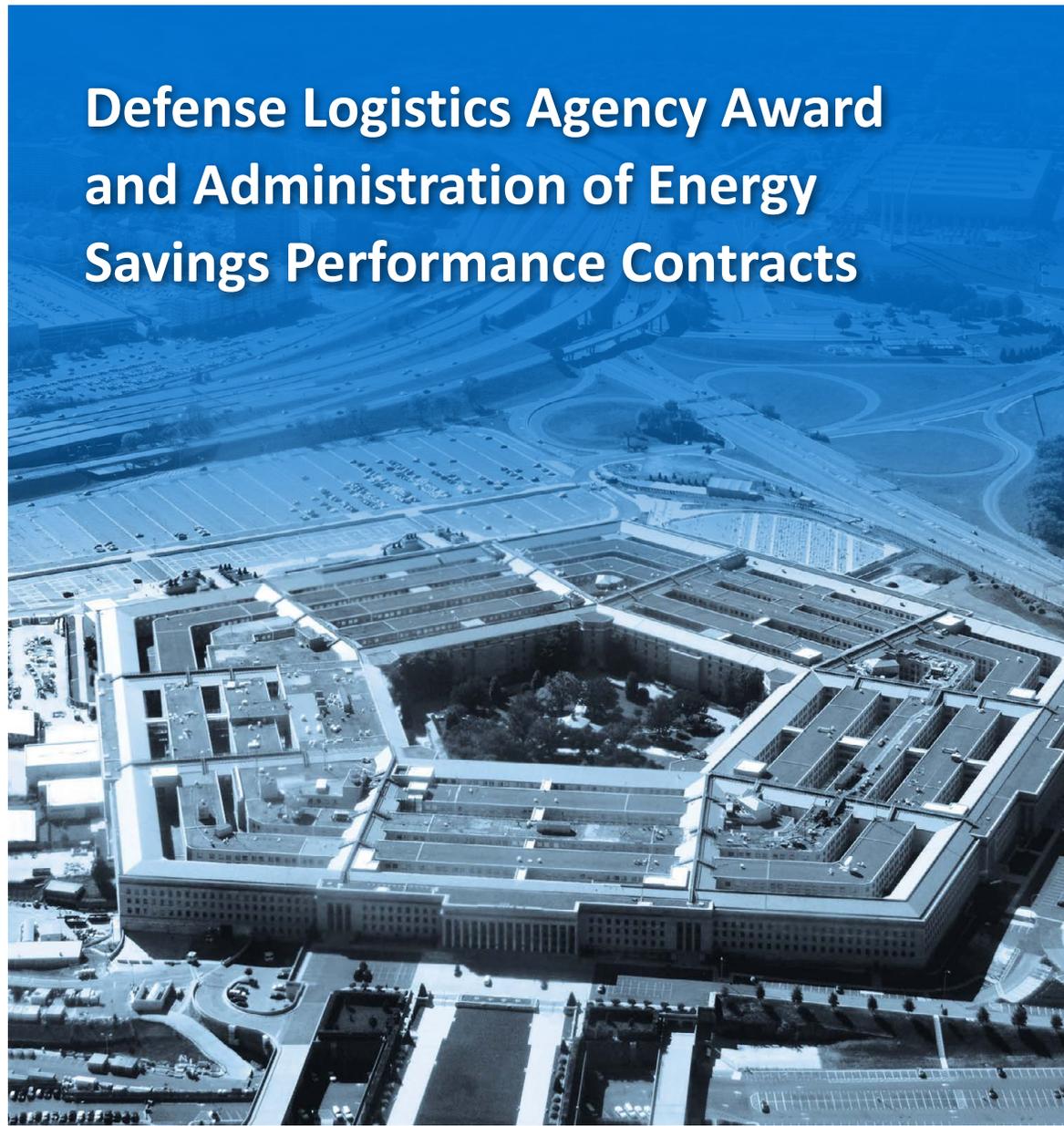




# INSPECTOR GENERAL

*U.S. Department of Defense*

JULY 6, 2018



## Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





# Results in Brief

## *Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts*

July 6, 2018

### Objective

We determined whether the Defense Logistics Agency (DLA) officials:

- maintained competition in soliciting and awarding energy savings performance contracts (ESPCs),
- appointed contracting officer's representatives (CORs) and conducted base-level oversight of ESPC maintenance and repair, and
- validated contractor-claimed energy savings on select ESPCs.

