

**U.S. Department of Energy (DOE)
Office of Energy Efficiency and Renewable Energy (EERE)
Federal Energy Management Program (FEMP)**



**ORDERING GUIDE
FOR Generation 3
ENERGY SAVINGS PERFORMANCE CONTRACT
(ESPC) TASK ORDERS
UNDER DOE'S INDEFINITE DELIVERY, INDEFINITE
QUANTITY (IDIQ)
MULTIPLE AWARD CONTRACTS**

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Introduction

The U.S. Department of Energy (DOE) Federal Energy Management Program (FEMP) is pleased to provide the 2017 version of the DOE FEMP Energy Savings Performance Contract (ESPC) Indefinite Delivery, Indefinite Quantity (IDIQ) Ordering Guide. This Ordering Guide will assist federal ordering agencies in developing, awarding and administering task orders (TOs) under the DOE ESPC IDIQ contracts.

This document provides procedures for issuing TOs under the DOE ESPC IDIQ contracts and defines the roles and responsibilities of the major parties involved in the ordering process. It also serves as a resource index to help federal ordering agencies develop technically excellent ESPC projects that will save energy, water and taxpayer dollars, improve energy security, and enhance their organizations' missions.

The first section of the Ordering Guide covers ESPC basics: where to find primary sources of help and information, the scope of the contracts, and notable characteristics of the DOE ESPC IDIQ contracts. The rest of the Ordering Guide contains a step-by-step description of the process of awarding an ESPC TO under the DOE ESPC IDIQ contracts, from the early, exploratory steps, through project acceptance, to contract closeout.

The Ordering Guide is highly recommended to ordering agencies as a tool to learn about and utilize the DOE ESPC IDIQ contracts. Additional tools and other information concerning these contracts and the overall DOE FEMP mission can be found at <https://www.energy.gov/eere/femp/federal-energy-management-program>. Ordering agency officials are also strongly encouraged to complete at least one of the basic ESPC training courses found at <https://www.energy.gov/eere/femp/federal-energy-savings-performance-contract-training> prior to completing the steps found in this guide.

Part I – Energy Savings Performance Contract (ESPC) Basics

A.1 Primary ESPC Resources and Guidance

DOE FEMP actively supports ordering agencies interested in ESPC projects by providing technical expertise, contracting assistance, information, and tools. FEMP’s assistance is designed to help ordering agencies develop ESPC projects that are technically excellent, contractually and legally sound, and financially smart. Several primary sources of help and information are highlighted below. Additional sources of information have been included throughout the guide for further assistance in all stages of the ESPC process.

- **FEMP ESPC Web Site:**

<https://www.energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies>

The FEMP web site offers information on energy service companies (ESCOs), contract resources, laws and requirements, ESPC awards to date, case studies, training and many other subjects.

- **ESPC Contract Tools and Resources:**

<https://www.energy.gov/eere/femp/resources-implementing-federal-energy-savings-performance-contracts>

All of the tools and resources mentioned in this document are available from the “RESOURCES ON IMPLEMENTING ENERGY SAVINGS PERFORMANCE CONTRACTS” page of the web site, unless noted otherwise. This site serves as the primary location for forms, tools and other information to help ordering agencies implement ESPC projects.

- **Project Facilitation:**

<https://www.energy.gov/eere/femp/project-facilitators-federal-espc-uesc-and-espc-enable-projects>

A Project Facilitator (PF) provides expert technical assistance to guide the ordering agency through the ESPC process.

- **FEMP Training Search:**

<https://www7.eere.energy.gov/femp/training/>

FEMP provides a variety of ESPC-related training that can enhance the knowledge of the ordering agency’s acquisition team. These courses are offered in various formats and delivery vehicles.

- **Federal Project Executives (FPE):**

<https://www.energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0>

FEMP’s FPE reps are dedicated to providing support to agencies who are striving to achieve their energy goals. The web site always has current contact information for FEMP’s representatives who can help you get started.

- **The DOE ESPC IDIQ Contract and Modifications to the ESPC IDIQ Contracts:**

<https://energy.gov/eere/femp/resources-implementing-energy-savings-performance-contracts>

A generic copy of DOE’s ESPC IDIQ contract and contract modifications are provided on the FEMP web site.

- **FEMP Measurement & Verification (M&V) Guidelines:**

<https://www.energy.gov/eere/femp/downloads/mv-guidelines-measurement-and-verification-performance-based-contracts-version>

FEMP M&V Guidelines details M&V requirements for ESPCs.

- **FEMP ESPC Project Development Resource Guide:**

<https://energy.gov/eere/femp/downloads/femp-escp-project-development-resource-guide>

A detailed guide of the support services agencies can expect when working with FEMP as well as an ESPC development process overview.

- **FEMP Best Practices and Lessons Learned for Federal ESPC Projects:**

<https://energy.gov/eere/femp/downloads/best-practices-and-lessons-learned-federal-agency-escp-projects>

Best practices and lessons learned to help agencies award high-quality, high-value ESPC task orders.

- **Federal Energy Savings Performance Contracts Frequently Asked Questions on the Scope of 42 U.S.C. § 8287 et seq.:**

<https://www.energy.gov/eere/femp/downloads/federal-energy-savings-performance-contracts-frequently-asked-questions-scope-42>

Provides clarification and guidance on issues commonly raised regarding the scope of the ESPC statutory authority.

- **General ESPC FAQs**

<https://www.energy.gov/eere/femp/downloads/frequently-asked-questions-about-escp-strategy>

What to include, how to combine appropriated funds, keys to success, and many others.

A.2 What is Energy Savings Performance Contracting?

Energy savings performance contracting is an acquisition method that allows federal agencies to achieve energy savings through improvement projects that meet energy efficiency, renewable energy, water conservation, and emissions reduction goals with no upfront costs to the Government. An ESPC project is a collaboration between the customer (a federal ordering agency) and an energy service company (ESCO). The ESCO conducts a comprehensive energy audit of federal facilities and identifies improvements that will save energy and reduce utility bills. The ESCO designs and constructs a project that meets the ordering agency's needs and arranges project financing, usually with a third-party financier. The ESCO guarantees that installed energy and water conservation measures (ECMs) will result in a specified level of cost savings to the federal customer, which will be sufficient to pay the ESCO for the project. The ordering agency uses the guaranteed cost savings to pay for building improvements over the life of the contract. After the ESPC project TO ends, all additional cost savings accrue to the ordering agency.

A.2.1 Federal ESPC Authority

Federal agency use of ESPCs is authorized by the provisions of 42 U.S.C. § 8287, et seq., as amended with regulatory provisions at 10 C.F.R. § 436.30, et seq.

The resources on the Implementing Energy Savings Performance Contracts page within the FEMP website include additional information, responses to frequently asked questions, guidance, and reports intended to clarify the ESPC authority and provide policy guidance to agencies that are starting an ESPC, have a project underway, or already have awarded an ESPC.

A.2.2 ESPC Streamlined Energy Project Procurements

DOE ESPC IDIQ contracts have been used since 1996 to make ESPCs as practical and cost-effective as possible for federal agencies to meet their various energy- and water-related goals.

Under the ESPC program, IDIQ contracts were awarded to multiple ESCOs through a full and open competitive process. The competing ESCOs were evaluated based on demonstrated capabilities to manage the development and implementation of multiple ESPC projects over a large geographic area and on their technical approach and price. The DOE ESPC IDIQ contracts establish the general scope of work, terms, and conditions for firm-fixed-price task orders for ESPC projects at federal agency sites worldwide. Ordering agencies can implement ESPC projects by issuing TOs under the DOE ESPC IDIQ contracts.

The award of the DOE ESPC IDIQ contracts was done in compliance with Federal Acquisition Regulation (FAR) rules and requirements for competition. With these IDIQ contracts in place, ordering agencies can move quickly to developing a project. This streamlined process of gaining access to the expertise and private financing offered by ESCOs can save agencies time and money.

A.2.3 Eligibility to Use ESPC

All federal agencies may use the DOE ESPC IDIQ contracts to implement ESPC projects within the scope of the contract worldwide. The 2017 DOE ESPC IDIQ contracts include a base ordering period from April 27/28, 2017 through April 26/27, 2022, and an option ordering period from April 27/28, 2022 through October 26/27, 2023. TOs issued under the DOE ESPC IDIQ contracts may be issued with a period of performance of up to 25 years from date of TO award.

A.2.4 Financing Provided and No Up-Front Capital Costs

The features of ESPCs that are often most attractive to ordering agencies are the financing and guarantee of cost savings. The ESCO provides all labor, materials, equipment, and engineering design for improvement projects to reduce energy and water costs and meet other energy-related goals with no up-front capital outlay by the ordering agency required. An ESPC contract requires the ESCO to finance and implement ECMs for the ordering agency and guarantee that these improvements will result in a specified level of annual cost savings. In return, the ESCO receives firm-fixed-price payments from the guaranteed cost savings. The ESCO and the ordering agency agree on annual payments that are less than the cost savings guaranteed for the year, structuring a project with a long enough term to ensure that the savings are sufficient to repay the ESCO for designing, implementing, maintaining, repairing, and financing the ESPC project. The ordering agency negotiates the frequency of payments (such as annually, quarterly or monthly) with the ESCO.

A.2.5 Cost Savings Pay for the Project

ESPCs are guaranteed to pay for themselves through the “energy savings” generated by the installed ECMs. The term “energy savings”, as defined in 42 U.S.C. § 8287c(2) and 10 C.F.R. § 436.31, includes energy cost savings, water cost savings, energy and water-related cost savings and one-time savings.

Energy cost savings can come from ECMs that reduce overall energy use, improve the efficiency of energy-using systems and equipment, and lower the consumption of outside energy utilities. Utility costs can also be decreased through operational improvements (i.e. – control system upgrades, fuel switching, etc.), distribution system upgrades and electrical peak shaving.

Water cost savings can come from ECMs that reduce overall water use and improve the efficiency of water delivery systems and equipment.

Energy and water-related cost savings are from reduced expenses for operations and maintenance (O&M) or repair and replacement (R&R) of energy or water systems and equipment.

One-time savings that are the result of the ESPC project can be applied to the project, usually as a pre-performance-period payment. For example, the agency may have been planning to replace a chiller using O&M/R&R funds, and then decide to include the chiller replacement in the ESPC project. The money that would have been used to replace the chiller in the absence of the ESPC project can be used to help pay for the ESPC project. Recurring, ongoing savings resulting from reduced O&M/R&R expenses may also be used to pay for the ESPC.

To learn more about the financial structure of ESPCs, see the *Practical Guide to Savings and Payments in FEMP ESPC Task Orders* on the FEMP website.

A.2.6 Qualified and Motivated Energy Service Companies (ESCOs)

The competitive selection of the ESCOs works to the advantage of ordering agencies. Each ESCO is heavily invested in the ESPC program and driven to work hard to satisfy DOE and the ordering agencies by the motivation to earn repeat business.

The DOE ESPC IDIQ contracts provide several benefits to ordering agencies as compared to a conventional, stand-alone contract. The DOE ESPC IDIQ contracts provide streamlined ESCO selection procedures authorized under 42 U.S.C. § 8287, as amended, that reduce an ordering agency's evaluation efforts, such as down-selecting to one ESCO before proposal submission. This also benefits the ESCOs by minimizing upfront proposal costs for potential projects.

A.3 Scope of the Contracts

DOE FEMP has established the DOE ESPC IDIQ contracts to be used by all federal agencies for ESPC projects worldwide. ESPC projects awarded under these contracts can implement a wide variety of ECMs under authorized Technology Categories (TC) provided that the contemplated measures comply with the requirements necessary to qualify as an ECM under 42 U.S.C. § 8287c(4) and 10 C.F.R. § 436.31.

The DOE ESPC IDIQ contracts (Attachment J-3) list the following TC's that may qualify as ECMs:

- Boiler Plant Improvements
- Chiller Plant Improvements
- Building Automation Systems (BAS) / Energy Management Control Systems (EMCS)
- Heating, Ventilating, and Air Conditioning (HVAC) Improvements (not including boilers, chillers, and BAS/EMCS)
- Lighting Improvements
- Building Envelope Modifications
- Chilled Water, Hot Water, and Steam Distribution Systems
- Electric Motors and Drives
- Refrigeration
- Distributed Generation
- Renewable Energy Systems
- Energy / Utility Distribution Systems
- Water and Sewer Conservation Systems
- Electrical Peak Shaving / Load Shifting
- Energy Cost Reduction Through Rate Adjustments
- Energy Related Process Improvements
- Commissioning
- Advanced Metering Systems
- Appliance / Plug-load Reductions
- Other / Future ECMs

Specialized technical assistance with these technologies is available through DOE FEMP. For more information, the ordering agency may visit the FEMP website and/or reach out to one of the FEMP contacts listed on the site.

A.4 Primary Roles in the ESPC Process

A.4.1 The Department of Energy (DOE)

The overall responsibility for the success of the ESPC program is assigned to the DOE FEMP Program Manager, who manages the overall programmatic issues and technical resources. The Manager is responsible for tracking and goal-setting within the program, and coordinates periodic ESCO meetings. The Manager is supported by a DOE IDIQ Contracting Officer and a DOE IDIQ Contracting Officer's Representative (COR). These parties work with other technical, financial, administrative, legal, and procurement specialists within DOE to support ordering agencies interested in pursuing ESPC projects.

