



## ESPC Energy Sales Agreement (ESPC ESA) Update

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# Presentation Overview

- I. ESPC ESA Basics
- II. ESPC ESA Requirements
- III. IRS Revenue Procedure 2017-19
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# Introduction

- Civilian agencies have limited options for implementing on-site renewables
- Utilizing the long term ESPC authority is one option
- FEMP issued two Request for Comments last year to better understand issues surrounding this approach
- An IRS Revenue Procedure on the topic of ESPC Energy Sales Agreements (ESA) was published in the Internal Revenue Bulletin on February 2017 and may improve project viability

# ESPC ESA Basics

- Long-term contract option utilizing ESPC authority for a renewable energy conservation measure (ECM) on federal buildings/land; agency purchases electricity
- May include other ECMs
  - Work with FEMP on contract structure details
- FAR Part 41 authorizes federal agencies to undertake an ESPC for the acquisition of utility services
  - “...agencies may utilize 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”  
*[48 CFR § 41.102(b)(7) (2015)]*

# ESPC ESA Requirements

- Must meet all ESPC authority requirements, including:
  - Savings requirement
  - Statutory ECM definition in 42 USC 8259
  - ESCO must be on DOE qualified list by time of award
- OMB Memo M-12-21: title retention requirement for annual scoring
  - Work with FEMP to brief OMB on planned procurement



# Tax Incentive Considerations\*

- IRS Revenue Procedure 2017-19: ESPC ESA safe harbor (<https://www.irs.gov/pub/irs-drop/rp-17-19.pdf>)
  - Provides a safe harbor under which the IRS will not challenge the treatment of an ESPC ESA as a service contract under §7701(e)(3) of the Internal Revenue Code
  - Allows for other ECMs as part of a comprehensive project
- Published in Internal Revenue Bulletin 2017-7 on February 13, 2017 (<https://www.irs.gov/pub/irs-irbs/irb17-07.pdf>)

***\* Tax incentive eligibility due diligence is the responsibility of the ESCO.***

# Rev. Proc. 2017-19 Section 4 Safe Harbor Excerpts:

*.01 Safe harbor.* If an ESPC ESA entered into between an ESCO and a FA satisfies all of the requirements of section 4.02 of this revenue procedure, the Service will not challenge the treatment of the ESPC ESA as a service contract under § 7701(e)(3).

*.02 Requirements.* The ESPC ESA must satisfy the following requirements:

(1) *Term.* The total term of the ESPC ESA cannot exceed 20 years in length. The term must be consistent with and appropriate for the scope and scale of the renewable project.

(2) *Other Federal guidance.* The ESPC ESA must satisfy the requirements of 42 U.S.C § 8287 and OMB Memorandum M-12-21.

*FA = Federal agency*

# Rev. Proc. 2017-19 Section 4 Safe Harbor Excerpts, Cont'd

(3) *Operation of Alternative Energy Facility.* Under no circumstances will the FA attempt to operate the renewable energy generation asset. In the event of a shut-down or mechanical issue, FA will immediately notify the ESCO or its designated contractor.

(4) *Risk.* The ESCO bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements.

(5) *Reduced Costs.* The contract price for electricity will not be reduced if operating costs should diminish.

(6) *Equipment Purchase.* The FA may have the option to purchase, or may be required to purchase, the renewable energy generation asset at the end of the contract term, for its fair market value (FMV) at the time of the purchase.

# ESPC ESA Suggestions Based on Revenue Procedure

- Contract term 20 years or less
- Privately owned initially, with agency purchasing the equipment by end of contract at FMV, appraised at time of sale
- ESCO transfers a portion of the payments it receives into a reserve account held by the ESCO for the future FMV purchase
  - Reserve account payment based on ESCO estimate of future FMV
  - Periodic FMV re-appraisals, with reserve account and/or contract term adjustments if needed

# ESPC ESA Suggestions Based on Rev. Proc., Cont'd

- Contract price is on a fixed per-kWh basis and must be paid for by the FA from energy savings
  - Price includes O&M, with ESCO bearing all financial risk for non-performance (price does not vary if the operating costs are lower than expected)
  - The amount charged for each payment period includes both the price of power and an amount for the reserve account (separate and in addition to the price of power)
  - Because all ESPCs require annual savings, the total ESPC ESA rate including reserve account payment, must be lower than the current and forecasted utility rate for each year of the contract

