**UESC Acquisition Plan Template [[1]](#footnote-2)**

**Agency:**

**Project Title:**

**Location:**

**Estimated Contract[[2]](#footnote-3) Value:**

**Contract Type:** Firm fixed-price

1. **Acquisition Background and Objectives**
	1. **Federal Acquisition Regulation (FAR) 7.105(a)(1), Statement of Need:**

The purpose of this contract action is to develop and implement energy conservation measures (ECMs). *[Agency include specific location(s) and priority ECMs.]* The requirements for this contract were generated during *[list specific evaluations, inspections, or surveys of subject facilities]*. This Utility Energy Service Contract (UESC) has a dual purpose of meeting energy-related policy objectives and making necessary capital improvements to buildings *[list specific energy-related policy objectives or goals the agency hopes to fulfill with this project, such as Executive Orders, Energy Act of 2020, etc.].* This UESC will be executed using *[the GSA areawide contract (AWC),* *[Basic Ordering Agreement (BOA), or stand-alone contract]* with *[ABC Electric, Gas or Water Company].*

Prior to the formation of this Acquisition Plan, *[Agency]* looked at other funding and procurement options. The *[Agency]* has considered *[insert considered alternatives to UESCs such as: ESPCs, appropriations, performing the work in-house, not completing the upgrades, etc.]* as potential methods for executing this project. These options are not preferred due to *[list types of reasons such as lack of appropriations, nature of the project, etc.]*. As such, the UESC procurement vehicle was chosen.[[3]](#footnote-4)

**Nature of Action:**

Authorized by Energy Policy Act of 1992 (EPACT), codified at 42 USC 8256, a UESC is a firm fixed price contract between a federal agency and serving utility for energy management services including energy and water efficiency improvements, onsite renewables/carbon pollution-free electricity, and demand-reduction services.

As part of all UESCs, the utility conducts a comprehensive energy audit to identify potential energy conservation measures (ECM)s and estimates the agency’s resulting future utility cost savings. The implementation cost for these ECMs shall be estimated during a Preliminary Assessment (PA) and finalized during an Investment Grade Audit (IGA).

The utility incurs the upfront costs of implementing selected ECMs and the government makes annual payments to the utility. These payments come from funds identified for energy and related expenses[[4]](#footnote-5). The energy/water cost savings to the government will be ensured through implementation of the required Performance Assurance Plan.

* 1. **FAR 7.105(a)(2) Applicable Conditions:**

The *[Agency]* is held to a number of executive orders and mandates that require all federal agencies to reduce their energy and water consumption and implement energy conservation measures that maximize use of renewables/carbon pollution-free electricity. The Energy Act of 2020 requires an agency to use performance contracts to implement at least 50% of cost effective ECMs identified through required energy audits (see 42 USC § 8253(f)(4)(B)). The Energy Policy Act of 2005 requires agencies to use 7.5% renewable energy. The Energy Independence and Security Act of 2007 includes a variety of requirements including audits and energy intensity reductions. Energy-and water-consuming equipment require upgrades to meet these mandates. Upgrades to this equipment shall not adversely affect the performance of any related systems.As mentioned above, UESCs are authorized by the Energy Policy Act of 1992 (EPACT), codified at 42 USC 8256, and allow for an agency to contract with their serving utility for the implementation of such upgrades, with payments to the utility from the savings over the contract term.

*[Note to agency: See 42 USC 8256(c) that states:*

***1)*** *Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.*

***(2)*** *Each*[*agency*](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=42-USC-1419699195-1161785689&term_occur=999&term_src=)*may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.*

***(3)*** *Each*[*agency*](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=42-USC-1419699195-1161785689&term_occur=999&term_src=)*is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such*[*agency*](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=42-USC-1419699195-1161785689&term_occur=999&term_src=)*.*

*(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.]*

Specifically, the UESC will help meet certain Energy Act of 2020 requirements: As amended by the Energy Act of 2020, 42 USC 8253(f)(4)(B) requires implementation of any life cycle cost-effective energy and water-saving measure identified in a federal agency’s evaluation of a covered facility not later than two years after the completion date of the evaluation. This requirement applies to evaluations completed on or after December 27, 2020. Each Federal agency shall use performance contracting to address at least 50 percent of the measures.

Systems compatibility: The ECMs must meet *[Agency]* cyber security and *[list other relevant requirements]*. These will be addressed in the request for proposal to the utility.

Cost, Schedule, and Capability Constraints: After considering appropriations applied to the UESC project, all additional payments must come from project savings.

