U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Federal Energy Management Program

ORDERING GUIDE

For
Energy Savings Performance Contract Task Orders
Under the U.S. Department of Energy's
Indefinite Delivery, Indefinite Quantity
Multiple Award Contracts
Generation 4

Contract Nos.
892434-23D-EE-000012 through -000031
(Awarded August 2023)

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Foreword

The U.S. Department of Energy (DOE) Federal Energy Management Program (FEMP) is pleased to provide the Ordering Guide for the DOE FEMP Energy Savings Performance Contract (ESPC) Indefinite Delivery, Indefinite Quantity (IDIQ) Generation 4 (GEN4) contracts. This Ordering Guide will assist federal ordering agencies in developing, awarding, and administering task orders under the DOE ESPC IDIQ GEN4 contracts.

In addition to procedures for issuing task orders, this document 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.

This Ordering Guide is highly recommended to ordering agencies as a tool to learn about and utilize the DOE ESPC IDIQ GEN4 contracts. Additional tools and other information concerning these contracts and the overall DOE FEMP mission can be found at https://www.energy.gov/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/femp/federal-energy-savings-performance-contract-training prior to completing the steps found in this guide.

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PART I – GENERAL OVERVIEW (Energy Savings Performance Contract Basics)

A.1 Background and Purpose of the Energy Savings Performance Contract

DOE FEMP facilitates the federal government's implementation of sound, cost-effective energy and water management and investment practices to enhance the nation's energy security and environmental stewardship. The National Energy Conservation Policy Act, the Energy Policy Acts (EPACT) of 1992 and 2005, the Energy Independence and Security Act of 2007, and related Executive Orders set energy efficiency, renewable energy, and water efficiency requirements for federal agencies. These pieces of legislation also authorize the use of contract vehicles that incorporate private financing to leverage federal funds to implement performance energy/water projects. More recently, the Energy Act of 2020 updated performance contracting requirements for federal agencies, such as implementing efficiency measures within 2 years of an evaluation, and promoting the use of performance contracts (e.g., ESPCs) for at least 50% of those measures.

FEMP succeeds in its mission by implementing a number of activities, including direct federal agency assistance, to effectively participate in alternatively financed contracting mechanisms such as ESPCs. Pursuant to Title 42 United States Code (U.S.C.) §§ 8287 *et seq*., DOE has regulatory and administrative responsibility for implementation of ESPCs. FEMP has promoted the use of ESPCs since the inception of the statutory authority. FEMP has determined an IDIQ contract significantly increases federal ordering agency use of ESPCs and that ESPCs represent an effective process for the federal government to achieve various energy- and water-related goals.

In accordance with EPACT 1992 and Title 10 Code of Federal Regulations (CFR) 436, FEMP first established the DOE Qualified List of Energy Service companies (ESCOs) as the initial component of the Government's multi-tiered ESCO evaluation for ESPC procurements in the early 1990s. FEMP continuously maintains the Qualified List and accepts applications from potential ESCOs throughout the year. Each ESCO on the Qualified List is required to recertify each calendar year to remain on the list.

DOE has been awarding and administering ESPC IDIQ contracts to ESCOs on the Qualified List since 1996. These DOE ESPC IDIQ contracts help to make ESPCs as practical and cost-effective as possible for federal agencies to meet their various energy- and water-related goals. ESPC projects are awarded through task orders issued by federal ordering agencies under DOE's current IDIQ contracts. The ordering agencies use a portion of the guaranteed energy/water cost savings each year to make payments to the ESCO for the installed energy/water systems improvements over the life of the task orders.

Under FEMP's ESPC program, the GEN4 DOE ESPC 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, finance projects at reasonable interest rates, and on their technical approach, past performance, and pricing. The GEN4 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.

A.2 What is Energy Savings Performance Contracting

Energy savings performance contracting is an acquisition method that allows federal agencies to achieve energy and/or water 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 ESCO (the contractor). The ESCO conducts a comprehensive energy (and water) audit of federal facilities and identifies improvements that will save energy and/or water, lower energy- and/or water-related costs, and/or reduce utility bills. The ESCO designs and implements a project that meets the ordering agency's needs and arranges project financing, usually with a third-party financier. An ESPC must provide that the ESCO incurs the costs of implementing energy savings measures in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract. The ESCO guarantees that installed energy conservation measures (ECMs) and/or water conservation measures (WCMs) 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 the installed ECMs/WCMs and related expenses over the life of the contract. After the ESPC project task order ends, all additional cost savings accrue to the ordering agency.

A.3 Authority for Federal ESPCs

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. part 436 subpart B.

The documents posted on the "Resources for Implementing Energy Savings Performance Contracts" page within the FEMP website (see section F.1 for link) include additional information, responses to frequently asked questions, guidance, and reports intended to clarify the ESPC authority and provide policy guidance to federal agencies that are starting an ESPC, have a project underway, or already have awarded an ESPC.

A.4 Benefits and Other Characteristics of an ESPC

A.4.1 Financing Provided and No Upfront Capital Costs

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- and water-related goals with no up-front capital outlay by the ordering agency required. An ESPC requires the ESCO to finance and implement ECMs/WCMs 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.

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 ESPCs 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/water savings and that any payments must be made from energy/water savings resulting from installed ECMs and/or WCMs. 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 (or WCM) has been installed. Therefore, the first payment for an ESPC is usually in a fiscal year following award, which means no funds are generally required at time of award. Obligations under an ESPC task order are normally incurred when payments become due, such as after commissioning, 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, the ordering agency will withhold the amount of shortfall from future payments.

A.4.2 Cost Savings Pay for the Project

ESPCs are guaranteed to pay for themselves through the "energy savings" generated by the installed ECMs/WCMs. The term "energy savings", includes energy cost savings, water and wastewater treatment cost savings, and related operations and maintenance expense, which can include one-time savings. (See 42 U.S.C. § 8287 and § 8287c(2).) "Energy cost savings" is defined as:

> [A] a reduction in the cost of energy and related operation and maintenance expenses, from a base cost established through a methodology set forth in an energy savings performance contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—
>
> (1) The lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or
>
> (2) The increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

10 C.F.R 436.31. 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 and wastewater cost savings can come from WCMs that reduce overall water use and improve the efficiency of water delivery systems and equipment.

Energy- and water-related cost savings can come from reduced expenses for operations and maintenance (O&M) including repair and replacement (R&R) of energy and/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 ordering 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 that includes the chiller replacement. 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 ESPC Resources page of the FEMP website.

https://www.energy.gov/sites/default/files/2013/10/f3/practguide_sav_paymnts.pdf

A.5 Eligibility to Use DOE ESPC IDIQ Contracts

All U.S. federal government agencies may use the DOE ESPC IDIQ contracts to implement ESPC projects within the scope of the contract worldwide. The GEN4 DOE ESPC IDIQ contracts include a base ordering period from August 3, 2023, through August 2, 2028, and an option ordering period from August 3, 2028, through August 2, 2033. 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 develop a project. Ordering agencies implement ESPC projects by issuing task orders under the DOE ESPC IDIQ contracts. This streamlined process to gain access to the expertise and private financing offered by ESCOs can save ordering agencies time and money. Task orders may be issued with a period of performance of up to 25 years from date of task order award.

A.6 Accessing the Contract

A generic version of the GEN4 DOE ESPC IDIQ contracts is available on the ESPC Resources page of the FEMP website:

Resources for Implementing Federal Energy Savings Performance Contracts | Department of Energy

Previous generations of the DOE ESPC IDIQ contracts are also provided on this page.

Additional contract documents may be obtained by contacting the DOE ESPC IDIQ Contracting Officer. See Ordering Guide Section F.2 for contact information.

PART II – CONTRACT INFORMATION

B.1 The DOE ESPC IDIQ Contractors - Energy Service Companies (ESCOs)

DOE competitively awarded the GEN4 ESPC IDIQ contracts to 20 ESCOs on the DOE Qualified List. The names of the ESCOs, their specific contract numbers, and contact information are provided on the 2023 DOE ESPC IDIQ Generation 4 page of the FEMP website:

DOE ESPC Generation 4 (Gen4) IDIQ Energy Service Companies | Department of Energy

DOE's competitive selection of the ESCOs benefits 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 include streamlined ESCO selection procedures authorized under 42 U.S.C. § 8287 that reduce an ordering agency's evaluation efforts, such as down-selecting to one ESCO before task order proposal submission. This also benefits the ESCOs by minimizing upfront task order proposal costs for potential projects.

B.2 Allowable Order Type

Per Section G.2.1, *Ordering Agency Contracting Officer Authority*, and other terms and conditions of the GEN4 DOE ESPC IDIQ contracts, task orders shall be firm-fixed price. No other order type is allowed.

B.3 Period of Performance (IDIQ and Task Orders)

The GEN4 DOE ESPC IDIQ contracts were awarded on August 3, 2023, with a base period of 5 years and one option period of 5 years, for a total period of performance of 10 years. Ordering agencies may award ESPC task orders during this period.

Under 42 U.S.C. §8287, ordering agencies may award ESPC task orders with a period of performance of up to 25 years, including the design, installation, acceptance, and performance of ECMs and/or WCMs. The specific period of performance will be specified in each ESPC task order by the ordering agency, depending on how long it takes to pay for the ECMs/WCMs out of the guaranteed savings.

B.4 Maximum Contract Ceiling

The maximum contract ceiling for each GEN4 DOE ESPC IDIQ contract is $5,000,000,000 ($5 Billion). This entire ceiling is available during the base period of 5 years and will not increase if or when the option period of 5 years is exercised.

B.5 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/WCMs under authorized Technology Categories (TC) provided that the contemplated measures comply with the requirements necessary to qualify as an ECM or WCM under 42 U.S.C. § 8287c(4) and 10 C.F.R. § 436.31.

B.5.1 Breadth of Support / Technology Categories

The DOE ESPC IDIQ contracts, within Attachment J-3 of each contract, list the following Technology Categories (TCs) that ESCOs are to evaluate when determining which ECMs/ WCMs to include in an ESPC project:

- TC.1 Boiler Plant Improvements
- TC.2 Chiller Plant Improvements
- TC.3 Building Automation Systems (BAS) / Energy Management Control Systems (EMCS)
- TC.4 Heating, Ventilating, and Air Conditioning (HVAC) Improvements (not including boilers, chillers, and BAS/EMCS)
- TC.5 Lighting Improvements
- TC.6 Building Envelope Modifications
- TC.7 Chilled Water, Hot Water, and Steam Distribution Systems
- TC.8 Electric Motors and Drives
- TC.9 Refrigeration
- TC.10 Distributed Generation
- TC.11 Renewable Energy Systems
- TC.12 Energy / Utility Distribution Systems
- TC.13 Water and Wastewater Conservation Systems
- TC.14 Electrical Peak Shaving / Load Shifting
- TC.15 Energy Cost Reduction through Rate Adjustments
- TC.16 Energy (or Water) Related Process Improvements
- TC.17 Commissioning
- TC.18 Advanced Metering Systems
- TC.19 Appliance / Plug-load Reductions
- TC.20 Other / Future ECMs/WCMs.

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.

Federal Energy Management Program | Department of Energy
Federal Energy Management Program Contacts | Department of Energy

B.5.2 Energy and Water Conservation Measures

The primary objective of ESPC projects is to install ECMs and/or WCMs that result in energy, water, or related cost savings. Full definitions of ECMs and WCMs are provided in Attachment J-2 of the DOE ESPC IDIQ contracts.

Contract Attachment J-3 provides examples of specific ECMs and WCMs under each of the TCs. There are a wide variety of potential measures that could be implemented under an ESPC project. These examples are not intended to be inclusive of all ECMs and WCMs authorized. The ESCOs are encouraged to seek out all energy and water conservation opportunities present in a given facility, including renewable energy systems.

ECMs and WCMs are usually part of an integrated system. This is highlighted in Section C.2 of the DOE ESPC IDIQ contracts. ESCOs are expected to consider what related work can and should be included in an ESPC project to ensure the successful performance of each ECM and WCM. The ordering agency Contracting Officer (CO, or KO for Department of Defense (DoD) entities) will make the final decision as to what constitutes ECM/WCM related work.

B.6 Fair Opportunity Requirements and Exemptions

The requirements for and exemptions from competition in awarding task orders 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 task order competition terms based on their own agency procedures and regulations, as applicable.

B.6.1 Providing Fair Opportunity to DOE ESPC IDIQ Contract Holders

Per FAR 16.505(b), *Orders under multiple-award contracts*, the ordering agency must provide fair opportunity to all ESCOs with a GEN4 DOE ESPC IDIQ contract award. To meet this requirement, the DOE ESPC IDIQ Contracting Officer recommends that the ordering agency post a Notice of Opportunity (NOO) to the governmentwide point of entry (GPE) (i.e., SAM.gov) and email a copy of the NOO to the primary and secondary contacts of each ESCO with a GEN4 IDIQ contract.

B.6.2 Contractor-Initiated ESPC Projects

Each ESCO with a GEN4 IDIQ contract may actively market the ESPC program and its contract to federal ordering agencies. DOE has suggested to the ESCOs the following marketing and outreach activities that they may engage in:

- Contact federal agency staff and visit federal sites.
- Take a general tour of a site with federal agency permission and proper escorts.
- Discuss various topics related to the ESPC program, including:
  - How the ESPC contract works
  - ESPC benefits
  - Give examples of ESPC projects, including its own prior projects
  - DOE FEMP system of support

  - How an ESPC project might work at a specific site, including how it might fix a particular problem, address a challenge, or capture an opportunity.
- Refer federal agency staff to a FEMP Federal Project Executive (FPE) and other FEMP ESPC program staff.
- Convey federal agency contact information to FEMP staff and FPE.

To avoid procurement complications, DOE has recommended to the ESCOs to avoid the following activities as part of their marketing and/or outreach efforts:

- Perform/participate in a detailed walk-through of a federal site.
- Record equipment details such as name-plate data typically used for energy/water audits.
- Produce a written proposal or audit in any form, no matter how abbreviated.

If an ordering agency has issued a NOO for a potential ESPC project, the ESCOs should refrain from conducting any marketing or outreach activities on or about the potential project site.

If an ESCO subsequently submits an unsolicited task order proposal or preliminary assessment (PA) to an ordering agency as a result of such marketing or outreach, that ordering agency must still provide fair opportunity to all DOE ESPC IDIQ awardees, unless an exception to fair opportunity applies.

B.6.3 Statutory Exceptions to Fair Opportunity

FAR 16.505 defines the rules for awarding task orders 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 the micro-purchase threshold 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.
f. Contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in FAR 19.000(a)(3).

