



December 10, 2018

TO: Members, Subcommittee on Energy

FROM: Committee Majority Staff

RE: Hearing entitled “Public-Private Partnerships for Federal Energy Management.”

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## I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Wednesday, December 12, 2018, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Public-Private Partnerships for Federal Energy Management.” The hearing will examine the status, challenges, and opportunities for increasing energy efficiency savings and energy conservation in Federal facilities and programs through Energy Savings Performance Contracts and Utility Energy Service Contracts.

## II. WITNESSES

- **Leslie Nicholls**, Strategic Director, Federal Energy Management Program, Department of Energy;
- **Jack Surash**, Acting Deputy Assistant Secretary for Energy and Sustainability, Department of the Army;
- **Kevin Kampschroer**, Chief Sustainability Officer and Director of the Office of Federal High-Performance Buildings, General Services Administration; and,
- **Ed Bradley**, Executive Director of the Office of Asset Enterprise Management, Department of Veterans Affairs.

## III. BACKGROUND

### A. Public-Private Partnerships to Meet Energy-Related Goals

Public-private partnerships have long been used to manage Federal property and meet energy-related goals. Since the 1970’s, both the executive branch and Congress have promoted energy efficiency within Federal agencies and encouraged innovative means of financing to fund investments. The Energy Policy and Conservation Act, enacted in 1975, and the National Energy Conservation Policy Act, enacted in 1978, require Federal agencies to develop and implement plans to establish conservation goals and reduce energy use. Subsequent legislation built on these Congressional mandates, setting efficiency goals and enabling agencies to use

contracting mechanisms, namely, the use of private sector financing, rather than prior Congressional appropriations to pay for upgrades.<sup>1</sup>

The Department of Energy (DOE) is authorized to help lead the Federal government in reducing the energy intensity of its facilities. DOE provides guidance and reference materials to help agencies comply with Federal laws. It also manages programs to support project development and contracting to help agencies implement energy and water efficiency projects as directed through legislation or Executive Orders.<sup>2</sup>

## **B. Energy Savings Performance Contracts and Utility Energy Service Contracts**

Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs) are two examples of third-party financing mechanisms to improve energy efficiency. These contracts allow a private party to provide funding upfront to design, acquire, and, in some cases, operate and maintain energy conservation equipment in a Federal facility. In return, the Federal agency agrees to pay for those services and equipment over time, with interest, on the basis of reduction in the agency's energy costs. In the case of an ESPC, the vendor is an energy service company that has been qualified by DOE. With UESCs, the services and equipment are provided by a gas or electric utility.

ESPCs and UESCs have been in use since the mid-1990s<sup>3</sup>. According to DOE, between FY 2005 and FY 2017, investments through ESPCs totaled \$5.7 billion, and investments through UESCs totaled \$1.5 billion.<sup>4</sup> A wide array of equipment and services are commonly financed through performance contracting, including new windows, lighting, heating, ventilation, air conditioning, and building automation systems. Federal agencies have increasingly utilized performance contracting for non-building applications, including power generation and energy resiliency. It has been proposed that performance contracting may also be compatible and cost-effective for other applications, including mobile power generation and vehicle fuel efficiency.<sup>5</sup>

The Government Accountability Office (GAO) has examined alternative financing for Federal energy projects, including ESPC and UESCs. In a 2016 study, GAO made recommendations to improve Federal oversight of performance contracts through clearer reporting of savings, improved training, and systematic evaluations of portfolios, among other

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<sup>1</sup> See, e.g. 1992 Energy Policy Act (P.L. 104-52); 1998 Energy Policy Act Amendments (P.L. 105-388); 2001 Department of Interior and Related Agencies Appropriations Act (P.L. 106-291); 2005 Energy Policy Act (P.L. 109-58); and, 2007 Energy Independence and Security Act of 2007 (P.L. 110-140).

<sup>2</sup> On May 17, 2018, President Trump issued [Executive Order \(E.O.\) 13834](#) regarding efficient Federal operations. E.O. 13834 establishes goals for agencies, which are based on statutory requirements, including utilizing performance contracting to achieve energy, water, building modernization, and infrastructure goals.

