U.S. General Services Administration

Federal Utility Partnership Working Group (FUPWG)

Areawide Contract (AWC) Holders Meeting

Ebony Atkinson

May 2, 2023

Agenda

- Areawide Contract Highlights
- Areawide Contract Updates
- Utility Reminders
- Carbon Pollution-Free Electricity Goals
- Commercial/Individual Subcontracting Plans
- Electronic Subcontract Reporting System (ESRS)
- Training/Resources
- Question & Answer

AWC Highlights

- Annual Spend/Contract Actions against AWC:
  - FY20: $805M on 2,016 contract actions
  - FY21: $795M on 1,592 contract actions
  - FY22: $711M on 2,022 contract actions
  - FY23 (so far): $162M on 1,079 contract actions

Previous 10 years have been 11,165 delivery orders issued for a total contract value of $5.2B.

AWC Updates

- ❖ Updated Article 18 section and Energy Management Services (EMS) definition
- ❖ Telecommunications Clause (SAM.Gov)
- ❖ Energy Division now Carbon Pollution-Free Electricity Division
- ❖ CFE Nature of Service added to Exhibit A’s

Forthcoming Updates:

- ❖ Refresh of FAR Clauses
- ❖ Links to Tariffs from Utilities

Feedback from utilities can be sent to energy@gsa.gov for consideration

Utility Reminders

Don’t forget:

- Notify GSA if there’s a new AWC POC
- The term of TO/PO can exceed beyond the AWC
- Subcontracting Plan Requirements
  - Plan submissions
  - Reports

CFE Requirements

- E.O. 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* - Dec. 8, 2021
- E.O. 14057 Implementing Instructions - Aug. 31, 2022
- CEQ CFE Working Group:
  - CEQ, GSA, DOD, and DOE working together to develop strategies and tools to help the USG reach the CFE goals
  - "Utility Lead Agency" Model: Conducting pilots in various markets with large government electricity usage
  - Aggregate with other agencies

CFE Requirements: Whole-of-Government Approach

- CEQ CFE Working Group:
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  - “Utility Lead Agency” Model: Conducting pilots in various markets with large government electricity usage
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Utility Reminders

- FEMP Federal Utility CFE Program Availability Map Tool
- Can be filtered for “Available & Eligible”
  - **Technology meets definition of CFE**
  - **Generator was placed in service on or after October 1, 2021**
  - **CFE is delivered to the same balancing authority**
  - **Energy attribute certificates are obtained and retired by the customer or on the customer's behalf.**

- Currently **35** available & eligible green options

If you have any Green Tariff Offerings in development, contact **energy@gsa.gov.**

Subcontracting Plans

- Requirement for over 40 years and implemented in FAR 19.7 and FAR 52.219-9 (Also: PL 111-240 & PL 95-507)

- Plan required if contractor is “other than small business” and value of award is $750,000 or higher, inclusive of options and value of all orders issued.

- Any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract.

Subcontracting Plans

Small Business Subcontracting Plan Types:

Commercial Plan is a subcontracting plan that:

- ➢ covers the contractor's fiscal year and is negotiated annually
- ➢ based off a company's division spend or an entire company's spend and
- ➢ applies to the company's or division's entire production of commercial items sold
- ➢ **Effective 9/10/21, it is now required for indirect costs to be included in commercial plans; you are no longer given the choice.**

Subcontracting Plans and Reporting

Small Business Subcontracting Plan Types (Cont.):

Individual Plan is a subcontracting plan that:

- ➢ applies to a specific contract,
- ➢ covers the entire contract period/period of performance
- ➢ has goals that are based on the offeror's planned subcontracting in support of the specific contract,
- ➢ indirect costs incurred for common or joint purposes can only be allocated on a prorated basis to the contract
- ➢ The start date of the plan will be the effective date of the contract

Subcontracting Plans: Best Practices

Ensure your plan:

- ❖ Has all required signatures and a valid POC
- ❖ Is not just copied year to year
- ❖ Does not reflect Affiliates
  - ➢ Affiliates do not count towards subcontracts for commercial reporting