An ordering agency may use one of these exceptions to award an ESPC task order to a single source if warranted. However, exceptions (a) through (e) would rarely be applicable for ESPC projects. Since there are no small business concerns with a GEN4 DOE ESPC IDIQ contract, exception (f) is not possible.

If an ordering agency determines that the circumstances warrant a sole source award for an ESPC task order, the ordering agency is responsible for completing the justification and approval process per the requirements in FAR 16.505 and any agency-specific procedures.

B.6.4 Complaint Resolution

Per FAR 16.505(a)(10), task orders 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 for ordering agencies other than DOD, NASA, and the Coast Guard, or greater than $25 million for DOD, NASA, or the Coast Guard. In the event there is a protest regarding an ESPC task order 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 ESCOs 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 ESCOs 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 ESPC IDIQ Contracting Officer who will then inform the DOE Ombudsman. Alternative dispute resolution techniques are recommended when the initial proposed resolution is not accepted by the ESCO.

In accordance with the DOE ESPC IDIQ contract, the ordering agency and the ESCO 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 III – ROLES AND RESPONSIBILITIES

C.1 The Department of Energy

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 Program Manager is responsible for tracking and goal setting within the program and coordinates periodic ESCO meetings. The Program Manager is supported by a DOE ESPC IDIQ Contracting Officer and a DOE ESPC 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.

C.1.1 DOE ESPC IDIQ Contracting Officer

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

C.1.2 DOE ESPC IDIQ Contracting Officer's Representative

The DOE ESPC 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 ESPC 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.

C.1.3 Federal Energy Management Program Assistance and Support

DOE FEMP offers assistance to federal ordering agencies in the development of 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 ordering 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 ordering agencies can expect from FEMP as well as an ESPC development process overview can be found in the *FEMP ESPC Project Development Resource Guide*, which is available on the ESPC Resources page of the FEMP website.

Resources for Implementing Federal Energy Savings Performance Contracts | Department of Energy

The FPEs, from DOE's Oak Ridge National Laboratory, can help ordering agencies throughout the ESPC project 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 ordering agency needed to initiate a project, and establish the preliminary scope and goals for the project. The FPE is in essence a case manager, making sure the project stays on track. The FPEs bring their own expertise and FEMP's resources, as needed, to promote high-quality ESPC projects.

Ordering agencies must use a qualified PF when using the DOE ESPC IDIQ contracts. A PF is an experienced and unbiased technical advisor who helps an ordering agency avoid obstacles and expedite the development and implementation of its ESPC project. PFs can provide a technical review of every document produced by the ESCO for the ESPC project. As they are technical experts in both building systems and the ESPC process, they are vital in attaining solid, best-value ESPC projects. A qualified PF may be obtained via DOE's existing contracts and other agreements for PF services (i.e. inter-agency agreement), contracted directly by the ordering agency, or may be a qualified federal employee at the ordering agency or another federal entity. For more information on PF services, see Section D.3 of this Ordering Guide, Phase 1, "Getting Started".

C.2 The Ordering Agency

The ordering agency is responsible for posting the ESPC project opportunity on the governmentwide point of entry (GPE) website, selecting an ESCO, and collaborating on project development toward award and administration of the ESPC task order. The success of each ESPC project includes, but is not limited to, the ordering agency making a good faith effort for the following:

- *Notify the DOE ESPC IDIQ Contracting Officer of the ordering agency's intent to use the DOE ESPC IDIQ contracts prior to issuing the NOO.*

  Per DOE ESPC IDIQ contract Section C.1, *General Requirements / Project Scope*, paragraph c, the ordering agency is required to notify the DOE ESPC IDIQ Contracting Officer when issuing a NOO for a potential ESPC project under the GEN4 IDIQ contracts. More detailed information about this initial notification is provided under Ordering Guide Section D.2.2.

- *Designate a primary ordering agency contact for the entire ESPC project, from acquisition planning throughout the performance period of the task order.*

  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 task order; and 2) maintaining continuity of documentation and awareness of the ESPC project throughout the ESPC task order performance period.

- *Ensure ESPC project team members receive recent FEMP ESPC training.*

  Besides the ESPC project core team members, the ordering agency is highly encouraged to have all project officials and key stakeholders complete one or more ESPC-related training courses within 12 months of the project start.

- *Have a project facilitator assigned to the ESPC project by the time of the Preliminary Assessment Kick-Off Meeting.*

Per DOE ESPC IDIQ contract Section C.1, General Requirements / Project Scope, paragraph e, the ordering agency is required to obtain a project facilitator (PF) to pursue an ESPC project under the GEN4 DOE ESPC IDIQ contracts. A PF is an experienced, unbiased advisor who guides the ordering agency acquisition team through the ESPC project development and implementation processes by providing technical and financial advice. More information about the options available for obtaining a PF is provided in Ordering Guide Section D.2.3.

- *Notify the DOE ESPC IDIQ Contracting Officer of the estimated value for the potential ESPC project to verify the selected ESCO has sufficient ordering capacity under its DOE ESPC IDIQ contract prior to issuing the NOITA.*

  After the selected ESCO provides a Preliminary Assessment (PA), the ordering agency will have a better understanding of the estimated value for the potential ESPC project. This value may have changed considerably from the estimated project value provided before the NOO was issued. The ordering agency will need to verify with the DOE ESPC IDIQ Contracting Officer that the selected ESCO's GEN4 DOE ESPC IDIQ contract has sufficient ordering capacity. This verification is important before issuing the NOITA letter because the selected ESCO will be investing significant resources in the project development phase after receiving the letter.

- *Collaboratively work towards task order award for projects that can be financed and the ESCO has made a good faith effort to address the ordering agency's needs and concerns.*

  When developing a project, the ESCO will spend considerable resources of time and money to develop a task order proposal, with no guarantee of reimbursement. The ordering agency's responsibility is to share information and work collaboratively with the ESCO so they can develop the best task order proposal possible for task order award. When an ordering 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 the ordering agency's needs and concerns. Some ordering agencies do not award a task order for an ESPC project, through no fault of the ESCO. For these cases, the ordering agency may consider the option to negotiate with the ESCO for ownership of the Investment Grade Audit (IGA) and reimbursement of development expenses through the issuance of a standalone (not an ESPC) contract.

- *Carefully consider the Risk, Responsibility, and Performance Matrix and ensure any ordering agency opted performance of operations, maintenance, or repair and replacement, can be accomplished.*

  The Risk, Responsibility and Performance (RRP) Matrix should summarize all the risks of the ESPC project and clarify who is taking the risks. Although the ESCO always maintains responsibility for assuring its guaranteed savings, ordering agencies have the option to perform any required operation and maintenance (O&M), or repair and replacement (R&R) of the ECMs and/or WCMs. It is important to recognize the ESCO's guarantee of savings could be affected by an ordering agency not properly performing O&M. The RRP Matrix should detail what will occur if an ordering agency agrees to perform the O&M but does not properly maintain equipment. The DOE ESPC IDIQ contract specifies that the ESCO always maintains ultimate responsibility even if the ordering agency performs O&M. The ordering agency needs to ensure that ordering agency capabilities and resources are available when taking on O&M responsibilities. Unfamiliar equipment that an ordering agency does not regularly maintain is best handled by the ESCO.

- *Follow FAR requirements for determining price reasonableness and subcontractor competition.*

FEMP provides multiple guides, worksheets, trainings, and other tools to assist ordering agencies in determining the price reasonableness of ESPC task order proposals.

- *Notify the DOE ESPC IDIQ Contracting Officer of any pending ESPC task order award and obtain an authorization to award the task order from the DOE ESPC IDIQ Contracting Officer via letter or email.*

  Per DOE ESPC IDIQ contract Section C.1, General Requirements / Project Scope, paragraph c, the ordering agency is required to obtain written authorization to award its ESPC task order from the DOE ESPC IDIQ Contracting Officer. This request for authorization to award is a separate requirement from the notice requirement for the NOO noted above. The ordering agency only needs to provide a notice to the DOE ESPC IDIQ Contracting Officer about the potential project before issuing the NOO. Before awarding the ESPC task order, the ordering agency will need to receive an authorization letter from the DOE ESPC IDIQ Contracting Officer. This letter will provide confirmation that the subject ESPC IDIQ contract has enough ceiling left to accommodate the total value of the pending ESPC task order award. More detailed information about obtaining this authorization is provided under Ordering Guide Section D.5.7.

- *Witnessing and reviewing the Measurement and Verification (M&V) measurements and reporting for the baseline, post-installation, and performance periods.*

  Ordering agencies must designate a government witness to accompany the ESCO during the baseline M&V measurements, post-installation M&V activities, and annual M&V activities. Ordering agencies must 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.

- *Notify the DOE ESPC IDIQ Contracting Officer of any pending task order award modification(s) that changes the value and/or scope of the original ESPC task order and obtain an authorization to award the task order modification when applicable.*

  Per DOE ESPC IDIQ contract Section G.2.5, Modifications to the Ordering Agency Task Order, paragraph a.1, the ordering agency is required to obtain written authorization to award an ESPC task order modification from the DOE ESPC IDIQ Contracting Officer when that modification will increase the total value above the original authorized amount. More detailed information about obtaining this authorization for a task order modification is provided under Ordering Guide Section E.1.1.

C.2.1 Ordering Agency Contracting Officer

The ordering agency CO/KO is responsible for the administration of the ordering agency's ESPC task order and the activities leading up to task order award, such as the ESCO selection process and review of project development documents. The general authorities and responsibilities of the ordering agency CO/KO are provided in DOE ESPC IDIQ contract Section G.2.1, *Ordering Agency Contracting Officer Authority*. Additional responsibilities of the ordering agency CO/KO, such as making determinations on applicable codes and standards (ref. Section C.5.4, Design and Construction Standards), are found throughout the DOE ESPC IDIQ contract. Some of these responsibilities may be delegated to another authorized official of the ordering agency. The DOE ESPC IDIQ Contracting

Officer recommends that any delegations of responsibilities are documented in the awarded ESPC task order and/or provided to the ESCO through an official letter.

C.2.2 Ordering Agency Contracting Officer's Technical Representative

The ordering agency CO/KO may appoint a Contracting Officer's Representative (COR) and/or Contracting Officer's Technical Representative (COTR), in accordance with ordering agency procedures, to perform delegated functions on the ESPC task order, as well as assisting with the activities leading up to task order award, such as the ESCO selection process and review of project development documents. The ordering agency COR/COTR appointment must be in writing, detailing the delegated responsibilities and functions, and a copy must be provided to the ESCO as soon as practicable.

C.2.3 Task and Delivery Order Ombudsman

Per DOE ESPC IDIQ contract Section H.3.12, *Task and Delivery Order Ombudsman*, each ordering agency will have a designated Task and Delivery Order Ombudsman. The ordering agency must provide the name and contact information for its Task and Delivery Order Ombudsman in the NOO.

The ordering agency Task and Delivery Order Ombudsman is responsible for reviewing any concerns related to fair opportunity submitted by ESCOs and working to resolve those concerns. The ordering agency Task and Delivery Order Ombudsman is a senior ordering agency official who is independent of the ordering agency CO/KO.

C.2.4 Other Ordering Agency Key Stakeholders

Most ESPC projects will involve multiple systems, buildings, and facilities at a particular ordering agency site or sites. For an ESPC project to be successful, it will require the input, collaboration, and/or approval of various key stakeholders at both the site and agency management levels. Here are the roles and responsibilities for some of these stakeholders.

Site Technical Representative: The Site Technical Representative (STR) serves as the principal point of contact, typically at the site level, for addressing technical issues, and must be designated from the beginning of the ESPC project planning process. The STR may be the Facility Manager, Energy Program Manager, or other similar title, and could also be designated as the ordering agency COR/COTR for the ESPC project.

Project Champion: The project champion partners with the ordering agency CO/KO to lead the efforts of the ordering agency's acquisition team in pursuing and promoting an ESPC project. The project champion should ensure that team members are trained, and other key stakeholders and decision makers are educated about the ESPC 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.

Additional information about key stakeholders is provided in Ordering Guide Section D.3.3, *Assemble an ESPC Project Team / Acquisition Team*.

C.2.5 Personnel Management

Since an ESPC task order 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 ordering 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 CO/KO and the ordering agency COR/COTR.

C.2.6 Project Documentation

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 task order. Documentation must include all pre-award communications such as PA and IGA development notes, task order proposal questions, responses, and resolutions, and other direction and agreements gathered by the ordering agency CO/KO and COR/COTR.

C.3 The Energy Service Companies

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

C.3.1 Contractor Employees

The ESCO (Contractor) is responsible for the supervision and control of its employees when performing services for an ESPC project during all phases from project development through the end of the post-acceptance performance period. The ESCO's responsibilities are outlined in DOE ESPC IDIQ contract Section H.16, Contractor Employees. An ordering agency may provide additional specifications about contractor employees in its TO RFP and subsequent ESPC task order, as needed.

C.3.2 Interaction With Other Contractors and Government Employees

The ESCO (Contractor) is required to fully cooperate with all other on-site contractors and government agency employees during all phases of an ESPC project. The ordering agency will provide direction and information as needed to the ESCO to assist them with the coordination and performance of its work to comply with this cooperative requirement. The DOE ESPC IDIQ Contracting Officer recommends documenting any communications related to these interactions in the ordering agency task order file.

C.3.3 Contractor Releases of Information Regarding ESPC Projects

Per GEN4 DOE ESPC IDIQ contract Section H.25, *Public Affairs – Contractor Releases of Information Regarding DOE ESPC Projects*, the ESCO (Contractor) is required to submit any potential releases of information regarding DOE ESPC projects to the DOE ordering site for review and approval before issuing or posting. For non-DOE ESPC projects, an ordering agency should consider adding a similar clause to its ESPC task order.

C.3.4 Posting Subcontracting Opportunities

Per GEN4 DOE ESPC IDIQ contract Section H.27, Requirements for Posting Subcontracting Opportunities, the ESCO (Contractor) is required to post links to its subcontracting opportunities at or above $250,000 for each ESPC project on various websites. For non-DOE ESPC projects, the ESCO is required to post links to subcontracting opportunities on any public-facing site recommended by the ordering agency. The ordering agency may recommend an agency specific website or portal for the ESCO to use. The ordering agency will assist the ESCO in posting links on that website or portal.

PART IV – ORDERING PROCESS AND PROCEDURES FOR ESPC TASK ORDERS

D.1 Overview of the ESPC Task Order Process

This part provides a detailed description of the ordering process and procedures for developing and implementing an ESPC task order under the DOE ESPC IDIQ contracts. The process is organized into five phases. The highlights of each phase are provided at the beginning of each section below.

This guide describes the acquisition steps and ESPC processes for awarding an ESPC project task order procured using the methods described in the DOE ESPC IDIQ contracts, either using FEMP's best-practices method, which is the Selection Based on Qualifications (SBQ) method, or the 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 the PA submittal.