*[Agency list all known cost, schedule, capability/performance constraints applicable to this acquisition. Include whether appropriated funds are going to be applied and if so, what funding sources were evaluated and will be used. State the performance constraints and how savings will be monitored (ex. verified/measured per a performance assurance plan). Are there any important scheduling considerations such as failing equipment that needs to be replaced as soon as possible. Include information regarding any other projects that will impact and/or constrain the UESC. Or state that there are no constraints or issues.]*

* 1. **FAR 7.105(a)(3) Cost:**

Total estimated Project Implementation Price = *[$xxx]*, with an anticipated simple payback of approximately *[xx years]*. Based on anticipated savings, the contract term (including financing) will be within the 25-year limit for UESC projects.

*[Note to agency: Consider life-cycle cost of the expected ECMs. Explain rationale and description of how costs were considered and how cost objectives were met. Note: The authority for the 25-year UESC limit is DFARS Part 241.103 for DoD agencies and the May 9, 2000, GSA Office of General Counsel opinion titled “Authority for Extended Utility Agreements” for all other agencies. The ECM cost and the energy, water and related cost savings will be provided in the utility’s Investment Grade Audit (IGA), using eProject Builder[[5]](#footnote-6). If the project is not lifecycle cost-effective and/or if negotiations are unsuccessful, the agency is not obligated to make an award. If the project does not go forward, the agency may be obligated to pay for the IGA (based upon payment requirements negotiated with the utility prior to IGA initiation).* *]*

* 1. **FAR 7.105(a)(4) Capability or Performance Conditions:**

The ECMs must meet energy performance standards and operate as specified. Performance assurance standards consistent with 42 USC 8253(f)(5) requirements shown below, and Department of Energy Federal Energy Management Program (FEMP) recommendations will be incorporated into the task order.

42 USC 8253(f)(5) Follow Up on Implemented Measures

For each measure implemented, each [energy manager](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=42-USC-2072958485-187796981&term_occur=999&term_src=title:42:chapter:91:subchapter:III:part:B:section:8253) shall ensure that—

**(A)** equipment, including building and equipment controls, is fully commissioned at acceptance to be operating at design specifications;

**(B)** a plan for appropriate operations, maintenance, and repair of the equipment is in place at acceptance and is followed;

**(C)** equipment and system performance are measured during its entire life to ensure proper operations, maintenance, and repair; and

**(D)** energy and water savings are measured and verified.

* 1. **FAR 7.105(a)(5) Delivery/Performance Period Requirements:**

The UESC will result in the implementation of various energy and water conservation measures that are paid for through realized savings. If the ECMs do not operate as designed, the energy and water efficiencies and resultant savings will not be achieved. Performance assurance will ensure energy/water savings are maintained through the entire contract performance period.

Performance assurance is required[[6]](#footnote-7) pursuant to OMB Memo M-12-21, *Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)* and the Performance Assurance Plan should meet all *42 USC 8253(f)(5) Follow-up on Implemented Measures* requirements*.* The Performance Assurance Plan should contain the following requirements for each ECM: commissioning plan, training, operations and maintenance/repair and replacement, baseline, performance metrics, periodic verification and measurement of performance and savings (using M&V protocol or other methods), and periodic recommissioning.

The schedule has some flexibility, although once established it is enforced as a contract requirement. There *[are/are no]* other projects dependent on this project being completed at a specific date.

* 1. **FAR 7.105(a)(6) Trade-Offs:**

*[Agency]* has considered *[insert considered trade-offs regarding cost, capability, performance, or schedule goals. Due to the energy saving measures associated with UESC projects, capability or performance goals typically rank highest, with schedule and cost ranking next in priority.]*

Scheduling *[has/has not]* presented a significant trade-off concern.

* 1. **FAR 7.105(a)(7) Risks:**

*[Note to agency: The Agency should discuss their approach to managing project risk during implementation to ensure that contract is implemented within the appropriate time period so that performance period payments are rendered on time.]*

Equipment lead times and construction schedule will be thoroughly discussed during the IGA to ensure that construction will be complete on time so that payments can begin on time and so additional construction period interest is not accrued.

Technical risk *[is/is not]* determined to be high due to the new/existing technological measures being implemented in the ECMs for this project. Emerging technologies must be addressed and justified.

Contract performance risk is mitigated by a comprehensive Performance Assurance Plan that demonstrates energy savings are sufficient to cover the costs of the project.