### Background

ESPCs provide a way for the private sector to finance Federal Government energy-saving projects. The ESPC is a contract type, through which an energy services contractor designs, finances, acquires, installs, and maintains energy-saving equipment and systems for a Federal agency. ESPCs allow Federal agencies to procure energy savings and facility improvements with no upfront capital costs or special appropriations from Congress.

An ESPC consists of two phases—the construction phase and the performance phase. During the construction phase, the energy savings contractor constructs the energy conservation measures, such as lighting improvements, and heating and air conditioning replacements. At the conclusion of the construction phase, the contractor submits a post-installation report to summarize construction phase actions

### Background (cont'd)

and outcomes, and identify any energy savings achieved during the phase. The performance phase begins once the contractor installs and the Government accepts the energy conservation measures. During the performance phase, the contractor operates and maintains energy improvements, measures the energy savings, and submits measurement and verification reports in accordance with the ESPC. The reports outline the calculation of energy savings and any other evaluation of costs and savings needed to determine the guarantee of savings. The agency is responsible for ESPC administration for the entire term of the ESPC.

DLA-Energy, Fort Belvoir, Virginia, performs the contract management functions for 11 ESPCs, valued at \$992.8 million, at selected Army, Air Force, and Defense agency bases. We reviewed 10 of the 11 ESPCs, valued at \$343.5 million, to determine whether DLA-Energy properly solicited and awarded the ESPCs.<sup>1</sup>

Seven of the 10 projects, valued at \$240.7 million, were in the performance phase. With the assistance of base-level Department of Public Works (DPW) officials, DLA-Energy oversees the contractor during both the construction and performance phases of the ESPC.

We reviewed the seven DLA-Energy performance-phase ESPCs to determine whether DLA-Energy and the base-level DPW officials verified that the energy savings reported in the contractor's post-installation and measurement and verification reports were accurate, and that Government payments to the contractor did not exceed the verified savings.

We nonstatistically selected five performance-phase ESPCs, valued at \$117.8 million, to determine whether DLA-Energy and the base-level DPW officials performed onsite oversight of the ESPCs. The five ESPCs were located at Fort Hood, Texas, and Fort Hamilton, New York.

<sup>1</sup> We deferred consideration of a potential review of the DLA-Energy ESPC at the Oklahoma City-Air Logistics Center located on Tinker Air Force Base, Oklahoma, valued at \$649.3 million, until a later date.



# Results in Brief

## *Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts*

### Finding

DLA-Energy contracting officials maintained competition in soliciting and awarding the 10 ongoing ESPCs. In addition, DLA-Energy contracting and base-level DPW officials properly administered four of seven ESPCs we reviewed by appointing contracting officer's representatives and validating contractor-claimed energy savings.

However, DLA-Energy contracting and base-level DPW officials did not:

- document the validation of the contractor claimed energy savings in 2 of 52 measurement and verification reports that supported a total of \$0.9 million in contract payments, and
- resolve a disagreement between DLA-Energy contracting and base-level DPW officials regarding whether the contractor sufficiently supported \$1.8 million in contractor-claimed energy savings in the Fort Hamilton Delivery Order No. 2 post-installation report.

This occurred because DLA-Energy contracting officials had not established written standard operating procedures on the Federal Energy Management Program requirements for awarding and administering ESPCs.

