

Department of Energy, Federal Energy Management Program's Procedure
for Notifying Congress Prior to Award of
Energy Savings Performance Contracts (ESPCs)

Although the Energy Independence and Security Act of 2007 repealed the express Congressional notification requirement in the ESPC statute, ESPCs remain subject to the requirements of Subpart 17.1 of the Federal Acquisition Regulation (FAR) (see 42 U.S.C. § 8287(a)(2)(D)(iii); 10 C.F.R. § 436.34(a)(4)), which requires agencies to notify Congress at least 30 days prior to the award of certain proposed multiyear contracts. Specifically, for agencies other than the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the U.S. Coast Guard, FAR Subpart 17.1 establishes a requirement for Congressional notification of at least 30 days prior to award of a multiyear contract that includes a cancellation ceiling in excess of \$15 million. See 48 C.F.R. § 17.108(a). For DOD, NASA, and the U.S. Coast Guard, FAR Subpart 17.1 establishes a similar Congressional notification requirement for multiyear contracts that include a cancellation ceiling in excess of \$150 million. See *id.* § 17.108(b). For all agencies, including DOD, NASA, and the Coast Guard, the contract may not be awarded until the thirty-first day after the date of notification.

The Congressional notification requirement need not be burdensome or result in undue delay. Notification can be provided when a reasonable estimate of the underlying project's cancellation ceiling is obtained, which generally occurs well in advance of contract award. Further, such early notification may be provided on a periodic basis (e.g., semi-annually, quarterly, etc.) and for multiple ESPCs.

DOE has implemented a process to provide Congressional notification for pending task orders under the DOE IDIQ, including for pending task orders at non-DOE sites. Under this process DOE will provide Congress with a description of the proposed task order, its anticipated savings impact and cancellation ceiling, and project term. DOE will notify Congress on a quarterly basis of any proposed task order under the DOE IDIQ for which FAR notification applies and that is expected to be awarded prior to DOE's subsequent quarterly notification, and for which Congress has not received prior notification. The DOE GC has determined that this notification satisfies FAR 17.1 and no further notifications should be required by the awarding agency.

If you have any questions regarding the DOE Congressional notification process, please direct them to Kurmit Rockwell in DOE/FEMP (kurmit.rockwell@ee.doe.gov).