U.S. DEPARTMENT of ENERGY | Federal Energy Management Program

Optimizing Performance Contracts Including Combining Funding Streams

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FEMP Summer Workshops

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Executive Director

National Association of Energy Service Companies (NAESCO)

Agenda

- Session Learning Objectives
- Shankar Earni - ePB Financial Schedules
- Beth Brown - Combining Funding Streams
- Russ Dominy - Price Reasonableness, Federal Agency Assessment
- Andrea Kincaid - Acquisition Requirements, CO / KO Perspective
- Questions & Answers

Session Learning Outcomes

1. Identify the basics of eProject Builder schedules and their relationship to project financial goals.
2. Recognize strategies to optimize performance contracts by effectively combining funding streams and other strategies, including contract term limits, project size, and risk profile.
3. Recognize the cost reasonableness of performance contracts using federal and industry benchmarks.
4. Identify acquisition requirements for awarding a performance contract task order from a Contracting Officer's perspective.

Shankar Earni, Ph.D.

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Berkeley Lab

eProject Builder (ePB) Overview

- **Secure, web-based energy project tracking and reporting system**
- **Free tool maintained by LBNL for U.S. DOE**
- **Two pathways:**
  - eProject Builder (ePB) – full-featured w/ energy conservation measure (ECM)-level information | eProject eXpress (ePX) – streamlined for state/local needs
- **ePB and ePX enable project owners, contractors to securely:**
  - Preserve and track project/ECM data and documents in perpetuity
  - Develop project scenarios using standardized calculations
  - Output financial schedules, measurement and verification (M&V) reports, custom and standard reports
  - Conduct ECM price benchmarking
  - Conduct analysis on own portfolio of projects.

ePB Status

- Over 3,400 projects across all markets
- Represents over $23B in total investment and $32B in total guaranteed savings
- 745 federal projects (23%)
- 2167 MUSH projects (68%)

ePB Benefits

- **Puts the power of data management** to work for you
- **Preserves critical project data** in perpetuity – even through staff turnover
- **Standardizes energy project data** collection and reporting – across markets, contractors and regions
- **Standardization enables robust analysis and reporting** of project/program performance
- **Empowers customers** by providing them ready access to data for their own portfolio of projects
- **Accommodates wide range of project types**: guaranteed savings, utility energy service contract (UESC), Federal energy savings performance contract (ESPC) energy sales agreement (ESA), direct-funded, design-build
- **Minimizes agency time:** energy services companies (ESCOs)/utilities/contractors, not customers, typically do the work of entering project data and M&V/performance assurance results.

ePB Components and Security

Two key system components

- Excel-based data template for ESCO/utility/contractor to enter data and develop project scenarios
- Online system where data and documents are uploaded, accessed and tracked

Security features

- Encrypted protocol (https)
- Two-step log-in similar to high-security e-commerce sites
- Project access restricted to one Project Builder and one Project Initiator account
- Zero risk score via 2 levels of vulnerability testing/remediation
  - National laboratory information technology (IT) security scans
  - 3rd-party scans from government cyber security expert

ePB Data Template Overview

The ePB data upload template is a Microsoft Excel workbook that contains several tabs in which:

- Yellow cells indicate fields where data can be entered
- Grey cells indicate values calculated or derived from elsewhere based on other inputs
- Two template versions: calculating and non-calculating
- For the calculating version, red text with asterisks indicates required fields that must be completed.

Template Schedules Overview (tabs in workbook)

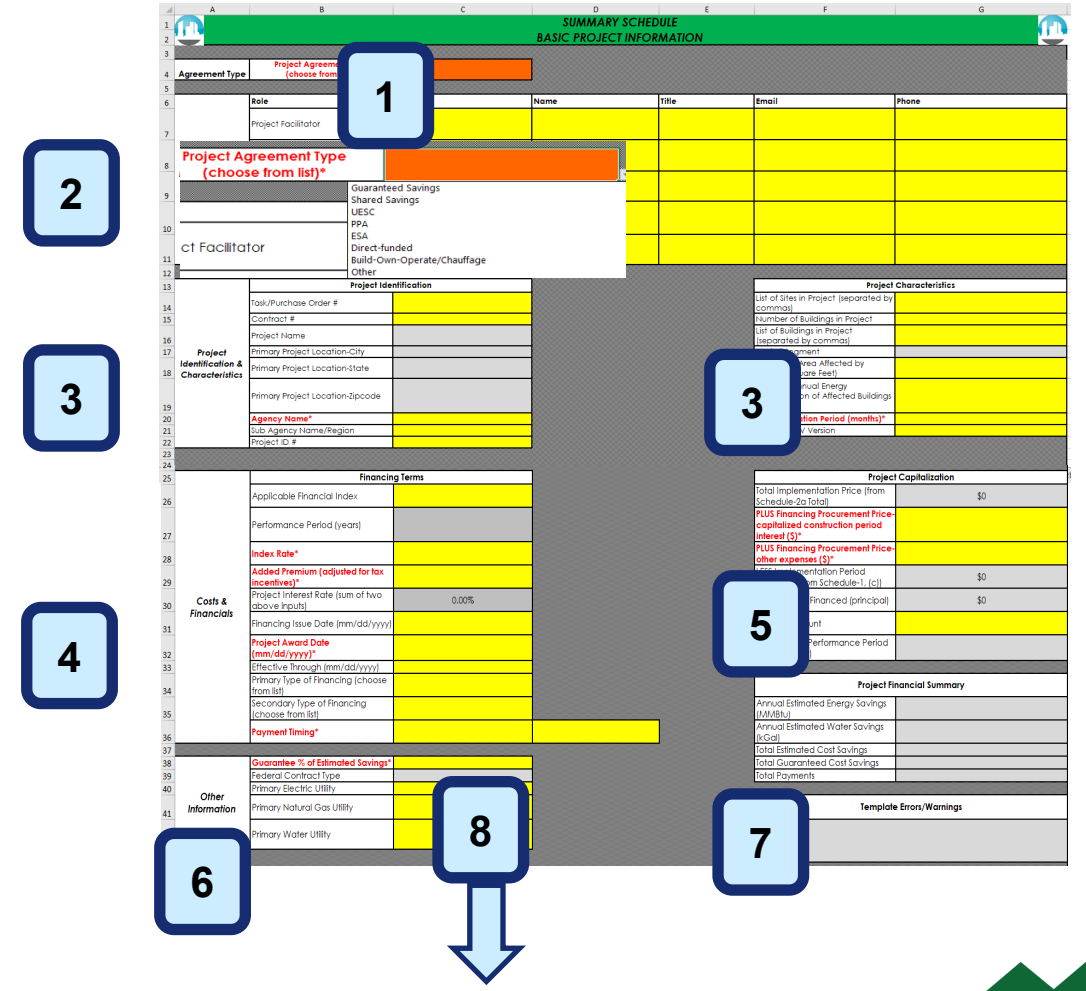
- Summary Schedule
- Escalation Rates
- Schedule 1: Cost Savings & Payments
  - For guaranteed savings or direct-funded projects, use **Schedule 1**
  - For UESC use **Schedule 1u**;
  - For federal ESPC ESA use **Schedule 1ee** and **Schedule 1ESA**
- Schedule 2a: Implementation Price by ECM
- Schedule 3: Performance Period Cash Flow
- Schedule 4: Estimated Savings by ECM
- Schedule 5: Cancellation Ceiling