As a result, three performance-phase ESPC projects included \$2.7 million in questionable contract payments that do not fully comply with Federal ESPC statutory requirements. Furthermore, if DLA-Energy does not maintain standard operating procedures to implement Federal Energy Management Program guidance for ESPCs, DLA-Energy contracting officials may implement inconsistent oversight of ESPCs when validating contractor-claimed savings and overseeing the maintenance, repair, and replacement of energy conservation measures.

### Recommendations

We recommend that the DLA-Energy Commander direct DLA-Energy contracting officials to validate ESPC contractor-claimed energy savings achieved for one ESPC (SPO600-03-F-8274) at Fort Hood, Texas, and two ESPCs (SPO600-02-F-8257 and SPO600-15-F-8001) at Fort Hamilton, New York. We also recommend that the Commander direct the contracting officials, based on the result of the validations, as mandated by law, to take appropriate contractual action (if necessary), such as recovering unrealized guaranteed energy savings or buying out the remaining portion of the applicable contracts.

In addition, we recommend that the DLA-Energy Commander consider developing standard operating procedures regarding implementing Federal Energy Management Program guidance regarding solicitation, competition, award, and monitoring of ESPCs. We also recommend that DLA-Energy implement a standard operating procedure to resolve internal Government disagreements over contractor-claimed energy savings.

### Management Comments and Our Response

The DLA Acquisition Deputy Director, responding for the DLA-Energy Commander, agreed or partially agreed with six recommendations and disagreed with one recommendation. Specifically, the DLA Acquisition Deputy Director:

- agreed with recommendations to validate contractor-claimed energy savings achieved for one ESPC each at Fort Hood and Fort Hamilton and provided documentation showing recently completed validations. Therefore, we have closed these two recommendations.



# Results in Brief

## *Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts*

### *Comments (cont'd)*

- partially agreed with the recommendation to validate a second Fort Hamilton ESPC (SPO600-15-F-8001), noting that the DLA contracting officer, the contractor, and Fort Hamilton base-level DPW officials were in continuing discussion to modify the ESPC to improve contractor-claimed energy savings methodology, if necessary. We will close this recommendation once DLA-Energy officials have provided the results of the discussions and issued a contract modification, if required.
- partially agreed with the two recommendations to consider developing standard operating procedures regarding the award and administration of ESPCs and the validation of contractor claimed energy savings. The DLA Acquisition Deputy Director stated that the DLA considered developing standard operating procedures to Federal Energy Management Program ESPC guidance for solicitation, competition, award, and monitoring of ESPCs, but concluded that supplemental DLA procedures were unnecessary. DLA-Energy remains the exception among DoD Components in operating an ESPC program without standard operating procedures. We request additional comments from the DLA-Energy Commander as to why further DLA-Energy policy for award and administration of DLA ESPCs are unnecessary. Therefore, we consider these recommendations to be unresolved.
- disagreed with the recommendation to implement a standard operating procedure to resolve internal Government disagreements. However, the Deputy Director noted, as of October 2017, DLA-Energy issued an Interagency Agreement with requiring activities that included language to have Government parties resolve any dispute through consultation and escalation, as needed, within their respective organizations. We verified that the agreements included language to resolve Government disagreements; therefore, we have closed the recommendation.

Please see the Recommendations Table on the next page.

## Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Defense Logistics Agency-Energy Commander	1.c.1 and 1.c.2	1.a.3 and 1.b	1.a.1, 1.a.2, and 1.d.

Please provide Management Comments by August 6, 2018.

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

July 6, 2018

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY  
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Defense Logistics Agency Award and Administration of Energy Savings Performance  
Contracts (Report No. DODIG-2018-135)

We are providing this report for your review and comment on the recommendations and the report's public release. We conducted this audit in accordance with generally accepted government auditing standards.