# ESPC Options



Site-specific



DOE IDIQ



Army Corps IDIQ



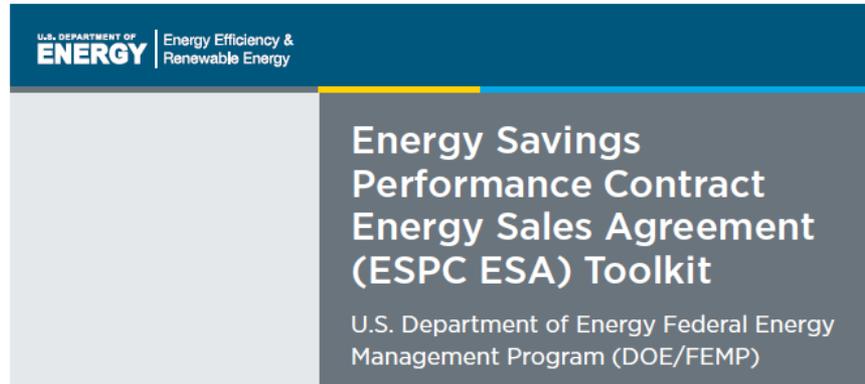
ENABLE

# ESPC ENABLE ESA

- Specified ECMs only, including PV
- Utilizes GSA Federal Supply Schedule 84, SIN 246-53
- Pre-qualified vendors
  - 20 eligible ESCOs, including 10 small businesses and 6 DOE ESPC IDIQ ESCOs
  - Several companies do their own solar work (should reduce overhead)
- Standardized and streamlined procurement process for small federal projects
  - No fixed minimum or maximum project size
- Must meet all ESPC authority requirements and the OMB title retention requirement

# FEMP ESPC ESA Toolkit Under Development

- A resource that is focused on ESPC ESA projects\* and includes the following:
  - Assumes site-specific ESPC
  - Process diagram, checklist, and team responsibility chart
  - Project consideration description
  - Authorizing legislation and other applicable information
  - Editable templates—RFP, site access agreement, acquisition plan, and source selection plan
  - Separate “Technical Specifications” document



\* This information may be useful for other types of projects

# Web Resources

- FEMP ESPC ESA Website:  
<https://www.energy.gov/eere/femp/energy-savings-performance-contracts-energy-sales-agreements>
- IRS Revenue Procedure 2017-19:
  - <https://www.irs.gov/pub/irs-drop/rp-17-19.pdf>
- Internal Revenue Bulletin 2017–7
  - <https://www.irs.gov/pub/irs-irbs/irb17-07.pdf>