Summary Schedule

1. Project Agreement Type (required)
2. Project contact information
3. Project identification and characteristics
4. Financing information (e.g., interest rate)
5. Project capitalization
6. Percent guarantee
7. Project summary (implementation price, total guaranteed savings, etc.
8. Notes field at bottom of all tabs (not shown)

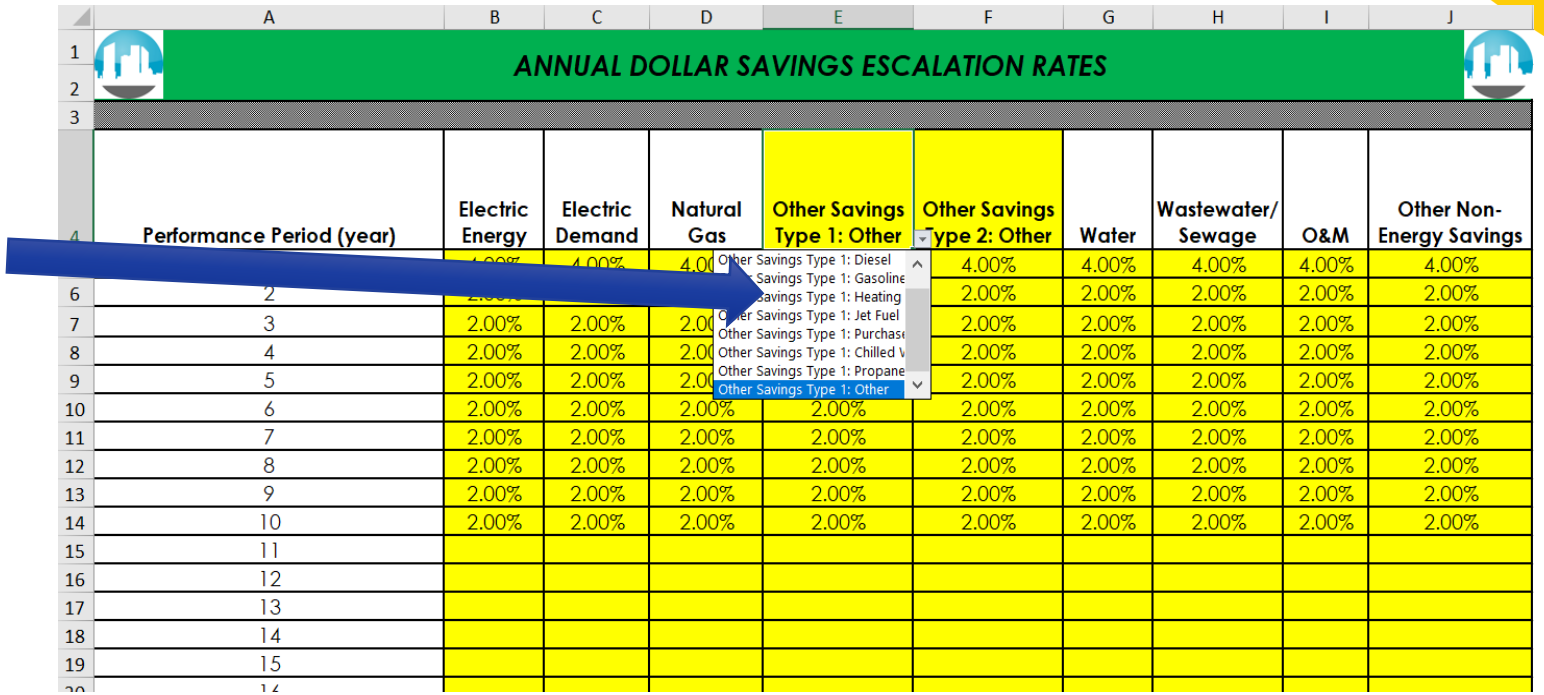
If using the calculating template (shown here), all fields in red text with asterisk are required

Summary Schedule may display an error message until all fields in all tabs that contribute to the amortization calculation are completed



Escalation Rates

- If escalating savings, enter percent escalation for each resource type and performance year
- For fuels such as diesel, heating oil, etc., indicate the other types of fuel savings in the Escalation Rates cells E4 and F4 (choose from dropdown list)
- It is recommended that you use the NIST Energy Escalation Rate Calculator (EERC) tool to calculate escalation rates: https://pages.nist.gov/eerc/
- Utilities' escalation rates may be used, if available. See FEMP Guidance on Utility Rate Estimations and Weather Normalization in Performance Contracts