D.2 Getting Started / Preliminary Actions

- Ordering agency gets started with an FPE.
- Ordering agency contacts DOE ESPC IDIQ Contracting Officer to use the DOE ESPC IDIQ contracts.
- Ordering agency considers options for engaging a qualified PF (internal, direct contract, through DOE, etc.) and at what stage. The FPE assists the ordering agency with a request for a PF through DOE.

D.2.1 Contact a DOE FEMP Federal Project Executive

A DOE FEMP FPE performs a lead role in DOE's ESPC process. From the beginning, when an ordering agency decides whether an ESPC is the best tool for meeting their needs, the FPE is essentially a case worker, helping to keep projects on track and ensuring the DOE FEMP resources are made available as needed. Their initial project support focuses on the first two phases of project development through ESCO selection and the PA kick-off meeting. They are also responsible for assisting ordering 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 may be utilized for projects worldwide). Check the FEMP website for current contact information for the FPE in the region of your project.

Federal Project Executives for ESPC, UESC, and ESPC ENABLE Projects | Department of Energy

The FPE will guide the ordering 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 ordering agency focuses on the following objectives in Phases 1 and 2:

- Determining whether an ESPC project, or other alternatively financed project, is feasible.
- Educating ordering agency staff about ESPCs and other options.

- Developing the ordering agency support 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 ordering agencies gain access to and use FEMP resources and tools such as renewable energy screenings and the ESCO Selector.
- Assisting the ordering agency with the development of the NOO.
- Participating in the PA kick-off meeting and communicating with the PF.
- Helping as needed to keep a project on track:
    - Repeated training and briefing on ESPCs to ordering agency staff, including senior officials who are new to the project.
    - Providing documentation about the value of an ESPC project to avoid decisions about reducing project scope that are not in the ordering agency's best interest.
    - Helping project champions acquire approvals.
    - Helping, with a broad range of FEMP resources, to address problems.

D.2.2 Contact the DOE ESPC IDIQ Contracting Officer

Before starting an ESPC project and eventually issuing an ESPC task order under the DOE ESPC IDIQ contracts, the ordering agency must notify the DOE ESPC IDIQ Contracting Officer of its intent to pursue an ESPC project under the IDIQ. The written notification should be sent by email or similar method before the NOO is issued and should 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/WCMs, if known
- Estimated value of the ESPC project, if available
- Name, contact information and warrant level (dollar value) of the ordering agency CO/KO who will be responsible for competing, negotiating, awarding, and administering the ESPC task order
- Name and contact information for the ordering agency COR/COTR and other key officials
- Summary of the ESPC training and/or experience for the ordering agency CO/KO, COR/COTR and other key officials.

This notice is to make sure that DOE is aware of all potential activity under its IDIQ contracts for accurate tracking of the remaining contract ceiling available for future projects. The notice also provides an opportunity for the DOE ESPC IDIQ Contracting Officer to assess the ESPC knowledge of ordering agency officials and advise where to find additional information and training. Notification gives the ordering agency an opportunity to ask questions, especially on ESPC acquisition-related topics. Some of the items that the DOE ESPC IDIQ Contracting Officer 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/KO's warrant is sufficient for the projected size of the project.
- Verifying that the ESPC training and/or experience of the ordering agency CO/KO (and other ordering agency officials) is recent and sufficient.

If the ordering agency CO/KO changes at any time, particularly after an ESPC task order is awarded, the ordering agency must notify the DOE ESPC IDIQ Contracting Officer 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/KO has sufficient training, experience and warrant level to administer the ESPC task order.

D.2.3 Project Facilitation Support - Engaging a Qualified ESPC Project Facilitator

D.2.3.1 *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 task order. A qualified PF is an experienced, unbiased advisor who can help the ordering agency avoid obstacles and expedite the project.

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, Task Order Request For Proposal (TO RFP), etc.), the process of ESCO selection, the coordination of various kickoff meetings (PA, IGA, implementation, etc.), the review of key project documents (PA, task order proposal with IGA, 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 or water 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. To further promote successful project execution, all PFs coordinate with the FEMP FPEs and other FEMP staff periodically during the ESPC process to support ordering agency. The scope of the PF services is ultimately determined by the ordering agency and its needs; and it is the ordering agency that is responsible for the solicitation and execution of any subsequent TO under the IDIQ. However, DOE highly recommends taking advantage of the expertise of the PF during every step of the process. Additional information about PF requirements and guidance can be found in the FEMP ESPC Project Development Resource Guide.

D.2.3.2 *Options for Designating or Obtaining a Project Facilitator*

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 (i.e. inter-agency agreement). If an ordering agency chooses to obtain PF services through DOE, the ordering agency must submit a request for PF support to the DOE ESPC IDIQ COR and/or the FPE representative.

See the Project Facilitator page on the FEMP website for additional information concerning PF support provided by FEMP.

Project Facilitators for Federal ESPC, UESC, and ESPC ENABLE Projects | Department of Energy

D.2.3.3 *Reimbursable Project Facilitation Services Through DOE*

An Inter-agency Agreement (IAA) between DOE and the ordering agency is required to reimburse DOE for reimbursable PF services. 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 Officer for PF services coordinates with the ordering agency CO/KO to execute the IAA. Additional information on available payment options for this "Skaggs IAA" can be obtained by contacting the DOE Contracting Officer and/or the DOE COR for PF services.

Federal Energy Management Program Contacts | Department of Energy

D.3 Phase 1: Acquisition Planning

D.3.1 Overview & Highlights of ESPC Process – Phase 1

During this initial ESPC project phase, the ordering agency will lay the groundwork for the various parameters of a potential ESPC project. Below is a summary of some of the actions that typically happen during Phase 1.

- 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.
- 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.
    - SBPA Method – Down-select to two or more ESCOs to perform PA for further evaluation.
- Ordering agency designates and engages a qualified PF (internal, direct contract, through DOE, etc.) – A PF can be engaged on the project as early as the acquisition planning phase but no later than the Preliminary Assessment phase.
- If a PF is engaged through DOE, DOE negotiates a Skaggs IAA with the ordering agency for reimbursement.

D.3.2 Assemble an ESPC Project Team / Acquisition Team

The acquisition team steers the ordering agency's efforts in developing the project, builds support for the project inside the ordering agency, and obtains the necessary management approvals. The team should include anyone who could 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/KO 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/water, design, and construction engineers
- Procurement officials
- Legal
- Public affairs
- Budget/comptroller
- Administrative services
- Maintenance
- Security
- Union representatives and labor relations
- Ordering 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 ordering agency's 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 lack of 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 ordering agency acquisition team's efforts along with the ordering agency CO/KO. 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 ordering agency support for the project. The ordering agency should also enlist the support of the specific site(s) and/or ordering agency upper management and keep them fully briefed, making sure their questions and concerns are addressed throughout project development.

D.3.3 Acquisition Strategy and Planning

D.3.3.1 *General Guidelines*

The ordering agency's 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 are committed to the final strategy.

The acquisition strategy should include a schedule of all actions necessary to award the task order, with an individual or group 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.

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

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

Resources for Implementing Federal Energy Savings Performance Contracts | Department of Energy

D.3.3.2 *Determining Project Scope Parameters*

Below is a list of some recommended topics or issues the ordering agency acquisition team should consider when determining project scope.

Scope of facilities/sites: What areas or facilities may be included in the ESPC project? Are there related sites that could be combined as one project? DOE FEMP recommends making the scope as broad as possible. It's easier to reduce buildings or sites to be included; not so easy to add after the ESCO is selected.

Future use of the facilities: An ordering agency must consider the use of the facility over the anticipated period of performance (up to 25 years). In particular, the ordering agency should consider the likelihood that a facility could be closed down (e.g., demolition, major renovation, etc.) during the performance period of the task order and how such action would impact the proposed project including the guaranteed savings.

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

Energy Conservation Measures (ECMs) and Water Conservation Measures (WCMs): What ECMs/WCMs would the ordering agency consider for an ESPC project? How could the ordering agency bundle them for a more cost-effective project, greater overall energy efficiency and/or water efficiency? (This is a good practice, but the ordering agency should remain open to changes in the ECM/WCM scope once the ESCO brings its expertise to the ESPC project.

Conditions of existing equipment: Is the equipment old and unreliable such that it will require replacement or major repairs soon? Is there a deferred maintenance list with which an ESPC project could help? These types of concerns could be considered for inclusion in the ESPC project, potentially leveraging appropriated dollars for planned, funded replacements.

Reliability and Resiliency: 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? Are there water or energy storage needs to continue mission-critical activities? These types of concerns could be considered for inclusion in an ESPC project.

D.3.3.3 *Determining Evaluation Factors (incl. Past Performance)*

Under the DOE ESPC IDIQ contract, the ordering agency has the flexibility to choose evaluation factors it deems most appropriate in selecting an ESCO for its potential ESPC project, as long as they are consistent with FAR 16.505, *Ordering*. DOE FEMP recommends that ordering agencies consider the following items when determining which evaluation factors to use:

- Project Management Approach
- Past Performance
- Related Experience
- Technical capabilities
- Use of renewable energy technologies
- Maximizing small business participation / subcontracting
- Promotion of mentor-protégé agreements.

DOE FEMP recommends that ordering agencies keep the number of evaluation factors low, to the minimum necessary to provide a meaningful distinction between the ESCOs that respond to a project opportunity. The evaluation factors should be prioritized rather than all factors being equal.

DOE also recommends that the ordering agency 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 ESCO respondents would tackle the problem. However, the ordering agency should avoid limiting an NOO to only "wish list" items to allow for a more robust project should one be supported by a subsequent investment grade audit.

An ordering agency is not required to have a formal evaluation plan, but it may help to have an evaluation plan, or similar document, to ensure that fair opportunity is provided to all GEN4 DOE ESPC IDIQ contract holders.

D.3.3.4 *Determining ESCO Selection Procedures*

a. Specific Selection Method Frameworks

When pursuing an ESPC project to issue a task order under the DOE ESPC IDIQ contracts, an ordering agency is authorized to use simplified ESCO selection procedures. The DOE ESPC IDIQ contracts allow an ordering 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 of the selection procedures based on an ESCO's qualifications or an ESCO's preliminary assessment. The Selection Based on Qualifications (SBQ) method allows an ordering agency to evaluate ESCOs based on their related experience, past performance, and other criteria that the ordering agency deems relevant. The Selection Based on Preliminary Assessment (SBPA) method allows an ordering agency 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.

1. *Selection Based on Qualifications (SBQ)*

i. The ordering agency CO/KO issues an NOO as described above that includes a description of the selection method chosen. Ordering agency COs/KOs are encouraged to use FEMP's ESCO Selector Tool, which helps streamline the ESPC NOO production process and makes evaluating NOO responses from ESCOs easier for site project teams. The tool also helps ordering agencies understand the steps to produce NOOs for ESPC projects, incorporates best practices associated with developing NOOs and evaluating NOO responses, facilitates writing and issuing complete NOOs that comply with the DOE ESPC IDIQ contracts, 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 https://esco-selector.ornl.gov/. The DOE FEMP FPEs can assist with training and use of the ESCO Selector Tool.

ii. The ordering agency CO/KO 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 when required by law consistent with FAR 16.505(b)(6), Post-award Notices and Debriefings of Awardees for Orders Exceeding $6 million.

iii. The ordering agency CO/KO contacts the selected ESCOs to request additional information that includes, but is not limited to, the following:

A) Qualifications for implementing potential ECMs/WCMs.
B) References for projects, or similar efforts, that included any of the potential ECMs/WCMs.
C) Specific detailed descriptions of those projects.
D) The resulting energy/water savings from those projects.
E) An explanation of how those projects relate to the objectives (or general scope and content) of the envisioned project.
F) Any other information the ordering agency needs to make a meaningful selection (e.g., ability and experience in obtaining third party financing arrangements).

The ordering agency CO/KO must also advise the selected ESCOs of the significant evaluation factors the ordering agency expects to consider in reviewing the additional information. If interviews will be conducted, the ordering agency CO/KO 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).

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

2. *Selection Based on Preliminary Assessments (SBPA)*

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

i. The NOO must include a description of the SBPA selection method.

ii. The ordering agency CO/KO may select two or more ESCOs to develop and submit PAs.

iii. The ordering agency CO/KO 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 FEMP recommends that a second full-scope PA be developed by the final selected ESCO to ensure the viability of the whole project is considered.

iv. The ordering agency CO/KO 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 conducting an IGA for the ESPC project, for the purpose of preparing a task order proposal.

b. Recommendations for the Selection Method Process

The following recommendations are based on the experience of various ESPC experts and other ordering agencies that have awarded 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:

   i. Quicker NOO development
   ii. More comprehensive project scope developed by the ESCO
   iii. More efficient ESCO selection and shorter project development cycle
   iv. Minimized administrative burden for ordering agency staff
   v. Avoidance of potential out-of-scope issues in fair-opportunity ESCO selection
   vi. Collaborative and flexible PA process (competitive PAs are constrained by typical competition rules).

2. 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.3.3.5 *Determining Funding, Savings, and M&V Parameters*

Below is a list of some recommended topics or issues the ordering agency acquisition team should consider when determining funding, savings, and M&V parameters.

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

Potential Funding Sources / Budget Considerations: What other funding sources might exist besides the utility or O&M budgets for making recurring or one-time payments to the ESCO, such as expected or available repair/replacement funds for aging equipment? Are there any current or future appropriations for energy or water improvements that could be used? Is there a possibility for the sale or transfer of excess energy generated on-site to utilities or non-federal users?

Potential savings both in energy/water units and dollars: Are dollar savings large enough to attract an ESCO and provide a payback period which would be acceptable to the ordering agency? The ordering agency should work with the DOE FEMP FPE to help to determine these potential savings, especially to avoid missed opportunities.

M&V approach: While FEMP has strong M&V best-practices and guides, consider if there are any special ordering 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)?

D.3.3.6 *Determining Site Requirements*

Below is a list of some recommended topics or issues the ordering agency acquisition team should consider when determining site requirements.

Site Conditions: What is the condition of the various systems in the site facilities and buildings, such as electrical and plumbing? Are they compliant with current codes or will they need to be updated? Are the building structures sound? Are there any space restrictions that might limit the types of ECM/WCMs that could be considered? Are there historical building considerations? These examples are just a sample of site conditions to consider that may impact a potential ESPC project.

Security Requirements (IT systems, Physical Access, Clearances): Are there web security issues that could be addressed in an existing data center or control system? What will be the process for providing the ESCO and its subcontractors physical access to the site and the buildings during project development and implementation? Will escorts be required? Are there any restricted access facilities that will require individuals to have a security clearance?