Cost risk is minimal. UESCs are firm fixed price contracts, and the project team will review multiple iterations of the contractor’s proposed costs in increasingly more detail throughout the pre-award process. This is accomplished by reviewing the Preliminary Assessment and Investment Grade Audit financial details.

Performance risks will also be mitigated by using a *[add applicable staff such as a contracting officer representative, project manager, construction manager and/or project facilitator. The project facilitator will minimize project risk during project development by acting in the best interest of the government. A construction manager and contracting officer representative will monitor the implementation of the ECMs onsite to verify that measures are implemented as planned and meet all applicable codes and standards.]*

* 1. **FAR 7.105(a)(8) Acquisition Streamlining**

*[Add details if applicable.]*

1. **Plan of Action**
	1. **FAR 7.105(b)(1) Sources:**

As authorized by EPACT, codified at 42 USC 8256, this UESC will be a limited-source firm fixed price contract between the Government and a serving utility for energy management services.

* 1. **FAR 7.105(b)(2) Competition:**

The UESC authority, 42 USC 8256 allows federal agencies to contract with their utility for incentive programs. The potential providers for a UESC are limited by statute to the water, natural gas, and electric distribution companies serving the facilities. A Letter of Interest will be sent to these companies and a Sources Sought Notice will be posted on SAM.gov. This process will notify all eligible distribution utilities of the site and allow interested utilities to respond. If more than one utility expresses interest the agency will select one based on pre-determined selection criteria. *[xxx]* providers serving in the area of performance meet this requirement: *[ABC Electric Company],* *[XYZ Gas Company], and [RST Water Company]*. We anticipate robust competition at the subcontractor level and will require selected contractors to provide their subcontractor quotes and analysis of selected firms.

* 1. **FAR 7.105(b)(3) Contract Type Selection:**

Firm fixed price task order under an existing GSA AWC *[or Basic Ordering Agreement (BOA) or stand-alone contract]* with *[ABC Electric Company].*

**FAR 7.105(b)(4) Source Selection:**

A Letter of Interest will be sent to each serving distribution utility and a Sources Sought Notice will be posted on SAM.gov.

*[Note to agency: Discuss source selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives.]*

* 1. **FAR 7.105(b)(5) Acquisition Considerations**

Subpart 17.1 Multiyear Contracting applies–this is a multi-year contract. This task order will include cancellation ceilings. The FAR 17.108 special congressional notification procedure *[do/do not]* apply as the cancellation ceilings are *[above/below]* the stated threshold.

* 1. **FAR 7.105(b)(6) Budgeting & Funding:**

There are *[$xxx, if applicable]* appropriated/non-appropriated funds programmed for this project and the rest of the project will be financed, as allowable under 42 USC 8256. Specifically, 42 USC 8256(c)(2) states “Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.” Financed projects, such as a UESC, are included within the financial incentives the agency may accept.

* 1. **7.105(b)(7) Product or Service Descriptions:**

The Contractor will implement and ensure the performance of the following ECMs: *[list known ECMs].*

Each ECM will have specific performance characteristics/key performance indicators that will be evaluated in the commissioning process and performance assurance process during implementation and performance period respectively.

* 1. **FAR 7.105(b)(8 through 15):** *[Note to agency: Items 8 through 15 are typically not applicable but ensure that they are addressed as needed in accordance with agency policies and procedures.]*
	2. **FAR 7.105(b)(16) Government Furnished Information:** *[Note to agency: Discuss any anticipated information that the agency will provide to the contractor to assist in developing the project.]*
	3. **FAR 7.105(b)(17) Environmental and Energy Conservation Objectives:** *[Add general objectives regarding desired ECMs, and if available, details such as the following: The ECMs will reduce energy consumption by xx kWh/year, resulting in $xxx of annual savings, with a simple payback of xxx years.]*

*Note to agency: The following items and clauses may be included depending upon the unique characteristics of the contract:*

*The contractor shall comply with all applicable Federal, State, and local laws and with the applicable regulations and standards regarding environmental pollution.*

*Asbestos and Other Hazardous Material*

*Hazardous Material Handling and Disposal*

*PCB Handling and Disposal*

*52.223-3* *Hazardous Material Identification and Material Safety Data – Alternate I (January 1997)*

*52.223-14* *Toxic Chemical Release Reporting (October 2000)*

*52.236-9* *Protection Of Existing Vegetation, Structures, Equipment, Utilities And Improvement (April 1984)*

*52.236-12* *Cleaning Up (April 1984)*

*970.5204-2* *Integration of Environment, Safety, and Health into Work Planning and Execution (June 1997)*

*952.223-72* *Radiation Protection and Nuclear Criticality (April 1984)*

*952.223-75* *Preservation of Individual Occupational Radiation Exposure Records (April 1984)*

* 1. **FAR 7.105(b)(18) Security Considerations:** Contractor personnel are required to successfully complete an appropriate level background check and security badging process to obtain access to the place of performance. Agency document security and IT security requirements apply. Applicable standards, including access to any classified information or facilities are referenced in the TO.