- ❖ Once the GSA CO has reviewed your plan it is routed to:
  - ➢ GSA Small Business Technical Advisor (OSBU)
  - ➢ SBA Procurement Center Representative

Subcontracting Plans: Reporting

- How is reporting data used?
  - Monitor progress against the plan
  - Individual: On track to meet goals
  - Commercial: Did you meet the goals
  - Performance evaluations in CPARS
  - Future responsibility determinations

Subcontracting Plans: Reporting

- Important dates to remember:
    - Commercial Plans due to CO 60 days before end of contractor’s fiscal year
    - Commercial SSRs due in eSRS by Oct 30 and cover subcontracting over Government’s fiscal year
    - ISRs are due March 30 and Oct 30

Note: GSA will send subplan letters by August, 2023

Upcoming Training/Office Hours

- Subcontracting Plan Training
  - June 13, 2023
- Agency AWC Training
  - June 28, 2023
- Utility Office Hours
  - August 1, 2023

Contact

Chief, Public Utilities Branch and Contracting Officer:

Ebony Atkinson

ebony.atkinson@gsa.gov

Areawide Questions:

Energy@gsa.gov

FEDERAL UTILITY PARTNERSHIP WORKING GROUP SEMINAR

May 1-2, 2023

Special Session 2: Energy Lawyers and Contracting Officers Forum

Katy Christiansen, NREL, Moderator

John Michael Forrest, DOE FEMP, Moderator

FEMP Federal Energy Management Program

NRECA America's Electric Cooperatives

U.S. DEPARTMENT OF ENERGY

Including ECMs with indeterminate savings in UESCs?

Phil Coleman, Lawrence Berkeley Nat'l. Lab; Kurmit Rockwell, FEMP

FUPWG Energy Lawyers & COs Forum, May 2, 2023

FEMP Federal Energy Management Program

What constitutes “indeterminate”?

- **ECMs whose flow of savings is:**
  - Unknown (before deep audit): e.g., whole-building RCx
  - Highly variable: e.g., demand response
    - Payouts depend on auction results or wholesale market prices
- **Problem: poor fit w/ *guaranteed* savings**
  - Deeper audit required– time, $$$
  - Annual savings need to be low-balled
- **Result: ESCOs steer clear in ESPCs**
  - Whole-bldg. RCx: ~ 6% of 400+ IDIQ projects
  - ISO 50001: two projects …
  - Economic DR: never (I believe)
- **Question: Is same true of UESCs?**
  - Our hunch is yes, but maybe less so

Reserve accounts (RAs)

- **Fund set aside to pay for expected need**
  - E.g., "energy sales agreement" (ESA) solar array at end of term
    - Small portion of savings set aside annually to pay "fair market value" for array
  - RAs have also been created to replace equipment expected to fail
    - E.g., 18-year-old chiller (fine now, but likely not at year 10-15)
- **We think RAs can be used to capture add'l. savings**
  - Where M&V reveals savings beyond original estimated amount
- **And same rules would apply**
  - E.g., agency doesn't own RA, utility or ESCO does
- **Key: in annual mod (to obligate funds), adjust savings estimate to actual amount saved (per M&V) in that year**
  - Any amount beyond low-balled estimate assigned to RA

Example: Re-commissioning (RCx) ECM

- **Utility estimates $175K/yr savings**
  - BUT: savings expected to be volatile from year to year
    - EX: $175K (yr. 1), $150K (yr. 2), $200K (yr. 3) …
- **So, savings estimated at just $100K/yr**
  - $100K devoted to TO payments
- **But when M&V reveals extra savings, the surplus gets devoted to reserve account**
  - EX: year 1 savings of $175K – $100K to financing payment, $75K to reserve account
- **And RA funds can be used toward future need**
  - E.g., a new chiller to replace one that's old (e.g., 15-20 yrs.), but not yet at end of life

Significance

- **These ECMs generally have quick paybacks**
  - And some have substantial savings
    - e.g., RCx – Crowe et al. (2020) meta-study found 14% avg. savings with 1.1-year simple payback (non-utility projects)
- **Thus, they can "help" project finances**
  - Cross-subsidizing desired but long payback ECMs (chillers, building envelope, microgrids …)
- **And considerably deepen project savings**
  - Increase average savings from ~ 20% to 25-30%?

