

Issue Brief: Congressional Scoring of ESPC/UESC

A review of legislative matters related to Performance-Based Contracts for Energy Savings

What are Energy Savings Performance Contracts?

This alternative financing mechanism, first authorized by Congress in 1986 as an amendment to the National Energy Conservation Policy Act, enables Federal agencies and installations to meet their energy conservation goals without relying on appropriated funding.

ESPCs permit Federal agencies to enter into long-term contracts with an Energy Service Company (ESCO) for comprehensive facility and building energy efficiency improvements. Such contracts can extend up to 25 years but typically range between 12-20 years. By law, the ESCO must guarantee, measure and verify the energy savings associated with the project to the government. The ESCO is repaid solely from energy bill savings, with a portion of the savings accruing to the agency every year. The government never pays more than they would have paid for utilities if it had not entered into the ESPC.

According to the Federal Energy Management Program (FEMP), over 570 performance contracts worth \$3.9 billion have been awarded throughout 25 Federal agencies and in 49 states. These projects have resulted in energy savings exceeding \$13.1 billion, of which approximately \$10.1 billion went to repay project investments, accruing a net savings of \$3 billion to the Federal government.

Energy Savings Performance Contracts (ESPCs) are a vital alternative-financing mechanism throughout the Federal government. These long-term contracts enable agencies to procure energy services and projects without relying solely on appropriated funds. At no added cost to the government, ESPCs assist agencies and installations in reducing their energy intensity and improving their energy efficiency. Since their inception, ESPCs have achieved over \$13 billion in energy savings across the Federal government.

In 2002, the Congressional Budget Office (CBO) made a change for all privatization efforts of the Federal government which triggered a score for ESPCs for the first time. This has altered how legislation can promote this budget-neutral mechanism. Any congressional efforts to ensure energy efficiency in the Federal government that would allow the use of ESPCs triggers a score. Significantly, the Office of Management and Budget (OMB), under both Democratic and Republican Administrations, has accounted for ESPCs as budget neutral.

ESPCs are a force multiplier for the Federal government. They reduce energy consumption and revitalize energy equipment.

When considering legislative matters related to ESPCs it may be helpful to understand how the congressional scoring process develops a cost estimate for ESPCs.

When analyzing congressional scoring for ESPCs there are two spending categories to consider: *mandatory* and *discretionary*. Congressional scoring assumes that when Federal agencies enter into a legally binding contract they incur *mandatory* spending for the length of the contract (which scoring accounts for over as much as a ten year period). Mandatory spending is defined as an obligation or an outlay that stems from budget authority provided in laws other than appropriations acts.

During an ESPC, repayment of the contract comes from savings on utility bills. In budgetary terms, Federal agency utilities are paid for by annual appropriations. These appropriations are *discretionary* in nature and score only in the year when funding is appropriated.

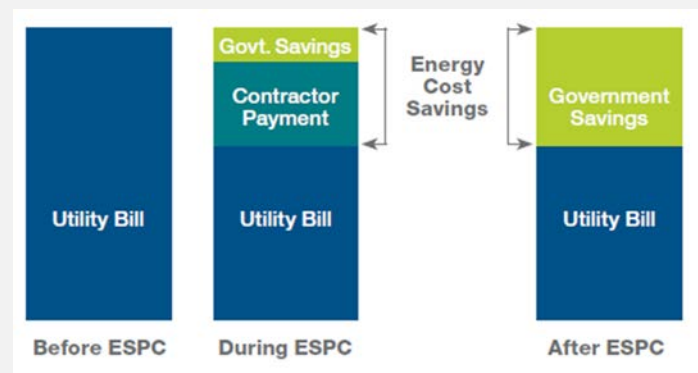
Scoring of ESPCs is complicated by these budget category factors, in addition to the long-term nature of the ESPC which can extend up to 25 years. Specifically, the cost of the contract falls into one budget category (*mandatory*) while the savings which pay back the contract fall into another (*discretionary*). Additionally, the guaranteed energy savings which are at the core of these types of IDIQ contracts accrue well beyond the five and ten year cost estimating windows. On average, an ESPC lasts 17 years.

Scoring of ESPCs can pose many legislative challenges for Congress. For example, if Congress sought to require Federal agencies to utilize alternative financing for energy savings in lieu of spending limited appropriations (i.e. a mandate for Federal agencies to utilize ESPCs), this type of legislation would trigger a significantly high score based on the vast potential for ESPCs throughout the Federal government.

Over the past several years as legislation has been drafted to promote or expand the use of ESPCs, members of Congress have become more familiar with such constraints. In May 2011, House Energy & Commerce Committee Chairman Fred Upton, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman and Senator Chris Coons wrote to CBO about ESPC scoring and inquired about the methodology for developing scores for ESPC related legislation.