*[Agency add information regarding applicable cyber security requirements and how they will be met.]*

*Note to Agency: References can be found at:*

[*https://www.energy.gov/eere/femp/cybersecurity-considerations-performance-contracts*](https://www.energy.gov/eere/femp/cybersecurity-considerations-performance-contracts)

*Legal and regulatory cybersecurity requirements provide the framework for federal and agency-specific policies and conditions for cybersecurity across federal facilities. These include, but are not limited, to:*

* E-Government Act (Public Law 107-347)
* Federal Information Security Management Act of 2014, as amended (to include P.L. 113-283)
* Executive Order 13800: Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure
* National Institute of Standards and Technology (NIST) Cybersecurity Framework Version 1.1
* NIST's Federal Information Processing Standards
* All other applicable cybersecurity guidance and best practices as laid out in other NIST Special Publications
* All cybersecurity requirements and policies of the contracting federal agency.
	1. **FAR 7.105(b)(19) Contract Administration:** Contract administration will be within the *[*Acquisition Management Division*]*. The Contracting Officer’s Representative shall be *[xxx]*.

Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement’s performance criteria will be enforced.

* 1. **FAR 7.105(b)(20) Other Considerations:** [Insert information as applicable.]
	2. **FAR 7.105(b)(21) Milestones for the Acquisition Cycle**

|  |  |  |
| --- | --- | --- |
| **Milestone Name** | **Planned Date** | **Actual Date** |
| Acquisition Plan Approval |   |   |
| Statement of Work |   |   |
| Specifications |   |   |
| Data Requirements |   |   |
| Package Completion |   |   |
| Justification for Approval |   |   |
| Issuance of Letter of Interest/Sources Sought Notice |   |   |
| Utility Selection |   |   |
| Preliminary Assessment |  |  |
| PA Review |  |  |
| Investment Grade Audit |  |  |
| IGA Evaluation |   |   |
| Negotiation Begin |   |   |
| Negotiation Completion |   |   |
| Contract Preparation |   |   |
| Contract Review |   |   |
| Contract Clearance |   |   |
| Contract Award |   |   |

* 1. **FAR 7.105(b)(22) Identification of Participants in Acquisition Plan preparation *[examples below]*:**

|  |  |  |
| --- | --- | --- |
| **Level** | **Role** | **Participant Name** |
| 0.0 | Planner |   |
| 1.0 | Other Planning Team Members |    |
| 2.0 | Contracting Officer - Coordination |   |
| 3.0 | Competition Advocate |  |
| 4.0 | SBS/SBA |   |
| 5.0 | Local OCIO Representative |   |
| 6.0 | General Counsel |   |
| 7.0 | Contracting Officer - Approval |   |
| 8.0 | Management - Approval |  |
|  9.0 | Contracting Director |   |
| 10.0 | Head of the Contracting Activity |   |

* 1. **File attachments (if any)**
	2. **Routing Chain/History**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Role** | **User** | **Involvement** | **Required Action** | **Routing History** |
|   |   |   |   |   |

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Contracting Officer (CO) Date

Concurrence/Approval:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1 level above CO Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2 levels above CO Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

General Counsel Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Senior Acquisition Authority Date

1. Note: Although FEMP considers it a best practice, not all agencies require formal acquisition plans. Additionally, this template acquisition plan is based upon the requirements set forth in FAR Part 7, but please follow your agencies internal policies for acquisition plans. [↑](#footnote-ref-2)
2. Note: Modify based on agency policy. For example, “investment value” (excluding financing) may be used to determine contracting officer warrant requirements. [↑](#footnote-ref-3)
3. If required by your agency, include additional details about the consequences of not proceeding with the project, such as continued deterioration of failing equipment, etc. [↑](#footnote-ref-4)
4. Or other funds as allowed by your agency policies. [↑](#footnote-ref-5)
5. Unless agency policy dictates otherwise. [↑](#footnote-ref-6)
6. Or a savings guarantee, although this is less common and may not be allowable depending on utility regulations put in place by the commission/other governing body. [↑](#footnote-ref-7)