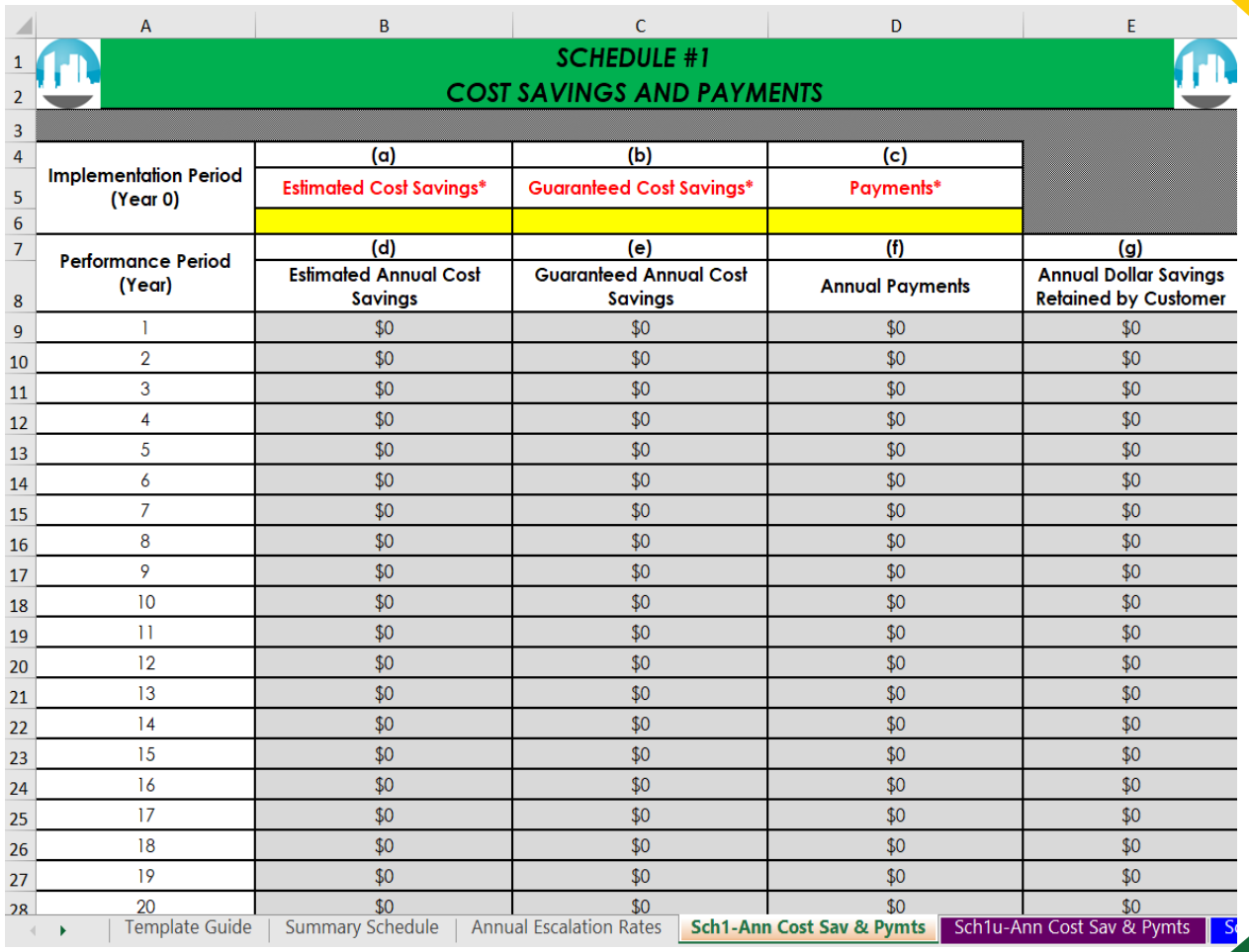


	A	B	C	D	E	F	G	H	I	J
1	ANNUAL DOLLAR SAVINGS ESCALATION RATES									
2										
3										
4	Performance Period (year)	Electric Energy	Electric Demand	Natural Gas	Other Savings Type 1: Other	Other Savings Type 2: Other	Water	Wastewater/ Sewage	O&M	Other Non-Energy Savings
6	2					2.00%	2.00%	2.00%	2.00%	2.00%
7	3	2.00%	2.00%	2.00%		2.00%	2.00%	2.00%	2.00%	2.00%
8	4	2.00%	2.00%	2.00%		2.00%	2.00%	2.00%	2.00%	2.00%
9	5	2.00%	2.00%	2.00%		2.00%	2.00%	2.00%	2.00%	2.00%
10	6	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
11	7	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
12	8	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
13	9	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
14	10	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
15	11									
16	12									
17	13									
18	14									
19	15									

Other Savings Type 1: Diesel
Other Savings Type 1: Gasoline
Other Savings Type 1: Heating
Other Savings Type 1: Jet Fuel
Other Savings Type 1: Purchase
Other Savings Type 1: Chilled
Other Savings Type 1: Propane
Other Savings Type 1: Other

Schedule 1: Annual Cost Savings and Payments

- In the calculating template, Schedule 1 will mostly auto-populate all performance years based on financial and savings information entered in other tabs
- In the calculating template the three required fields (indicated by red text with asterisks) must be completed
- If using the non-calculating template, all information must be entered manually



