

Distributed Energy Procurement Options



Steps to Determine the Best Distributed Energy (DE) Project Procurement Option

- 1. How will the project be funded & who will own the system?**
- 2. What type of contract works best for the project?**

System Ownership and Funding Source Options

Funding Source

System Ownership

Directly
Funded

Government
Owned

Privately
Financed

Government
Owned

Privately
Owned

Government vs. Privately Owned

	Directly Funded	Privately Financed	
Questions to Consider	Government Owned	Government Owned	Privately Owned
Is upfront funding required?	Yes	No	No
Can the project take advantage of tax incentives?	No	No	Yes
Are there financing costs associated with the project?	No	Yes	Yes
Is the government responsible for operation & maintenance (O&M), equipment repair & replacement?	Yes ¹	Yes ¹	No
Can the associated Renewable Energy Credits (Recs) be sold to improve the project economics?	Depends on the agency	Depends on the agency	Yes
In general, will the contract be easy to execute?	Yes	Depends on the agency	Depends on the agency

¹ Unless specified otherwise

Appropriations

Directly Funded

Government Owned

- Implemented through either a design-build or design-bid-build process
- Agency develops and issues a request for proposal (RFP), which includes project requirements and evaluation criteria
- Agency evaluates responses and selects contractor(s) for design and construction
- Once the system is built, the agency will commission and accept the system. The agency is responsible for the O&M/R&R or can contract it to a third-party.

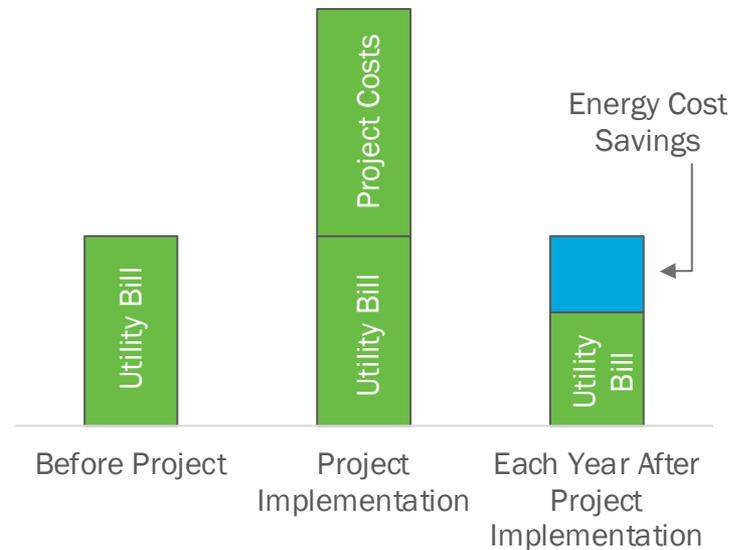
Legal Authority:

Agency dependent

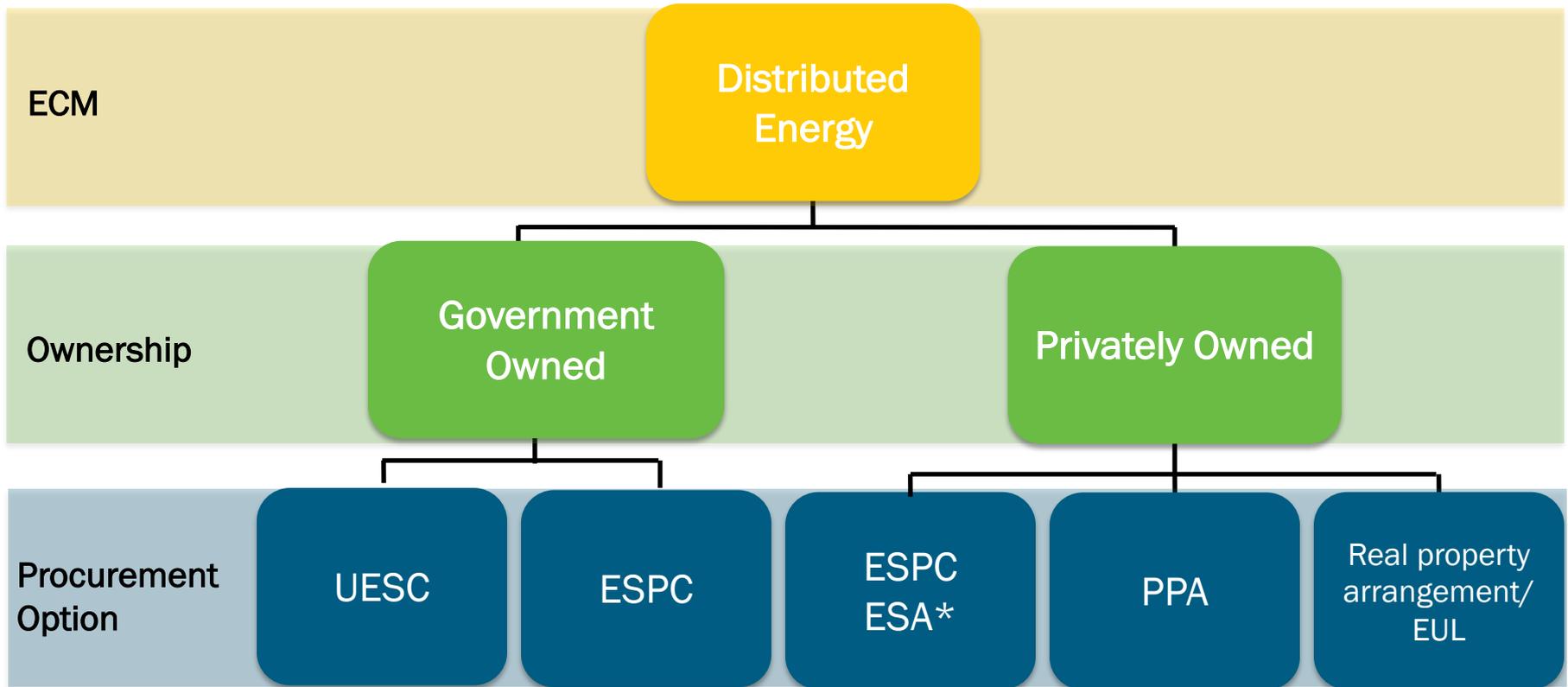
Max. Contract Length:

N/A

Payment Structure



Privately Financed DE Project Procurement Options



Legend & Abbreviations

ECM	Energy Conservation Measure	ESPC ESA	ESPC Energy Sales Agreement
UESC	Utility Energy Service Contract	PPA	Power Purchase Agreement
ESPC	Energy Savings Performance Contract	EUL	Enhanced Use Lease

*System is privately owned initially, government must retain title by end of the contract (OMB Memo requirement)

Energy Savings Performance Contract

Privately Financed

Government Owned

A partnership between a federal agency and an energy service company (ESCO) to procure energy saving and facility improvements

- After being selected for a potential award, the ESCO conducts a Preliminary Assessment (PA)* and then an Investment Grade Audit (IGA)
- After award, ESCO arranges financing and completes design/construction
- ESCO guarantees sufficient energy cost savings to pay for the project over the term of the contract
- Main types of federal ESPCs:
 - DOE indefinite-delivery, indefinite-quantity (IDIQ)
 - DOE ENABLE
 - U.S. Army Corps of Engineers MATOC (IDIQ)
 - Site-specific/stand-alone with DOE-qualified ESCOs
- DE projects can be bundled with other measures

*PA is not required for ENABLE

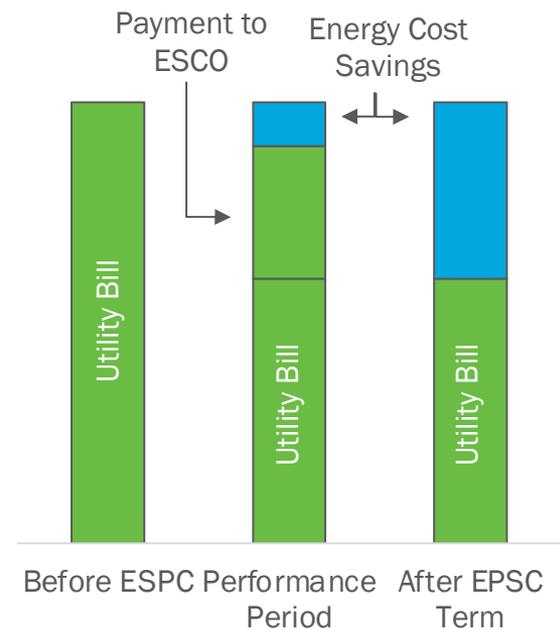
Legal Authority:

[42 USC § 8287 et seq.](#)

Max. Contract Length:

25 years

Payment Structure



Utility Energy Service Contract

Privately Financed

Government Owned

A limited-source contract between a federal agency and its serving utility for energy- and water-efficiency improvements and demand-reduction services.

- During the contract period, agency payments come from resulting savings (or agency funds)*
- After the term of the contract, agency continues to benefit from the savings
- UESCs can be executed under one of the following:
 - Areawide contracts (AWCs)
 - Basic ordering agreement (BOAs)
 - Separate contracts
 - Interagency Agreements (when working with a Federal utility)
- DE projects can be bundled with other measures

* Unlike ESPCs, UESCs do not have a statutory annual savings requirement but must still be lifecycle cost effective. Performance assurance required for annual scoring.

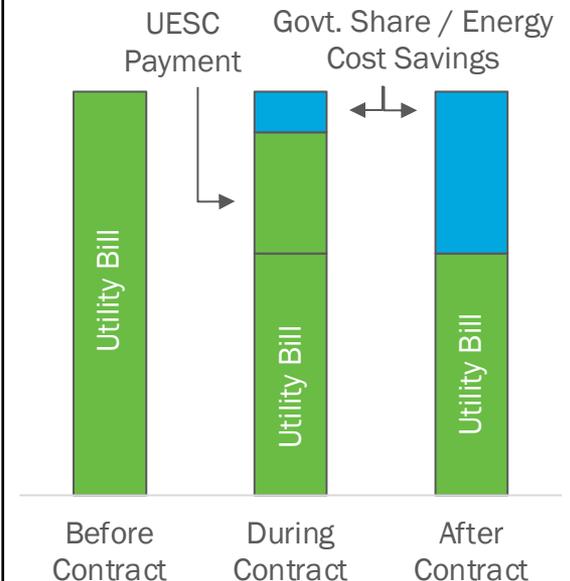
Legal Authority:

[42 USC 8256](#)
[10 USC 2913](#) (DOD)

Max. Contract Length:

Up to 25 years

Payment Structure



Power Purchase Agreement

Privately Financed

Privately Owned

A contract where a federal agency buys electricity from a developer at a competed rate for a specified term without taking ownership of the DE project.

- Developer installs, owns, operates, and maintains a DE project on federal land. In exchange, the agency agrees to purchase the electricity generated by the system.
- Primary agreement is the PPA, but there is often a separate site access agreement
- Agency may have an option to purchase the system at the end of the contract
- Developer could be any third party including the site's serving utility company

Legal Authority & Max. Contract Length:

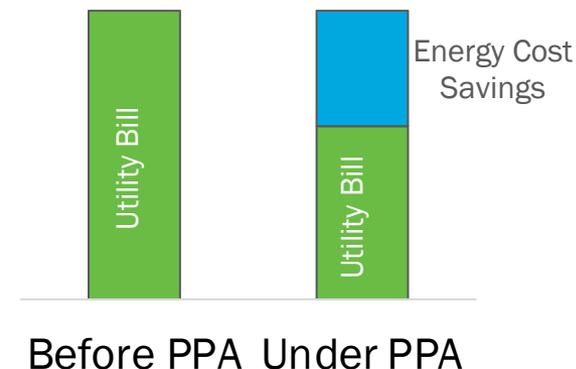
[10 USC 2922a](#) (DOD only, 30 years)

[40 USC 501](#) (FAR Part 41, GSA authority requiring delegation, 10 years)

FAR Part 12 (typically 5 years depending on agency policy, no examples)

[WAPA](#) (20 years, possibly longer)

Payment Structure



ESPC Energy Sales Agreement

Privately Financed

Privately Owned

An ESPC Energy Sales Agreement (ESA) is a project structure using long-term ESPC authority for a DE ECM on government land that is privately owned until the end of the contract; agency purchases the electricity (similar to a PPA).