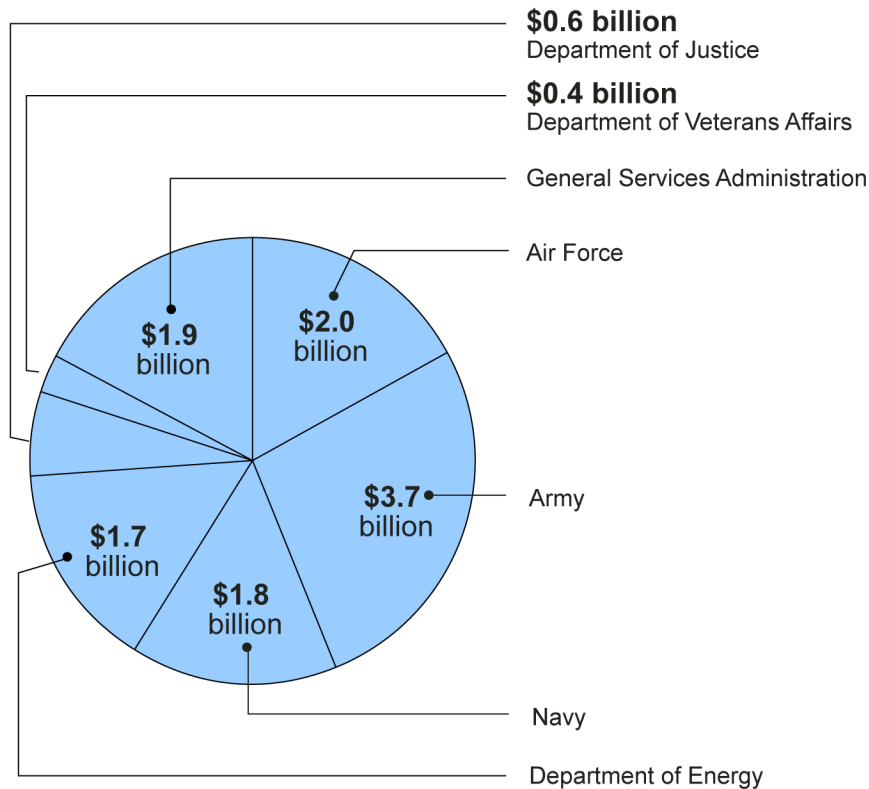
<sup>3</sup> ESPCs and UESCs were first authorized by the Energy Policy Act of 1992 (P.L. 102-486).

<sup>4</sup> DOE, *Comprehensive Annual Energy Data and Sustainability Performance*, <https://ctsedweb.ee.doe.gov/Annual/Report/Report.aspx>.

<sup>5</sup> For more information, see a joint study by the Secretaries of Energy and Defense, [Potential for the Use of Energy Savings Performance Contracts to Reduce Energy Consumption and Provide Energy and Cost Savings in Non-Building Applications](#), authorized by the Energy Independence and Security Act of 2007.

things.<sup>6</sup> GAO's review focused on the use of performance contracts by agencies with the highest energy usage and the greatest facility square footage, as shown in **Figure 1**. The Congressional Research Service (CRS) has also recently examined the use of ESPCs and UESCs in Federal energy management. CRS highlighted GAO's prior findings and identified a continued lack of consistency in reporting across agencies, which makes it challenging to document the cost savings achieved solely from ESPCs or UESCs. With the available data, CRS identified broad trends of declining water and energy use and increases in consumption of renewable electricity at Federal facilities.<sup>7</sup>

**Figure 1. Value of Energy Savings Performance Contracts (ESPCs) Awarded by Selected Agencies in Fiscal Years 1995 through 2014**



**Source:** GAO, *Energy Savings Performance Contracts: Additional Actions Needed to Improve Federal Oversight*, GAO-15-432, June 2015.

**Notes:** These data have been adjusted for inflation to fiscal year 2014 dollars using the gross domestic product deflator. This figure reflects the total contract value, which includes financing costs and costs paid to contractors for performance period services, such as operations and maintenance or measurement and verification.

<sup>6</sup> GAO, [Energy Savings Performance Contracts: Additional Actions Needed to Improve Federal Oversight](#), GAO-15-432, June 2015.

<sup>7</sup> For further information, see CRS Report R45411, *Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)*, by Corrie E. Clark, released November 23, 2018.

### **C. Considerations for Congress**

Congress most recently modified performance contracting authority with the passage of the Energy Independence and Security Act of 2007. The law made several changes to encourage the use of ESPCs and UESCs by expanding certain definitions, providing additional financing flexibility, requiring new studies, and permanently authorizing the authority to enter into performance contracts.

The Committee has reported legislation in the 115th Congress, H.R. 723, the Energy Savings Through Public Private Partnerships Act of 2017, which would further encourage the use of performance contracting in Federal facilities. In particular, H.R. 723 would require agencies to implement energy conservation measures if they are cost-effective; expand the definition of energy savings that may be included in a performance contract; authorize agencies to use, sell, or transfer energy incentives, rebates, or credits as a means of making payments to vendors under ESPCs; and, require agencies to include anticipated reductions in operation and maintenance costs when estimating the savings attributable to energy conservation measures acquired through a performance contract.

### **IV. ISSUES**

The following issues may be examined at the hearing:

- What are lessons from the application of existing authorities for use of Energy Savings Performance Contracts and Utility Energy Service Contracts?
- What is necessary to ensure sufficient information is available for the Congress and the public to assess the benefits of these contracts?
- What are the documented costs and savings achieved from use of these contracts?

### **V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Peter Spencer, Brandon Mooney, or Mary Martin of the Majority Committee staff at (202) 225-2927.