	A	B	C	D	E
1		SCHEDULE #1			
2		COST SAVINGS AND PAYMENTS			
3					
4	Implementation Period (Year 0)	(a)	(b)	(c)	
5		Estimated Cost Savings*	Guaranteed Cost Savings*	Payments*	
6					
7	Performance Period (Year)	(d)	(e)	(f)	(g)
8		Estimated Annual Cost Savings	Guaranteed Annual Cost Savings	Annual Payments	Annual Dollar Savings Retained by Customer
9	1	$0	$0	$0	$0
10	2	$0	$0	$0	$0
11	3	$0	$0	$0	$0
12	4	$0	$0	$0	$0
13	5	$0	$0	$0	$0
14	6	$0	$0	$0	$0
15	7	$0	$0	$0	$0
16	8	$0	$0	$0	$0
17	9	$0	$0	$0	$0
18	10	$0	$0	$0	$0
19	11	$0	$0	$0	$0
20	12	$0	$0	$0	$0
21	13	$0	$0	$0	$0
22	14	$0	$0	$0	$0
23	15	$0	$0	$0	$0
24	16	$0	$0	$0	$0
25	17	$0	$0	$0	$0
26	18	$0	$0	$0	$0
27	19	$0	$0	$0	$0
28	20	$0	$0	$0	$0

Template Guide | Summary Schedule | Annual Escalation Rates | Sch1-Ann Cost Sav & Pymts | Sch1u-Ann Cost Sav & Pymts

Schedule 2a: Implementation Price by ECM

- Project ECMs are all entered, each on its own row; complete all fields indicated in red text
- Multiple ECMs within the same tech category by using ECM numbers, descriptions, size, location
- Location/Facility ID field may be used to enter/track ECMs separately by site or building

SCHEDULE #2a
IMPLEMENTATION PRICE BY ENERGY CONSERVATION MEASURE

ECM - Technology Category*	ECM No.	Not Applicable	ECM Description – Title*	ECM Size	ECM Coverage (%)	Location/Facility ID	M&V Expense ($)	(a) Cost of Goods and Services (Base Construction)*	(b) Project Implementation Delivery Charge*	(c) Applied Incentives ($)	(d) Implementation Price PDP + [a+b] - c
Project Development Price (PDP)-Technical Energy Audit and Project Proposal											

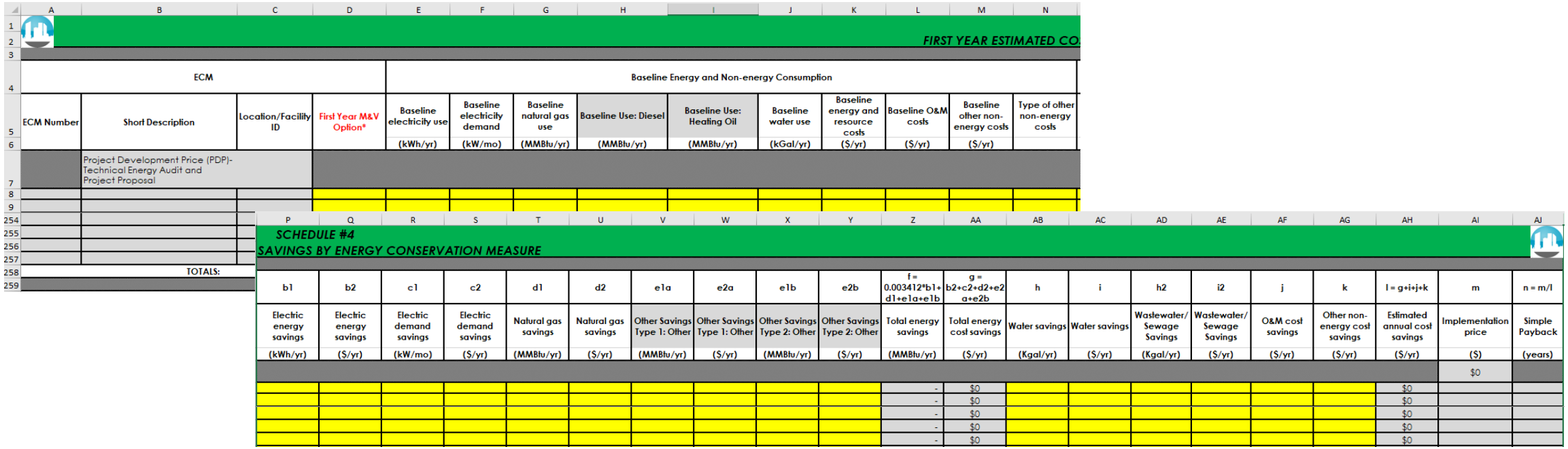
Schedule 3: Performance Period Cash Flow

- Schedule 3 is for projects that involve a performance period and performance period expenses, such as operation and maintenance (O&M), M&V, etc.
- Expected performance period incentives or other payments (e.g., Investment Tax Credit, buy downs), are entered on row 6, “Performance Period Incentives and Other Revenues.”

	A	B	C	D	E	Z	AA	AB	AR
4		**Term (year)**	**Implementation Period (Year 0)**	**1**	**2**	**23**	**24**	**25**	**Totals**
5		Principal Repayment		$0	$0	$0	$0	$0	$0
6	**Debt Service/Performance Period Payments**	Performance Period Incentives and Other Revenues		$0	$0	$0	$0	$0	$0
7		Dollar savings retained by customer		$1	$1	$1	$1	$1	
8		Interest ($)							$0
9		*Total Debt Service (a)*		$0	$0	$0	$0	$0	$0
10									
11	**Performance Period Expenses**	Management/Administration							$0
12		Operation							$0
13		Maintenance							$0
14		Repair and Replacement							$0
15		**Measurement and Verification***							$0
16		Other PP Expense 1: Other							$0
17		Other PP Expense 2: Other							$0
18		*SUBTOTAL Before Application of Performance Period Delivery Percentage*		$0	$0	$0	$0	$0	$0
19		**Performance Period Delivery Percentage (%)***							
20		*Performance Period Delivery Charge ($)*		$0.00	$0.00	$0.00	$0.00	$0.00	$0
21		*TOTAL Performance Period Price (b)*		$0	$0	$0	$0	$0	$0
22									
23	**Annual Cash Flow (Performance Period)**	***TOTAL - ANNUAL PAYMENTS (a)+(b)***	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**

