenhouse Gases</b>	reduce emissions through reduction of energy intensity by 3% annually or 30% by 2015
<b>Renewable Power</b>	≤ 50% of current renewable energy purchases must come from new renewable sources (in service > January 1, 1999)
<b>Building Performance</b>	use sustainability strategies to construct & renovate buildings
<b>Water Conservation</b>	reduce consumption intensity 2% annually by 2015
<b>Procurement</b>	purchase environmentally-sound goods and services
<b>Pollution Prevention</b>	reduce use and purchase lower risk chemicals and toxic materials
<b>Electronics Management Systems</b>	purchase products that meet Energy Star and Electronic Products Environmental Assessment Tool requirements
<b>Vehicles</b>	increase purchase of alternative fuel, hybrid, and plug-in hybrid (PIH) vehicles when commercially available
<b>Petroleum Conservation</b>	reduce consumption in fleet vehicles 2% annually through 2015
<b>Alternative Fuel Use</b>	increase consumption ≤10% annually



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48 CFR Part 41

# Acquisition of Utility Services

- ❖ Authorizes GSA to prescribe policies & methods for the acquisition and supply of utility services for federal agencies; includes delegating authority to purchase utility services
- ❖ Authorizes GSA to issue areawide contracts for utility services

Utility Service is defined as furnishing electricity, natural or manufactured gas, water, sewage, thermal energy, chilled water, steam, hot water, or high temperature hot water

[http://www.eere.energy.gov/femp/financing\\_types.cfm](http://www.eere.energy.gov/femp/financing_types.cfm)



## *National Defense Authorization Act, 2007*

- ❖ Repeals 10 USC 2865, old enabling UESC legislation (language is similar w/ some key additions)
- ❖ Reaffirms congressional & presidential support for UESC's
- ❖ Clarifies & expands authority to work with utilities

2911. Energy performance goals & plan for DoD

2912. Availability & use of energy cost savings

2913. Energy savings contracts & activities

2914. Energy Conservation

2915. New construction: use of RE and EE products

2916. Sale of electricity from alternate energy and cogeneration production

2917. Development of geothermal on military lands

2918. Fuel sources for heating systems



## Energy savings contracts and activities

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- ❖ Encourages participation in gas or electric utility programs for the management of energy demand or for energy conservation
- ❖ Accept financial incentives, goods and services generally available from the utility



## Amendment to Section 10 USC 2866: Water Conservation Authority

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- ❖ Water cost savings realized – One-half of the savings shall be used for water conservation activities as designated by DoD; One-half of the savings to be used at the installation at which the savings were realized

\_Retain savings for applied water measures



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## **Legal Opinions**





- ❖ Authority for Extended Utility Agreements - authorized to enter contracts for terms greater than ten years.

*May 9, 2000, Richard Butterworth, GSA*

- ❖ Relationship of the Anti-Deficiency Act to Multi-year Contracts - no need to obligate total estimated cost of contract; must cover annual costs under the contract

*June 22, 1999, Mark Schwartz, DOE*

- ❖ Definition of Demand Side Management Services

*December 17, 1998, Larry Oliver, DOE*



- ❖ Statutory Exception from Competition in DSM Utility Contracts - Section 152 authorizes agencies to participate in DSM contracts; and authorizes agencies to directly approach a utility concerning DSM services without the use of full and open competition

*July 7, 1994, memorandum from Anne Troy, DOE*

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

*October 18, 1991, memorandum from Kathy Izell, DOE*



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## **Agency Guidance**





- ❖ Energy Savings Performance and Utility Service Contracts Policy - Obtain MAJCOM approval prior to issuing Notice of Intent; submit to AFCESA for technical assessment; include buy-out clauses in all candidate projects; program robust portfolios of energy conservation projects

Major General Del Eulberg, October 30, 2007 (Air Force)

- ❖ Procuring Energy Management Services with the GSA Utility Areawide Contract

*General Services Administration*



# Agency Guidance

- ❖ Utility Energy Services Contract (UESC) Guidance Memorandum, March 23, 2004 - Encourages all installation to expand, promote and accelerate the use of UESC to meet the Army energy reduction goals  
*Colonel Charles Guta & Joseph Plunkett, Dept. of the Army*
- ❖ ESPC and UESC/ Demand Side Management Memorandum (addition), September 15, 2003  
*Major General Anders Aadland, Department of the Army*
- ❖ Participation in Public Utility Sponsored EC/DSM Programs  
*Defense Energy Program Policy Memorandum 94-1*



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# Alternative Financing Guidance Memorandum (AFGM)

- ❖ Sole Source Justification - Federal agencies may enter into sole-source agreements with their franchised and/or serving utilities for any financial incentives, goods and services

*Alternative Financing Guidance Memorandum #001*

- ❖ Congressional Notification for Utility Projects

*Alternative Financing Guidance Memorandum #002*

- ❖ Relationship of Anti-Deficiency to Multi-year Contracts

*Alternative Financing Guidance Memorandum #003*

AFGM's are developed by FUPWG and approved by the IATF



# Agency Guidance

- ❖ Source of Funds - Fund source not constrained by statute; Contracting Officers have discretion to use funds deemed appropriate for utility services to pay for multi-year contracts under the utility incentive program

*Alternative Financing Guidance Memorandum #004*

- ❖ Performance Assurance for Multi-year Contracts under the Utility Incentive Program

*FEMP Guidance*



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## **Contracts**





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# Utility Energy Services Contracts

- ❖ GSA Model Areawide Contract
- ❖ Basic Ordering Agreement (BOA)
- ❖ Site Specific Contract

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UESC Model Agreement

*(pending final review and approval)*



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## **Sample Documents**





- ❖ Task Order under Areawide contract
- ❖ Task Order under Basic Ordering Agreement (BOA) with master agreement as an exhibit
- ❖ Site Specific Contract using master agreement
- ❖ Sole Source Justification – updated



- ❖ Retaining Savings – *non-committed end-of-year funds can be applied*
- ❖ RFQ for Utility selection of UESC partner implementer
- ❖ Utility Agreement with contract implementer
- ❖ Fair consideration in selecting from multiple serving utilities
- ❖ Assignment of Claims



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## **Resources**





- ❖ Updated lessons learned publication
- ❖ Risk and responsibility matrix
- ❖ Reviewing proposals & cost estimates
- ❖ Rolling costs from phase to phase
- ❖ Availability of funds crossing fiscal years



- ❖ Utility Services List
- ❖ Choosing a Financing Vehicle for Energy Efficiency Projects – description & URL
- ❖ Life-Cycle Cost Analysis – description & URL
- ❖ Case Studies - URL to case studies



- ❖ M&V – description & URL
- ❖ Metering Guidance – description & URL
- ❖ Commissioning Guide – description & URL
- ❖ O&M Best Practices – description & URL



- ❖ U.S. Department of Energy Contacts
  - Titles & URL
  
- ❖ Utility Contacts
  - Titles & URL
  
- ❖ Agency Contacts
  - *List agencies using UESC successfully*



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