# FEMP's Renewable Energy Procurement Team



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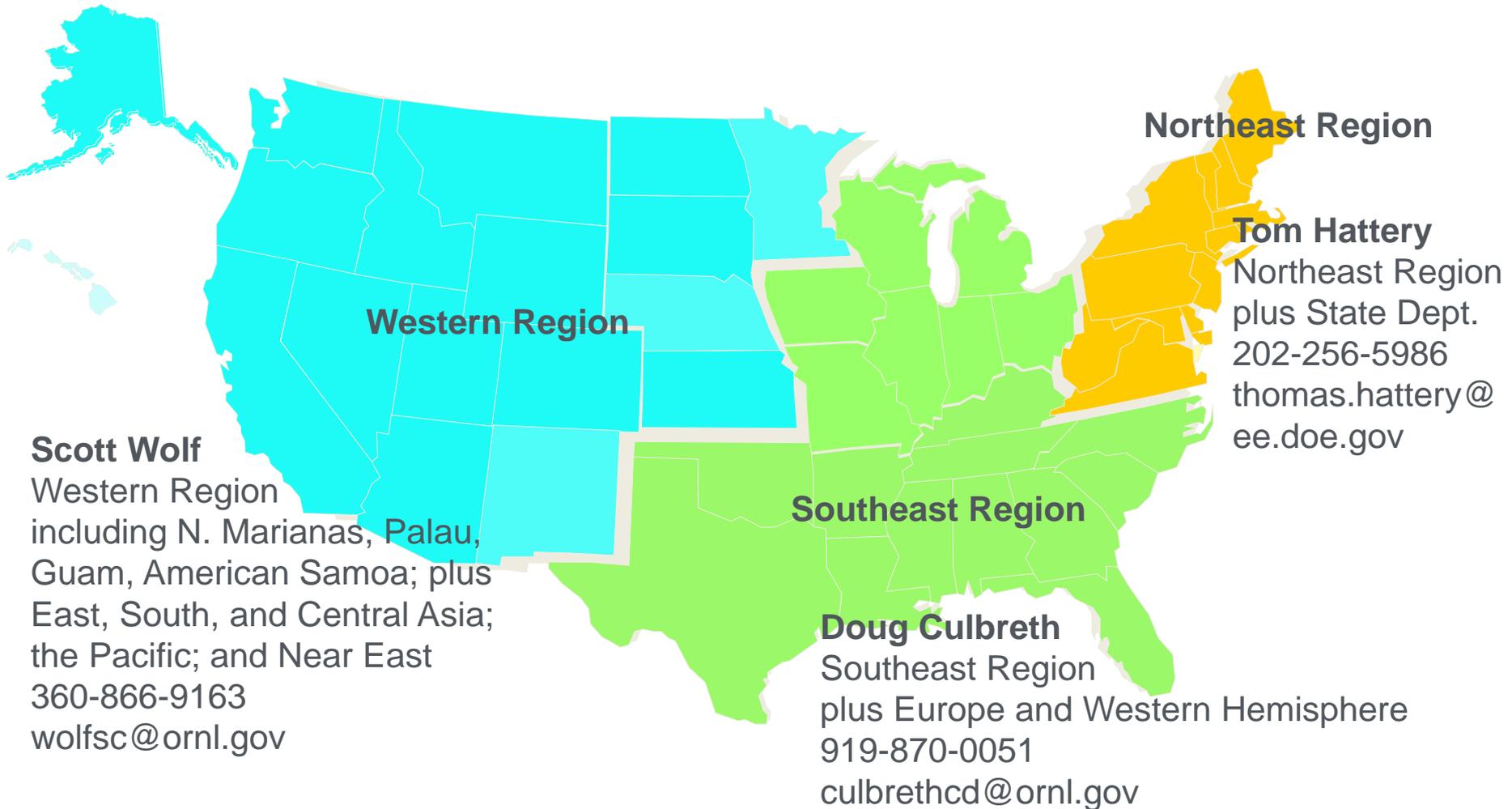


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# FEMP Federal Project Executives (FPEs)



<http://energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0>

# FEMP's Flagship Training Event



## TRAINING & TRADE SHOW

**AUGUST 15-17, 2017**

Tampa Convention Center

Tampa, Florida

[femp.energy.gov/energyexchange](http://femp.energy.gov/energyexchange)

### *Example Leading-Edge Training Sessions:*

- Innovative Building Management Best Practices
- Designing Resiliency into Buildings and Campuses
- Energy Technology and Building Systems Security
- Advanced Fleet Guidance
- Integrated Master Planning
- Performance Contracting Strategies
- Key Updates to Federal Energy Policies and Legislation
- Emerging and High Performance Technologies

CEUs : Continuing education units (CEUs) will be available for designated training sessions

# Energy Exchange 2017 Registration Info & Contacts

## Attendee Registration

*Current rates increase after June 16*

Speaker	\$100
Federal Employees & National Labs	\$250 <i>\$295 after June 16</i>
Private Sector & Gov.'t Contractors	\$395 <i>\$450 after June 16</i>

## Trade Show Exhibitors

10'x10' Booth	\$2,995 <i>Includes 2 full registrations</i>
20'x20' Booth	\$13,500 <i>Includes 4 full registrations</i>
20'x30' Booth	\$17,500 <i>Includes 6 full registrations</i>

## WEBSITE & CONTACTS

- Session info., register, hotel info, & trade show info: <http://energy.gov/eere/femp/energy-exchange>
- General Inquiries: [EnergyExchangeInfo@ee.doe.gov](mailto:EnergyExchangeInfo@ee.doe.gov)
- Registration Inquiries: [Anne Phillips](#), [aphillips@mc-2.com](mailto:aphillips@mc-2.com)
- Trade Show: [Diane Manuel](#), [dmanuel@mc-2.com](mailto:dmanuel@mc-2.com)