Schedule 4: Estimated Savings by ECM

- Baseline consumption for each ECM is entered in columns E-N as applicable
- First year estimated savings is entered for each ECM in columns O-AD as applicable
- Schedule 4 auto-populates ECM implementation price and calculates ECM simple payback



FIRST YEAR ESTIMATED CO

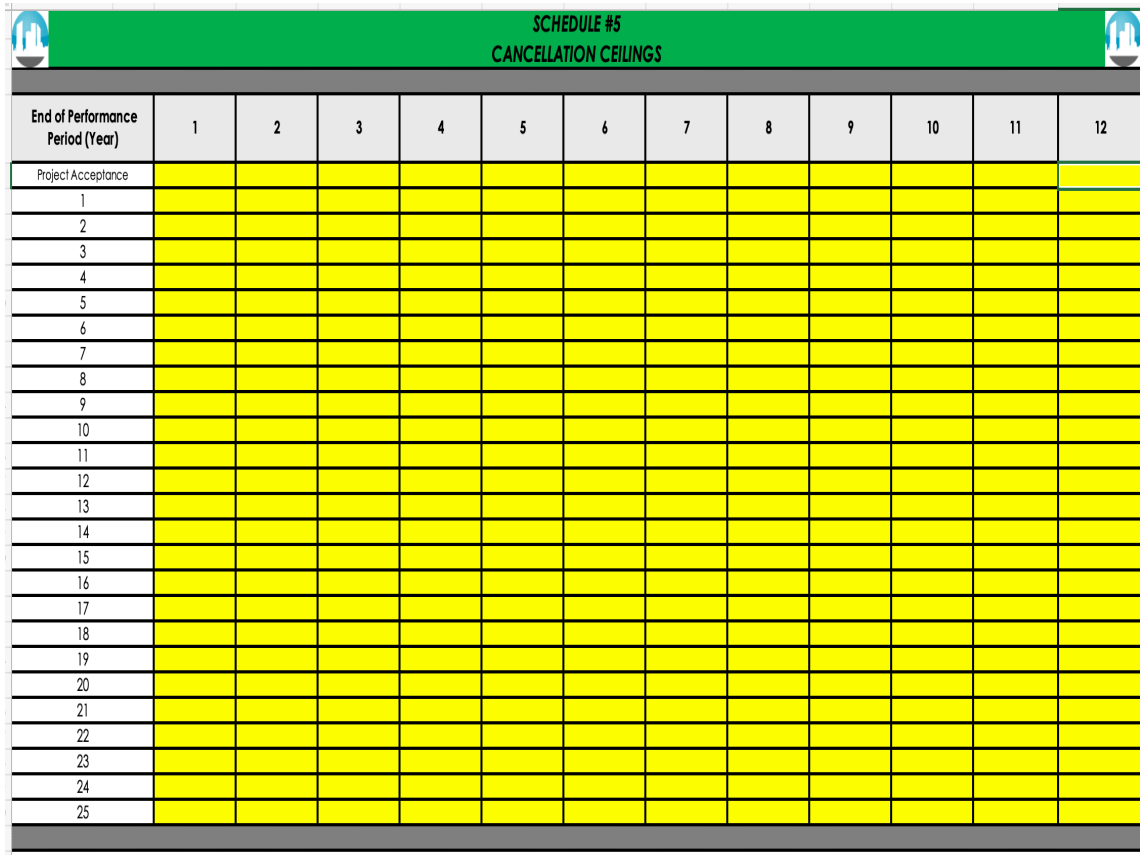
ECM				Baseline Energy and Non-energy Consumption									
ECM Number	Short Description	Location/Facility ID	First Year M&V Option*	Baseline electricity use	Baseline electricity demand	Baseline natural gas use	Baseline Use: Diesel	Baseline Use: Heating Oil	Baseline water use	Baseline energy and resource costs	Baseline O&M costs	Baseline other non-energy costs	Type of other non-energy costs
				(kWh/yr)	(kW/mo)	(MMBtu/yr)	(MMBtu/yr)	(MMBtu/yr)	(kGal/yr)	($/yr)	($/yr)	($/yr)	
	Project Development Price (PDP)-Technical Energy Audit and Project Proposal												
TOTALS:													

SCHEDULE #4
SAVINGS BY ENERGY CONSERVATION MEASURE

b1	b2	c1	c2	d1	d2	e1a	e2a	e1b	e2b	f = 0.003412*b1+d1+e1a+e1b	g = b2+c2+d2+e2a+e2b	h	i	h2	i2	j	k	l = g+i+j+k	m	n = m/l
Electric energy savings	Electric energy savings	Electric demand savings	Electric demand savings	Natural gas savings	Natural gas savings	Other Savings Type 1: Other	Other Savings Type 1: Other	Other Savings Type 2: Other	Other Savings Type 2: Other	Total energy savings	Total energy cost savings	Water savings	Water savings	Wastewater/ Sewage Savings	Wastewater/ Sewage Savings	O&M cost savings	Other non-energy cost savings	Estimated annual cost savings	Implementation price	Simple Payback
(kWh/yr)	($/yr)	(kW/mo)	($/yr)	(MMBtu/yr)	($/yr)	(MMBtu/yr)	($/yr)	(MMBtu/yr)	($/yr)	(MMBtu/yr)	($/yr)	(Kgal/yr)	($/yr)	(Kgal/yr)	($/yr)	($/yr)	($/yr)	($/yr)	($)	(years)
																			$0	
										-	$0							$0		
										-	$0							$0		
										-	$0							$0		
										-	$0							$0		
										-	$0							$0		

Schedule 5: Cancellation Ceilings

- Schedule 5 is required only for Federal ESPC and UESC contracts
- All fields must be completed manually, whether using the calculating or non-calculating template
- Cancellation ceilings establish the maximum termination liability for each month and year of the performance period. Ceiling amounts include the remaining unamortized principal of the total amount financed for each time period specified above plus any prepayment charges. Actual total termination costs are negotiated.