The DOE IDIQ Contracting Officer has overall responsibility for the DOE ESPC IDIQ contracts. The DOE IDIQ Contracting Officer monitors the status of the IDIQ's maximum contract ceiling and may review ESPC project documents, such as the Notice of Opportunity (NOO), the Notice of Intent to Award (NOITA) and the proposal prior to issuance of a TO award. The DOE IDIQ Contracting Officer's responsibilities include maintaining ESCO data for contract administration reporting requirements. This data includes records on all ESPC task order awards.

The DOE IDIQ COR is responsible for ensuring the ESCOs comply with all technical requirements of the DOE ESPC IDIQ contracts, such as the timely submission of project deliverables to DOE. The DOE IDIQ COR also provides technical guidance to both the ordering agency and the ESCO through all stages of an ESPC project. This includes coordinating project support and other FEMP services for the ordering agency, completing technical reviews of project documents and facilitating the resolution of technical issues between an ESCO and an ordering agency.

A.4.2 The Energy Service Companies (ESCOs)

The ESCOs are responsible for identifying potential energy savings opportunities within the facilities and on the sites designated by the ordering agency. The ESCOs are responsible for developing and negotiating ESPC TOs in good faith and performing the work described in each awarded TO in accordance with both the DOE ESPC IDIQ contracts and the TO terms and conditions. This includes, but is not limited to, making a good faith effort to develop a project proposal that meets the needs and concerns of the agency, and submitting the required deliverables to the ordering agency and DOE.

A.4.3 The Ordering Agency

The ordering agency is responsible for the posting the opportunity in FedBizOps, selecting an ESCO and collaborating on project development toward award and administration of the ESPC TO. The Success of each task order includes, but is not limited to agencies making a good faith effort for the following:

- Notify the DOE IDIQ Contracting Officer of any pending award of a TO or modification and obtain an authorization to award letter
- Team members obtain FEMP ESPC training
- Have a project facilitator by the time of the Preliminary Assessment Kick-Off
- Follow FAR requirements for determining price reasonableness and subcontractor competition
- Designate a primary contact throughout the performance period of the TO

- Witnessing and review of Measurement and Verification (M&V) measurements and reporting for the baseline, post-installation, and performance period
- Carefully consider the risk and responsibility matrix and ensure any agency opted performance of operations, maintenance, or repair and replacement, can be accomplished
- Collaboratively work towards task order award for projects that can be financed and the ESCO has made a good faith effort to address agency needs and concerns.

The administration includes notifying the DOE IDIQ Contracting Officer of any pending award of a TO or TO modification that changes the value and/or scope of the original TO. An authorization to award letter will be provided to the agency contracting officer for their file.

The ordering agency is also highly encouraged to have all project officials complete one or more ESPC-related training courses within 12 months of project start.

Since an ESPC TO can last up to 25 years, personnel turnover is inevitable. Ordering agencies must anticipate and prepare for personnel turnover by documenting the project process and agency decisions. It is highly recommended that the ordering agency develop a task order management plan which addresses transition of key officials, especially the ordering agency Contracting Officer (CO) and COR/Contracting Officer's Technical Representative (COTR).

Complete documentation of the ESPC project is critical to maintaining the intent of the contract as time passes. Project development decisions and communications between the ordering agency and the ESCO are to be documented in the contract files for the ESPC TO. Documentation must include all pre-award communications such as Preliminary Assessment (PA) and Investment Grade Audit (IGA) development notes, proposal questions, responses, and resolutions, and other direction and agreements gathered by the ordering agency CO and COR/COTR.

It is highly recommended that ordering agencies designate a primary contact that is responsible for (1) maintaining contact with DOE FEMP throughout the life of the ESPC TO, and (2) maintaining continuity of documentation and awareness of the ESPC throughout the performance period.

Ordering agencies shall designate a government witness to accompany the ESCO during the baseline M&V measurements, post-installation M&V activities, and annual M&V activities, and ensure that the government witness has reviewed current FEMP guidance on M&V witnessing. If the ordering agency COR/COTR is designated as the M&V witness, be sure to include this function in the COR/COTR delegation letters.

The risk responsibility and performance matrix (RRPM) should summarize all the risks of the performance contract and clarifies who is taking the risk. One important consideration is that ordering agencies have the option to perform any required operation, maintenance, or repair and replacement of (O&M) the Energy Conservation Measures (ECMs). The ESCOs guarantee of savings could be affected by an agency not properly performing O&M. The RRPM should detail what will occur if an agency agrees to perform the O&M but does not properly maintain equipment. The IDIQ contract specifies that the ESCO always maintains responsibility even if the agency performs O&M. The RRPM should detail what the ESCO will do if an agency does not perform O&M properly. Ensure that agency capabilities and resources are available when taking on O&M responsibilities. Unfamiliar equipment that an agency does not regularly maintain may be best handled by the ESCO.

When developing a project the ESCO will spend considerable resources of time and money to develop a proposal, with no guarantee of reimbursement. The agency's responsibility is to share information

and work collaboratively with the ESCO so they can develop the best proposal possible for task order award. When an agency selects an ESCO and moves forward to develop a project they should act in good faith to work towards award when an ESCO provides a viable financed project and makes a good faith effort to address agency needs and concerns. Some agencies do not award a TO for a project, through no fault of the ESCO. For these cases, the agency may consider the option to negotiate with the ESCO for ownership of the investment grade audit and reimbursement of development expenses through the issuance of a standalone (not an ESPC) contract.

A.4.4 Federal Energy Management Program (FEMP) Assistance and Support

DOE FEMP offers assistance to help federal agencies develop ESPC projects to achieve greater energy efficiency, water conservation, and use of renewable energy in federal facilities. An ESPC project is similar to other facility improvement or construction projects, because significant analysis, engineering, and coordination efforts are required. FEMP provides comprehensive support for federal agencies that may need technical and/or procurement assistance for these projects. This support includes Federal Project Executives (FPE), Project Facilitators (PF), advanced technology planning and ESPC-related training. A detailed guide of the services that agencies can expect from FEMP as well as an ESPC development process overview can be found at the FEMP ESPC Project Development Resource Guide at: <https://energy.gov/eere/femp/downloads/femp-espc-project-development-resource-guide>

The FPEs, from DOE's Oak Ridge National Laboratory, are FEMP's are there to help agencies throughout the process. With the FPE's help, the ordering agency can determine whether a "pay-from-savings" project is feasible, become more educated in the ESPC process, develop support within the agency needed to initiate a project, and establish the preliminary scope and goals for the project. The FPE is also, in essence, a case manager, making sure the project stays on track and bringing whatever of their own or FEMP's expertise and resources are needed to assure a high-quality project.

A PF is an experienced and unbiased technical advisor who helps an ordering agency avoid obstacles and expedite the implementation of its ESPC project. PFs review every document produced by the ESCO. As they are technical experts in both building systems and the ESPC process, they are key to getting solid, best-value ESPC projects. Ordering agencies must use a qualified PF when using the DOE ESPC IDIQ contracts. A qualified PF may be obtained indirectly via DOE's existing contracts and other agreements for PF services, contracted directly by the ordering agency, or may be a qualified ordering agency employee. For more information on PF services, see Phase 1, Getting Started.

A.5 Notable Characteristics of the Contract

A.5.1 Anti-Deficiency Regulations

Anti-deficiency regulations normally require that the funds to pay for contracted services must be obligated before a contractor may perform any work for the government. The ESPC authorizing legislation, however, states that ESPC contracts may be entered into "without funding of cancellation charges" so long as "funds are available and adequate for payment of the costs of such contract for the first fiscal year." See 42 U.S.C. § 8287(a)(2)(D)(ii). The statute further requires that the ESCO guarantee energy savings and that any payments must be made from energy savings resulting from

installed energy conservation measures. Because of these provisions and requirements, funds are usually not obligated at award, since savings (and therefore payments) from the ESPC project would typically not start accruing until at least one ECM has been installed. Therefore, the first payment for an ESPC is usually in a fiscal year following award. That means that no funds are required at time of award. Obligations under an ESPC TO are normally incurred when payments become due, such as after measurement, verification and acceptance of an installed project when realized project savings are available to make those payments.

Ordering agencies may enter into ESPCs with confidence in their ability to make the required payments throughout the term of the contract, because the ESCO guarantees sufficient cost savings to cover project costs within a timeframe of up to 25 years. If the guaranteed savings are not realized, the ordering agency either (1) does not make a payment to the ESCO for those savings not realized, or (2) if the ordering agency has made a payment it will withhold the amount of shortfall from future payments.

A.5.2 Requirements for and Exemptions from Competition

The requirements for and exemptions from competition in awarding TOs are derived from 41 U.S.C. § 3301, 10 CFR Part 436 and FAR 16.505. In addition, ordering agencies have the flexibility to further specify TO competition terms based on their own agency procedures and regulations, as applicable.

FAR 16.505 defines the rules for awarding TOs under multiple-award contracts. According to FAR 16.505(b)(2)(i), a contracting officer shall give every awardee a fair opportunity to be considered for a task-order exceeding \$3,000 unless one of the following statutory exceptions applies:

- a) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
- b) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
- c) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order;
- d) It is necessary to place an order to satisfy a minimum guarantee;
- e) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source; or
- f) Contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in FAR 19.000(a)(3).

These situations are referred to as exceptions to fair opportunity. An ordering agency may use one of these exceptions to award a TO to a single source if the circumstances warrant it. However, exceptions (a) through (e) would rarely be applicable for ESPC projects.

If none of the exceptions to fair opportunity apply, the TO must be awarded competitively in accordance with the fair opportunity procedures outlined in the DOE ESPC IDIQ contracts.

A.5.3 Fair Opportunity in Contractor-Initiated ESPC Projects

Each ESCO awardee may actively market the ESPC program and its contract to federal agencies. If the ESCO subsequently submits an unsolicited proposal or PA to the federal agency as a result of such marketing, the federal ordering agency must provide fair opportunity to all IDIQ awardees. For more information about choosing an ESCO, see Phase 2.1 and 2.2.

A.5.4 Complaint Resolution Regarding Fair Opportunity for Contractor-Initiated ESPC Projects

TOs awarded under the DOE ESPC IDIQ contracts are not subject to protest procedures, unless the order increases the scope, period, or maximum value of the contract, or the order value is greater than \$10 million. In the event there is a protest regarding a TO award or the down-selection process, the ordering agency is responsible for addressing all concerns in accordance with FAR Subpart 33.1 and other applicable regulations and procedures.

In lieu of a formal protest, an ESCO may file a complaint with the designated Task and Delivery Order Ombudsman at the ordering agency. The Ombudsman is responsible for reviewing these complaints and ensuring that all contractors are afforded a fair opportunity to be considered for the issuance of orders consistent with the procedures set forth in the DOE ESPC IDIQ contracts. The ordering agency Ombudsman, after collecting all relevant facts, makes a determination whether all contractors were afforded a fair opportunity. When necessary, the ordering agency Ombudsman also makes a determination about any corrective action(s) to be taken. The ordering agency Ombudsman normally responds directly to the ESCO filing the complaint by providing the findings and proposed resolution. DOE requests that a copy of this response also be provided to the DOE FEMP Project Manager. Alternative dispute resolution techniques are recommended when the initial proposed resolution is not accepted by the ESCO.

A.5.5 Alternative Dispute Resolution

In accordance with the IDIQ contract, the government and the contractor shall use their best efforts to informally resolve any contractual issues by mutual agreement. The use of an alternative disputes resolution (ADR) process is recognized as a method for the fair and efficient resolution of contractual issues to reach a just and equitable solution that is satisfactory to both parties. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. Either party may request use of the ADR; however, a voluntary election by both parties is required to participate. If a request for ADR proceedings is submitted and either party rejects the request a written explanation with the reasons for rejection shall be provided to the requestor.

Part II - The ESPC Task Order (TO) Process

B.1 Overview of TO Process

Part II of the Ordering Guide describes the process of developing and implementing a task order under the DOE ESPC IDIQ contracts. The process is described in detail in the following sections, which cover Phases 1 through 5 of the process. The highlights of each phase are outlined below.

This guide describes the acquisition steps and ESPC processes for awarding an ESPC project TO procured using the methods described in the DOE ESPC IDIQ contracts, either using FEMP's best-practices method, the Selection Based on Qualifications (SBQ) or Selection Based on Preliminary Assessment (SBPA) method. The steps and processes are based on the assumption that the project proceeds to a successful conclusion, without major detours, such as a decision not to proceed after reviewing the NOO responses or PA(s).