We considered Defense Logistics Agency-Energy management comments on the draft of this report when preparing the final report. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Defense Logistics Agency-Energy Commander comments on Recommendations 1.c.1 and 1.c.2 were not responsive to the intent of the recommendation. We request that the Defense Logistics Agency-Energy, Commander provide further comments on Recommendations 1.c.1 and 1.c.2.

Please send a PDF file containing your comments on Recommendations 1.a.3 and 1.d to [audrgo@dodig.mil](mailto:audrgo@dodig.mil) by August 6, 2018. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET). Copies of your comments must have the actual signature of the authorizing official for your organization.

If you have any questions or would like to meet to discuss the audit, please contact me at (703) 604-9187 (DSN 664-9187). We appreciate the cooperation and assistance received during the audit.

A handwritten signature in blue ink, appearing to read "MJR", written over a white background.

Michael J. Roark  
Assistant Inspector General  
Readiness and Global Operations

cc:  
Defense Logistics Agency-Energy Commander

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## Acronyms and Abbreviations

# Introduction

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## Objective

We determined whether the Defense Logistics Agency (DLA) officials:

- maintained competition in soliciting and awarding energy savings performance contracts (ESPCs),
- appointed contracting officer's representatives (CORs) and conducted base-level oversight of ESPC maintenance and repair, and
- validated contractor-claimed energy savings on select ESPCs.

See Appendix A for the scope and methodology and prior audit coverage.

## Background

ESPC is a contract type, through which an energy services contractor designs, finances, acquires, installs, and maintains energy-saving equipment and systems for an agency. ESPCs allow Federal agencies to procure energy savings and facility improvements with no upfront capital costs or special appropriations from Congress.

An ESPC consists of two phases—the construction phase and the performance phase. During the construction phase, the energy savings contractor constructs the energy conservation measures (ECMs), such as lighting improvements and heating and air conditioning replacements. The performance phase begins once the Government accepts the contractor-installed ECMs. At the conclusion of the construction phase, the contractor submits a post-installation (PI) report to summarize construction phase actions and outcomes and identify any energy savings achieved during the phase. During the performance phase, the contractor will operate and maintain energy improvements, measure the energy savings, and submit annual measurement and verification (M&V) reports in accordance with the ESPC contract. The agency is responsible for contract administration for the entire term of the contract. Each ESPC we reviewed had a cancellation ceiling schedule option that the agency can exercise at the end of any performance year.<sup>2</sup> The option gives the Government the flexibility to terminate ESPCs for convenience for a pre-determined amount if circumstances change regarding during the term of the contract. ESPC delivery order schedules included a negotiated termination amount for each year.

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<sup>2</sup> The cancellation ceiling schedule option gives the Government the flexibility to terminate ESPCs for convenience for a pre-determined amount if circumstances change regarding during the term of the contract.

The Department of Energy (DOE) executes the Federal Energy Management Program (FEMP), which establishes the criteria for awarding and administering ESPCs.<sup>3</sup> In addition, the FEMP provides Federal agencies with ESPC training and project facilitation services, including technical assistance, legal guidance, funding guidance, and contracting support. Additionally, under the FEMP, the DOE awarded indefinite-delivery indefinite-quantity contracts, called “Super ESPCs,” for use by Federal agencies.

### ***Statutory ESPC Requirement***

Section 8287, title 42, United States Code (42 U.S.C. § 8287 [2011]) includes several specific mandates for Federal agencies entering into ESPCs. The statute allows Federal agencies to take on debt to acquire ECMs if the overall utility costs to the agency do not increase as a result of the contract and if any Government-incurred debt is secured by a guarantee of energy savings from the contractor.<sup>4</sup> The statute also requires that aggregate annual agency payments to the contractor over the term of the ESPC do not exceed the amount that the agency would have paid for utilities without the ESPC in place and the contractor guarantees that ECMs will generate sufficient cost savings to pay for the project.<sup>5</sup> The statute further mandates the ESPC include an annual energy audit of contractor-claimed energy savings using M&V techniques based on sound engineering and financial practices.

