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Distributed Energy Projects with Government Ownership

Appropriations

• Agencies with appropriations can pay directly for distributed energy projects

Project Financing

• No up-front capital costs required for the equipment

• Include distributed energy conservation measures (ECMs) within:
  o Energy Savings Performance Contracts (ESPCs)
  o ESPC ENABLE
  o Utility Energy Service Contracts (UESCs)
Distributed Energy Projects with Private Ownership

**Power Purchase Agreements**
- Agency hosts privately owned and operated distributed energy project
- Agency purchases the electricity

**Real Property Arrangement**
- Agency hosts privately owned and operated distributed energy project
- Some or all of the electricity is sold elsewhere
- Enhanced-use lease (EUL), lease, easement or license
Power Purchase Agreement

**Developer**
- Purchases, installs, owns, operates, and maintains distributed energy equipment on federal land and/or buildings
- May be able to take advantage of tax incentives
- May sell the project renewable energy certificates, for RE projects, if they are valuable

**Agency**
- Hosts an distributed energy project
- Purchases energy from the distributed energy project for the life of the contract

- Best for large projects (generally >500 kW)
- Long term contract (20 years) is ideal, but civilian agencies have limited long term contract options
Power Purchase Agreement

Interconnection Agreement (may be between utility & developer or tri-party agreement)

Contracting Agent (DLA Energy, GSA, WAPA, other)

Federal Site

Site Access Agreement

Developer

PPA

Utility
Procurement Options*

- 10 USC 2922a (Dept. of Defense only)
- 40 USC 501/FAR Part 41
- FAR Part 12 Commercial Items
- Western Area Power Administration
- ESPC Energy Sales Agreement (ESPC ESA)
- Real Property Arrangement

*Disclaimer: Not all options are available to all agencies; check with your contracting and legal staff regarding available options*
PPA: 10 USC 2922a (Department of Defense only)

- Contract term: 30 years
- Department of Defense authority
  - Not available to civilian agencies
- Requires Secretary of Defense approval (delegated)
- Streamlined approval process
• Contract term:
  - 10 years
  - Two GSA regions have awarded 10 years with 10-year-option contracts under FAR Part 12 and FAR Part 41 to the extent applicable

• FAR Part 41 is a GSA authority, other agencies must request a delegation of this authority from the GSA Energy Division
  - FEMP can help with the request

• Certain agencies (DOE, DOD) have permanent FAR Part 41 delegation
PPA: FAR Part 12 Commercial Items

• The Commercial Item is the electricity being purchased

• Contract length limitation is typically 5 years; options may be allowed (depends upon agency policy)

• Discuss applicability with agency contracting and legal staff
PPA: Western Area Power Administration (WAPA)

- WAPA has a unique power marketing authority
- Only available for federal agencies in WAPA’s service territory
- Agency selects developer
- WAPA negotiates and signs PPA contract
- WAPA has a Renewable Resources for Federal Agencies (RRFA) program
- Fee for WAPA’s services

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Real Property Arrangement

• Agency hosts privately- or utility- owned distributed energy project on government land

• Real property arrangement
  o Enhanced Use Lease (EUL)
  o Lease
  o Easement
  o License

• Some or all of the electricity is sold elsewhere
  o Agency may or may or may not purchase any electricity
## Agenda

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• Civilian agencies have limited options for implementing distributed energy
• ESPC Energy Sales Agreement (ESPC ESA) is a long term contract option
• OMB Memo M-12-21 title retention requirement and industry concerns regarding tax incentive eligibility
• FEMP issued two Request for Comments to better understand issues surrounding this approach
• Recent IRS Revenue Procedure may improve project viability
• Long term contract option utilizing ESPC authority for a distributed energy ECM on federal buildings/land; agency purchases electricity

• May include other ECMs
  o Work with FEMP on contract structure details

• FAR Part 41 authorizes federal agencies to undertake an ESPC for the acquisition of utility services
  o “…agencies may utilize for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years” [48 CFR § 41.102(b)(7) (2015)]
The document outlines the ES PC ESA Requirements and states:

- **Must meet all ES PC legal requirements including** *(See, e.g., 42 U.S.C. § 8287 et seq.)*:
  - Savings requirement
  - Statutory ECM definition in 42 US C 8259
  - ESCO must be on DOE qualified list by time of award

- **OMB Memo M-12-21**: Title retention and other requirements for annual scoring
Tax Incentive Considerations*

- IRS Revenue Procedure 2017-19
  - Provides a safe harbor under which the IRS will not challenge the treatment of an ESPC ESA as a service contract under §7701(e)(3) of the Internal Revenue Code
  - Allows for other ECMs as part of a comprehensive project
  - Section 4 contains specific ESPC ESA contract requirements

* Tax incentive eligibility due diligence is the responsibility of the ESCO.*
• Contract term 20 years or less
• Privately owned initially, with agency purchasing the equipment by end of contract at fair market value (FMV), appraised at time of sale
• ESCO transfers a portion of the payments it receives into a reserve account held by the ESCO for future FMV purchase
  o Reserve account payment based on estimated future FMV
  o Periodic FMV re-appraisals, with reserve account and/or contract term adjustments if needed
ESPC ESA Suggestions Based on Rev. Proc., Cont’d

• Contract price is on a fixed per-kWh basis and must be paid from energy savings
  o ESCO bears all financial risk for non-performance
  o Price includes O&M and does not vary if operating costs are lower than expected
  o Price includes price of power and an amount for the reserve account (separate and in addition to price of power)
  o Total price, including reserve account payment, used to determine compliance with ESPC statutory annual savings requirement
ESPC ESA Options

- Site-specific/stand-alone
- DOE IDIQ
- Army Corps MATOC
- ENABLE
## Summary: Distributed Energy Procurement Pathways

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<td>(Title must transfer to gov’t by end of contract.)</td>
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A resource that is focused on ESPC ESA projects*

- Assumes site-specific (stand-alone) ESPC
- Process diagram, checklist, and team responsibility chart
- Project consideration description
- Authorizing legislation and other applicable information
- Editable templates—RFI, Small Business Sources Sought, RFP, site access agreement (acquisition plan and source selection plan available to federal agency staff upon request)

* This information may be useful for other types of projects.
Affordable Power Infrastructure Partnership (APIP)

- Partnership between FEMP, EPA Region 9 and agencies
- Agencies pursue aggregated ESPC ESA projects concurrently
  - Increase offeror interest to foster competition
- APIP program developed based on past experience and lessons learned
  - Programmatic approach
  - Helps streamline a complex but replicable process
  - Reduce agency staff time and effort
- FEMP support - technical and procurement (including contracting officer support)
Web Resources


• FEMP PPA website: http://energy.gov/eere/femp/federal-site-renewable-power-purchase-agreements

• FEMP ESPC ESA website: https://www.energy.gov/eere/femp/energy-savings-performance-contracts-energy-sales-agreements

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