



U.S. Department of Energy
Energy Efficiency and Renewable Energy

federal energy management program

UTILITY ENERGY SERVICES CONTRACTS: ENABLING DOCUMENTS

Karen Thomas
National Renewable Energy
Laboratory



- The Enabling Documents for Utility Energy Services Contracts (UESCs)
 - provide a selected set of background information that clarify the authority for Federal agencies to enter into UESCs.
 - and, is designed to assist Federal agency acquisition teams who are interested in implementing energy service projects. The Federal agencies' partners have benefited from the Enabling Documents as well.



- *Energy Policy Act of 2005*
- *42 U.S.C. § 8256, Energy Policy Act of 1992*
- *10 U.S.C. § 2865, Energy Savings at Military Installations*
- *10 U.S.C. § 2866, Water Conservation at Military Installations*



- **Federal Acquisition Regulations, Part 41 -**
 - Authorizes GSA to prescribe policy and methods for the acquisition and supply of utility services.
- **Executive Order XXXXX - "Enhancing Government Performance Through Effective Environmental, Energy, and Fleet Management"**
- **Executive Order 13123 - Greening the Government through Energy Efficiency**



- **Authority for Extended Utility Agreements**
May 9, 2000, Richard Butterworth, GSA - authorized to enter contracts for terms greater than ten years
- **Relationship of the Anti-Deficiency Act to Multi-year Contracts**
*June 22, 1999, Mark Schwartz, DOE - no need to have available the budget authority to obligate the total estimated cost of the contract, but **only sufficient budget authority to obligate its annual costs***



- **Definition of Demand Side Management Services, December 17, 1998, Larry Oliver, DOE**
 - Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water or electric utilities and **generally available to customers of such utilities**



- **Statutory Exception from Competition in DSM Utility Contracts, July 7, 1994, Anne Troy, DOE**
 - ...without the use of full and open competition **Section 152's plain language** contains an express authorization for an agency to participate in DSM contracts... This language appears to provide express authority for an agency to directly approach a utility concerning DSM services, ... without the use of full and open competition



- **Sole Source Justification**
AFGM #001
 - Ample justification exists for Federal agencies to enter into sole-source agreements with their franchised and/or serving utilities for any financial incentives, goods and services...
- **Congressional Notification for Utility Projects**
AFGM #002
 - There is no indication in any of the laws, regulations, or policies that Congressional notification is required in utility contracting. Therefore, this statement clarifies that any Federal agency may enter into a utility contract as allowed under section 152 of EPAct with congressional notification.



- **Relationship of Anti-Deficiency Act to Multi-Year Contracts - AFGM #003**
 - No need to obligate total estimated cost of contract, but only necessary to cover annual costs under the contract
- **Source of Funds - AFGM #004**
 - Clarifies that the choice of fund sources is not constrained by statute. Contracting Officers of each agency have discretion to use any funds deemed appropriate to pay for utility services, to pay for Multi-Year Contracts under the Utility Incentive Program



- **Performance Assurance for Multi-Year Contracts Under the Utility Incentive Program -AFGM #005**
 - In order to assure the necessary fiscal responsibility consistent with sound program management, alternatively financed UESCs should include **some plan for continued action during the contract to assure continued accomplishment of expected performance.**



Agency Guidance

- **Utility Energy Services Contract (UESC) Guidance Memorandum**
March 23, 2004, Colonel Charles Guta and Joseph Plunkett, Department of the Army
 - ...supports continued energy savings initiatives and encourages all installations to **expand, promote and accelerate the use of UESCs** to meet the Army's Energy Reduction Goals
- **ESPC and UESC / Demand Side Management Memorandum**
September 15, 2003, Major General Anders Aadland, Department of the Army
 - ...supports continued energy savings initiatives (ESPC, UESC, etc.) and encourages all installations to **expand, promote and accelerate the use of these tools** to meet the Army's Energy Reduction Goals
- **Participation in Public Utility Sponsored EC/DSM Programs**
Defense Energy Program Policy Memorandum (DEPPM) 94-1-
 - Actions should be taken to participate wherever advantageous to the government



Utility Energy Services Contracts

- GSA Model Areawide Contract
- UESC Model Agreement - Updated
- Basic Ordering Agreement (BOA)
- Site Specific Contract
- UESC Process Timeline - range of time and key milestones
- Utility Services List



- *Basic Ordering Agreement (BOA)*
- *Site Specific Contract using Master Agreement*
- *Sole Source Justification - updated*
- *Assignment of Claims*



Utility Energy Services Contracts - Sample Documents

- Competition Between Serving Utilities
- Payment Stream Options, Impacts & Cautions
- Risk and Responsibility Matrix
- Retaining Savings - process example
- Soliciting Competitive Financing
- Renewable Energy UESC Finance Model



- Updated UESC Lessons Learned
 - Impact of Non- or Late Payment
 - Reviewing Proposals & Cost Estimates
 - Rolling Costs from Phase to Phase
 - Availability of Funds Crossing Fiscal Years
 - Implications and Impacts of Refinancing



Resources

- Reference Guide
- Life-cycle cost analysis - description + URL
- Case Studies URL
- OMB Energy Scorecard - description + URL
- Metering Guidance - description + URL
- Commissioning Guide - description + URL
- O&M Best Practices - description + URL



- U.S. Department of Energy Contacts - **update**
- **Utility Contacts**
- **Agency Contacts**
 - List agencies using UESC successfully
- **Definitions**



Next Steps

- Provide feedback on handout
- Email Karen & Deb additional documents for consideration/inclusion
- Incorporate comments/suggestions and additions
- Circulate Draft of Enabling Documents to subcommittee by March 16, 2007
- Comments due back to Karen & Deb by March 23, 2007
- Share draft with FUPWG Steering Committee at Cape Canaveral FUPWG
- Publish new Enabling Documents by September 30, 2007



Karen Thomas
202-646-5223
karen_thomas@nrel.gov

Deb Beattie
303-384-7548
deb_beattie@nrel.gov