Site Support: What do the managers of these facilities need to do to support an ESPC project? Where will the ESCO have on-site space and who is in charge of it? Will there be parking available? Is there secure space available on-site to stage equipment and tools? Who is responsible for securing and locking the equipment, if needed?

Safety, Fire Prevention, and Other Requirements: What are the site-specific safety requirements the ESCO and its subcontractors will need to adhere to while performing any activities on the site? How will potential safety violations or accidents be handled? What fire prevention regulations, codes, equipment and systems should the ESCO be made aware of at the site?

Salvage and Nonhazardous Waste: What materials and equipment could potentially be salvaged and how will it be stored or relocated? How will construction/demolition debris and other nonhazardous waste be handled? The default is to have the ESCO manage the removal of the debris and waste.

Hazardous Materials: Are there any known hazardous materials onsite that may be disturbed or will need to be removed during the project? Is there a possibility of discovering unknown hazardous materials during the project that may be hidden from plain sight behind walls or buried underground? What measures will need to be taken to prevent the disturbance of hazardous materials, or safely remove and dispose of it? The default is to have the ESCO manage the handling of all hazardous materials. The ordering agency may negotiate with the ESCO to determine which party will perform the various responsibilities.

D.3.3.7 *Determining Applicable Terms and Conditions*

Below is a list of some recommended topics or issues the ordering agency acquisition team should consider when determining applicable terms and conditions for the ESPC project.

Government Property: Does the ordering agency have any equipment, materials, and/or supplies the ESCO could use in developing, implementing, or maintaining the potential ESPC project? Would it be in the government's best interest to have the ESCO use this government property?

Rights in Data: If the potential ESPC project does not get to task order award, will the ordering agency want to obtain rights to the data in the PA and/or the IGA? These project development work products would have to be procured by the ordering agency from the ESCO through a contracting instrument separate from the DOE ESPC IDIQ contract.

Additional clauses and provisions: Are there any agency-specific clauses and provisions that could be added to the TO RFP and subsequent ESPC task order that are not already addressed by the terms and conditions in the GEN4 DOE ESPC IDIQ contract?

Agency-specific directives: What applicable directives specific to the ordering agency/site should be included in the TO RFP and subsequent ESPC task order?

D.3.3.8 *Other Items to Consider in Acquisition Plan*

Below is a list of some other topics or issues the ordering agency acquisition team may want to consider during acquisition planning.

Conflicts and Obstacles: Are there any current or pending construction projects at the selected facilities? Are there barriers to an ESPC project, such as security issues, union issues, or management attitudes that need to be addressed to promote success? Are there any ordering agency contractors involved on site? Are there other contractual arrangements in place that might be affected by an ESPC project, including existing energy performance projects or utility agreements? When a site is run by another party (e.g., management and operations (M&O) contractor), which party will be responsible for maintenance, repair, and replacement, or addressing various issues when they arise?

Providing Utilities: How will the ordering agency provide electricity and/or water to the ESCO and its subcontractors while onsite? Will the cost of the utility usage be handled under a separate arrangement or incorporated into the ESPC project? Will the ESCO need internet access?

Reserve Accounts: Would the establishment of a reserve account for an identified future expense related to an ECM or WCM be appropriate for the ESPC project?

Delivery Requirements: Are there any special delivery or packing requirements for equipment, materials, or supplies for the ESPC project that may get shipped to the ordering agency site?

Parameters for Travel and Other Direct Costs: Are there any specific travel regulations, rules, or guidelines that should be communicated to the ESCO prior to the start of the project development process? Are there any restrictions concerning other direct costs that should be emphasized?

D.3.3.9 *Small Business Participation, Subcontracting, and Mentor-Protégé Agreements*

Another key factor of acquisition strategy that ordering agencies must consider is how to maximize small business participation in their ESPC projects. This goal can be accomplished primarily through subcontracting opportunities. The DOE ESPC IDIQ Contracting Officer recommends that an ordering agency require each interested ESCO to submit a small business participation plan with the proposed goals based on the total estimated task order value.

All the ESCO awardees under the GEN4 DOE ESPC IDIQ contracts are large businesses and have an approved individual small business subcontracting plan included as part of their DOE ESPC 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. The ESCO will report its small business subcontracting achievements through the electronic Subcontract Reporting System (eSRS). Further detail about this reporting is found under Ordering Guide Section E.3.

All large business ESCOs are also required to establish a minimum of two mentor-protégé agreements with eligible small businesses during the life of the DOE ESPC IDIQ contract. One of the potential benefits of these agreements to the mentor is the ability to award a subcontract to its protégé without competing it. Ordering agencies are encouraged to promote these mentor-protégé agreements by allowing the ESCOs to award non-competitive subcontracts to their established protégés under individual ESPC task orders.

Unless otherwise agreed to by the ordering agency CO/KO, the ESCOs are required to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent for work to be performed under an ESPC task order. To support this requirement, the ESCOs must publicly post all subcontracting opportunities with a projected value at or above $250,000 for each ESPC project, unless an exception applies as identified in FAR 5.202. The ESCOs are also encouraged to post subcontracting opportunities with a projected value below $250,000.

D.4 Phase 2: Notice, Selection, and Preliminary Assessment

D.4.1 Overview & Highlights of ESPC Process – 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 NOO, and ultimately selects one ESCO to develop an ESPC task order project based on information submitted in response to the NOO. Such information may include contractor qualifications, PAs, and other specified facts or data. Below is a summary of some of the actions that typically happen during Phase 2.

- Ordering agency sends NOO to all IDIQ ESCOs via the GPE website with ESCO selection criteria.
- Interested ESCOs submit responses to NOO.
- Ordering agency evaluates ESCO responses to NOO; PF may assist with review of NOO responses.
- SBQ/SBPA: Ordering agency may select 2 or more ESCOs for further consideration (e.g., interview, additional questions) – ESCOs not selected for further consideration are notified by ordering agency.
- SBQ Method: Ordering agency selects one ESCO for PA development.
- SBPA Method: Ordering agency selects two or more ESCOs for PA development.
- Ordering agency notifies ESCO(s) not selected for PA development.
- ESCO(s) notifies DOE ESPC IDIQ COR in writing that it has been selected before the PA is submitted.
- Ordering agency registers project in eProject Builder (ePB) and notifies ESCO.
- Ordering agency schedules and conducts PA Kickoff Meeting with PF support.
- ESCO(s) conducts PA Site Visit(s).
- ESCO(s) submits PA(s).
- Ordering agency reviews PA(s) with assistance of PF.
- Ordering agency determines project viability (Go/No-Go decision).
- Ordering agency selects one ESCO for IGA development (if using SBPA Method).
- Ordering agency verifies the selected ESCO's ordering capacity with the DOE ESPC IDIQ Contracting Officer.
- Ordering agency drafts and issues NOITA; PF may provide support.

D.4.2 The Notice of Opportunity (NOO)

An ordering agency CO/KO must provide each DOE ESPC IDIQ contractor a fair opportunity to be considered for any ESPC task order award, unless an exception applies (See Ordering Guide Section B.6.3). In selecting a contractor, the ordering agency CO/KO 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/KO must indicate in the NOO the selection method and selection steps the ordering agency intends to use for the entire ordering process.

D.4.2.1 *Developing the NOO*

The NOO is the first key document to notify the ESCOs with DOE ESPC IDIQ contracts of a potential ESPC project and establish that fair opportunity has been provided. DOE FEMP 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 a third-party energy or water audit is not recommended as some potential ECMs/WCMs could be overlooked. The ESPC authorizing statute (42 U.S.C. § 8287, as amended) establishes the following framework for DOE's ESPC IDIQ contract minimum content requirements for an NOO:

a. The ordering agency's desire to pursue an ESPC project.

b. A concise statement of the ordering agency's objectives for considering an ESPC project.

c. 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.

d. Summary information about the energy/water usage for its facilities.

e. A request that each interested ESCO (contractor) submit a response that includes:
   1. An Expression of Interest (EOI) in pursuing a potential ESPC project, and
   2. If interested -
      i. Qualifications for performing site surveys/investigations, feasibility designs/studies or similar assessments such as a PA, IGA, etc., and
      ii. Any other preliminary information the ordering agency needs to make a meaningful selection (e.g., experience with third party financing arrangements).

f. 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.

g. A submittal deadline that provides a reasonable period of time for the ESCOs (contractors) to respond to the notice. The DOE ESPC IDIQ Contracting Officer recommends factoring in time for questions and answers before the EOIs are due.

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

a. 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.

b. The methods and procedures an ESCO plans to use to obtain competitive prices on ECMs/WCMs and achieve the best value for the government.

c. The personnel an ESCO plans to assign responsibility for the PA and their qualifications.

d. An ESCO's approach to developing energy/water baselines and the M&V approach for this project.

D.4.2.2 *Support Resources for the NOO*

The DOE FEMP FPE can assist the ordering agency with the development of the NOO. DOE also provides various resources on the ESPC Resources page of the FEMP website for formulating the NOO, including the ESCO Selector tool. This is an online tool that ordering agencies can use to develop a NOO and NOO response evaluation forms.

https://esco-selector.ornl.gov/

D.4.2.3 *Posting the NOO*

Per DOE ESPC IDIQ contract Section H.3, *Procedures for Awarding Task Orders*, the NOO must be published on SAM.gov, Contract Opportunities (or the current GPE). In addition, the ordering agency may also use any other reasonable methodology to post the NOO and provide fair opportunity to all DOE ESPC IDIQ contract holders. While the ESPC task order award is limited to the ESCOs with a DOE ESPC IDIQ contract, publishing the NOO on the SAM.gov website provides notification of subcontracting opportunities.

DOE also recommends that the ordering agency email the primary and secondary contacts for each ESCO to ensure they are aware of the NOO posting.

D.4.3 ESCO Selection Process

D.4.3.1 *ESCO Selection Debriefings*

Per GEN4 DOE ESPC IDIQ contract Section H.3.7, *Notification of Contractors Not Selected*, the ordering agency CO/KO is required to notify the non-selected ESCOs that they are no longer being considered for the ESPC project. If the ordering agency's selection process includes multiple steps that reduce the number of ESCOs under consideration, then notices to non-selected ESCOs must be sent out at each of those steps. Debriefings may not be required by law for each of these selection steps, but the DOE ESPC IDIQ Contracting Officer recommends that an ordering agency at least provide an explanation to the non-selected ESCOs of why they are no longer being considered. The ordering agency may provide this explanation by any delivery method deemed appropriate, whether written or oral, and should be reviewed by the ordering agency's legal counsel prior to release.

D.4.3.2 *Alternative ESCO Selection*

Sometimes the selected ESCO may not turn out to be a good fit for an ordering agency's ESPC project. For example, the ordering agency and the selected ESCO may fail to reach agreement on the terms and conditions of a pending ESPC task order. The ordering agency may then select another ESCO for the ESPC project, as long as the NOO included language allowing for the selection of an alternate ESCO (Ref. DOE ESPC IDIQ contract Section H.3.11, *Additional Information*). However, the alternate selected ESCO will have to start the project development process from the beginning. The ordering agency will not have rights to the project development products (i.e., PA, IGA, etc.) of the previous selected ESCO, unless otherwise agreed to.

D.4.4 The Preliminary Assessment (PA)

D.4.4.1 *Recommended But Not Required, Benefits of a PA*

DOE FEMP highly recommends the use of a PA during ESPC project development. However, an ordering agency may determine that a PA is not essential and may opt out of requiring the ESCO to develop a PA. If the ordering agency decides a PA is not required, DOE FEMP recommends that the ESCO and the ordering agency follow the *FEMP ESPC Project Development Resource Guide* (or agency equivalent guide) regarding project development without a 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. The following sections provide an overview of the PA, consistent with DOE ESPC IDIQ contract Section H.4, *Preliminary Assessments for ESPC Projects*.

D.4.4.2 *ESCO Develops PA at Risk*

An ordering agency 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 ordering agency has no rights to the ESCO's proprietary work products associated with the PA, such as surveys, data, feasibility study reports, and/or design documentation.

D.4.4.3 *Contents of a PA*

The PA is intended to be a high-level view of the potential ESPC project scope. DOE FEMP recommends that the length of the main document be no more than 35 pages, not including a cover page, table of contents, list of acronyms and abbreviations, Task Order Schedules, or ECMs/WCMs using the ECM template provided on the ESPC Resources page of the FEMP website. Completed ECM templates are not intended to be limited to a single page; however, they should be concise. A reasonable goal is two pages per ECM/WCM to maintain the PA content at a high level, as illustrated in the ESPC PA templates located on the ESPC Resources page of the FEMP website.

The PA shall include at a minimum the following sections:

a. Project Overview, or Executive Summary, that includes –

   i. A narrative summary of the proposed project
   ii. A brief summary of the project management plan / approach
   iii. A brief description of recommended and potential ECMs/WCMs
   iv. A summary of ranges for energy, water and related cost savings
   v. A conceptual range of implementation price.

b. Technical Assessment, that includes –

i. *Project Management Plan*. A project management plan that provides for the efficient development of a task order proposal for a project and effectively addresses the ordering agency's objectives depicted in the NOO. Although not required in the DOE ESPC IDIQ contract, key recommended elements of the plan include:

   A) A communication plan
   B) Organization and key personnel, including identification of functions to be subcontracted
   C) Description of the subcontracting management plan
   D) A draft RRP Matrix
   E) Expectations for ordering agency participation
   F) ECM/WCM Project schedule.

ii. *Descriptions for each recommended and potential ECM/WCM*. In addition to narrative information, each ECM/WCM description should include ranges for estimated implementation price and savings. ECMs/WCMs are categorized by those recommended for inclusion in the task order proposal (Recommended ECMs/WCMs) and those that may be included but require additional evaluation (Potential ECMs/WCMs) as described below.

   A) *Recommended ECMs/WCMs* – the ESCO is quite confident this ECM/WCM is viable for this ESPC project and will be included in the task order proposal. The ESCO will provide narrative information and estimated implementation price and savings ranges in the format specified in the template.

   B) *Potential ECMs/WCMs* – ECMs/WCMs the ESCO considers worthy of evaluation, but which require evaluation and verification of field conditions in the task order proposal development phase for the ESCO to complete a more accurate calculation to increase its confidence for inclusion in the task order proposal. For these potential ECMs/WCMs, the ESCO will provide a narrative description of each ECM/WCM, how the ECM/WCM may save energy and/or water for the site, and a conceptual-level estimate range of potential implementation costs, cost savings, and energy/water savings.

iii. *ECM/WCM Performance Measurement*. The ESCO will provide a general description for the M&V approach that will be proposed for the recommended ECMs/WCMs in accordance with DOE ESPC IDIQ Contract 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 will 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*. For each Recommended ECM/WCM submitted, the ESCO will also include an explanation when the ESCO's M&V approach in the PA may differ from FEMP's M&V Guidelines.