SCHEDULE #5
CANCELLATION CEILINGS

End of Performance Period (Year)	1	2	3	4	5	6	7	8	9	10	11	12
Project Acceptance												
1												
2												
3												
4												
5												
6												
7												
8												
9												
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20												
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22												
23												
24												
25												

ePB Project Data Outputs

- Task order schedules/single project summary report
  - View online and download pdf
  - ESCOs can export from the web-based platform and drop into a proposal
  - Project owners/customers can review offline and compare to online data to ensure final proposal matches the data in ePB
- Annual M&V summary report
- Cumulative M&V summary report
- Portfolio level preset and custom reports – Analysis & Reporting feature
  - Tables and plots
- ECM Price Benchmarking
- Raw data export into Excel file for your own analysis

Training and Technical Assistance

Website: eprojectbuilder.lbl.gov

Training resources on the ePB Help page https://eprojectbuilder.lbl.gov/help include:

- ePB introductory webinars
- Other short training videos on various specific features and functions
- User guides for various features

Contact Us:

Email: epb-support@lbl.gov
Phone: (510) 486-7442

Elizabeth “Beth” Brown

Finance Director

AMERESCO

ESPC/UESC Funding Streams

- ECMs are funded by “assigning” a Task Order’s cash flows to a lender under the Assignment of Claims Act
- Traditional cash flows
  - Energy Cost Savings (Electric, Gas, Water, Etc.) that are generated during the Performance Period of a Task Order
  - O&M Cost Savings

ESPC/UESC Funding Streams (Implementation Period)

- Agency can maximize project investment opportunities by leveraging additional funding sources during Implementation Period
  - Grants (AFFECT) or other Agency “Buydowns”
  - Utility Rebates
  - Savings During Construction
  - Avoided Cost Savings
- Can be invoiced and paid at Award, at Acceptance, or periodically as Construction progresses

Savings During Construction (SDC)

Defined: refers to the energy cost savings that accrue while the energy conservation measures (ECMs) are still being installed, but before the project is fully completed and accepted.

Financial Treatment: Depending on the contract terms, these savings might:

- Be used by the Customer as excess savings (excess cash flow)
- Be paid to Contractor to reduce the amount of financing required

SDC is important because it can improve the cash flow profile of the project and demonstrate early value to stakeholders

Avoided Cost Savings

Refers to **costs that an agency would have incurred in the absence of the ESPC project**, but which are now avoided due to the implementation of energy conservation measures (ECMs).

Types of Avoided Costs:

- **Utility Costs**: Reduced energy consumption leads to lower utility bills.
- **Operations & Maintenance (O&M)**: Newer, more efficient systems often require less maintenance.
- **Repair & Replacement (R&R)**: Upgraded equipment/infrastructure reduces need for costly repairs/replacements

One-Time or Recurring:

- Some avoided costs are **one-time savings**, such as not having to replace a failing boiler.
- **Recurring**, like reduced electricity bills or lower maintenance and/or R&R costs over contract life

Tangible Funding Source:

- For avoided cost savings to count in the ESPC financial model, there must be a **tangible and identifiable funding source** that would have otherwise been used to cover those costs

ESPC Project with/without Grant Funding

Project #1		Project #2	
ECMs		**ECMs**	
Chiller Plant Improvements	Water Conservation	Chiller Plant Improvements	Water Conservation
Lighting Improvements	Controls Upgrades	Lighting Improvements	Controls Upgrades
Boiler Plant Upgrades		Boiler Plant Upgrades	Building Envelope Modifications
			Solar PV
Implementation Price = $32.5M		Implementation Price = $37.5M	
Implementation Period Payments:		Implementation Period Payments:	
Savings During Construction = $500K		Savings During Construction = $500K	
Utility Rebates = $500K		Utility Rebates = $500K	
		AFFECT Grant = $5M	
Term = 20 Years		Term = 20 Years	

ESPC/UESC Funding Streams (Performance Period)

- Agency can maximize project investment opportunities and/or performance period services by leveraging additional cash flows during the Performance Period
    - Performance-Based Incentives
    - RECs
    - Avoided Cost Savings
- By assigning the additional cash flows, can increase project size, allowing Agency to include low payback ECMs, infrastructure improvements and sustainability measures with little to no savings.
- Agency can choose not to assign the additional cash flows and use them to increase the O&M or other performance period service offering by the ESCO.

Example of ESPC Project with RECs

Project without RECs	Awarded Project with RECs
Assigned Cash Flows Electric Cost Savings $1.95M/yr escalating at 2.0% per year for 22 years	**Assigned Cash Flows** Electric Cost Savings $1.95M/yr escalating at 2.0% per year for 22 years REC Revenue of $2.42M/yr for 15 years (with degradation factor)
Project Size = 8.5 MW PV	**Project Size = 18 MW PV**

Russell Dominy

Energy Contracting Consultant

Boston Government Services

Pricing Evaluation

CO/KO Responsibilities:

1. Makes determination of fair and reasonable pricing
2. Establishes pre-negotiation objectives before negotiation of any pricing action
3. Leads negotiations (if required)
4. Documents the contract file with principal elements of negotiated agreement

COR and PF Support

- CO should request assistance from PF and technical SMEs to ensure appropriate analysis is performed
- COR should be involved in pre-negotiation discussions

Determining Fair and Reasonable Pricing

Applies to all price components (ECMs, performance-period activities, and financing costs)

- ESPCs and UESCs are required to comply with FAR 15.4
- FAR 15.403-1 requires certified cost and pricing data unless an exemption exists
  - **For ESPC,** exemption exists (10 CFR 436 Subpart B)
  - **For UESC,** agency determination
- Obtain necessary documentation from utility/ESCO to make reasonableness determination
- Fair and reasonable price determination based on **cost AND expected savings**