B.2 ESPC Process Highlights

Phase 1. Initial Project Planning

- Ordering agency gets started with an FPE
- Ordering agency contacts DOE IDIQ Contracting Officer to use the DOE ESPC IDIQ contracts
- Ordering agency assembles the Agency Acquisition Team (AAT)
- Ordering agency AAT receives/attends ESPC-related training
- Ordering agency considers project motivations and site needs and develops Acquisition Plan
- Ordering agency defines general project requirements
- Ordering agency determines appropriate approval levels

Phase 2. Notice, Selection and Preliminary Assessment (PA)

- Ordering agency determines ESCO selection procedures and fair opportunity consideration award method (SBQ vs SBPA)
 - SBQ Method – Down-select to one ESCO to do PA (notify unsuccessful offerors)
 - SBPA Method – Down-select to two or more ESCOs to perform PA for further evaluation
- The ordering agency proposing to use this IDIQ shall submit a written notification to the DOE IDIQ Contracting Officer
- Ordering agency sends Notice of Opportunity (NOO) to Fedbizops
- Ordering agency evaluates ESCO responses to NOO
- SBQ: Ordering agency selects 2 or more for further consideration (e.g., interview, additional questions)
- SBQ: Ordering agency selects one ESCO for PA development
- SBPA: Ordering agency selects two or more ESCOs for PA development
- SBPA: Ordering agency selects one ESCO to develop proposal/IGA (investment grade audit)
- ESCO notifies DOE CO in writing that it has been selected before the PA is submitted
- Ordering agency and ESCO registers project in eProject Builder
- Ordering agency designates and engages a qualified PF (internal, DOE or other)

- If a DOE PF is engaged, DOE negotiates a Skaggs IAA with the ordering agency for reimbursement
- Ordering agency schedules and conducts PA Kickoff Meeting
- ESCO(s) conducts PA Site Visits
- ESCO(s) submits PA(s)
- Ordering agency reviews PA(s)
- Ordering agency determines project viability (Go/No-Go decision)
- Ordering agency selects one ESCO for IGA development
- Draft and issue Notice of Intent to Award (NOITA)
- Ordering agency drafts and issues TO Request For Proposal (RFP)

Phase 3. Project Development, Proposal and Award

- Ordering agency and ESCO schedule and hold Investment Grade Audit (IGA) Kickoff Meeting
- ESCO Conducts IGA (or in-depth site survey)
- Agency witnesses baseline measurements
- ESCO develops and submits proposal with IGA results included
- Ordering agency reviews ESCO's proposal package
- Ordering agency and ESCO conduct final negotiations; agreement is reached on all issues
- Ordering agency notifies DOE IDIQ CO and COR with proposed TO value; DOE IDIQ CO and COR may review TO documents; CO provides an authorization to award
- Ordering agency verifies proposal schedules submitted by ESCO match what is in ePB and approves them
- ESCO signs TO and returns it to ordering agency
- Ordering agency awards TO

Phase 4. Design, Implementation and Acceptance

- ESCO and ordering agency hold a post-award conference
- ESCO provides any required proof of insurance and payment and performance bonds
- ESCO submits project design and construction package, including commissioning plan
- Ordering agency reviews and approves construction package before construction begins
- Ordering agency issues notice to proceed with construction to ESCO
- Construction, inspections, documentation and any training occur per TO award
- ESCO proves performance by submitting the commissioning report and post-installation report that includes ePB output, to ordering agency, and provides copies to DOE
- Ordering agency confirms receipt of all other ESCO required submittals before acceptance (e.g., O&M manuals, training, etc.)
- Ordering agency witnesses, inspects, and accepts all ECMs and compares results of post-installation M&V with ePB, prior to project acceptance
- ESCO provides copy of notice of agency project acceptance to DOE

Phase 5. Post-Acceptance Performance and Closeout

- ESCO delivers contracted equipment performance and energy cost savings
- ESCO performs agreed-upon performance-period services (O&M, M&V, R&R).
- Agency witnesses M&V
- ESCO completes and submits periodic M&V reports to the ordering agency and includes an M&V summary from ePB

- Ordering agency witnesses ESCO measurements, reviews and approves the ESCO's M&V reports and M&V summary in ePB
- Ordering agency and ESCO reconcile performance or savings shortfalls, if necessary
- Ordering agency makes payments to the ESCO
- Ordering agency administers TO modifications as needed
- Ordering agency closes out ESPC TO and notifies DOE IDIQ Contracting Officer
- Ordering agency maintains and updates contract file as needed

Phase 1: Initial Project Planning

C.1 Getting Started

C.1.1 Contact a DOE FEMP Federal Project Executive (FPE)

A FPE performs a lead role in DOE's ESPC process. From the beginning, when an agency needs to decide if an ESPC is the best tool for their needs to the end of a project, the FPE is essentially a case worker, helping to keep projects on track and to be sure whatever DOE FEMP resources that are needed are made available. Their initial project support focuses on the first two phases of project development, through ESCO selection and the PA kick-off, they are also responsible for assisting agencies and coordinating resources through the life of each task order project. FPEs are DOE national laboratory experts who cover specific regions in the U.S. and globally (DOE's ESPC IDIQ contracts are worldwide). Check the FEMP website for current contact information for the FPE in the region of your project.

The FPE will guide the agency's first steps in the project, and can also coordinate ESPC training and other FEMP services for the ordering agency. With the FPE's help, the agency focuses on the following objectives in Phases 1 and 2:

- Determining whether an ESPC project, or other alternatively financed project, is feasible
- Educating agency staff about ESPCs and other options
- Developing support in the ordering agency needed to initiate a project and see it through in a timely manner, especially project decision makers and approvers
- Establishing the preliminary scope and goals for the project
- Helping agencies gain access to and use FEMP resources and tools such as renewable energy screenings and the ESCO Selector
- Assisting the agency with the development of the Notice of Opportunity
- Participating in the Preliminary Assessment kick-off meeting and communicating with the Project Facilitator (PF)
- Helping as needed to keep a project on track:
 - Repeated training and briefing on ESPC to staff, including senior officials, new to project
 - Providing documentation about the value of ESPC to avoid decisions about reducing project scope that are not in the agency's best interest.
 - Helping project champions acquire approvals
 - Helping, with a broad range of FEMP resources, to address problems

C.1.2 Contact the DOE IDIQ Contracting Officer

In order to issue a TO under the DOE ESPC IDIQ contracts, the ordering agency shall notify the DOE IDIQ Contracting Office of its intent to pursue an ESPC project under the IDIQ. The written notification (by email or similar method) shall include the following information:

- Ordering agency title and address,
- Proposed ESPC project name and location(s)/site(s),
- Brief description of project goals and general scope, such as desired ECMs, if known,

- Estimated value of the ESPC project,
- Name, contact information and warrant level of the ordering agency CO who will be responsible for competing, negotiating, awarding, and administering the ESPC TO,
- Name and contact information for the ordering agency COR/COTR and other key officials, and,
- Summary of ESPC training and/or experience for the ordering agency CO, COR/COTR and other key officials

This notice is to make sure that DOE is aware of all potential activity under its IDIQ contracts to ensure accurate tracking of the remaining contract ceiling available for future projects. The notice also provides an opportunity for the DOE IDIQ Contracting Office to assess the ESPC knowledge of ordering agency officials and advise where to find additional information and training. In addition, providing notice gives the ordering agency an opportunity to ask questions, especially on acquisition-related topics. Some of the items that the DOE IDIQ Contracting Office will check are:

- Determining the estimated scope and size of the ESPC project fall within the terms and conditions of the DOE ESPC IDIQ contracts,
- Confirming the ordering agency CO's warrant is sufficient for the projected size of the project, and
- Verifying that the ESPC training and/or experience of the ordering agency CO (and other ordering agency officials) is recent and sufficient.

If the ordering agency CO changes after an ESPC TO is awarded, the ordering agency shall notify the DOE IDIQ Contracting Office, as part of the transition process. This provides another opportunity for an exchange of knowledge between DOE and the ordering agency and to confirm the new ordering agency CO has sufficient training, experience and warrant level to administer the ESPC TO.

C.2 Initial Project Setup and Planning

C.2.1 Assemble an Acquisition Team

The acquisition team steers the ordering agency's efforts in developing the project, builds support for the project inside the agency, and obtains the necessary management approvals. The team should include anyone who could potentially have a significant impact on or be affected by the ESPC project. The makeup and commitment of the team is an important determining factor in the success or failure of a project. The acquisition team must include at least the ordering agency CO and a Site Technical Representative (STR), who serves as the principal point of contact on technical issues. The STR could be the Facility Manager, Energy Program Manager, or other similar roles. The acquisition team should represent all groups that are affected by or should be consulted about the project, such as the following:

- Facility management
- Facility maintenance
- Energy, design, and construction engineers
- Procurement officials
- Legal
- Budget/comptroller
- Administrative services
- Maintenance
- Security
- Union representatives and labor relations
- Agency customers and tenants

- Environment, health, and safety
- Consider expansion of the team to include information systems, process, and other specialties if applicable to the potential scope of work

The acquisition team should be designated, on-board, and educated about ESPC rules and benefits early in the process. As early as possible and throughout the process, acquisition team members should identify the ordering agency decision makers who have the authority to approve an ESPC project, educate them about the ESPC program, familiarize them with the site's project plans, and ensure that they have all the information they need to approve the project. Lack of an acquisition team and the support of upper management can severely impede or entirely halt the process after significant resources have been expended by the ordering agency and the ESCO.

Teamwork is critical to the success of an ESPC project. The ordering agency should designate a project champion who will lead the agency team's efforts along with the ordering agency CO. The project champion should ensure that team members are trained and stakeholders and decision makers are educated about the project. A committed project champion is a key factor in the success of the project, paving the path forward and building agency support for the project. The ordering agency should also enlist the support of the site/agency upper management and keep them fully briefed, making sure their questions and concerns are addressed throughout project development.

C.2.2 Acquisition Strategy and Planning

The acquisition team must formulate an acquisition strategy for completing the procurement. The team must determine what actions are necessary for a successful project, who will be responsible, and when and how these actions will be accomplished. It is essential that all acquisition team members and appropriate management officials should be committed to the final strategy.

The acquisition strategy should include a schedule of all actions necessary to award the task order, with an individual assigned responsibility for each action. The success of any procurement strategy depends on continuous assessment of progress. The acquisition team should frequently compare the schedule to actual accomplishments to ensure that impediments to progress are overcome quickly.

Ordering agencies must make a determination of best procurement approach in accordance with FAR 17.502-1. The determination must address the suitability of the DOE ESPC IDIQ contract vehicle.

Another key factor of acquisition strategy that ordering agencies must consider is how to maximize small business participation in their ESPC projects. This can be accomplished through set-asides and/or subcontracting opportunities. The DOE ESPC IDIQ contract includes procedures for partially setting aside a potential TO project for the small business with a DOE IDIQ award. DOE also recommends that an ordering agency require each interested ESCO submit a small business participation plan with the proposed goals based on the total estimated task order value. For potential TO projects not set aside and the selected ESCO is not the small business, all the large business ESCOs have an approved individual small business subcontracting plan included as part of their IDIQ contract. An ordering agency may establish its own small business participation and subcontracting goals; however, they must be equal to or greater than the minimum goals established in the DOE ESPC IDIQ contract.

Although a written acquisition plan may not be required for a firm-fixed-price TO by ordering agency procedures, it is highly recommended due to the complexity of an ESPC project, the potential high dollar value of an ESPC TO, and a TO period of performance that could last up to 25 years.

Check the FEMP website for information concerning the development of an acquisition strategy, a written acquisition plan and additional guidance on requirements documentation.

C.2.3 Issues to be Addressed by Acquisition Team

The acquisition team should consider the issues listed below, along with others more specific to the candidate site, when considering or planning an ESPC project.

Future use of the facilities: An ordering agency might not want to pursue an ESPC task order at a facility that could be closed down during the performance period of the task order.

Needs and desires of facility occupants: Are there problems with keeping the area at a comfortable temperature or problems meeting environmental requirements? These types of concerns by ordering agency employees would motivate an organization to ensure an ESPC project is successful.

Condition of existing equipment: Is the equipment old and unreliable so that it will require replacement or major repairs soon? Is there a deferred maintenance list which the ESPC ask order could help with?

Reliability, Resiliency, and Security: Are there mission requirements that require improved up-time of utilities or automatic switching of critical loads to backup power in case of a power outage? Do you need water or energy storage to continue your mission? Are there web security issues that could be addressed in an existing data center or control system? These types of concerns could be considered for inclusion in an ESPC.

Utility budget and energy-related equipment and O&M budget: Is the annual utility budget large enough to attract an ESPC proposal (greater than \$500K), and is it stable, or increasing in size? Are there any energy upgrade projects or service contracts that could be transferred to the ESPC? How could an agency align O&M savings dollars for use in the payment of an ESPC? Considering these savings could provide a significant benefit to increase your ESPC project scope of work and could help energy savings be persistence if an ESCO performs the O&M.

Scope: What areas or facilities may be included in the task order? Make this as broad as possible. It's easy to reduce buildings to be included; not so easy to add after the ESCO is selected.

Energy Conservation Measures (ECMs): What ECMs would the agency consider for a project? How could the agency bundle them for a more cost-effective project, greater overall energy efficiency and/or water efficiency? This is a good practice, but remain open to major changes once your ESCO partner brings their expertise to your project.

Potential savings both in energy units and dollars: Are dollar savings large enough to attract an ESCO and provide a payback period which would be acceptable to the agency? Work with your DOE FPE to help to determine this, especially not to miss opportunities.

M&V approach: While FEMP has strong M&V best-practices and guides, consider if there are any special agency desires that should be considered? Are there barriers that might impede certain M&V approaches (e.g., lack of building-level meters or an electronic energy-management system)?

Conflicts: Are there any current or pending construction projects at the selected facilities?

Obstacles: Are there barriers to a project, such as security issues, union issues, or management attitudes that need to be addressed to assure success?

