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Although the Energy Independence and Security Act of 2007 repealed the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 $13.5 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
$135.5 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).