FEMP Resources

- Determining Price Reasonableness in Federal ESPCs & UESCs (guide updated 2025)
- Pricing in ESPCs (Webinar)

Additional Details on Price Reasonableness

Technique	Abbreviated Summary from FAR 15.404-1: Proposal Analysis Techniques
Price analysis	The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
Cost analysis	The review and evaluation of any separate cost elements and profit in a contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism.
Cost realism analysis	The process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; and reflect a clear understanding of the requirements.
Technical analysis	CO/KO request that personnel with specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor and other associated factors

Price Analysis Techniques

- Comparison of proposed prices in response to the solicitation (competitive proposals)
- Comparison of proposed prices to historical prices paid (govt. or others for same/similar item)
- Parametric estimating methods ($/MBTU, $/ton, $MW etc.)
- Comparison with competitive published price lists
- Comparison with Independent Government Cost Estimate (agency specific requirements)
- Comparison with prices obtained through market research
- Analysis of data other than certified cost or pricing data (requires supporting information from the contractor)

First two techniques preferred, provided sufficient information to support

Cost Elements of an Energy Performance Contract (for ESPC, elements may vary slightly for UESC's)

Project Development	PA (typically provided at no-cost), IGA with performance assurance plan, and other costs through TO award
ECM Implementation & Construction	Implementation costs by energy conservation measure (ECM)
Mark-Up / Project Implementation Delivery Charge	Costs related to design, project management, commissioning, training, M&V services, performance and payment bonds, overhead, and profit.
Financing	Financing procurement costs, interest
Performance-Period Services	Contract administration, performance assurance/M&V, and potentially O&M services (including repair, replacement)

Using TO Financial Schedules to Evaluate Cost Proposals

What are TO Schedules?

Financial schedules that provide data for evaluating cost elements and help answer critical questions:

- How much does each ECM cost and save?
- When and how much are payments?
- What would the price be to terminate the contract?
- How will utility rate escalation impact savings and payments over time?

Can be used to compare how project feasibility/payback would be impacted by:

- Adding or removing an ECM or facility
- Leveraging avoided costs to supplement ECM savings
- Impacts of other savings (e.g., construction period savings, rebates)
- Financing and interest rates
- Utility rate escalation
- Assigning performance period services to the contractor (O&M, M&V, etc.)
- Changes to construction schedule (impacts on construction period interest)

Pricing Review Key Takeaways

- Follow agency policies and procedures for price reasonableness assessment
  - Price Analysis Methods – FAR 15.404-1(b)(2)
  - Review prime contractor analysis of subcontract pricing (FAR 15.404-3)
- ***Request details for Overhead/profit*** - should only be applied to direct costs (not indirect)
- Be familiar with full scope of work
- Get technical and other help when needed (COR, Project Facilitator, FEMP)
- Document price analysis at every step and retain all documentation for contract file!
- Ensure TO schedules align with IGA and Pricing Proposal

Costs must be transparent, and should be traceable

Pricing should be supported by open-book details, including subcontractor and financing bids

Financing Review

- **Index rate - largest component of project interest rate**
  - Based on U.S. Treasury rates, represents prevailing cost of money in long-term borrowing market (changes day to day)
- **Premium - basis points added to index rate (1% = 100 basis points)**
  - Perception of risk is main factor (termination potential, utility/ESCO credit, agency payment history, guarantees, etc.)
  - Minimized through competition
- **Financing procurement price (FPP)**
  - Pass-through fee that includes cost to procure financing, construction-period interest, bonds, extended rate lock (if used) and other expenses

Project Cost

Project Interest Rate

- Index interest rate
- Premium

Financed Amount

- Project development/construction costs
- Direct costs for ECMs
- Implementation Delivery Charge (mark up)
- Financing procurement price
- Minus any up-front payments (usually at project acceptance)

Financing Process & Responsibilities

- **ESCO/Utility solicits multiple offers, using standard templates**
  - Investor Deal Summary (IDS; for ESPC), IDS (for UESC) project summary and risk profile provided to financiers.
  - Standard Finance Offer (SFO, for ESPC), SFO (for UESC) - standardized format of financier offers for project.
- **ESCO/Utility documents selection**
  - Financier Selection Memo documents reasoning for selecting the financier
- **CO/KO reviews financing documents**
  - Ensure transparency, ask questions and request FEMP assistance.

Require transparency and documentation

- Understand terms of the offer, what government is paying for (e.g., rate lock premium, insurance on savings guarantee)
- Coordinate with financial/budget team
- Understand how frequency and timing of payments impact cashflow (e.g., beginning of performance period; annually, semi-annually)

Ensure TO terms reflect government's best interest and mitigate risk

- E.g., how construction delays may impact interest payments

Financing Considerations and Takeaways

- Ensure competition: Make sure utility/ESCO solicits at least 3 financing offers
- Request and agree upon draw schedule
- Review financing procurement price calculation (construction-period interest, etc.)
- Establish Assignment of Claims to allow direct payments to trustee
- Require justification for any difference between financier's bid and Utility/ESCO offer
- Timing Matters
  - Competition/selection close to award is best (may require refreshed bids)
  - Build time into award schedule for financier's legal counsel to review TORFP

Resources

- (Webinar) Financing and Financial Proposal Review for Performance Contracting
- (Webinar) Financing for UESCs: Ensuring the Best Value for the Government
- (Template) Review of ESPC Financing

Putting It All Together: Price Negotiation Memorandum

- Used to document Government pre negotiation position
- Memorializes price analysis
- Structure to logically follow proposal analysis
    - Summary of analysis of various cost elements
- Include summary of results from technical proposal analysis (savings capture)
- Follow agency requirements as applicable