   If operation and maintenance savings are included in the PA, then the ESCO will 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/water cost savings,

the ESCO is required to comply with the latest version of FEMP's *Guidance on Utility Rate Estimations and Weather Normalization in Performance Contracts*.

Although not required in the DOE ESPC IDIQ contract, DOE highly recommends that the PA include the baseline energy/water use for the buildings/site being evaluated, and if applicable, the baselines of each ECM/WCM being recommended, as well as the utility rates used for calculations.

iv. *Completed Task Order Schedules from eProject Builder for all Recommended ECMs/WCMs*. This must include a Schedule 1, Schedule 2a and 2b, Schedule 3, Schedule 4, and Schedule 4g. The ESCO may also include the Summary and Annual Escalation Rates schedules. The Task Order Schedules provide estimates of proposed energy/water and cost savings and the estimated implementation price. The ordering agency should provide guidance to the ESCO on what values to use in the Task Order Schedules, such as the average of the ranges provided in the ECM/WCM descriptions. At this stage of development, the costs and savings may be largely based on the ESCO's previous experience with similar measures and other benchmarking data. Details of savings calculation and cost build ups are not required for this phase and only need to be provided during the task order proposal phase.

See the ESPC Resources page on the FEMP website for various templates and a PA example to help ESCOs conduct preliminary assessments required for federal ESPC projects.

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D.4.4.4 *Review of PA*

The ordering agency's decision to proceed with the ESPC 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.

a. PA Review Guidance

The ordering agency should consider the following criteria when reviewing the PA:

- Are ECM/WCM descriptions and projected energy/water savings reasonable, acceptable and comprehensive?
- Is the M&V approach reasonable and appropriate?
- Are the risks and responsibilities, as proposed in the RRP Matrix, acceptable?
- Are the estimated annual cost savings reasonable and consistent with the technical approach?
- Are the service-phase (performance period) line items, contract term, and total cost, reasonable and consistent with the technical approach?
- Does this PA 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/WCMs expected in the task order proposal. Any ordering agency, PF, and/or DOE FEMP comments on the PA should be recorded, consolidated, and provided to the ESCO. These comments will be resolved in the task order proposal, which includes an IGA, without requiring additional iterations of the PA.

See the ESPC Resources page on the FEMP website for a PA review template and additional guidance on reviewing ESCO submitted PAs.

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b. Go/No-Go Decision

1. *Selection Based on Qualifications (SBQ) Process*

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.

2. *Selection Based on Preliminary Assessments (SBPA) Process*

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 ESPC IDIQ ESCOs but may not disclose any proprietary information submitted by ESCOs under the original opportunity.

For ESPC projects at DOE sites, the PA must be reviewed by the DOE ESPC Review Board. The DOE ordering office must allow adequate time in the project's schedule for this required review process. To learn more about the DOE ESPC Review Board and how to engage it, contact the DOE Sustainability Performance Office at sustainability@hq.doe.gov.

D.4.5 The Notice of Intent to Award (NOITA)

The ordering agency CO/KO formalizes the decision to proceed to award of an ESPC project to the ESCO by transmitting a NOITA letter. The letter specifies a time frame and any conditions incumbent on the selected ESCO for conducting the IGA and submitting a task order proposal. It should not include any representations or commitments for the ordering agency to compensate or reimburse the ESCO for ineligible costs. **The ordering agency is not responsible for costs associated with audits and preparation of PAs, IGAs, and task order proposals, unless an ESPC task order is awarded.**

D.4.5.1 *Purpose of the NOITA*

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. 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.4.5.2 *Verification of IDIQ Ordering Capacity*

In order to ensure there is enough ordering capacity left on the DOE ESPC IDIQ contracts, the ordering agency must provide to the DOE ESPC IDIQ Contracting Officer an estimate of the maximum potential price of the task order before the NOITA is issued (See Ordering Guide Section C.2, *The Ordering Agency*). The estimated price ranges in the ESCO's PA can be used for this purpose. The DOE ESPC IDIQ Contracting Officer, or the designated proxy, will respond within 5 working days confirming the selected ESCO's contract has sufficient ordering capacity for the ordering agency's potential ESPC project.

D.5 Phase 3: Project Development, Task Order Proposal and Award

D.5.1 Overview & Highlights of ESPC Process – Phase 3

Having been given a NOITA, the ESCO may conduct the IGA for the task order proposal. The ESCO's task order proposal is the basis for negotiating the final terms and conditions of the ESPC task order. The task order proposal provides a complete technical description of the project including detailed ECM/WCM descriptions and savings, M&V plan, O&M, etc., as well as the costs, pricing, financing and related information.

An ESPC task order award is still conditional upon the compliance of the ESCO's task order proposal with all requirements defined in the DOE ESPC IDIQ contract (as supplemented by the TO RFP) and upon successful negotiation and agreement on the requirements of the task order and the content of the task order proposal. Award is also contingent upon the ESCO's ability to meet pre-award requirements defined in the DOE ESPC IDIQ contracts. Below is a summary of some of the actions that typically happen during Phase 3:

- Ordering agency and ESCO schedule and hold IGA Kickoff Meeting with PF support.
- Ordering agency drafts and issues TO RFP with PF support.
- ESCO conducts IGA (or in-depth site survey).
- Ordering agency witnesses baseline measurements.
- ESCO develops and submits task order proposal with IGA results included.
- Ordering agency notifies DOE ESPC IDIQ Contracting Officer and COR with proposed task order value.
- Ordering agency reviews ESCO's task order proposal package with PF support; DOE ESPC IDIQ Contracting Officer and COR may review task order documents as requested by ordering agency.
- DOE ESPC IDIQ Contracting Officer provides the ordering agency an authorization to award the ESPC task order.

- Ordering agency and ESCO conduct final negotiations; agreement is reached on all issues; PF may provide support.
- ESCO submits final task order proposal with revised IGA as needed.
- Ordering agency verifies task order proposal schedules submitted by ESCO match what is in ePB and approves them; PF may provide review support of final task order proposal.
- ESCO signs ESPC task order and returns it to ordering agency.
- Ordering agency awards the ESPC task order and ensures the total project value of the task order is recorded in Federal Procurement Data System – Next Generation (FPDS-NG).

D.5.2 The Task Order Request For Proposal (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.5.2.1 *Function of the TO RFP*

The DOE ESPC IDIQ contracts are intended to be flexible and to accommodate the 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 DOE ESPC IDIQ contract), and to communicate these requirements to the ESCO. The terms of the TO RFP, which are ultimately incorporated into the awarded ESPC task order, take precedence over the terms of the DOE ESPC IDIQ contract as long as they remain within the DOE ESPC IDIQ contract scope, period of performance, and contract ceiling and do not reduce or eliminate a requirement established in the IDIQ contract, e.g. small business subcontracting.

DOE ESPC IDIQ contract Section H.5, *Task Order Proposals and Proposal Reviews for ESPC Projects*, guides the ESCO in preparing its task order proposal and submission of supporting information. The ESCO may be instructed to submit task order proposals or information in a specific format or severable parts to facilitate evaluation. The ordering agency may also emphasize the need for the ESCO 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. (An exception to competition applies when the ESCO is allowed to award a subcontract directly to a protégé operating under a properly executed DOE Mentor Protégé agreement. See Ordering Guide Section D.3.3.9, *Small Business Participation, Subcontracting, and Mentor-Protégé Agreements*.) The ordering agency may require the ESCO to conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices and include the results of these analyses in the task order price proposal. Any other supporting documentation that is required by the ordering agency to make an evaluation of the task order proposal should be stated in the TO RFP.

Some provisions that must be addressed in the TO RFP include ordering 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 ordering agency and site requirements.

D.5.2.2 *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 DOE ESPC IDIQ contract provisions that usually require tailoring 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 in the development of the TO RFP saves time, as it precludes the need to review the entire DOE ESPC IDIQ contract in order to determine what should or must be addressed in the TO RFP. Also, ESCOs are familiar with the format.

See the ESPC Resources page on the FEMP website for the prescriptive TO RFP template that can be tailored for an ordering agency's needs.

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D.5.2.3 *Tailored Terms and Conditions*

Only the DOE ESPC IDIQ contract terms and conditions that are to be tailored need to be addressed in the TO RFP. Any provision of the ESPC may be tailored to clarify or add to the language, unless tailoring is specifically prohibited in a section. No DOE ESPC IDIQ contract requirement may be reduced or removed.

One of the sections an ordering agency will want to address is Section C.9, *Contractor Maintenance and Repair Response Time*. For example, in the DOE ESPC IDIQ contract, the phrase "within the timeframe specified" in the task order is used in several statements. The ordering agency will need to determine what a reasonable timeframe may be for each statement and incorporate that information into the TO RFP and subsequent ESPC task order.

An ordering agency will also need to provide the necessary information for the fill-in clauses provided by reference in DOE ESPC IDIQ contract Section I.1, *FAR and DEAR Clauses Incorporated by Reference*.

D.5.2.4 *Tailored Small Business Subcontracting Goals*

Ordering agency policy may require agency-specific goals for the project task order based on the composition of its ESPC project. The GEN4 DOE ESPC IDIQ contracts allow the ordering agencies to request tailored small business subcontracting goals. Each GEN4 DOE ESPC IDIQ contract includes the ESCO's approved individual Small Business Subcontracting Plan. Each plan has established overall minimum goals for task orders issued under the DOE ESPC IDIQ contract during its term.

The TO RFP may include an indication of the agency-specific subcontracting goals that the ordering agency wants the ESCO to meet in the ESPC task order. The ordering agency requirements may increase, but not reduce, the small business subcontracting goals already established in the DOE ESPC IDIQ contract plan. At this point the project should be sufficiently defined to permit identification of any tailored subcontracting goals for the ESPC task order. These tailored small business subcontracting goals should be another item negotiated and included in the award. The TO RFP prescriptive template provides direction for this process as well.

D.5.3 Developing the Project through an Investment-Grade Audit (IGA)

D.5.3.1 *Purpose of an IGA*

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

D.5.3.2 *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 task order 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/WCMs
- The general O&M approach
- The general M&V approach
- 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 task order proposal with the IGA (i.e., content and level of detail).
- Establishing access procedures and security requirements.

- Clarifying as necessary the agency- and site-specific requirements in the TO RFP.

See the ESPC Resources page on the FEMP website for a sample IGA kickoff meeting agenda.

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D.5.3.3 *IGA Development Activities*

Although the ESCO is responsible for most activities during this period, the success of the ESPC project depends on collaboration between the ordering agency and the ESCO. Communication is key. It is critical that the ordering agency stay actively involved throughout the process. During the IGA, measurements are taken and baselines are established. The ordering agency needs to perform witnessing activities of measurements 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 ordering agency generally provides an escort and/or arranges for access to the buildings to be surveyed. The ordering agency and ESCO should participate in bi-weekly meetings to keep all parties on the same page. These bi-weekly meetings provide a routine venue for addressing questions of both the ordering agency and the ESCO and for ensuring the ESCO receives updated information. It is recommended that an IGA midpoint review is conducted to discuss findings to date and determine how to proceed.

The ESCO will also be making efforts around this timeframe to evaluate and obtain all available financial, tax, and other incentives that can be applied to the ESPC project. The ordering agency will need to coordinate with the ESCO on the documentation needed to apply for these incentives.

D.5.4 Task Order Proposal Submittal

D.5.4.1 *Description of Task Order Proposal*

The ESCO integrates findings from the IGA and the results of the financing acquisition with the requirements stated in the DOE ESPC IDIQ contract and the TO RFP to produce the task order proposal. The task order proposal consists of two components: the technical and price proposal. The final IGA findings are submitted as part of the technical component of the task order proposal. The ESCO may submit a draft IGA report before the task order proposal for the ordering agency to review and approve. The task order proposal addresses ECMs/WCMs considered, their feasibility, energy/water savings calculations, rationale for ECM/WCM selection, costs to implement each ECM/WCM with detailed backup information, and annual cost savings of each ECM/WCM with detailed supporting data. The task order proposal is a firm fixed-price proposal.

D.5.4.2 *Contents of Task Order Proposal*

Summarized contents of the task order proposal are as follows:

- Project Overview
  - Executive Summary

    - Site Description and Utility Summary
- Volume I: Technical Proposal
    - ECM/WCM Descriptions
    - ECM/WCM Performance Measurements
        + M&V Plan
        + Commissioning Approach
    - Project Management Plan
        + Communication Plan
        + Organization
        + RRP Matrix
        + Operations, Maintenance, Repair & Replacement Approach
        + ECM/WCM Training Plan
- Volume II: Price Proposal
    - Task Order Schedules and supporting documentation
    - Summary of finance offer with Investor Deal Summary (IDS), Standard Financing Offers (SFOs) and Selection Memorandum and project interest rate update process
    - Summary of a reserve account, if applicable
    - Price analysis of subcontractor quotes
    - Copies of mentor-protégé agreements, if applicable
- Tailored small business subcontracting goals, if required by the ordering agency

The task order proposal must also address appropriate M&V methodology, energy/water and O&M baselines, and an M&V management plan. The recommended content for the task order proposal is specified in DOE ESPC IDIQ contract Section H.5; this content may be modified as allowed by the TO RFP. Negotiations to achieve agreement on a final ESPC task order are based on the task order proposal and any other post-IGA submittals.

D.5.4.3 *Competitive Financing Requirements*

The DOE ESPC IDIQ contract 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 ordering agency will receive the best possible overall value for the proposed ESPC project. The financing of an ESPC project is a contract or agreement between the ESCO and the financier. It is the ESCO's responsibility to obtain competitive offers, evaluate the offers, and select a financier based on the ESCO's criteria for best value. The ESCO is required to document the process for the ordering agency.

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 Selection Memorandum signed by an authorized official of the Contractor. This memorandum and the SFO for the selected offer become part of the task order proposal.

Templates for the IDS and the SFO are available on the ESPC Resources page of the FEMP website. These documents are also attachments to the DOE ESPC IDIQ contracts.

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D.5.5 Ordering Agency Review of Task Order Proposal

The ordering agency's careful review of the task order 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 task order proposal is imperative. Every detail in all documents related to the task order 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 task order proposal sections requires coordination between the members of the acquisition team assigned to review parts of the task order 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 task order award, adhering to the established schedule should reduce costs and allow for timely implementation of ECMs/WCMs and the accrual of energy and/or water savings for the ordering agency.

For ESPC projects at DOE sites, the task order proposal must be reviewed by the DOE ESPC Review Board. The DOE ordering office must allow adequate time in the project's schedule for this required review process. To learn more about the DOE ESPC Review Board and how to engage it, contact the DOE Sustainability Performance Office at sustainability@hq.doe.gov.