Other issues: What do the managers of these facilities need to do to support the project? Where will the ESCO have on-site space and who is in charge of it? Are agency contractors involved on site? Are there other contractual arrangements in place that might be affected by an ESPC project?

Phase 2: Notice, Selection and Preliminary Assessment (PA)

D.1 Overview of Phase 2

Key decisions are made during Phase 2 that will determine the feasibility of an ESPC project and have a direct impact on its successful completion. The ordering agency gives notice and a fair opportunity for award to all IDIQ contract holders by publishing a Notice of Opportunity (NOO), and ultimately selects one ESCO to develop an ESPC TO project based on information submitted in response to the NOO. Such information may include contractor qualifications, PAs, and other specified facts or data.

D.2 Providing Fair Opportunity to all ESCOs under the DOE ESPC IDIQ Contracts

An ordering agency CO must provide each contractor a fair opportunity to be considered for any ESPC TO award, unless an exception applies. In selecting a contractor, the ordering agency CO may exercise discretion in developing contractor selection procedures, as long as the procedures comply with the FAR, all other applicable laws and regulations, ordering agency policies and the framework of the selection methods established in the ESPC IDIQ and this guide. The ordering agency CO must indicate in the NOO the selection method and selection steps the agency intends to use for the entire ordering process. All notices required under Section H.4 of the ESPC IDIQ must be published on the Federal Business Opportunities (FBO) website, and any other reasonable methodology identified by the ordering agency. While the ESPC TO award is limited to the ESPC IDIQ contract holders, publishing the NOO on the FBO website provides notification of subcontracting opportunities to small businesses, as well as other large businesses.

D.2.1 The Notice of Opportunity (NOO)

The NOO is the first key document to notify the ESCOs with IDIQ contracts of a potential ESPC project and establish that fair opportunity has been provided. DOE recommends keeping the NOO as broad as possible to allow the ESCO(s) the greatest flexibility to later propose comprehensive and innovative solutions. For this reason, the use of 3rd party energy audits are not recommended as some potential ECMs could be overlooked. The ESPC authorizing statute (42USC8287) establishes the following framework for DOE's IDIQ contract minimum content requirements for an NOO:

1. The ordering agency's desire to pursue an ESPC project.
2. A concise statement of the ordering agency's objectives for using ESPC services.
3. A general description of the ordering agency's mission and the facilities that may be included in the potential project. As noted above, the ordering agency should keep this description as broad as possible.
4. Summary information about the energy usage for its facilities.
5. A request that each interested contractor submit a response that includes:
 - a. An Expression of Interest (EOI) in pursuing a potential ESPC project, and

- b. If interested -
 - c. Qualifications for performing site surveys/investigations, feasibility designs/studies or similar assessments such as a PA, IGA, etc., and
 - d. Any other preliminary information the ordering agency needs to make a meaningful selection.
6. The significant evaluation factors that the ordering agency expects to consider in reviewing the responses and their relative importance. DOE highly recommends keeping the number of factors to the minimum necessary and prioritizing them to reflect the ordering agency's most important objectives rather than considering them all equal.
 7. A submittal deadline that provides a reasonable period of time for the contractors to respond to the notice. DOE recommends factoring in time for questions and answers before the EOIs are due.

For other preliminary information, DOE recommends that the ordering agency first consider the following key items:

1. An ESCO's management approach (how they're going to get the job done). This includes, but is not limited to information on how the ESCO will maintain continuity throughout the entire process.
2. The methods and procedures an ESCO plans to use to obtain competitive prices on ECMs and achieve the best value for the government
3. The personnel an ESCO plans to be responsible for the PA and their qualifications
4. An ESCO's approach to developing energy baselines and the M&V approach for this project

See the FEMP website for additional instructions for formulating the NOO, including a template.

D.2.2 Specific ESCO Selection Methods

When issuing a task order under the DOE ESPC IDIQ, a federal agency is authorized to use simplified contractor selection procedures. The DOE ESPC IDIQ contracts allow a federal agency to negotiate and award individual task orders from an approved, pre-competed pool of ESCOs under an expedited and streamlined procurement process using either selection procedures based on an ESCO's qualifications or an ESCO's preliminary assessment. Selection by qualifications (SBQ) allows agencies to evaluate ESCOs based on their past experience, performance, and other criteria that the federal agency deems relevant. Selection based on preliminary assessment (SBPA) allows agencies to evaluate ESCOs based on submission of preliminary assessments for an ESPC project. The two methods are described below followed by recommendations based on ESPC program experience.

D.2.2.1 Selection Based on Qualifications (SBQ)

1. The ordering agency CO issues an NOO as described above that includes a description of the selection method chosen. Agency contracting officers are encouraged to use FEMP's ESCO Selector Tool, which helps streamline the ESPC NOO production process and makes evaluating NOO responses from energy service companies (ESCOs) easier for site project teams. It helps agencies understand the steps to produce NOOs for an ESPC projects, incorporates best practices associated with developing NOOs and evaluating NOO responses, facilitates writing and issuing

complete NOOs that are in compliance with U.S. Department of Energy indefinite-delivery, indefinite-quantity ESPCs, and helps manage documentation associated with ESCO selection. The ESCO Selector Tool can be accessed on the FEMP website and can be directly accessed at <http://hyperion.ornl.gov/noo/>. Federal Project Executives can assist with training and use of the ESCO Selector.

2. The ordering agency CO reviews all responses submitted, and may select two or more ESCOs for further consideration. The ordering agency must provide an opportunity for a debriefing to any ESCOs not selected.
3. The ordering agency CO contacts the selected ESCOs to request additional information that includes the following:
 - a) Qualifications for implementing potential ECMs;
 - b) References for projects, or similar efforts, that included any of the potential ECMs;
 - c) Specific detailed descriptions of those projects;
 - d) The resulting energy savings from those projects;
 - e) An explanation of how those projects relate to the objectives (or general scope and content) of the envisioned project; and
 - f) Any other information the ordering agency needs to make a meaningful selection.

The ordering agency CO must also advise the selected ESCOs of the significant evaluation factors the agency expects to consider in reviewing the additional information. If interviews will be conducted, the ordering agency CO must provide a description of the manner in which the interview will take place (i.e., by telephone, in writing, by videoconference, or in person).

4. The ordering agency CO reviews the additional information from the selected ESCOs, and selects one ESCO to develop and submit a PA in accordance with its IDIQ contract. As required by law, the ordering agency must provide an opportunity for a debriefing to the remaining ESCOs not selected.

D.2.2.2 Selection Based on Preliminary Assessments (SBPA)

The steps for this method are similar to the SBQ method except for the following:

1. The NOO must include a description of the SBPA selection method.
2. The ordering agency CO may select two or more ESCOs to develop and submit PAs at this step.
3. The ordering agency CO must also request a PA and explain how it will be used in the selection process. For selection purposes only, the ordering agency may limit the scope of the PA to a discrete portion of the overall ESPC project. If the PA scope is limited, DOE recommends that a second full-scope PA be developed by the final selected ESCO to ensure the viability of the whole project is considered.
4. The ordering agency CO must also review the PA, with technical assistance. The ordering agency determines whether there is a viable ESPC project, selects one ESCO and then issues a NOITA letter to the ESCO. The selected ESCO will then proceed with preparation of a proposal that includes an IGA.

D.2.3 Additional Recommendations for the Selection Process

The following recommendations are based on the experience of various ESPC experts and other ordering agencies that have done ESPC projects under one of DOE's ESPC IDIQ contracts.

1. The SBQ selection method can elicit as much useful information for finding the best ESCO for a specific project as other more complex, costly, labor-intensive, and time-consuming methods. Some observed benefits include:
 - a. Quicker NOO development,
 - b. More comprehensive project scope developed by the ESCO,
 - c. More efficient ESCO selection and shorter project development cycle,
 - d. Administrative burden is minimized for agency staff,
 - e. Potential out-of-scope issues are avoided in fair-opportunity ESCO selection.
 - f. A PA process that is collaborative and flexible (competitive PAs are constrained by typical competition rules)
2. Identify two or three site-specific needs or wish-list items (e.g., renewable energy conservation measures). This allows the ordering agency to better match ESCO capabilities with site needs. If there is an opportunity or need that is particularly challenging, ask how respondents would tackle the problem.
3. Don't hesitate to conduct in-person interviews with down-selected ESCOs in the process. Face-to-face meetings can provide perspectives that may be missed otherwise.

D.3 Designating and Engaging a Qualified Project Facilitator (PF)

D.3.1 General Requirements for a Project Facilitator

DOE requires ordering agencies to use a qualified PF when using the DOE ESPC IDIQ contracts to place an ESPC TO. A qualified PF is an experienced, unbiased advisor who can help the ordering agency avoid obstacles and expedite the project. A qualified PF may be a qualified federal employee with ESPC project experience within the ordering agency, may be contracted directly by the ordering agency, or may be obtained through DOE's Contracting Office.

In general, the PF can guide the ordering agency through the entire process of developing, awarding, and verifying savings for the ESPC project. The PF can provide expert consultation on contractual and financial/funding issues, technology and engineering considerations, and M&V processes. More specifically, the PF can assist an ordering agency with the development of various documents (NOITA, TO RFP, IGA and proposal, etc.), the process of ESCO selection, the coordination of various kickoff meetings (PA, IGA, Construction, etc.), the review of key project documents (PA, Proposal, M&V reports, etc.) and provide guidance during construction and acceptance. This support may help ordering agencies achieve fair and reasonable pricing, minimize interest rates, keep the project on track, start achieving energy savings as soon as possible, and employ rigorous cost-effective M&V strategies. The PFs also have the experience to facilitate a balanced collaboration between the ordering agency and the ESCO to ensure the ESPC project is successful. The scope of the PF services is ultimately determined by the ordering agency's needs; however, DOE highly recommends taking advantage of the expertise of the PF during every step of the process.

If an ordering agency chooses to obtain PF services through DOE's Contracting Office, the ordering agency must submit a request for PF support to the DOE IDIQ COR and/or the FPE representative.

See the FEMP website for additional information concerning PF support provided by FEMP.

D.3.2 The Interagency Agreement (IAA) for Reimbursable PF Services under DOE's Contract

An IAA between DOE and the ordering agency is required to reimburse DOE for reimbursable PF services. This is the only cost to the agency for the use of FEMPs contract and resources. Under the authority of 42 U.S.C. § 8287d, otherwise known as the Skaggs Amendment, the ordering agency is authorized, without the constraints of the Economy Act, to reimburse DOE from the savings realized from the ESPC project. The DOE Contracting Office coordinates with the ordering agency CO to execute the IAA. Additional information on available payment options for this "Skaggs IAA" can be obtained by contacting the DOE Contracting Office.

D.4 The Preliminary Assessment (PA)

The PA is intended to give the ordering agency and the ESCO enough information to make a confident decision on proceeding with the ESPC project, but is not expected to reflect a complete understanding of agency- and site-specific requirements. The PA is intended to be produced at a modest cost to the ESCO and should only be long enough to convey the viability of a project. Per section H.4 of the IDIQ contract the following provides an overview of the PA.

D.4.1 Contents of a PA

The PA must be 35 pages plus one page for each ECM per template J-13 of the contract and include at a minimum the following sections:

1. Project Overview, or Executive Summary, composed of –
 - a. A narrative summary of the proposed project,
 - b. A brief summary of the project management plan / approach,
 - c. Recommended and potential ECMs,
 - d. Ranges for energy, water and related cost savings, and
 - e. A conceptual range of implementation price.
2. Technical Assessment, composed of –
 - a. A project management plan that provides for the efficient development of a proposal for a project and effectively addresses the ordering agency's objectives depicted in the NOO. Although not required in the contract, key recommended elements of the plan include:
 - i. A communication plan
 - ii. Organization and key personnel, including identification of functions to be subcontracted
 - iii. Description of the subcontracting management plan
 - iv. A draft Risk, Responsibility, and Performance matrix
 - vi. Expectations for agency participation
 - vii. ECM Project schedule

- b. Descriptions for each recommended and potential ECM. In addition to narrative information, each ECM description should include ranges for estimated implementation price and savings.
 - i. Recommended ECM – the ESCO is quite confident this ECM is viable for this ESPC project and will be included in the proposal. Contractor shall submit narrative information and estimated implementation price and savings ranges in the format specified in Attachment J-13.
 - ii. Potential ECMs are those ECMs the Contractor considers worthy of evaluation, but which require evaluation and verification of field conditions in the proposal development phase for the Contractor to complete a more accurate calculation to increase its confidence for inclusion in the proposal. For these ECMs, the Contractor shall provide a narrative description of each ECM, how they may save energy for the site, and a conceptual-level estimate range of potential implementation costs, cost savings, and energy savings.
- c. *ECM Performance Measurement* – Provide a general description for the M&V approach that will be proposed for the recommended ECMs in accordance with Section C.4.2, Paragraph A and the latest version of the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts. The M&V approach shall also include a general description of the recommended level of government witnessing that complies with the latest version of DOE FEMP’s “Guide to Government Witnessing and Review of Measurement and Verification Activities.” (See Attachment J-17 for specific web link.). Attachment J-13 will be submitted for each ECM and will also contain the specific recommended approach for M&V and where the ESCOs PA may differ from FEMPs M&V Guidelines.