How do ESPCs work?

The ESPC contractor designs and installs solutions and equipment which together reduce the energy consumption of a facility. These energy savings are guaranteed to occur by the contractor. The savings on the utility bills which occur as a result of implementing the ESPC are used to pay for the services and equipment installed. These payments occur over a stipulated period of time until the contract has been repaid.



“ESPCs offer Federal agencies a novel means of making energy efficiency improvements to aging buildings and facilities...The government does not spend appropriated funds for the capital investment”

- House Energy Chairman Fred Upton
Writes in a Letter to CBO, May 2011

Congress and the Administration have continued to recognize and support the significant energy savings achieved by ESPCs and UESCs. In 2012, the bipartisan Energy Savings Performance Caucus was created in Congress to inform and promote the use of ESPCs and UESCs across the Federal government.

In 2011, the President issued a Presidential Memorandum calling on Federal agencies to enter into \$2 billion worth of performance-based contracts for energy savings by December 2013.

According to a report by the National Association of Manufacturers, the presidential initiative has been an unqualified success. Twenty-three different agencies have helped identify 305 projects with an estimated \$2.4 billion of private sector investment value and potential net savings to the federal government of over \$2 billion. By the close of 2013, over \$1.3 billion in private sector financing was leveraged through this initiative.

In late 2013, Congress asked the White House to extend this successful initiative in a bi-partisan and bicameral letter to the President signed by 145 Members of Congress.

In December 2013, the President extended the ESPC/UESC Directive for Federal agencies through 2016.



What are UESCs?

Similar to ESPCs, **Utility Energy Service Contracts (UESCs)** offer Federal agencies an alternative means to implement energy-efficiency, renewable-energy, and water-efficiency projects. Under 42 U.S.C. 8256, Federal agencies are authorized to participate in energy-efficiency, water-conservation, and electricity-demand programs offered by gas, water, or electric utilities.

Agencies may implement a UESC with no initial capital investment or may use appropriated funds to maximize the impact of their energy projects.

A UESC is a contract between a Federal agency and a utility providing energy, water, or sewage services, as well as provision of technical services and/or upfront project financing for energy efficiency, water conservation, and renewable energy investments, allowing Federal agencies to pay for the services over time, either on their utility bill, or through a separate agreement.

According to DOE, FEMP has collected UESC data from Federal agencies since 1995 and more than \$2.3 billion has been invested in nearly 2,000 UESC projects nationwide.

In 2012, the Office of Management and Budget (OMB) released guidance which extended the annual scoring treatment of ESPCs to UESCs given the UESC contract requires the following criteria: energy savings performance assurances or guarantees of the savings to be generated by improvements; measurement and verification (M&V) of savings through commissioning and retrocommissioning; and competition or an alternatives analysis as part of the selection process prior to entering into the UESC.

Potential Taxpayer Savings

ESPC and UESC are a demonstrated means to achieve energy savings. A 2013 report by the Oak Ridge National Laboratory (ORNL) titled *Beyond Guaranteed Savings: Additional Cost Savings Associated with ESPC Projects* found that for a typical ESPC the actual cost savings to the Federal government are 174% to 197% of the guaranteed savings by the contractor.

Savings opportunities are also available beyond traditional building applications. The Lawrence Berkeley National Laboratory found significant opportunities for ESPCs to be utilized for hydroelectric facilities, Federal ship fleets, aircraft fleets, and Federal civilian and tactical vehicles. Specifically, their report concluded that the military has the greatest potential to benefit from non-building applications of ESPCs given its fuel-intensive activities spanning land, sea, and air.

In order to address these applications the statutory authorities for ESPC would need to be amended by Congress.

There exists a vast opportunity for more energy efficiency across the Federal government. The Energy Independence and Security Act (EISA) of 2007 required Federal agencies to perform energy audits of their facilities. Today, with only half of the buildings audited, approximately \$9 billion worth of energy conservation measures (over 55,000 measures) with a ten year payback or less have been identified.

Performance-based contracts for energy savings continue to support agencies in meeting their energy efficiency and renewable energy goals—though potential remains. A 2011 study by the Oak Ridge National Laboratory found that if the entire \$80 billion DOE Super ESPC IDIQ authority were utilized across the Federal government agencies would net an additional \$20 billion in cost savings and would also benefit from the immediate acquisition of more than \$30 billion in new technologies, energy equipment and infrastructure.

About the Federal Performance Contracting Coalition

The FPCC is a national coalition of leading Energy Service Companies (ESCOs) advocating for increased Federal use of Energy Savings Performance Contracts. To that aim, our activities primarily focus on barrier removal and ensuring more, faster, bigger and better ESPC projects across the Federal government. The FPCC is the primary organization representing the Federal ESPC industry. Our members have designed and delivered over 90 percent of Federal ESPCs.

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