D.5.5.1 *ECM/WCM Description and Projected Energy/Water Savings*

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

- Compliance with the requirements necessary to qualify as an ECM/WCM under 42 U.S.C. § 8287c(4) and 10 C.F.R. § 436.31.
- Technical feasibility, reasonableness and acceptability.
- An energy/water analysis based on sound assumptions and engineering principles.
- Utility escalation rates were determined using FEMP guidance where appropriate.
- Adequate backup documentation on energy/water 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.

D.5.5.2 *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 and verified. The final M&V plan should specify the following for the entire contract term:

- M&V methods to be employed.
- Measurements, calculations, and parameters for baseline, post-installation and performance period.
- Agency-required content of the annual M&V report (in addition to required components of the ESPC Annual M&V Report Outline in latest version of FEMP M&V Guidelines).

- 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.
- Description of methods used to determine O&M savings for each ECM/WCM (if included).
- O&M report requirements for each ECM/WCM (if required).
- Details of the recommended witnessing level for each ECM/WCM proposed.

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

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

See the ESPC Resources page on the FEMP website for documentation that provides guidance for the implementation of uniform and consistent reviews of measurement and verification (M&V) plans for federal ESPC projects.

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D.5.5.3 *Definition of Baselines*

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

The task order proposal should contain a complete description of the baseline energy/water 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). Data collected during the IGA is generally used for determining the baselines. It is very important for the ordering agency to document the witnessing of the baseline measurements, per the M&V plan. As the ESCO develops the M&V plan during the IGA, the ordering agency and the ESCO should be discussing the level of witnessing that will be required and plan to have the ordering 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 task order proposal and the ordering agency's 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 ECM/WCM installation, and preferably before award.

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

D.5.5.4 *Estimated Savings and Guaranteed Savings*

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

Energy and water savings are calculated by subtracting estimated post-installation energy/water use from baseline energy/water use. These savings calculations should be examined in detail. They are the basis of the contractually guaranteed savings offered by the ESCO, and they directly determine the project investment and contract term allowed in the contract.

The estimated savings are derived from facility information and utility use data, using standard engineering methods and calculations documented in the task order proposal. Only a portion of the estimated energy/water 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/WCMs; the O&M and R&R practices; the ESCO's risk tolerance; and ordering 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 ordering agency of guaranteeing less than 100% is assurance that the guaranteed savings will be sufficient to pay the ESCO for the costs of the project within the term of the ESPC task order.

See the ESPC Resources page on the FEMP website for more information concerning how estimated and guaranteed savings are included in the ESPC process, such as the "Practical Guide to Savings and Payments in FEMP ESPC Task Orders".

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D.5.5.5 *Commissioning Approach*

The ordering agency reviews the proposed commissioning approach which addresses how commissioning will support the ordering agency's objectives for improving facility operations and conditions. The ordering agency should 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 ESPC Resources page on the FEMP website for documentation outlining the commissioning process, including major considerations, for ESPC projects.

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D.5.5.6 *Project Management Plan*

The project management plan consists of the ESCO's organizational structure for the project, the RRP Matrix, the proposed level and assignment of O&M services, the proposed R&R services and responsibilities in detail, and a project timeline. It also includes a communication plan and a training approach. 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 project management plan and in the M&V section provide most of the backup and substantiation for the performance period pricing shown in the financial Task Order Schedules. Often there is considerable negotiation of the service levels since the investment in ECMs/WCMs and the task order term are directly affected by the performance period expenses.

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 RRP Matrix is clearly written and does not conflict with other areas of the task order proposal, including, but not limited to, the O&M and R&R proposed and the cost for O&M and R&R in the ESCO's pricing.

See the ESPC Resources page on the FEMP website for the current template of the RRP Matrix.

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D.5.5.7 *Task Order Price Proposal*

The ordering agency CO/KO is responsible for evaluating the reasonableness of the offered price to ensure that the final price is fair and reasonable. Because the ESCO's DOE ESPC IDIQ contract did not establish the price for ESPC savings, the ordering agency CO/KO must establish a price for each task order using FAR subpart 15.4. Most ordering agencies conduct task order proposal analysis on the pricing submitted by the ESCO to determine that the price is fair and reasonable for each task order award in accordance with FAR 15.404. There are a number of ways to determine price reasonableness including price analysis, cost analysis, cost realism analysis, and technical analysis. Analytical techniques and procedures can be found at FAR

15.404-1 and in the FEMP guidance document *Determining Price Reasonableness in Federal ESPCs*.

Before the ordering agency staff can effectively evaluate the task order 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 price — Energy/water surveys, task order proposal development, etc.
- Costs of Goods and Services — Direct costs for installation/construction of ECMs/WCMs.
- Post-acceptance performance period services — Costs to manage and ensure performance over the task order contract term.
- Financing costs — Interest and financing costs, including the interest rate premium above the interest rate index and financing procurement price.
- ESCO's project implementation delivery percentage/charge (IDP) — Costs to design, manage, commission, bond, M&V, and deliver the project to the ordering agency, including overhead and profit. Each ESCO has a reference IDP incorporated into its DOE ESPC IDIQ contract that can be provided to an ordering agency during the negotiation process.

The task order price proposal is required to include supporting information pertaining to proposed expenses for project implementation and post-acceptance performance period expenses shown in the Task Order Schedules and other sections of the task order price proposal. The ordering agency's TO RFP should include any specific data requests or format requirements with which the ESCO needs to comply. The negotiated Task Order Schedules are included in the ESPC task order award and detail the financial deal. An ordering agency must have an in-depth working knowledge of each of the Task Order Schedules and supporting pricing/cost information submitted by the ESCO. The task order price proposal includes the following:

- Summary Schedule
- Annual (Dollar Savings) Escalation Rates
- Completed Schedule 1, Schedule 2a, Schedule 2b, Schedule 3, Schedule 4, Schedule 4g, and Schedule 5
- Supporting documentation on –
  - Project-level expenses from project development through task order award
  - Pricing of implementation and construction phases, allocated by ECM/WCM
- Post-acceptance performance period expenses aligned with Schedule 3
- IDS, SFO, and signed selection memorandum
- Summary of any reserve account to be established (if applicable)
- Any other documentation requested in the TO RFP.

The ordering agency CO/KO should require the ESCO to provide evidence that it competed the subcontracting proposed for the ESPC project. The DOE ESPC IDIQ contract requires that, to the maximum extent practical, subcontracts are selected on a competitive basis (FAR 52.244-5), unless an exception applies (e.g., mentor-protégé agreement). The ordering agency should also review the ESCO's analysis of subcontract costs included in the task order proposal to the government.

The Task Order Schedules are prepared in accordance with the DOE ESPC IDIQ contract instructions located in Attachment J-8, *eProject Builder System Instructions*. ESCOs are required

to use ePB to develop the Task Order Schedules. This is a secure web-based data entry and tracking system for ESPC projects maintained by DOE at the Lawrence Berkeley National Laboratory. Further information, instructions, and training are available on the ePB website. For Department of Defense entities and other high security ordering agencies, check with your internal policy guidance and FEMP on how the ePB system and templates can be used without violating data security requirements.

Although project interest rates can change daily, the proposed project interest rate must be supported by a SFO 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 confirm to the ordering agency that the contents of the Selection Memorandum are true and correct. FEMP can assist ordering agencies with review of the proposed interest rate. The ordering agency may contact its FPE to request this service.

Each ESCO has a unique reference project IDP incorporated into its DOE ESPC IDIQ contract. This information is not publicly available, but an ordering agency may contact the DOE ESPC IDIQ Contracting Officer to obtain this reference project IDP for negotiation purposes.

Project facilitators and/or ordering agency representatives may prepare independent government cost estimates to assist in analysis. FEMP also collects benchmark pricing information for common ECMs/WCMs that ordering agencies can access. Analysis of the task order pricing proposal ensures that ordering agencies are receiving the best possible value for the government on their ESPC efforts and maximizing their energy/water related savings in the process. An ordering agency may contact an FPE to answer any questions about all the resources available.

See the ESPC Resources page on the FEMP website for guidance in determining fair and reasonable pricing for an ESPC task order proposal submitted by an ESCO for an ordering agency's project.

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D.5.5.8 *Achievement of Small Business Subcontracting Goals Under An ESPC Task Order*

The ESCO's individual Small Business Subcontracting Plan outlines its practices in hiring subcontractors to promote small business utilization. The task order proposal should include a description of the ESCO's efforts to hire small business subcontractors in order to meet the goals established in the plan, as well as any agency-specific tailored goals included in the TO RFP. Ordering agencies should consider negotiating with the ESCO on subcontractor selections, especially if one or more small business subcontracting goals may not be met. The ESCO will report its small business subcontracting achievements through the Electronic Subcontracting Reporting System (eSRS). Further detail about this reporting is found under Ordering Guide Section E.3.

D.5.5.9 *Pre-Award Requirements Met By ESCO*

The DOE ESPC IDIQ contracts define several requirements that must be met by the ESCO before the ESPC task order is awarded. Completing the IGA, revising the ECM/WCM feasibility analysis, delivering the task order proposal, and negotiating in good faith to a final accepted task

order proposal are among these requirements. The ESCO must also provide evidence that financing, bonding (if required), and insurance are committed.

D.5.6 The Negotiation Process

Negotiations for a task order award have both informal and formal aspects. Informal negotiations are ongoing, beginning with the first kickoff meeting and continuing throughout the development of the task order proposal, as the ESCO and ordering agency discuss the project details and the ordering agency's needs and preferences. Most of the issues regarding technical matters, such as ECMs/WCMs, equipment, and selection of subcontractors, are generally settled in these informal, ongoing communications and are reflected in the task order 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/KO. All agreements must be incorporated, specifically or by reference, into the signed ESPC task order award in order to be considered binding.

After agreement is reached on the three technical components of the task order proposal — ECMs/WCMs and energy/water savings, baseline and M&V plan, and project management plan — the ESCO may need to revise some of the wording in the task order proposal to clarify the agreements. In many cases, by the time the ordering agency CO/KO and ESCO sit down for formal, final negotiations, all parties are confident that no significant unresolved differences remain, and they are ready to sign the ESPC task order. 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 task order proposal terms, comprises the scope of the task order award, the TO RFP must be converted from a solicitation document to an award document that reflects the final negotiated terms and conditions. Clauses may be tailored or added as necessary at this point to reflect negotiations, unless tailoring is prohibited by the FAR or the DOE ESPC IDIQ contracts.

D.5.7 DOE Notification, Review and Authorization to Award

Per GEN4 DOE ESPC IDIQ contract Section C.1.c, an ordering agency must obtain written authorization from the current DOE ESPC IDIQ Contracting Officer before task order award. When requesting authorization, preferably within 60 calendar days before the expected award date, the ordering agency must provide the total value of the pending task order award to ensure enough ceiling is still available under the selected ESCO's DOE ESPC IDIQ contract. The ordering agency should also provide a summary of the scope and other project details to ensure that it complies with the scope parameters and other requirements under the DOE ESPC IDIQ contracts.

The ordering agency may request a DOE FEMP review of the pending ESPC task order award. The ordering agency should provide copies of the documents to be reviewed at least 30 calendar days before final negotiations. These documents may include the task order proposal volumes, M&V plan, draft task order documents, and other associated documents. The DOE FEMP Team will review the submitted 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 calendar days, to be used at the ordering agency's discretion unless comments are flagged as mandatory.

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

- Congressional notification has been submitted if required.
- The task order proposal has been reviewed by the ordering agency and designated PF, and both parties have determined it is close to awarding with only a few, if any, minor edits needed.
- The task order proposal would most likely include the selected financier, and the interest rate premium is based on the competition and selection of that financier.

D.5.8 Congressional Notification of ESPC Task Order Award

In accordance with FAR 23.205(b)(2), ESPCs are subject to the congressional notification requirements of FAR 17.108. The ordering agency must provide written notification to Congress at least 30 days prior to the award of a multi-year ESPC task order when the cancellation ceiling 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 task order may be awarded provided 30 days have elapsed since notification.

DOE FEMP has implemented a process to provide Congressional notification on behalf of ordering agencies for pending task orders under the DOE IDIQ, including for pending task orders at non-DOE sites. See the ESPC Resources page on the FEMP website for procedures concerning Congressional notification prior to ESPC task order award.

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D.5.9 Award of the ESPC Project Task Order

The ordering agency awards the ESPC task order after a complete review and agreement of all required ESPC documentation as well as following any local ordering agency procedures. The ESPC task order award consists of the following:

- Ordering agency's task order document, which incorporates the terms of the selected ESCO's DOE ESPC IDIQ contract.
- Task Order Schedules (ordering agency to verify that Task Order Schedules submitted by ESCO match what is in ePB, as appropriate).
- The final TO RFP (to reflect final settlement) as the main body of the ESPC task order award.
- The ESCO's task order proposal (revised per negotiations).

An important step before award is for the ordering agency to verify and approve the Task Order Schedules submitted by the ESCO in the task order proposal which were generated using ePB. This step verifies the validity of the Task Order Schedules. See attachment J-8 of the GEN4 DOE ESPC IDIQ contract for more information.

D.5.10 Recording the ESPC Task Order Award in FPDS-NG / Category Management

The GSA Facilities and Construction (F&C) Category Leadership Team approved a business case assessing the DOE ESPC IDIQ contracts as Tier 2 Spend Under Management (SUM). Spend (payments to ESCOs) on task orders awarded under DOE's ESPC IDIQ contracts help ordering

agencies achieve their SUM goals. The following link has been added to the Acquisition Gateway directing visitors to the FEMP website:

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

In order to standardize reporting across federal agencies and accurately capture SUM, an ordering agency must record its award in FPDS-NG as a task order under the ESCO's DOE ESPC IDIQ contract. In the FPDS-NG Document Information section, ordering agencies will record the agency task order number in the Award ID block. The ESCO's DOE ESPC IDIQ contract number must be entered in the Referenced Indefinite Delivery Vehicle (IDV) ID block. In FPDS-NG, Amounts section, ordering agencies should enter the total project value as the Base & All Options Value (Total Contract Value) for the award. If the task order/project includes options, the Base & Exercised Options Value block should reflect the value of the project without un-exercised options. As options are exercised, the value in this block will increase until it matches the Base & All Options Value if/when all options are exercised. Funds are not typically obligated at task order award and the Action Obligation fields are usually $0 when recording the award. As payments are made to ESCOs, the amount of the payment(s) should be recorded in the current Action Obligation block. The total Action Obligation block will reflect total payments to the ESCO as of the date of the FPDS-NG record. The DOE ESPC IDIQ Contracting Officer recommends an ordering agency record obligations in FPDS-NG at least once per fiscal year (FY) to ensure SUM credit is generated in the FY in which payment(s) was made.