Possible issues for UESCs

- **Does absence of guarantee deem added effort superfluous?**
  - I.e., could utility/ESCO instead just use avg. savings and not sweat the year-to-year variability?
- **Does absence of M&V mean annual savings adjustment is non-starter?**
  - For ESPCs, annual M&V identifies add'l. savings and forms basis of add'l. payment to reserve account
- **Are reserve accounts permissible in UESCs?**
  - We could not identify a case in which they'd been used
- **Are there additional UESC-specific issues?**

FEDERAL UTILITY PARTNERSHIP WORKING GROUP SEMINAR

May 1-2, 2023

Special Session 2: ELCOF Feasibility of UESC Energy Sales Agreements

Katy Christiansen, NREL

FEMP Federal Energy Management Program

NRECA America's Electric Cooperatives

Agenda

- UESC with Privately Owned CFE ECM: Introduction
- ESPC Energy Sales Agreement Overview
- Considerations
- Discussion

Current Utility Acquisition Approach

- FAR Part 41
  - Electric (not gas) utility installs CFE project
  - Project rate based if all customers benefit
  - If only one customer benefits, electric utility could recover cost via special facilities charge paid by customer (use GSA AWC Exhibit A, Authorization for Electric Service)

- CFE ECM structured as “standard” ECM with typical UESC payment structure

- Fixed payment rather than based on CFE production and $/kWh price

ESPC Energy Sales Agreements

An energy sales agreement (ESA) - referred to as an ESPC ESA or ESPC with an ESA ECM - is a project structure that uses the multiyear ESPC authority to implement CFE projects on federal buildings or land, with the agency purchasing the electricity.

- Similar to on-site CFE purchase contract but uses ESPC authority
- Private ownership initially, allowing tax incentives to be captured
- ESCO purchases & owns CFE equipment; provides O&M, R&R
- ESA price is in $/kWh; payment based on kWh generation
- FAR Part 41 authorizes use of ESPCs for the acquisition of utility services (48 CFR § 41.102(b)(7))
- CFE ECM can be bundled with other ECMs

ESPC ESA Requirements

- Must meet all ESPC requirements
- OMB Memo M-12-21: Agency must retain equipment title by end of contract for annual scoring
- For tax incentives, safe harbor provided by IRS Revenue Procedure 2017-19 published in Internal Revenue Bulletin 2017-07. Requirements include:
  - Title transfer must be at fair market value
  - Maximum contract term: 20 years
- Recommendation: ESCO transfers portion of payments to reserve account held by ESCO for future FMV title transfer

Considerations

- Appropriate authority
  - FAR Part 41 contains an exemption for ESPC, not UESCs
- IRS Revenue Procedure 2017-19 specifies ESPC, not UESCs
- UESCs allow for all serving utilities to provide ECMs of all technology classes
- Other Utility Acquisition Contracts restrict utilities to providing services in alignment with their tariffed offerings
- Novation
  - Is a novation required, given that IRA allows one tax credit transfer?
  - Can a TO under an AWC be novated?

Discussion

Katy Christiansen

Military, Resilience, and Utility Programs
Resilient Systems Design and Engineering Group
National Renewable Energy Laboratory

(720) 234-2710

katy.christiansen@nrel.gov

Appropriate Authority & FAR Part 41 Exemption

- Which authority should be used for an ECM structured as an electricity purchase: UESC (42 USC 8256) or FAR Part 41?
  - UESC benefits: 25-year vs. 10-year contract; ECM bundling

- FAR Part 41.102(b)7 provides an exemption for ESPCs (not UESCs):

102. Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to –

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize part 41 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.

OMB Title Retention Requirement & IRS Revenue Procedure

- OMB Memo M-12-21 (Section III Procurement) requires that title to onsite generation be retained by the government by end of contract for annual scoring (applies to both UESCs and ESPCs)

- IRS Revenue Procedure 2017-19 provides a safe harbor for ESPC ESAs
  - UESCs are not mentioned
  - ESPC authority requirements must be met
  - How would the Revenue Procedure requirements apply if the tax credits are transferred, as allowable by the IRA?