If operation and maintenance savings are included in the PA, then the Contractor shall include a general description of the methods that comply with the latest version of “How to Determine and Verify Operating and Maintenance (O&M) Savings in Energy Savings performance Contracts”. In determining energy cost savings, the Contractor shall comply with the latest version of FEMPs “Guidance on Utility Rate Estimations and Weather Normalization in an ESPC”.

Although not required in the contract, a key element should also cover the following the baseline energy use for the buildings/site being evaluated, and if applicable, the baselines of each ECM being recommended and utility rates used for calculations.

- d. Completed TO Schedules from eProject Builder for all recommended ECMs. This includes schedules Summary, Utility rate escalation, Schedule 1, Schedule 2a and 2b, Schedule 3, and Schedule 4. that provide estimates of proposed energy and cost savings, and the estimated implementation price. The ordering agency should provide guidance to the ESCO on what values to use in the schedules, such as the average of the ranges provided in the ECM descriptions. At this stage of development the costs and savings may be largely based on the contractors past experience and other benchmarking data. Details of savings calculation and cost build ups are not required for this phase and should be provided during the Proposal phase.

See the FEMP website for a templates and example to help ESCOs conduct preliminary assessments required for Federal ESPC projects.

D.4.2 ESCO Develops PA at Own Risk

The Government is not liable for the ESCO's costs for development of the PA unless a task order based on the PA is issued to the ESCO. If no task order is awarded, the government has no rights to the contractor's proprietary work products, such as surveys, data, feasibility study reports, and/or design documentation.

D.4.3 Review of PA

The ordering agency's decision on whether or not to proceed with the project is based on its evaluation of whether the project outlined in the PA appears to be feasible and whether it addresses the ordering agency's needs and priorities while complying with the requirements in the DOE ESPC IDIQ contracts.

D.4.3.1 PA Review Guidance

The ordering agency should consider the following criteria:

- Are ECM descriptions and projected energy savings reasonable, acceptable and comprehensive?
- Is the M&V approach reasonable and appropriate?
- Are the risks and responsibilities, as proposed in the Risk, Responsibility & Performance Matrix, acceptable?
- Are the estimated annual cost savings reasonable and consistent with the technical approach?
- Are the service-phase line items, contract term, and total cost, reasonable and consistent with technical approach?
- Does this meet the ordering agency's needs?
- Is it a good deal for the government?
- Will the ordering agency and the ESCO have a good long-term relationship?

The PA may not be perfect, but it should include evaluation of all the top-priority ECMs expected in the TO proposal. Any ordering agency and/or DOE FEMP comments on the PA should be recorded, consolidated, and provided to the ESCO. These comments will be resolved in the proposal, which includes an IGA, without requiring additional iterations of the PA.

See the FEMP website for a worksheet template and additional guidance on reviewing ESCO submitted PAs.

D.4.3.2 Go/No-Go Decision

A. Selection Based on Qualifications (SBQ)

After the PA is reviewed, the ordering agency must decide whether to go forward with the project. If the ordering agency decides to go forward, the ordering agency CO/COTR should provide comments to the ESCO about the PA, and particularly any adjustments needed in the ESCO's approach or direction as the ESCO team conducts the IGA.

If the ordering agency rejects the PA, it must be treated as proprietary information unless otherwise agreed to by the ESCO, and the ordering agency may not use it in developing future projects. At that point, the ordering agency can walk away from the project or consider starting anew.

B. Selection Based on Preliminary Assessments (SBPA)

In the case where the ordering agency is making an ESCO selection following the SBPA method, with PAs submitted by more than one ESCO, a few additional considerations apply. If the ordering agency determines that none of the PAs are satisfactory, it must reject and return all copies of each PA to the respective ESCOs. The ordering agency may start over by issuing a revised set of requirements in a new NOO to the DOE IDIQ ESCOs, but may not disclose any proprietary information submitted by ESCOs under the original opportunity.

D.5 Notice of Intent to Award (NOITA)

The ordering agency CO formalizes the decision to proceed toward award of an ESPC project to the ESCO by transmitting a Notice of Intent to Award (NOITA) letter. The letter specifies a time frame and any conditions incumbent on the selected ESCO for conducting the IGA and submitting a proposal. **The Government is not responsible for costs associated with audits and preparation of PAs unless a TO is awarded.**

The two-step ESPC process calling for a PA followed by a proposal based on the IGA was established in the DOE ESPC IDIQ contracts in accordance with the legislated ESPC authority, based on consensus among federal policy makers and the ESCO community on how to best conserve time and money for both parties. The purpose of the NOITA is to provide good faith assurance to the ESCO that the ordering agency intends to move forward with the ESPC project, subject to the ESCO's demonstration of a valid cost-saving project that is in the best interest of the Government. Therefore, it is important that the ordering agency be certain of its commitment before issuing the NOITA, and that the notice contain any conditions deemed necessary by the ordering agency.

D.6 Verification of Sufficient Ordering Capacity in IDIQ

In order to ensure there is enough ceiling capacity left on the DOE ESPC IDIQ contracts, the ordering agency must provide to the DOE IDIQ Contracting Office an estimate of the maximum potential price of the TO before the NOITA is issued. The estimated price ranges in the ESCO's PA can be used for this purpose.

D.7 The Task Order RFP (TO RFP)

The success of an ESPC project depends on a good working collaboration between the ordering agency and ESCO. At any time during project development, and especially when the TO RFP is taking shape, each party should freely disclose findings that could affect the development of the TO RFP. The ordering agency and the ESCO benefit from preventing delays and moving the project forward efficiently.

D.7.1 Function of the TO RFP

The DOE ESPC IDIQ contracts are intended to be flexible and to accommodate the particular requirements of the ordering agencies. Ordering agencies are expected to use the TO RFP to address their needs and circumstances by incorporating into the task order all necessary agency-, site-, and project-specific standards, procedures, functional requirements, terms, and conditions (not already addressed in the IDIQ), and to communicate these requirements to the ESCO. The terms of the TO RFP, which are ultimately incorporated into the awarded TO, take precedence over the terms of the IDIQ contracts as long as they remain within the IDIQ scope, period of performance, and contract ceiling.

TO-RFP section H.5 Requirements for Task Order Proposals and Proposal Reviews guides the ESCO in preparing its proposal and submission of supporting information. ESCO's may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. Agencies may also emphasize the need for ESCOs to comply with FAR 52.244-5 Competition in Subcontracting by stating that subcontractors shall be selected on a competitive basis to the maximum practical extent, and agencies may request that ESCOs shall conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices and include the results of these analysis in the price proposal. Any other supporting documentation that is required by the ordering agency to make an evaluation of the proposal should be stated in the TO RFP.

Some provisions that must be addressed in the TO RFP include agency-specific information, such as contact information and invoicing procedures. Ordering agencies also generally use the TO RFP to specify how operations and maintenance (O&M) and equipment repair and replacement (R&R) are to be handled. Other items that should be specified include special environmental, safety, and health requirements, and compatibility requirements for submittals.

It is imperative that those developing the TO RFP communicate with all site stakeholders to accurately identify requirements and to ensure that the TO RFP adequately addresses all agency and site requirements.

D.7.2 Prescriptive TO RFP Template

A prescriptive template for the TO RFP is provided by DOE FEMP to minimize the time and effort required for TO RFP development. The template identifies and shows the IDIQ provisions that usually require additions or amendments to specify agency-, site- or project-specific requirements. The template lists the provisions by number, in the order in which they appear in the contract. Using the template as a guide to developing the TO RFP saves time, as it precludes the need to review the entire IDIQ contract in order to determine what should or must be addressed in the TO RFP. Also, ESCOs are familiar with the format.

Only the IDIQ contract terms and conditions that are to be altered or supplemented need to be addressed in the TO RFP. Any provision of the ESPC may be altered, unless alteration is specifically prohibited.

See the FEMP website for the prescriptive TO RFP template to be tailored for agency needs.

D.7.3 Subcontracting Goals

The TO RFP may include an indication of the agency-specific subcontracting goals that the ordering agency wants the ESCO to meet in the TO. The DOE ESPC IDIQ contracts include individual Small Business Subcontracting Plans for each ESCO which establishes overall minimum goals for TOs issued under the contract during its term. Ordering agency policy may require agency-specific goals for the project task order based on the composition of its ESPC project. The ordering agency requirements may increase, but not reduce, the goals already established in the DOE ESPC IDIQ contracts. At this point the project should be sufficiently defined to permit identification of the subcontracting goals. This should be another item negotiated and included in the award. The TO RFP prescriptive template provides direction for this as well.

Phase 3. Project Development, Proposal and Award

E.1 Overview of Phase 3

Having been given a NOITA, the ESCO is in a position to begin conducting the IGA for the proposal. The ESCO's proposal is the basis for negotiating the final terms and conditions of the ESPC TO. The proposal provides a complete technical description of the project including detailed ECM descriptions and savings, M&V plan, O&M, etc., as well as the costs, pricing, financing and related information.

Notwithstanding the NOITA issued by the ordering agency, award to the ESCO is still conditional upon the proposal's conformance to all requirements defined in the IDIQ (as supplemented by the TO RFP) and upon successful negotiation and agreement on the requirements of the TO and the content of the proposal. Award is also contingent upon the ESCO's ability to meet pre-award requirements defined in the DOE ESPC IDIQ contracts.

E.2 Developing the Project through an Investment-Grade Audit (IGA)

E.2.1 IGA Kickoff Meeting

Before the ESCO initiates the IGA activities, the ordering agency must hold a kickoff meeting. The designated PF and other FEMP support can assist the ordering agency in planning and facilitating this meeting. They can also help to establish roles and responsibilities, timelines, communications protocols, and a plan for coordinating the process of reviewing the proposal.

At a minimum, the IGA kickoff meeting should ensure that the ordering agency and ESCO agree on:

- The schedule going forward,
- The buildings included in the scope,
- Required ECMs,
- The general O&M approach,
- The general M&V approach, and
- Commissioning

The IGA kickoff meeting is also useful for:

- Introducing new staff on both sides,
- Reviewing milestones from meeting to award
- Reviewing requirements for the submission of the proposal with the IGA (i.e., content and level of detail)
- Establishing access procedures and security requirements, and
- Clarifying as necessary the agency- and site-specific requirements in the TO RFP.

See the FEMP website for a sample IGA kickoff meeting agenda.

E.2.2 IGA Activities

The IGA is a site survey which can include a detailed analysis of the energy cost savings and energy unit savings potential, building conditions, energy consumption, and hours of use or occupancy for a facility for the purpose of preparing technical and price proposals. The IGA provides the information needed to establish the energy and O&M baselines and update the feasibility analyses of the ECMs under consideration. Such information is also used to verify or adjust the estimated annual cost savings and confirm the contractor's ability to structure a project with an acceptable term, with guaranteed annual cost savings that cover the firm-fixed-price contractor payments. The IGA is the basis for both the technical and price portions of the proposal.

Although the ESCO is responsible for most activities during this period, the success of the ESPC project depends on collaboration between the agency and the ESCO, and communication is key. It is critical that the agency stay actively involved throughout the process. During the IGA measurements are taken and baselines are developed so agencies should perform witnessing activities consistent with FEMP guidelines to help ensure that proposed savings are verified and realistic. The ESCO usually sends a team of engineers led by a senior project developer to perform the IGA. The agency generally provides an escort and/or arranges for access to the buildings to be surveyed. Agencies and ESCOs should participate in bi-weekly meetings to keep all parties on the same page by providing a routine venue for addressing both the agency and ESCO questions and ensuring that the ESCO receives updated information. An IGA midpoint review should be conducted to discuss findings to date and determine how to proceed.

E.3 Requirements for Competitive Financing Acquisition

The DOE ESPC IDIQ requires the ESCO to solicit competitive financing offers for the project in the commercial markets. The intent of this requirement is to ensure that the Government will receive the best possible overall value. The financing of an ESPC project is a contract between the ESCO and the financier, and it is the responsibility of the ESCO to obtain competitive offers, evaluate the offers, and make a selection based on their criteria for best value. The ESCO is required to document the process for the Government.

The ESCO first prepares an Investor Deal Summary (IDS) that summarizes the information needed by financiers for evaluation of the project as a financial risk and preparing an offer. The IDS establishes a common basis for the competition, and all offers are to be based on the information in the IDS. Financiers' offers in response to the ESCO's solicitation must be submitted in the form of a Standard Financing Offer (SFO). The SFO form is provided by the ESCOs to the financiers and ensures all information necessary for the ESCO to evaluate and compare offers is provided. The ESCO is required to document the selection of a financing offer in a certified Selection Memorandum. This memorandum and the SFO for the selected offer become part of the proposal.

E.3.1 Debt Modification / Refinancing

The DOE ESPC IDIQ contracts encourage ESCOs to consider and evaluate the potential for refinancing, restructuring, or modification of their TO project loan agreements (collectively "debt modification"). Because the Government is not a contractual party to such financing agreements, it is up to the ESCO to decide whether to pursue debt modification and only the ESCO may initiate communication with its

financier regarding possible debt modifications. The Government is prohibited from making debt modifications a requirement, especially under a fixed price TO.

However, an ordering agency may request the ESCO to consider providing a debt modification evaluation plan as part of its TO proposal, or as a post-award optional deliverable. This plan would include the frequency of evaluations, how they will be documented, and how the application of financial proceeds from a potential refinance could be negotiated. The ordering agency may encourage the ESCO to consider the possibility of applying at least some of the financial proceeds to benefit the ordering agency TO project. In modifying the TO to address such benefits, the ordering agency is responsible for assuring that such a modification complies with applicable procurement rules and requirements. Some examples of benefits may include, but are not limited to, restructuring of annual payments to shorten the overall payback period of the TO, and/or the incorporation of additional project ECMs, particularly ones that were removed from the original scope of the TO project due to cost limitations.