Questions regarding Category Management, SUM or FPDS-NG reporting may be sent to the DOE IDIQ Contracting Officer.

D.6 Phase 4: Project Design, Implementation, and Acceptance

D.6.1 Overview & Highlights of ESPC Process – Phase 4

Phase 4 of an ESPC project has three main segments:

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

Segment 2, Implementation: The ESCO's implementation of the project, including dismantling, demolition, and/or removal of old equipment and material, installation of ECMs/WCMs, and construction of new infrastructure as needed, as well as inspections by the ESCO and the ordering agency.

Segment 3, Acceptance: The ESCO's commissioning of ECMs/WCMs, post-installation M&V activities, and the ordering agency's acceptance of the project.

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

The ESPC project implementation begins after the ordering agency's acceptance of the ESCO's design and other submittals. The ordering agency's role during this stage of the project is to perform planned

inspections to verify the progress as implementation milestones are reached and to ensure that the ECMs/WCMs 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 are many similarities between this phase of an ESPC project and a traditional construction project. The DOE ESPC IDIQ 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 project acceptance cannot be completed until the ECM's and/or WCM's performance is proven by commissioning of the system and completion of post-installation M&V activities, documented in the commissioning and post-installation M&V reports, and accepted by the ordering agency.

For more information on the best practices during this phase refer to the resource: *FEMP Best Practices and Lessons Learned for Federal ESPC Projects*. Below is a summary of some of the actions that typically happen during Phase 4.

- Ordering agency holds a post-award conference with ESCO; PF may provide support.
- ESCO provides any required proof of insurance and payment and performance bonds.
- ESCO submits ESPC project design and construction package, including a commissioning plan.
- Ordering agency reviews and approves design and construction package before implementation begins; PF may provide support.
- Ordering agency issues notice to proceed with project implementation to ESCO.
- Ordering agency and ESCO schedule and hold Construction/Project Implementation Kick-off Meeting with PF support.
- Implementation, inspections, documentation and any training occur per ESPC task order award; PF may provide support as needed.
- 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 reviews and approves commissioning and post-installation reports with PF support.
- 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/WCMs and compares results of post-installation M&V with ePB, prior to project acceptance.
- ESCO provides copy of notice of ordering agency project acceptance to DOE.

D.6.2 The Design Process

D.6.2.1 *Post-Award Conference*

A post-award conference is recommended to ensure all parties have a mutual understanding of all task order contract requirements and to identify and resolve any potential problems. The post-award conference will help 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/KO, 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, dismantling/demolition, installation, 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/WCM 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 ESPC Resources page on 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.

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D.6.2.2 *Submittals, Reviews and Approvals*

The ESCO submits the Design and Construction package, Quality Control Inspection Plan, and Commissioning Plan for all ECMs/WCMs within the time frame specified in the awarded ESPC task order. Details of the ESCO's designs, plans, and schedules must be approved before ECM/WCM installation may begin. The processes for submittal and review of the ESCO's designs and equipment selections and orders are defined in the ESCO's task order proposal, per requirements for task order proposal contents in Section H.5 of the DOE ESPC IDIQ contracts, as supplemented by the TO RFP. The ESCO's submittals constitute requirements of the task order contract after approval by the ordering agency per Section C.5.3 of the DOE ESPC IDIQ contracts.

a. Design and Construction Package (preliminary and final reviews)

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/WCMs will be installed in a manner that complies with the task order contract requirements and any other ordering agency's requirements not specified in the awarded ESPC task order. The ECMs/WCMs must be as described in the ESPC task order and must meet the design and construction standards in the DOE ESPC IDIQ contract and in the task order contract, if any. Designs, equipment, and the Design and Construction package must conform to the standards given in Sections C.5.3, *Design and Construction Package*, and C.5.4*, Design and Construction Standards*.

1. *Minimum Contents of a Design and Construction Package*

Per DOE ESPC IDIQ contract Section C.5.3, *Design and Construction Package*, paragraph c, the ESCO is required to include, at a minimum, the following elements:

- Manufacturer's Data
- Design and Construction Specifications
- Construction Drawings
- Planned Service Interruptions
- Site Plan and Compliance with Federal Site Exterior Architectural Plan
- Acquisition of Permits
- Installation Schedules.

Ordering agencies may require additional elements in the Design and Construction Package, as needed, by including them in the TO RFP.

2. *Reviews of the Design and Construction Package*

The ordering agency will need to plan for both a preliminary and final review of the Design and Construction package, and any other submittals from the ESCO. Typically, these submittals are reviewed by several members of the ordering agency acquisition team. The ordering agency CO/KO should coordinate these reviews and required approvals with all key stakeholders, including on-site design meetings as needed, to ensure the project stays on schedule.

The ordering agency COR/COTR must review the applicable technical components of the Design and Construction package, for compliance with the ESPC task order. These components may be referred to as the installation plan. The ordering agency COR/COTR's review should confirm the location of ECM/WCM installations, schedule, acceptable planned service interruptions, requirements for space access, inclusion of a health and safety plan, and installation working hours.

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 will notify the ordering agency CO/KO in writing of final installation plan approval.

b. Quality Control Inspection Plan

The ESCO is required to submit a Quality Control Inspection Plan to the ordering agency for review and approval during this segment of Phase 4. The ordering agency CO/KO can specify the timeframe and other requirements for this deliverable in the ESPC task order.

The ordering agency COR/COTR must review the 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 appropriate ESCO point of contact.

Any deficiencies in the Quality Control Inspection Plan should be communicated to the ESCO in writing for resolution and submittal of a revised Quality Control Inspection Plan. The ordering agency COR/COTR will notify the ordering agency CO/KO in writing of Quality Control Inspection Plan approval.

c. Commissioning Plan

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

The ordering agency will want to assign oversight responsibilities for government witnessing of commissioning activities and ensure that the individuals assigned are qualified to oversee those activities. Additional guidance, best practices, and lessons learned about commissioning and government witnessing can be found on the ESPC Resources page of the FEMP website.

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D.6.2.3 *Payment and Performance Bonds*

Within 30 calendar days of ESPC task order award 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 financer as co-beneficiary along with the ordering agency. The ordering agency CO/KO must receive acceptable performance and payment bonds (as required) and any required insurance certificates before ECM/WCM installation begins. General bonding requirements are found in GEN4 DOE ESPC IDIQ contracts Section H.7, *Payment and Performance Bond Requirements for Task Orders*.

D.6.2.4 *Proof of Insurance*

Prior to commencement of work, the ESCO is required to furnish to the ordering agency CO/KO a copy of the insurance policy endorsement. Specific insurance level requirements are found in GEN4 DOE ESPC IDIQ contracts Section H.9, *Required Insurance for Task Orders*.

D.6.2.5 *Notice to Proceed with ECM/WCM Installation*

The ordering agency CO/KO transmits a notice to proceed with ECM/WCM installation to the ESCO, indicating that implementation of the ECMs and/or WCMs may commence, after all pre-installation 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 ordering agency before ECM/WCM installation begins.

D.6.3 The Implementation Process

D.6.3.1 *Construction Kickoff Meeting*

After the ordering agency CO/KO provides a notice to proceed to the ESCO, the ordering agency should hold a construction kickoff meeting with all key stakeholders before any implementation activities commence. The purpose of this meeting is to confirm the establishment of construction roles, responsibilities, expectations, milestones, communications protocol, and submittal review process. The meeting is also a good opportunity to ensure that all parties are aware of any design changes that may have occurred during the Design and Construction Package review and approval process.

FEMP provides a standard agenda template for the construction kickoff meeting on the Resources page of the FEMP ESPC website:

https://www.energy.gov/eere/femp/downloads/construction-kickoff-meeting-agenda

D.6.3.2 *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/water baselines have been accurately defined.
- The specified equipment has been installed (and installed properly).
- The ECMs/WCMs 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 (e.g., commissioning report, post-installation M&V report, as-built drawings, spare parts list, O&M plan, training materials and schedules).

a. General Ordering Agency Oversight

Before and during ECM/WCM installation, the ESCO provides the ordering agency with required documents concerning installation procedures, such as a quality control inspection plan, notification of work outside regular hours, planned utility outages, and ECM/WCM testing. The ordering agency is responsible for monitoring the ESCO's progress during ECM/WCM installation to ensure that the work is proceeding as planned. These activities include, but are not limited to:

- Monitoring ECM/WCM installation activity
- Reviewing and verifying construction quality assurance plan logs
- Coordinating space access to prevent delays in installation
- Verifying proper ECM/WCM installation per task order requirements, design/installation plans, and approved submittals
- Having the ordering agency COR/COTR, or other authorized official, generate punch lists as applicable.

A best practice for the project implementation period is to hold regularly scheduled progress meetings with the ESCO and ordering agency teams. The ordering agency has discretion on determining the frequency of these progress meetings; DOE FEMP recommends holding the meetings every two weeks. The attendance of the ESCO's site superintendents should be required so that any issues can be addressed during the meetings.

b. Day-to-Day Monitoring of ESCO Performance

The ordering agency's 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 the ESCO's contract 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.

c. Environmental Protection

Per GEN4 DOE ESPC IDIQ contract Section C.5.7, Environmental Protection, the ESCO must comply with all applicable federal, state and local laws, regulations, and standards regarding environmental protection when implementing an ESPC project. The ordering agency CO/KO is the primary contact for the ESCO to coordinate all environmental protection

matters. The ordering agency CO/KO may designate other ordering agency officials, such as the ordering agency CO/COTR or STR, with authority to inspect the ESCO's work areas to ensure compliance.

d. Commissioning

Just as all aspects of baseline performance (energy/water 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, augmented with building energy/water 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/WCM installation. For example, chiller performance should be assessed in summer when there is a cooling load and steam trap performance during winter heating load, regardless of when acceptance occurs.

e. Post-Installation M&V Report

Per GEN4 DOE ESPC IDIQ contract Section C.4.2, paragraph c, the ESCO is required to prepare and submit a post-installation M&V report to the ordering agency. The purpose of this report is to verify that installed ECMs/WCMs will meet the required standards of service and achieve the guaranteed annual energy, water, and related cost savings specified in the awarded ESPC task order. Inspections and measurements conducted by the ESCO for this post-installation report must be witnessed by the ordering agency, per the M&V plan witnessing details for each ECM/WCM.

The ordering agency is responsible for reviewing and approving the ESCO's post-installation M&V 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/KO. 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 ESPC task order 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 ePB web-based tool. See Attachment J-8, *eProject Builder System Instructions*, of the GEN4 DOE ESPC IDIQ contract for more information.

D.6.3.3 *Changes and Modifications During Implementation*

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

- Is the change within the current scope of the ESPC task order 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 task order 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 Task Order 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 task order for all changes made just prior to accepting the project. When the modification will change the total value of the ESPC task order award, the ordering agency must notify the DOE ESPC IDIQ Contracting Officer prior to issuing the modification to confirm there is sufficient ceiling available on the ESCO's IDIQ contract. 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 task order proposal and as-built conditions are documented in the post-installation M&V report, which includes associated energy/water impacts.

D.6.4 The Project Acceptance Process

D.6.4.1 *General Acceptance Information*

The timeframes for inspection and project acceptance are established with recommended lengths in the DOE ESPC IDIQ contract, which can be tailored in the ordering agency's awarded ESPC task order. Information on witnessing and review of the post installation M&V report is included in Ordering Guide Section D.6.3.2, Inspections and Verifications. 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 for which the ordering agency may be liable. The steps are as follows:

- The ESCO submits a written request for inspection to the ordering agency CO/KO.
- The ordering agency provides a written response to the ESCO of the scheduled date and time for ordering agency inspection.
- The ordering agency and ESCO conduct joint inspections of all ECMs/WCMs to facilitate mutual agreement on satisfactory ESPC task order ECM/WCM performance.
- If there are minor tasks that need to be completed, the ordering agency CO/KO provides the ESCO with a punch list of items for repair or correction.
- The ESCO completes the punch list and notifies the ordering agency CO/KO upon completion

After the punch list is finalized, but prior to acceptance, any additional minor discrepancies identified will be handled as agreed to by the ordering agency CO/KO or as specified in the awarded ESPC task order. 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.

D.6.4.2 *Acceptance of ECMs/WCMs before Final Project Acceptance*

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

Partial acceptance of a project may be warranted or desirable for projects with one or more ECMs/WCMs with very long implementation periods and the other ECMs/WCMs having a shorter implementation period, or projects with several sites involved. Ordering agencies can reduce their interest cost by making payments based on savings from provisionally accepted ECMs/WCMs during the implementation period. These implementation period payments must be specified in the Task Order Schedules per the task order award.

D.6.4.3 *Acceptance of Completed Project Installation*

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

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

The ordering agency authorized official(s) confirms that:

- Installation has been accomplished and inspected as required.
- Ordering agency acceptance of the commissioning and post-installation M&V reports show the ECMs/WCMs have the potential to generate the guaranteed cost savings.
- Required post- installation submittals (e.g., O&M manuals, O&M work procedures, etc.) are in hand.
- Required training has been delivered.

DOE FEMP provides guidance for project acceptance of ESPC projects on the Resources page of the FEMP ESPC website:

Resources for Implementing Federal Energy Savings Performance Contracts | Department of Energy

D.6.4.4 Additional Acceptance Information

The timeframe for review and project acceptance is based on the schedule of activities specified in the ordering agency's ESPC task order. The ordering agency should perform its oversight and review in the timeframes described in the M&V plan.

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. If the ordering agency

delays project acceptance and on-schedule payments to the ESCO, the ESCO may incur significant additional costs for which the ordering agency may be liable.

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 ordering agency CO/KO, or other authorized official, may issue a conditional letter of acceptance if seasonal testing is required for ECMs/WCMs identified in the commissioning and/or post-installation M&V report. The acceptance letter would document the outstanding items with an established due date for completion.

D.7 Phase 5: Post-Acceptance Performance Period

D.7.1 Overview & Highlights of ESPC Process – Phase 5

The post-acceptance performance period starts after the ordering agency accepts the ESPC project. ESCO invoicing and ordering 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. Below is a summary of some of the actions that typically happen during Phase 5.

- ESCO delivers contracted equipment performance and project cost savings.
- ESCO performs agreed-upon performance-period services (O&M, M&V, R&R).
- Ordering agency witnesses the performance period M&V activities.
- ESCO completes and submits periodic M&V reports to the ordering agency and includes M&V report outputs from ePB.
- Ordering agency reviews and approves the ESCO's M&V reports and M&V summary in ePB; PF provides review support of 1st Year M&V report; PF may provide reviews of subsequent M&V reports (i.e., 2nd Year, 3rd Year, and so on) as requested by the ordering agency.
- Ordering agency and ESCO reconcile performance or savings shortfalls, if necessary.
- Ordering agency makes payments to the ESCO.
- Ordering agency administers task order modifications as needed; if the modification will change the value and/or scope of the ESPC task order, the ordering agency requests authorization from the DOE IDIQ Contracting Officer to execute the modification.
- Ordering agency maintains and updates contract file as needed.
- Ordering agency closes out ESPC task order and notifies DOE ESPC IDIQ Contracting Officer.