Summary: Savings, Financing, and Pricing

Understanding unique financial elements of energy performance contracts is critical:

- Allowable savings are the backbone of the entire project
- Leveraging appropriations and other funding maximizes project investment opportunities
- Contract length and feasibility is determined by the bundled set of ECM/WCMs
  - Balanced by combination of long payback and short payback ECMs/WCMs
  - Changes/modifications to individual ECMs can have a ripple effect on feasibility of entire project
- Unique financial factors must be considered and evaluated
  - Financing and interest rates, price inflation
  - Opportunity costs of project delays (i.e., lost savings)
- Performance-based payments from cost savings detailed in TO Schedules
- Carefully review any unique contract clauses requested by financiers

Andrea Kincaid

Division Chief and Contracting Officer

DLA Energy

Introduction

- **Purpose**: Explain how acquisition requirements are developed, refined, and managed from the contracting officer's (CO) point of view in the unique nature of long-term, performance-based energy projects.
- **Partnerships:** Success and development depends on collaboration between Stakeholders.

Federal ESPC Acquisition Team

1. Contracting Officer
2. Contracting Officer's Representative (COR)
3. Contract Specialist
4. Legal Counsel
5. Agency Energy Manager/Site Champion
6. Financial Analyst
7. Measurement & Verification (M&V) Expert
8. Energy Service Company (ESCO)/Utility
9. Finance Company
10. Others

Role of the Contracting Officer

The Contracting Officer is the only individual authorized to legally bind the federal government in a contractual agreement. Their responsibilities include:

- **Contract Authority**: Enter-into, administer, modify, or terminate contracts
- **Compliance Oversight**: Ensuring all legal, regulatory, and procedural requirements are met
- **Funds Verification**: Confirm sufficient funds are available before obligating the government
- **Fair Treatment**: Ensuring contractors are treated impartially and equitably
- **Delegation**: Designating and authorizing a Contracting Officer's Representative (COR) when appropriate
- **Business Judgment**: Exercising discretion in managing contracts effectively

Contracting Officer's Representative (COR)

The **COR** is appointed by the CO to assist in the technical oversight of a contract. Key responsibilities include:

- **Technical Monitoring**: Overseeing the contractor's performance to ensure compliance with technical requirements
- **No Contractual Authority**: Cannot make commitments or changes to the contract terms (e.g., price, scope, schedule)
- **Certification & Training**: Must be certified and trained per OMB or DoD guidance
- **Documentation**: Maintaining a file for each assigned contract and documenting performance issues
- **Liaison Role**: Acting as the technical point of contact between the contractor and the CO

Considerations for Requirements Development

- The “requirement” is not a fixed product/service — it’s a set of performance outcomes (e.g., BTU/Water reduction, HVAC efficiency gains).
- The CO ensures:
    - Performance objectives are clear and measurable
    - Baseline energy use is documented and agreed upon
    - Savings Measurement & Verification (M&V) protocols are in place

.

Federal Contracting Officer ESPC Checklist

1. Pre-Solicitation Phase

- Define project scope and energy goals
- Conduct preliminary energy audit or feasibility study
- Engage FEMP for technical and acquisition support
- Develop acquisition plan and IGCE
- Ensure compliance with 10 CFR Part 436, Subpart B 1
- Use DOE's Qualified List of ESCOs

2. Solicitation Phase

- Issue Notice of Opportunity (NOO) to qualified ESCOs
- Evaluate ESCO responses using best-value criteria
- Select ESCO and issue a Notice of Intent to Award
- Negotiate Preliminary Assessment (PA)

Note: CO / KO reaches out to the various SMEs to complete required tasks

Federal Contracting Officer ESPC Checklist (cont.)

3. Investment Grade Audit (IGA) & Proposal Review

- Review and approve IGA
- Validate proposed ECMs (Energy Conservation Measures)
- Ensure M&V (Measurement & Verification) plan is included
- Review life-cycle cost analysis
- Coordinate legal and technical reviews

4. Award Phase

- Finalize and sign ESPC contract
- Ensure all FAR and DOE ESPC requirements are met
- Document contract file with all required approvals

Note: CO / KO reaches out to the various sme to complete required tasks

ESPC Task Order

Defines scope, responsibilities, financial terms, and performance expectations. Tailored to specific agency and facility. Builds upon DOE's Indefinite Delivery, Indefinite Quantity (IDIQ) ESPC contract.

Core documents typically include:

- TORFP
- Final Proposal
- IGA
- R&R Matrix
- M&V, O&M, Cx, and Subcontracting Plans
- Financing Agreement

Note: Language in the Task Order award document **can** override or add to the ESPC IDIQ.

Financing and Payback

- COs do not obligate appropriated funds for capital costs but must still ensure:
  - Legality of financing terms
  - Alignment with anti-deficiency rules
  - Projected savings exceed payments (ESPC rule: savings must be guaranteed and cover the cost of the contract)
- Must coordinate with agency energy management office or agency CFO to ensure funds are placed under the task order award for payment.

Legal, Policy and Audit Sensitivity

- These contracts are frequently audited by GAO and IGs due to their complexity and long-term cost implications.
    - COs must ensure:
        - Proper legal reviews
        - Adherence to DOE/agency ESPC/UESC policy
- COs must ensure contract administration is documented and defensible over 15–25 years in some cases.

Performance-Based Principles Apply Fully

- Focus is on outcomes, not methods.
- Clear performance objectives are key (e.g., “Reduce electricity use by 15% annually”).
- Use of a Measurement and Verification Plan (M&V Plan) is essential to support payment schedules.

Final Thought: It's a Team Sport

- ESPCs and UESCs require deep collaboration between the CO and technical/financial experts.
    - Reminder: The Contracting Officer is the only party that can execute the contract.
- Have flexibility.
- The CO ensures the government's interests are protected over the long term while enabling energy resilience and savings.

Questions?

Optimizing Performance Contracts Including Combining Funding Streams

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