Templates for the IDS and the SFO are available on the FEMP website. They are also attachments to the DOE ESPC IDIQ contracts, so the ESCO will have access and familiarity for completion.

E.4 Proposal Submittal

The ESCO integrates findings from the IGA and the results of the financing acquisition with the requirements stated in the IDIQ and TO RFP to produce the proposal. IGA findings are usually submitted as part of the proposal; however, the ESCO may submit a draft IGA report before the proposal for the ordering agency to review and approve. The proposal addresses ECMs considered, their feasibility, energy savings calculations, rationale for ECM selection, costs to implement each ECM with detailed backup information, and annual cost savings of each ECM with detailed supporting data. The proposal is a firm fixed-price proposal.

Summarized contents of the proposal are as follows:

- Project Overview,
- Volume I: Technical Proposal
 - ECM Descriptions
 - ECM Performance Measurements
 - Project Management Plan
- Volume II: Price Proposal
 - TO schedules and supporting detail
 - Summary of finance offer with IDS, SFOs and Selection Memorandum
- Tailored small business subcontracting goals, if required by the ordering agency

The proposal should also address appropriate M&V methodology, the energy and O&M baselines, management plan, and pricing. The recommended content for the proposal is specified in Section H.4 of the DOE ESPC IDIQ contracts; this content may be modified as allowed by the TO RFP. Negotiations to achieve agreement on a final Task Order are based on the proposal and any other post-IGA submittals.

E.5 Ordering Agency Review of Proposal

The ordering agency's careful review of the proposal, as in any contract obligation, is critical in preparing for the negotiation of the final Task Order and ensuring that the agreement is a good business deal for the ordering agency, the ESCO and the taxpayer. A thorough and systematic review before accepting the offer is imperative. Every detail in all documents related to the TO award must be reviewed to ensure nothing has been overlooked and the terms and conditions are clear for both the ordering agency and the ESCO.

The review of each of the proposal sections requires coordination between the members of the acquisition team assigned to review parts of the proposal for which they have relevant expertise. Developing a review plan and setting aside focused review time greatly assists the team in making a thorough and timely review. As with every step leading to ESPC TO award, adhering to the established schedule should reduce costs and allow for timely implementation of ECMs and the accrual of energy savings for the ordering agency.

E.5.1 Energy Conservation Measure (ECM) Description and Projected Energy Savings

The ECM descriptions and project savings should be carefully reviewed. At a minimum, evaluate the ECMs for the following:

- Compliance with the requirements necessary to qualify as an ECM under 42 U.S.C. § 8287c(4) and 10 C.F.R. § 436.31
- Technical feasibility, reasonableness and acceptability
- An energy analysis based on sound assumptions and engineering principles
- Energy escalation rates were determined using FEMP guidance where appropriate
- Adequate backup documentation on energy and O&M savings
- Only acceptable impacts on Government facilities and operations
- Suitability and service life of proposed equipment
- Adequate consideration of potential environmental impacts

E.5.2 Measurement and Verification (M&V) Plan

Careful consideration should be given to the final M&V plan, because it specifies how savings will be determined. The final M&V plan should specify the following for the entire contract term:

- M&V methods to be employed
- Measurements, calculations, and parameters
- Required content of the annual M&V report
- Recurring M&V deliverables, e.g., reports required with each monthly invoice, if continuous measurements are performed
- One-time M&V deliverables, e.g., the post-installation report
- Responsibility for M&V activities, preparation of analyses, and documentation O&M report requirements for each ECM (if required)
- Details of the recommended witnessing level for each ECM proposed

At a minimum, the agency's review of the M&V plan should confirm the following:

- Approach to post-installation M&V (commissioning) is adequate and acceptable

- Approach to performance-period M&V is adequate and acceptable, appropriately allocating risk between the agency and the ESCO
- Details of the recommended witnessing level and requirements for each ECM proposed is provided and the agency understands what they will be responsible for witnessing throughout the contract
- Dispute resolution approach is acceptable
- Methods for establishing, characterizing, and adjusting pre- and post-baseline conditions is adequate and reasonable

See the FEMP website for documentation providing for implementing uniform and consistent reviews of measurement and verification (M&V) plans for Federal ESPC projects

E.5.3 Definition of Baselines

The definition of baseline energy use and facility conditions is of prime importance in ensuring that measurements after the installation accurately represent the facility's energy use, energy savings, and O&M/R&R savings. The baselines, determined before installation of the ECMs, are used to estimate what the facility's energy use would have been during the contract term had the ECMs not been installed. Savings are determined by comparing a facility's energy use after ECM installation to what its energy use would have been if the ECMs had not been installed.

The TO proposal should contain a complete description of the baseline energy use and associated operation and occupancy profiles to a level of detail dictated by the M&V methods agreed to in the M&V plan. These data are usually documented down to the system level, e.g., power consumption rate and operating hours for a lighting retrofit. Note that data collected during the IGA is generally used for determining the baselines. It is very important for the agency to document the witnessing of the baseline measurements, per the M&V plan. As the ESCO was developing the M&V plan during the IGA, the agency and ESCO should be discussing the level of witnessing that will be required and plan to have the agency witness the baseline measurements during the IGA. The details of what will be witnessed should be in the M&V plan that is submitted in the proposal and the agencies witnessing documents should be checked to match what the final M&V plan included.

If whole-building methods are used, the baseline statistical model or computer simulation of the baseline must be calibrated with current and historical data prior to measure installation, and preferably before award.

This is the ordering agency's last chance to capture its baseline energy use and associated parameters. The baseline is used for the term of the contract, yet much of the equipment that made up the baseline may be modified or removed as part of ECM installation. The ordering agency needs to be comfortable with its accuracy and detail.

E.5.4 Estimated Savings and Guaranteed Savings

The TO proposal estimates the post-installation energy use, typically at the system level, even if whole-building M&V methods are to be used after commissioning. These estimates, like the baseline, are a key element of the savings calculations that will be part of the contract for its term and should be reviewed carefully for accuracy and reasonableness.

Energy savings are calculated by subtracting estimated post-installation energy use from baseline energy use. These savings calculations should be examined in detail, as they are the basis of the contractually

guaranteed savings offered by the ESCO and they directly determine the investment and term allowed in the contract.

The estimated savings are derived from facility information and utility use data, using common engineering methods and calculations, documented in the proposal. Only a portion of the estimated energy savings is included in the guaranteed cost savings. The percentage of the estimated savings that is guaranteed by the ESCO depends upon a number of factors, such as whether the estimation of savings is generally conservative or aggressive; the M&V method — the extent to which critical values are measured instead of estimated; the degree of savings predictability, variability, and reliability for the ECMs; the O&M and R&R practices; the ESCO's risk tolerance; and agency preference.

ESCOs never guarantee 100% of estimated savings, principally because they always want to ensure that the guarantee will be met. The benefit to the agency of guaranteeing less than 100% is assurance that the guaranteed savings—the savings they are counting on to pay the ESCO—will be real.

E.5.5 Commissioning Approach

The ordering agency reviews the proposed commissioning approach, which should address how commissioning will support the ordering agency's objectives for improving facility operations and conditions. The ordering agency should also review and request any needed clarifications regarding issues such as submittal of the final commissioning plan after ordering agency approval of the design and construction packages, commissioning schedule, and ESCO requests for ordering agency witnessing of commissioning tests.

See the FEMP website for documentation outlining the commissioning process, including major considerations, for ESPC projects.

E.5.6 Management Plan

The management plan consists of the ESCO's organizational structure for the project, the Risk and Responsibility Matrix, the proposed level of O&M services, the proposed R&R services in detail, and a project timeline. Each of these components must be reviewed carefully, as they will become the contractual basis for the performance period of the contract. Be sure there is sufficient detail — consider someone reading this contract five years from now and trying to understand who is responsible for each piece of equipment.

The services outlined in the management plan and in the M&V section provide most of the backup and substantiation for the performance-period pricing shown in the financial schedules. Often there is considerable negotiation of the service levels since the investment in ECMs and the TO term are directly affected by the performance-period costs.

Consider the following review criteria:

- Project management approach and timeline are well suited for successful project implementation.
- O&M plan addresses site requirements, including assigning responsibility for operations, preventive maintenance (O&M), and repair and replacement (R&R).

- The risk and responsibility performance matrix is clearly written and does not conflict with other areas of the proposal including but not limited to the O&M and R&R proposed, and the cost for O&M and R&R in the ESCOs pricing

See the FEMP website for a template of the Risk and Responsibility Matrix. This template is also included as an attachment to the DOE ESPC IDIQ contracts to which the ESCO will have access and familiarity for completion.

E.5.7 Price Proposal

The agency contracting officer is responsible for evaluating the reasonableness of the offered price to ensure that the final price is fair and reasonable. There are a number of ways to determine price reasonableness including price, cost, cost realism, and technical analysis. Analytical techniques and procedures can be found at FAR 15.404-1 and in FEMP guidance “*Determining Price Reasonableness in Federal ESPCs*”.

Before the ordering agency staff can effectively evaluate the price proposal, they need to understand the financial structure of ESPC projects. There are five types of cost elements in the ESPC project:

- Project development — Energy surveys, proposal development, etc.
- Costs of Goods and Services — ECMs direct costs for installation/construction
- Post-acceptance performance period services — Costs to manage and ensure performance over the contract term
- Financing costs — Interest and financing costs including the interest rate spread above the 10 year treasury rate
- ESCO’s delivery percentages — Costs and profit to design, manage, commission, bond, M&V and deliver the project to the agency. These are subject to IDIQ maximums for each ESCO

The price proposal is required to include supporting information pertaining to proposed expenses for project implementation and post acceptance performance-period expenses shown in the TO schedules and included in the price proposal. The agencies TO RFP should include any specific data requests or format required by the ESCO. The negotiated TO schedules are included in the TO award, and detail the financial deal. The price proposal includes the following:

- TO Summary Schedule
- TO Annual Escalation Rates
- Completed Schedules Summary, Annual Dollar Savings Escalation Rates, Schedule 1, Schedule 2a, Schedule 2b, Schedule 3, Schedule 4, Schedule 5.
- Supporting documentation on –
 - Project-level expenses from project development through TO award
 - Pricing of implementation and construction phases, allocated by ECM
- Post-acceptance performance period expenses aligned with Schedule TO-3
- Investor deal summary, standard financing offer, and certified selection memorandum
- And any other documentation requested in the TORFP
- Agency COs should require that the ESCO provide proof that it complied with the IDIQ requirement for competition in subcontracting requiring that to the maximum extent practical subcontracts are selected on a competitive basis (FAR 52,244-5), and also to review the ESCOs analysis of subcontract costs included in the proposal to the government.

The TO Schedules are prepared in accordance with the DOE ESPC IDIQ contract instructions located in Attachment J-5, Descriptions of TO Schedules and Placement of Pricing Information. ESCOs are required to use e-Project Builder to develop the TO Schedules. This is a secure web-based data entry and tracking system for ESPC projects, maintained by DOE at the Lawrence Berkeley National Laboratory.

ESCOs are required to use eProject Builder. Further information and instructions are provided in the DOE ESPC IDIQ contracts in Attachment J-15, eProject Builder System Instructions.

Although project interest rates can change daily, the proposed project interest rate must be supported by a Standard Finance Offer and a Selection Memorandum that describes the selection process, the rationale for selecting the financier and the reasons why the selection is the best value to the Government. The ESCO must also certify to the ordering agency that the contents of the Selection Memorandum are true and correct. FEMP assists agencies with review of the proposed interest rate and you can contact your Federal Project Executive to request this service.

Each ESCO IDIQ has a unique maximum implementation delivery percentage, performance period delivery percentage, and interest rate spread above treasury rate. This information is proprietary, however agencies should contact the DOE contracting officer to ensure that their proposals use percentages and spreads that are within the IDIQ negotiated maximums.

Ordering agencies must have an in-depth working knowledge of each of the TO schedules and supporting pricing information submitted by the ESCO. Because the ESCO's master contract did not establish the price for ESPC savings, the agency contracting officer must establish a price for each task order using FAR subpart 15.4. Most agencies conduct proposal analysis on the pricing submitted by the ESCO to determine that the price is fair and reasonable for each TO award in accordance with FAR 15.404. Project facilitators and/or agency representatives may prepare independent government cost estimates to assist in analysis and FEMP accumulates benchmark pricing information for common ECMs that agencies can access. This is to ensure that ordering agencies are receiving the best possible value for the Government on their ESPC efforts and maximizing their energy related savings in the process. Contact your Federal Project Executive if you have questions about the resources available.

See the FEMP website for guidance for determining fair and reasonable pricing for ESPC proposals submitted by an ESCO in response to an agency project.

E.5.8 Small Business Subcontracting for ESPC TO

The ESCO's individual Small Business Subcontracting Plan outlines its practices in hiring subcontractors. Each IDIQ contract includes an approved subcontracting plan, except for any IDIQ contracts with small businesses. The DOE ESPC IDIQ contracts allow the ordering agencies to request tailored small business subcontracting goals, unless the ESCO is a small business. The tailored goals must either meet or exceed the approved goals in the DOE ESPC IDIQ subcontracting plan.