- ESPC ESA must meet all ESPC authority requirements
- Payment based on kWh generation (ϕ /kWh)
- ESCO captures tax incentives to reduce ESA price
- Agency must retain equipment title by the end of the contract ([OMB Memo M-12-21](#))
- Safe harbor provided by IRS to not challenge treatment of an ESPC ESA as a service contract ([Internal Revenue Bulletin 2017-07](#))*
- ESPC ESAs can be implemented using the DOE IDIQ, DOE ENABLE or a site-specific/stand-alone contract
- ESA can be bundled with other ECMs (not recommended for site-specific/stand-alone)

* *ESCO responsible for tax incentive due diligence*

Legal Authority:

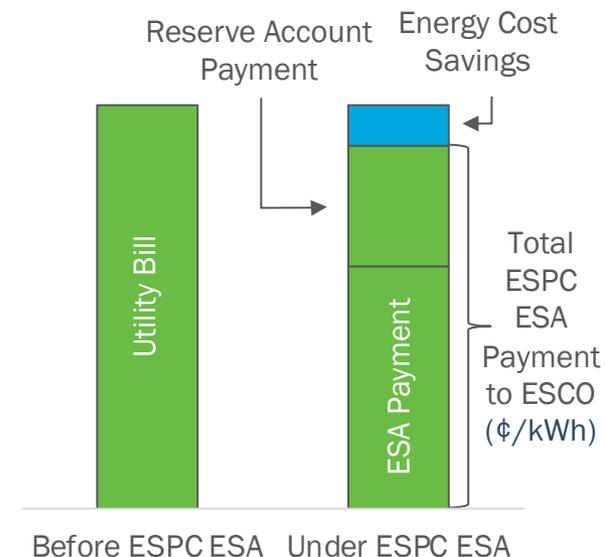
42 USC 8287 et seq.

40 USC 501/FAR Part 41

Max. Contract Length:

20 years*

Payment Structure



* Section 4 of [Internal Revenue Bulletin 2017-07](#) contains contract requirements

A real property arrangement where an agency contracts with a private company (could be the serving utility) that builds, owns, operates and maintains a DE project on federal land.

- Most or all of the electricity is sold by the private company to either the utility or another party
- Typical real property instruments include leases, easements and licenses
- Some agencies have an enhanced-use lease (EUL) authority that involves the out-lease of underutilized property for a payment in cash or an in-kind consideration

**Legal Authority & Max.
Contract Length:**

Varies depending upon the agency

Payment Structure

Varies depending upon project and agency authority (payment and/or in-kind consideration)

Additional Questions to Consider

- Does your agency have other authorities not listed in this presentation that could be used to do a distributed energy project?
- Are you aware of successful distributed energy projects in your agency? If so, what procurement option did they use?
- Are you currently considering implementing other ECMs at your site?
- Do any of the following stand out as a concern at this time:
 - Building/land ownership and utility bill payment
 - Tenants
 - Site management, agency and other approvals
 - Coordination with serving utility
 - Site access agreement
 - NEPA, NHPA, cultural, glint/glare, permitting
 - Stormwater management, erosion control, other construction considerations
 - Electrical requirements

Resources

Online Resources

General	<ul style="list-style-type: none">• FEMP's Energy and Project Procurement Development Services• FEMP's Distributed Energy Program• FEMP Renewable Energy Trainings
RFP Using Appropriations	<ul style="list-style-type: none">• FEMP Support for Appropriations-Funded Projects• Federal Distributed Energy Projects & Technologies
UESCs	<ul style="list-style-type: none">• UESC for Federal Agencies• FEMP UESC and Utility Engagement Trainings
ESPCs	<ul style="list-style-type: none">• ESPCs for Federal Agencies• ESPC ENABLE for Federal Projects• FEMP ESPC Trainings
ESPC ESAs	<ul style="list-style-type: none">• ESPC Energy Sales Agreements
PPAs	<ul style="list-style-type: none">• Federal On-Site PPAs• Sample Documents for Federal PPAs• FEMP Federal On-Site PPAs Training