D.7.2 Performance Period Services from the ESCO

The ESCO provides the services specified in the ESPC task order 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 task order award. The ordering agency verifies that the ESCO is delivering the negotiated services within the schedule provided.

D.7.3 Ordering Agency Review and ESCO Performance Evaluation

Ordering agencies are required to track performance of the ESCO on the awarded task order 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) in accordance with ordering agency procedures.

D.7.4 Annual M&V Reports

To verify and document that the guaranteed savings are being delivered, the ESCO (or other responsible party per the ESPC 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/WCMs, quantifies associated energy/water 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. Each annual M&V report includes a section that details any changes or impacts, including performance and/or O&M issues, that have or may impact the ability of the project to generate energy/water savings. Details include quantified impacts on generation of savings, cost savings impacts and recommended corrective action by ESCO or ordering agency.

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 ESPC task order. These reports document whether all parties and the delivered energy/water and cost savings meet the ESPC task order requirements. It is recommended that the ordering agency independently gather information for evaluating the reports by conducting spot checks of ECMs/WCMs to identify potential deficiencies in performance or energy/water 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/KO. Any shortfalls, exceptions, cost savings impacts identified, 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 task order contract file. Some ordering agencies have also documented M&V report acceptance through an administrative task order contract modification.

See the ESPC Resources page on 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.

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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 ePB web-based tool. See attachment J-8, *eProject Builder System Instructions*, of the GEN4 DOE ESPC IDIQ contract for more information.

It is critical that the ordering agency CO/KO obtain written confirmation from the ordering agency COR/COTR that the M&V report has been witnessed, reviewed, and is acceptable for payment to be made in full. Then the ordering agency CO/KO should memorialize it by including this information in the ESPC project task order 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 task order contract file record.

D.7.5 Invoices and Payments

Written notification from the ordering agency to the ESCO confirming that the installation complies with the terms of the task order 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, either in advance or in arrears. 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/water savings, that were contractually agreed to in the ESPC task order. If the annual sum of all the ECM energy savings and/or WCM water savings meets or exceeds the guaranteed savings and the other performance criteria are within specifications, the payments to the ESCO can be made in accordance with the ESPC task order. If the annual sum total of measured ECM/WCM performance for the project 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.

D.7.6 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 must occur at least annually. The guidance for reconciliation and the process for resolving disputes are specified in the DOE ESPC IDIQ contracts (as supplemented by the ESPC task order).

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 ESPC IDIQ contract, and the ESPC task order.

In the case of demolished or decommissioned buildings or removal of ECM/WCM equipment, the ordering agency must assess the changes to determine whether a contract action, such as a modification to the ESPC task order, is warranted. The ordering agency CO/KO may initiate a

contracting action to buy out that portion of the ESPC task order involving the ECMs/WCMs 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/WCMs to continue payments). Work with the ESCO and obtain legal counsel at the ordering agency level. If needed, seek additional guidance from DOE. In any case, be sure to recognize and document the issue and its resolution in the task order contract file.

See the ESPC Resources page on the FEMP website for a framework for implementing uniform and consistent reviews of post-installation and annual M&V 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.

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PART V – ADDITIONAL ORDER ADMINISTRATION TOPICS

E.1 Task Order Modifications

Changes will occur with every ESPC project that will require the ordering agency to modify the ESPC task order. This section provides information about some of the changes that may require modifications during the life of an ordering agency's ESPC project.

E.1.1 DOE Notification, Review and Authorization for Modifications

Per GEN4 DOE ESPC IDIQ contract Section C.1, *General Requirements / Project Scope*, paragraph c, an ordering agency must obtain written authorization from the current DOE ESPC IDIQ Contracting Officer before releasing any modifications that increase the total value of the task order above the maximum value in the original authorization letter for the ESPC task order award or the most recent modification. When requesting authorization for the modification, the ordering agency must provide the total value of the pending task order modification to ensure enough ceiling is still available under the ESCO's DOE ESPC IDIQ contract. The ordering agency may request a DOE FEMP review of a major ESPC task order modification.

E.1.2 Phasing and Options

When the potential scope for an ESPC project is large and complex, some ordering agencies have split the project into phases. For example, a large military base may phase its ESPCs by area, addressing buildings in one area in the first phase and another area in the second. These additional phases can be included as options in the base task order award.

E.1.3 Addition of ECMs/WCMs and/or Buildings

Per GEN4 DOE ESPC IDIQ contract Section G.2.5, *Modifications to the Ordering Agency Task Order*, an ordering agency may consider adding ECMs/WCMs (additional quantities or types) and/or buildings and facilities to its ESPC project after task order award. Some of the factors the ordering agency CO/KO must consider, in consultation with the ordering agency's legal counsel, include:

1. Whether sufficient ceiling value remains on the DOE ESPC IDIQ contract to allow the estimated modification value for the ESPC task order. The ordering agency must obtain written authorization from the DOE ESPC IDIQ Contracting Officer before the modification may be awarded.

2. Whether the modified period of performance of the ESPC task order would exceed 25 years from the date of initial task order award. The modified period of performance cannot exceed the 25-year statutory limit.

3. Whether the modification would add facilities not identified in the original NOO. Such additions may constitute a change in scope.

4. Whether the NOO, PA, or IGA considered the types of ECMs/WCMs proposed for modification.

DOE FEMP provides additional guidance on adding ECMs/WCMs and/or buildings on the Resources page of the FEMP ESPC website:
Guidance on Modifying Energy Savings Performance Contract Task Orders | Department of Energy

E.1.4 Removal of ECMs/WCMs and/or Buildings

Sometimes changes to site conditions occur, such as equipment removal, replacements, demolitions, or other changes in the usage of ECMs/WCMs and/or buildings. The ordering agency will need to assess these changes to determine whether a contract action, such as a modification to the ESPC task order, is warranted. At a minimum, the ordering agency CO/KO will need to document the changes in the ESPC task order file. The current DOE FEMP M&V Guidelines include recommendations to consider when modifying the task order for removals, replacements, demolitions, or other similar changes.

E.1.5 Novations and Name Changes

The contracting officer responsible for processing and executing novation and change-of-name agreements for ESCOs will normally be the DOE ESPC IDIQ Contracting Officer. When the DOE ESPC IDIQ contract has been modified to recognize an ESCO's novation or change-of-name, the DOE ESPC IDIQ Contracting Officer will provide a copy of the modification to each ordering agency with an active ESPC task order under that contract. The ordering agency CO/KO will be responsible for issuing a modification to its ESPC task order to reflect the ESCO's novation or change-of-name.

E.2 Quality Assurance

The ordering agencies that award the task orders under the DOE ESPC IDIQ contract are ultimately responsible for the quality assurance of the ESPC projects. For an effective ESPC project quality assurance plan, DOE FEMP recommends including the following elements:

- A team trained on current ESPC best practices
- Use and awareness of FEMP best management practices, resources, and tools by project staff
- Use of FPEs and PFs
- Baselines and savings analyzed by a PF—such as operations and maintenance (O&M) savings proposed—following FEMP best practices
- A sound M&V plan
- Competitive financing
- Competitive subcontractor bids
- Price reasonableness in review of proposals
- Commissioning
- Witnessing of baseline measurements and M&V activities
- M&V review over time to assure performance (e.g., O&M savings review)
- Energy performance contract administration over the contract term training for the agency team—planning for staff turnover
- Resolution of issues that impact savings and contract adjustments as needed
- Oversight of government-provided O&M (retrained by the ESCO, logs provided, reviewed, and issues addressed), and resolution of issues in the M&V and life-of-contract reports

- Contract file and supporting documents for potential audit and staff turnover.

Ordering agencies that include these elements in their projects will mitigate risk. The above elements of a successful project go above and beyond what is required in a standard quality assurance surveillance plan and help ensure an ESPC project is performing as intended.

E.3 Monitoring Small Business Subcontracting Under an ESPC Task Order

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

In August 2013, the Small Business Administration (SBA) updated 13 C.F.R. § 125.3 to add a new section (h) which began to address this issue. It stated that contractors were 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 confirmed that "the agency funding the order shall receive credit towards its small business subcontracting goals".

In accordance with FAR Case 2014-003 Final Rule, order level reporting requirements in eSRS went into effect for the FY18 reporting period of October 1, 2017 - March 31, 2018. The rule requires contractors who are awarded indefinite delivery, indefinite quantity contracts that can be used by more than one agency to submit order level subcontracting data for each task and delivery order awarded. Only contractors who have an Individual Subcontracting Plan are affected by this rule. All large business contractors with GEN4 DOE ESPC IDIQ contracts awarded in August 2023 have an Individual Subcontracting Plan incorporated into their IDIQ contracts.

The Individual Subcontract Report (ISR) in eSRS now includes a section entitled "Subcontract Awards: Task Orders" when the "master" contract is an IDIQ type that allows orders from multiple agencies. Task order numbers are pre-loaded from FPDS-NG. Dollar values for each category can be entered per task order, which is then compiled into the overall report for the IDIQ contract. The DOE ESPC IDIQ Contracting Officer is responsible for reviewing the order level data and approving the ISR for the IDIQ contract. In addition to compliance with SBA's regulations, the order-level reporting requirement has the benefit of facilitating the allocation of subcontracting credit to funding agencies; proper allocation of credit ensures that funding agencies are incentivized to promote small business subcontracting on orders.

The DOE ESPC IDIQ Contracting Officer 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 task order. An ordering agency should be able to view the subcontracting reports submitted in eSRS by the ESCO. If not, the ordering agency can request the ESCO to provide a copy of each report in order to monitor the small business subcontracting achievements for its specific task order.

E.4 Debt Modifications

The DOE ESPC IDIQ contracts allow the ESCOs to modify their task order debt obligations. 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 firm-fixed-price task order. If an ESCO determines it is beneficial to pursue a debt modification, the ESCO is required to notify the ordering agency and provide a copy of the revised terms per the requirements stated in DOE ESPC IDIQ contract Section H.6.3, Debt Modifications.

E.5 Terminations and Cancellations

Sometimes an ordering agency may determine it is in the best interest of the government to cancel or terminate for convenience an ESPC project, either partial or full, after full project acceptance. The FEMP website contains guidance on alternative contract language for an ordering agency to consider including in its ESPC task order:

https://www.energy.gov/femp/articles/guidance-alternative-contract-language-regarding-energy-savings-performance-contract

E.6 Closeout of ESPC Task Order

At the end of the ESPC task order contract term, title of the equipment is transferred to the ordering agency, if it has not previously been transferred at acceptance, and the ESPC task order is closed out.

E.6.1 Title Transfer (of ECMs/WCMs)

The title may be held by the ordering agency or the ESCO during the ESPC task order 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 ECM/WCM installation or at the end of the ESPC task order contract term, title will be transferred to the ordering agency. If the transfer occurs at the end of the task order contract term, it becomes part of the closeout process. Most ordering agencies currently transfer title at acceptance of the ECM/WCM installation and the initial M&V report after confirmation of the guaranteed savings.

E.6.2 Closeout Considerations

At the end of the ESPC task order contract term, the ordering agency notifies the ESCO by letter that the performance period is over and payments are complete. The ordering agency closes out the ESPC task order in accordance with the FAR and/or its own procedures.

DOE Notification

The ordering agency notifies the DOE ESPC IDIQ Contracting Officer upon closeout completion. It is recommended that the ordering agency include a copy of the signed ESPC task order closeout modification and the contract completion statement, or similar document, with the notification to DOE.

PART VI – LIST OF RESOURCES AND POINTS OF CONTACT

F.1 Primary Resources, Guides and Templates

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.

- **Best Practices and Lessons Learned for Federal ESPC Projects:**
https://www.energy.gov/femp/articles/best-practices-and-lessons-learned-federal-agency-espc-projects
Best practices and lessons learned to help agencies award high-quality, high-value ESPC task orders.

- **DOE ESPC IDIQ Contract:**
https://www.energy.gov/femp/resources-implementing-federal-energy-savings-performance-contracts
A generic copy of DOE's ESPC IDIQ contract is provided on the FEMP web site.

- **ESPC Contract Tools and Resources:**
https://www.energy.gov/femp/resources-implementing-federal-energy-savings-performance-contracts
All of the tools and resources mentioned in this document are available from the "Resources for Implementing Federal 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.

- **Federal Energy Savings Performance Contracts Frequently Asked Questions on the Scope of 42 U.S.C. § 8287 et seq.:**
https://www.energy.gov/femp/articles/federal-energy-savings-performance-contracts-frequently-asked-questions-scope-42-usc
Provides clarification and guidance on issues commonly raised regarding the scope of the ESPC statutory authority.

- **Federal Project Executives (FPE):**
https://www.energy.gov/femp/federal-project-executives-espc-uesc-and-espc-enable-projects
FEMP's FPE reps are dedicated to providing support to agencies who are striving to achieve their energy and water goals. The web site always has current contact information for FEMP's representatives who can help you get started.

- **FEMP ESPC Project Development Resource Guide:**
https://www.energy.gov/femp/articles/femp-espc-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 ESPC Web Site:**
https://www.energy.gov/femp/energy-savings-performance-contracts-federal-agencies

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

• FEMP Measurement & Verification (M&V) Guidelines:
https://www.energy.gov/femp/measurement-and-verification-federal-energy-savings-performance-contracts
FEMP M&V Guidelines details M&V requirements for ESPCs.

• 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.

• General ESPC FAQs
https://www.energy.gov/femp/articles/frequently-asked-questions-about-espc-strategy
What to include, how to combine appropriated funds, keys to success, and many others.

• Project Facilitation:
https://www.energy.gov/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.

F.2 Points of Contact Information

DOE ESPC IDIQ Contracting Officer

Eric Brandenburg, U.S. Department of Energy, Golden Field Office
Email: eric.brandenburg@ee.doe.gov
Alternate Email: femp@ee.doe.gov
Phone: (240) 562-1495

FEMP ESPC Program Manager

Kurmit Rockwell, U.S. Department of Energy, Headquarters in Washington, DC
Email: kurmit.rockwell@hq.doe.gov
Phone: (202) 329-9572

Other points of contact are provided on the FEMP website, including the current Federal Project Executives and other FEMP support staff:

Federal Energy Management Program Contacts | Department of Energy
Contacts for Federal Energy Savings Performance Contracts | Department of Energy

[END OF ORDERING GUIDE]