E.6 Negotiation of Final TO

Negotiations for a TO award have both informal and formal aspects. Informal negotiations are ongoing, beginning with the first kickoff meeting and continuing throughout the development of the TO proposal, as the ESCO and ordering agency discuss the project details and the agency's needs and preferences. Most of the issues regarding technical matters, such as ECMs, equipment, and selection of subcontractors, are

generally settled in these informal, ongoing communications and are reflected in the proposal text. The ordering agency and ESCO arrive at agreement over any remaining technical and price issues in negotiations led by the ordering agency CO. All agreements must be incorporated, specifically or by reference, into the signed ESPC TO award, in order to be considered binding.

After agreement is reached on the three technical components of the proposal — ECMs and energy savings, baseline and M&V plan, and management plan — the ESCO may need to revise some of the wording in the TO proposal to clarify the agreements. In many cases, by the time the ordering agency CO and ESCO sit down for formal, final negotiations, all parties are confident that no significant unresolved differences remain and that they are ready to sign the TO. Final negotiations result in agreement on all aspects of the offer including price.

Since the TO RFP, together with the DOE ESPC IDIQ contract and TO proposal terms, comprises the scope of the TO award, and because the TO RFP takes precedence over other terms and conditions, it is imperative that the TO RFP be updated from a solicitation document to an award document that reflects the final negotiated terms and conditions. Clauses may be revised, added, or deleted as necessary at this point to reflect negotiations, unless deviations are prohibited by the FAR or the DOE ESPC IDIQ contracts.

E.7 Confirmation that Pre-Award Requirements are Met by ESCO

The DOE ESPC IDIQ contracts define several requirements that must be met by the ESCO before the TO is awarded. Completing the IGA, revising the ECM feasibility analysis, delivering the proposal, and negotiating in good faith to a final accepted TO proposal are among these requirements. The ESCO must also provide evidence that financing, bonding (if required) and insurance are committed.

E.8 Notification to Congress Prior to ESPC TO Award

In accordance with FAR 23.205(b)(2), ESPCs are subject to the congressional notification requirements of FAR 17.108. There must be written notification to Congress at least 30 days prior to the award of a multi-year ESPC TO when its value exceeds the established threshold. The advance notice gives Congress an interval in which to respond or comment if it so chooses, but no official response or explicit approval is needed before the TO may be awarded provided 30 days have elapsed since notification.

See the FEMP website for procedures concerning Congressional notification prior to ESPC TO award.

E.9 Notification of DOE IDIQ Contracting Office

Per C.1.E of the contract, the ordering agencies shall obtain written authorization from the current DOE IDIQ CO before TO award or modification with significant dollar value increases. The ordering agency must also notify the DOE IDIQ Contracting Office of the pending TO award with the total value to ensure enough ceiling is still available as well as other requirements under the DOE ESPC IDIQ contracts.

The ordering agency may provide copies of the draft task order and associated documents and request a DOE FEMP review at least 30 days (20 business days) before the anticipated award date. The DOE FEMP Team will review the task order and associated documents, focusing on information or areas specifically requested by the ordering agency and for compliance with the DOE ESPC IDIQ contracts in general. DOE

FEMP will endeavor to provide its comments and recommendations to the ordering agency within 21 days (15 business days), to be used at its discretion.

Suggested guidelines for the submission of ESCO proposals for review include:

- Congressional notification has been submitted if required
- The proposal has been provided to the agency and PF and they reviewed it and have determined it is close to awarding with only a minor or a few final edits needed.
- The Proposal would most likely include the selected financier and the premium is based on the competition and selection of that financier.

E.10 Award of TO

The ordering agency awards the TO after a complete review and agreement of all required ESPC documentation as well as following any local ordering agency procedures. The ordering agency CO must confirm ceiling availability with the DOE IDIQ Contracting Office before signing and awarding the TO. The task order award consists of the following:

- Agency's task order document, which incorporates the terms of the DOE ESPC IDIQ contracts
- TO price schedules (agency to verify that TO Price schedules submitted by ESCO match what is in eProject Builder (ePB))
- The final TO RFP (to reflect final settlement) as the main body of the TO award
- The ESCO's TO proposal (revised per negotiations)

An important step before award is for the agency to verify and approve the TO schedules submitted by the ESCO in the proposal, which were generated within the web tool eProject Builder (ePB) before awarding a task order. This verifies the validity of the TO schedules. See attachment J-15 of the IDIQ contract for more information.

E.11 Monitoring Small Business Subcontracting Under an ESPC Task Order

When the electronic Subcontracting Reporting System (eSRS) was first implemented in November 2005, it only allowed a contractor to report its small business subcontracting dollars at the "master" contract level and not by individual TO. This has limited an ordering agency's ability to monitor the ESCO's utilization of small businesses for subcontracting under its ESPC TOs.

In August 2013, the Small Business Administration (SBA) updated 13 C.F.R. § 125.3 to add a new section (h) which begins to address this issue. It states that contractors are now required to "submit small business subcontracting reports for individual orders to the contracting agency on an annual basis" when issued under another agency's indefinite delivery vehicle. It also confirms that "the agency funding the order shall receive credit towards its small business subcontracting goals". According to the eSRS website, "SBA is [still] working with the Office of Federal Procurement Policy (OFPP) and other agencies to develop a Government-wide policy" in regards to submitting individual subcontracting reports in eSRS for task and delivery orders. "The feature will not be 'turned on' until there is an official, written policy issued by either OFPP or SBA."

Until this feature is operational in eSRS, DOE recommends the ordering agency develop internal procedures in line with the revised SBA regulations in order to monitor the small business subcontracting performance

of the ESCO under the ordering agency's ESPC TO. The suggested procedure is for the ESCO to submit an annual small business subcontracting report directly to the ordering agency for each awarded TO via email using an electronic Standard Form 294. The ordering agency then reviews and approves the report. The approved report would then be used to supplement the eSRS records for meeting the ordering agency's small business subcontracting goals and documenting the small business subcontracting performance of the ESCO.

DOE will still continue to monitor the ESCO's performance for small business subcontracting at the IDIQ contract level primarily by using the reports submitted to eSRS as defined in FAR 19.704. An ESCO is also required by the DOE IDIQ contract to provide DOE a copy of each annual TO-specific report submitted to ordering agencies. DOE will compare the TO-specific reports to the combined IDIQ contract report submitted in eSRS to confirm proper reporting.

Phase 4. Design, Implementation, and Acceptance

F.1 Overview of Phase 4

The implementation period can be divided into three parts:

Part 1: The ESCO's submittal of designs, equipment specifications, and design and construction package, and ordering agency review and approval of the submittals;

Part 2: The ESCO's installation/construction of the project and inspections by the ESCO and the ordering agency; and

Part 3: The ordering agency's acceptance of the project.

The final designs for the project are completed after the TO is awarded. The ESCO's submittals of their designs and plans become requirements of the contract after they are accepted by the agency. Careful review is imperative. However, liabilities associated with defects in design or materials remain with the ESCO.

Construction begins after the ordering agency's acceptance of the ESCO's submittals. The ordering agency's role during this stage of the project is to perform planned inspections to verify the progress as installation/construction milestones are reached, and to ensure that the ECMs are installed per task order specifications. Ordering agency inspections do not relieve the ESCO of its role in overseeing the work of subcontractors and doing its own inspections in accordance with its quality control plan.

There is very little difference between this phase of an ESPC project and any other construction project. The DOE IDIQ ESPC contract contains the clauses that normally appear in a government construction contract. The main differences between an ESPC project and a conventional construction project are the requirements for commissioning and post-installation M&V. The DOE ESPC IDIQ contracts specify that acceptance of the project cannot be completed until the equipment's performance is proven by M&V activities after installation and documented in the post-installation M&V report.

For more information on the best practices during this phase refer to web resource: FEMP Best Practices and Lessons Learned for Federal ESPC Projects.

F.2 Part 1: Submittal, Review and Approval of Design and Construction Package

F.2.1 Post-Award Conference

A post-award conference is recommended to ensure all parties have a mutual understanding of all contract requirements and to identify and resolve potential problems and to cement the foundation for a strong working relationship between the ESCO and the ordering agency during implementation of the ESPC project. Recommended attendees include the ordering agency CO, the ordering agency COR/COTRs and technical teams (e.g., design engineers) responsible for contract administration, the ESCO's project manager, and the ESCO's and/or subcontractors' design, construction, commissioning, M&V, and service manager personnel. The objectives of the post-award conference are similar to those of earlier kickoff meetings — to establish roles, responsibilities, expectations, timelines, and

communications protocols. At this stage the ESCO and the ordering agency will also review details pertinent to the ECM installation, post-installation inspections, commissioning, training, acceptance, operations, maintenance, and other aspects of contract performance, and establish protocols for site access and the submittal review process.

See the FEMP website for recommended agenda items to discuss at a post-award ESPC project conference, including those related to safety and the environment, organization and communications, project timeline, design, facility requirements, outages, and construction.

F.2.2 Submittals, Reviews and Approvals

F.2.2.1 Design and Construction Review

The ESCO submits the design and construction package, quality control inspection program, and commissioning plan for all ECMs within the time frame specified in the proposal. The purpose of the design and construction package is to provide detailed information that allows the ordering agency's COR/COTR to confirm that the ECMs will be installed in a manner that complies with contract requirements and the ordering agency's requirements. The ECMs must be as described in the proposal and must meet the design and construction standards in the contract.

Details of the ESCO's designs, plans, and schedules must be approved before construction may begin. The processes for submittal and review of the ESCO's designs and equipment selections and orders are defined in the ESCO's proposal, per requirements for proposal contents in Section H.6 of the DOE ESPC IDIQ contracts, as supplemented by the TO RFP. The ESCO's submittals constitute requirements of the contract after approval by the ordering agency, per Section C.5.1 of the DOE ESPC IDIQ contracts. Designs, equipment, and the design and construction package must conform to the standards given in Sections C.5.1 and C.5.2.

F.2.2.2 Installation Plan Review

The ordering agency COR/COTR must review the installation plans for compliance with the TO. The review should confirm the location of ECM installations, schedule, acceptable planned service interruptions, requirements for space access, and installation working hours. The ordering agency COR/COTR must review the ECM quality control inspection plan for acceptable logs/reports and proposed approach for quality control inspections of ESCO/subcontractor work. Review will also verify the schedule for equipment/system tests with the ESCO point of contact.

Any deficiencies in the installation plan should be communicated to the ESCO in writing for resolution and submittal of a revised installation plan. The ordering agency COR/COTR should notify the ordering agency CO in writing of installation plan approval.

F.2.2.3 Commissioning Plan

A commissioning plan is finalized after ordering agency approval of the design and construction package. The plan specifies functional and operational ECM performance tests to be conducted and specifies how test results will be documented to confirm that operation and interfaces with existing government equipment are acceptable. The plan includes commissioning test schedules and ESCO contacts for ordering agency witnessing of commissioning tests.

F.2.3 Payment and Performance Bonds

Within 30 days of award of the TO or acceptance of the design and construction package, whichever is later, the ESCO is required to furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the ordering agency. The ordering agency CO must receive acceptable performance and payment bonds (as required) and any required insurance certificates before construction begins. General bonding requirements are found in Section H.8 of the DOE ESPC IDIQ contracts.

F.2.4 Proof of Insurance

Prior to commencement of work, the ESCO is required to furnish to the ordering agency CO a copy of the insurance policy endorsement. Specific insurance level requirements are found in Section H.10 of the DOE ESPC IDIQ contracts.

F.2.5 Notice to Proceed with Installation

The ordering agency CO transmits a notice to proceed with ECM installation to the ESCO, indicating that construction may commence, after all pre-construction requirements are met. In addition to the required receipt of bonds and insurance certificates, the ESCO's design and construction package must be approved by the agency before construction begins.

F.3 Part 2: Installation/Construction and Inspections

F.3.1 Installation and Construction

Before and during ECM installation, the ESCO provides the ordering agency with required documents concerning installation procedures, such as a quality control plan, notification of work outside regular hours, planned utility outages, and ECM testing. The ordering agency is responsible for monitoring the ESCO's progress during ECM installation to ensure that the work is proceeding as planned. A best practice for the construction period is to hold regularly scheduled progress meetings with the ESCO and ordering agency teams. The attendance of the ESCO's site superintendents should be required so that any issues can be addressed during the meetings.

F.3.1.1 Day-to-Day Monitoring of ESCO Performance

The STR performs day-to-day monitoring of task order implementation and is responsible for developing a surveillance plan that outlines the reporting tools and observation methods to be used to track and measure contractor performance. No particular format is required, but the plan should list the subjective and objective measures that will be used to assure timeliness and quality and to prevent cost overruns.

F.3.1.2 Commissioning

Just as all aspects of baseline performance (energy use, conditioned space temperatures and humidity, light levels, etc.) were captured and documented during the IGA and negotiated at award, similar data on the performance of the new equipment is gathered during commissioning. Commissioning

is always done at the system level, and augmented with building energy use data if whole-building M&V methods are used.

Although the bulk of commissioning is usually done prior to acceptance, other performance checks may be required by the ESCO after ordering agency acceptance of ECM installation. For example, chiller performance should be assessed in summer and steam trap performance during winter, regardless of when acceptance occurs.

F.3.1.3 Post-Installation M&V Report

Per C.4.2.C of the contract, the Contractor shall prepare and submit a post-installation report to the ordering agency, per the report outline in Attachment J-9 of this IDIQ contract, and the current standards in the latest version of the DOE FEMP M&V Guidelines. The post-installation report shall include results of eProject Builder (ePB) output (see Attachment J-15 for instructions), and M&V data and calculations. This report shall verify that installed ECMs will meet the required standards of service and the guaranteed annual energy, water, and related cost savings specified in the awarded TO. Inspections and measurements conducted by the Contractor for this post-installation report shall be witnessed by the ordering agency, per the M&V plan witnessing details for each ECM, in accordance with FEMP's "Guide to Government Witnessing and Review of Measurement and Verification Activities." The post-installation report shall be reviewed as recommended in the latest version of DOE FEMP's "Reviewing Post-Installation and Annual Reports for Federal ESPC Projects" (See Attachment J-17 for specific website address), and must be accepted in writing, by the authorized ordering agency official(s).

The ordering agency is responsible for reviewing and approving the ESCO's post-installation report consistent with FEMP guidance. After a technical review of the report by the ordering agency, results of the review must be provided to the ordering agency CO. Any performance issues, shortfalls, exceptions, or discrepancies must be discussed with the ESCO. After any issues are resolved and prior to project acceptance the report must be accepted in writing by the authorized ordering agency official and a copy must be added to the contract file.

An important step before final approval of the Post-Installation M&V report submitted by the ESCO is to confirm the results match what the ESCO has uploaded into the web tool eProject Builder (ePB). See attachment J-15 of the IDIQ contract for more information.

F.3.2 Inspections and Verifications

The ESCO holds primary responsibility for inspecting its own work and the work of its subcontractors. However, the ordering agency must conduct oversight of the ESCO work and final inspections and otherwise verify that the following required actions have been taken:

- Facility and energy baselines have been accurately defined
- The specified equipment has been installed (and installed properly)
- The ECMs as installed have the potential to generate the guaranteed savings (using commissioning, test and balance, and/or M&V data for confirmation)
- The ESCO has submitted all required documentation, such as post-installation M&V report, as-built drawings, a spare parts list, an O&M Plan, and training materials and schedules

F.3.3 Changes and Modifications

Changes or modifications for ESPC projects are sometimes needed. It is difficult to anticipate all requirements, and additional information may surface during installation. The ordering agency should consider:

- Is the change within the current scope of the award, or outside of the scope?
- Is the change Government-initiated or is it ESCO-initiated?
- Why is the change necessary?
- Should there be additional cost to the Government, or should the ESCO bear the cost?
- Is a TO modification necessary? Immediately, or at installation completion?

Generally, all parties prefer to handle changes in ways that do not require renegotiation of the firm, fixed price [i.e., a revision to the payment stream in the TO Schedules] that might cause a corresponding effect on and renegotiation of the project financing. If changes are required, it is most feasible to do one modification to the TO for all changes made just prior to accepting the project. It is important that the ESCO and the ordering agency come to agreement quickly so that project acceptance and payments are not unduly delayed.

Variances between design and installation are found on most projects. Details of the variations between the TO proposal and as-built conditions are documented in the Post-Installation M&V Report, which includes energy impacts.

F.4 Part 3: Project Acceptance

F.4.1 Acceptance of Completed Project Installation

F.4.1.1 General Final Acceptance Information

The timeframe for inspection and project acceptance is established in DOE's IDIQ or as outlined in the agency TO. Information on witnessing and review of the post installation report is included in Section F.3. The ordering agency is obligated to perform its oversight and review in the timeframes as contracted. If the ordering agency is unable to complete oversight and review, accept the project, and process payments to the ESCO on schedule, the ESCO may incur significant additional costs which the ordering agency may be liable for. The steps are as follows

- The ESCO submits a written request for inspection to the agency CO.
- The agency provides a written response to the ESCO of the scheduled date and time for agency inspection
- The agency and ESCO conduct joint inspections of all ECMs to facilitate mutual agreement on satisfactory TO ECM performance.
- If there are minor tasks that need to be completed the agency CO provides the ESCO with a punch list of items for repair.
- The contractor completes the punch list and notify the agency CO upon completion

After the punch list is finalized, but prior to acceptance, any additional punch list items identified will be handled as a post-acceptance warranty issue. The ordering agency authorized official(s) indicates

the ordering agency's acceptance of the installed project via a letter to the ESCO including a signed copy of the completed acceptance checklist.

F.4.1.2 Acceptance Responsibilities and Checklist

The ordering agency authorized official(s) is responsible for:

- Inspecting ECMs;
- Developing punch lists;
- Re-inspecting to verify resolution so that the ECMs can be accepted;
- Witnessing commissioning and post-installation M&V testing; and
- Reviewing, commenting on, and demanding revision of post-construction documentation until it meets contract requirements.

The ordering agency authorized official(s) confirms that:

- Installation has been accomplished and inspected as required;
- Agency acceptance of the commissioning and post-installation M&V reports that show the ECMs have the potential to generate the guaranteed cost savings;
- Required post-construction submittals are in hand; and
- Required training has been delivered.

F.4.1.3 Additional Information

The ESCOs are generally highly motivated to resolve issues and achieve acceptance that all requirements of the contract have been met so that payments can begin.

The ordering agency authorized official may issue a conditional letter of acceptance if seasonal testing is required for ECMs identified in the commissioning or post-installation M&V report.

The ordering agency must decide when the project can be accepted. At the ordering agency's discretion, it may accept a project even though minor items or some services are not yet completed. The acceptance letter would document the outstanding items with an established due date for completion.

F.4.2 Acceptance of ECMs before Final Project Acceptance

Individual ECMs may be accepted before final project acceptance, as most projects have ECMs that can be installed, tested, and operational prior to completed installation of all ECMs. Sign-off by an ordering agency COR/COTR does not constitute official ordering agency acceptance of the ECM or the project. It acknowledges completion of the installation of that ECM and perhaps activates the warranty.

Partial acceptance of a project may be warranted or desirable for projects with one or more ECMs with very long construction periods and others having a shorter construction period, or projects with several sites involved. Ordering agencies can reduce their interest cost by making payments based

on savings from provisionally accepted ECMs during the implementation period. These implementation period payments must be specified in the TO Schedules per the TO award

Phase 5: Post-Acceptance Performance and Closeout

G.1 Overview of Phase 5

The post-acceptance performance period starts after the ordering agency accepts the ESPC project. ESCO invoicing and agency payments may begin. The ESCO submits an annual M&V report for review and approval to show whether the guaranteed cost savings have been achieved, or discuss reasons and remedies for shortfalls, if necessary. At the end of the contract term, title of the equipment is transferred to the ordering agency, if it has not previously been transferred at acceptance, and the task order is closed out.

G.2 Invoices and Payments

Written notification from the ordering agency to the ESCO confirming that the installation complies with the terms of the contract and has been accepted marks the point where the ESCO may submit invoices to the ordering agency. Invoicing and payments can be done monthly, annually, or at other negotiated intervals. The ordering agency is responsible for verifying that the invoices reflect reported and verified savings and are of appropriate format before issuing payment.

The commissioning and M&V activities should confirm the predicted post-installation performance, and hence the predicted energy savings, that were contractually agreed to in the TO. If the annual sum of all the ECM energy savings meets or exceeds the guaranteed savings and the other performance criteria are within specifications, the contractor payments can be made in accordance with the TO. If the annual sum total of measured ECM performance does not meet the total guaranteed savings, payments are not made unless and until this is resolved, unless negotiated contract provisions allow other remedies. If the ordering agency has made its guaranteed savings payments in advance (e.g., at the beginning of the contract year), it may withhold future payments and/or otherwise negotiate with the ESCO to determine the best method for reimbursing the Government for the shortfall.

G.3 Performance-Period Services from Contractor and Agency Review

The ESCO provides the services specified in the TO during the performance period. These services may include O&M, periodic re-training of ordering agency O&M staff, M&V activities, and other services as defined in the TO award. The ordering agency verifies that the ESCO is delivering the negotiated services within the schedule provided.

G.4 ESCO Performance Evaluation

Ordering agencies are required to internally track performance of the ESCO on the awarded TO in accordance with FAR 42.15 requirements and Section G.7 of the DOE ESPC IDIQ contract. This information must be recorded and submitted electronically in the Contractor Performance Assessment Reporting System (CPARS). The process for submitting such reports to CPARS must be in accordance with ordering agency procedures.

G.5 Annual M&V Reports

To verify and document that the guaranteed savings are being delivered, the ESCO (or other responsible party per the task order) carries out the M&V plan. The M&V plan establishes the schedules for site inspections and for specified measurements and monitoring, as well as the documentation required for periodic performance verifications. This documentation generally verifies continued operation and performance of the installed ECMs, quantifies associated energy savings, and demonstrates proper maintenance. The documentation is used to verify that the ESCO has delivered the guaranteed level of cost savings over the year.

The number and type of measurements and analyses performed in developing the annual M&V report are dictated by the M&V methods specified in the M&V Plan, and may comprise just a subset of data examined during commissioning and acceptance. In many cases the number of measurements may decline over time as trends emerge that can reliably indicate future performance. An annual site inspection or “energy audit” is mandated in the legislation authorizing ESPCs.

The ordering agency is responsible for reviewing and approving the ESCO’s annual M&V reports. The ordering agency should establish procedures to ensure prompt review of the ESCO’s annual M&V report, in accordance with FEMP guidance. The annual M&V report must be in accordance with the M&V plan in the TO. These reports document whether all parties and the delivered energy and cost savings meet the TO requirements. It is recommended that the ordering agency independently gather information for evaluating the reports by conducting spot checks of ECMs to identify potential deficiencies in performance or energy savings.

After a technical review of the M&V report by the ordering agency, results of the review must be provided to the ordering agency CO. Any shortfalls, exceptions, or discrepancies must be discussed with the ESCO. ESCOs must also be notified if M&V report revisions are required. Once the report is finalized and accepted by the ordering agency, a copy must be added to the contract file. Some ordering agencies have also documented M&V report acceptance through a contract modification.

See the FEMP website for guidance pertaining to government witnessing of M&V activities in Federal ESPC projects. Witnessing of M&V activities is a part of the process of reviewing and approving M&V deliverables and the on-site inspections, spot measurements, short-term monitoring, and performance tests described in the M&V plan.

An important step before final approval of the Annual M&V report submitted by the ESCO is to confirm the results match what the ESCO has uploaded into the web tool eProject Builder (ePB). See attachment J-15 of the IDIQ contract for more information.

It is critical that the CO obtain written confirmation from his or her COR or COTR that the M&V report has been witnessed, reviewed, and is acceptable for payment to be made in full. Then the CO should memorialize by including this information in the project contract file each year. It is also critical that any problems and their resolution (even if the resolution is to do nothing) are included in the contract file record.

G.6 Annual Reconciliation of Energy Savings Performance

If the actual annual savings, as determined by M&V, are less than the annual guaranteed savings amount, the ESCO must correct or resolve the situation or negotiate a change. Reconciliation of savings generally occurs annually. The guidance for reconciliation and the process for resolving disputes are specified in the DOE ESPC IDIQ contracts (as supplemented by the ESPC TO).

Review and comment on reports should be conducted in a timely fashion. Payments should not be delayed for issues that do not have a material impact on savings, and any payments withheld should be proportional to the perceived savings discrepancy or performance shortfall. Any dispute between the ordering agency and the ESCO must be resolved in a *timely* manner consistent with the dispute resolution language in the M&V plan, the DOE IDIQ and the ESPC TO.

In the case of demolished or decommissioned buildings or removal of ECM equipment by the Government, it is highly recommended that the ordering agency CO promptly initiates a contracting action to buy out that portion of the ESPC TO involving the ECMs that are no longer in place or no longer functional. Alternatively, some such changes can be dealt with by reconfiguring the remaining project, (e.g., there are enough savings from the remaining ECMs to continue payments). Work with the ESCO and seek guidance from DOE. In any case, be sure to recognize and document the issue and its resolution in the contract file.

See the FEMP website for a framework for implementing uniform and consistent reviews of post-installation and annual reports for federal ESPC projects. These procedures will allow for consistent evaluations of performance reports, produce standardized reviews, and enable centralized tracking of ongoing project performance.

G.7 End of Contract Term and Closeout of TO

At the end of the contract term, the ordering agency notifies the ESCO by letter that the performance period is over and payments cease. The ordering agency closes out the TO in accordance with the FAR and/or its own procedures and notifies the DOE IDIQ Contracting Office upon closeout completion. It is recommended that the ordering agency include a copy of the signed contract completion statement, or similar document, with the notification to DOE.

G.8 Title Transfer

The title may be held by the ordering agency or the ESCO during the contract term, depending on which option is most advantageous to the economics of the project. Taxation, ordering agency policies regarding real property holdings, or other factors may influence this decision. In any case, at acceptance of the installation or at the end of the contract term, title will be transferred to the ordering agency. If the transfer occurs at the end of the contract term, it becomes part of the closeout process. Most ordering agencies currently transfer title at acceptance of the installation and the initial M&V report, after confirmation of the guaranteed savings.

[END OF ORDERING GUIDE]