### ***DLA-Energy ESPC Management Structure***

Defense Reform Initiative Directive Number 21, January 16, 1998, directed the DLA to assist the Military Services with using ESPC contracts to reduce energy demand. DLA-Energy officials provide logistical support in procuring and delivering energy products to the Military Departments and Defense agencies. Specifically, the DLA Installation Energy contracting office officials solicit, negotiate, award, and administer ESPCs to support Army, Air Force, and Defense agencies. The DLA-Energy contracting officers award ESPCs as task orders to the DOE Super ESPC. DLA ESPC customers (Army, Air Force, or Defense agencies) may provide command-level ESPC program management services, as well as base-level oversight through contracting officer’s representatives (CORs) nominated by base-level Departments of Public Works (DPW) officials.<sup>6</sup>

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<sup>3</sup> Title 10, Code of Federal Regulations Part 436, Subpart B “Methods and Procedures for Energy Savings Performance Contracting,” January 1, 2011, edition and “M&V Guidelines: Measurement and Verification for Performance-based Contracts, version 4.0, November 2015.

<sup>4</sup> At 42 U.S.C. § 8287 (2011) (a)(2)(B).

<sup>5</sup> An ESPC term may not exceed 25 years.

<sup>6</sup> As of August 2017, the Department of the Navy had not requested DLA-Energy’s assistance in awarding and administering an ESPC.

## ***DOE and DLA ESPC Policy and Guidance***

The DLA-Energy contracting officers follow DOE FEMP guidance regarding competition, award, and administration of Super ESPCs. The DOE FEMP guidance states that contractor-provided PI and annual M&V reports are required for all Federal ESPC projects. Additionally, the FEMP guidance provides specific technical guidelines for Government reviewers of the PI and M&V reports, defines the Government and contractor reporting requirements, and provides guidance for specific ECMs. To quantify the savings resulting from improvements to energy efficient equipment, a detailed M&V plan must be tailored to the specific ECMs. The savings are determined by comparing the cost of energy use before and after the installation of the ECM.

## ***ESPCs Reviewed***

According to DLA-Energy officials, as of August 2017, DLA had an inventory of 11 issued and ongoing ESPC projects, valued at \$992.8 million, awarded between 2001 through 2016. We deferred consideration of a potential review of the DLA-Energy ESPC at the Oklahoma City-Air Logistics Center located on Tinker Air Force Base, Oklahoma, valued at \$649.3 million, until a later date. We reviewed 10 ESPCs, valued at \$343.5 million, to determine whether DLA-Energy officials:

- promoted competition in soliciting and awarding the ESPCs,
- selected ECMs that would result in a net energy savings during the term of the ESPC,
- validated contractor-claimed energy savings for 52 contractor PI and M&V reports, and
- appointed CORs to conduct base-level oversight.

Of the 10 ESPCs reviewed, 3 were in the construction phase and 7 were in the performance phase. We reviewed all 10 to determine whether DLA-Energy officials promoted completion in soliciting and award of the ESPCs. In addition, we nonstatistically selected five performance-phase ESPCs, valued at \$117.8 million, to determine whether an ESPC oversight system was in place at two Army installations (Fort Hood, Texas, and Fort Hamilton, New York) with multiple ESPC projects.<sup>7</sup> Specifically, for the five selected performance-phase ESPCs, we reviewed DLA-Energy and Army DPW officials' onsite ESPC oversight of maintenance and repair for ECMs implemented under the ESPCs. See Table 1 for the 10 ongoing ESPCs we reviewed.

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<sup>7</sup> We selected Fort Hood, Texas, and Fort Hamilton, New York, because each installation had multiple ESPC projects in the performance phase.

Table 1. DLA-Energy ESPC Projects Reviewed

Installation	Contract Award Amount (in Millions)	Description of Primary ECMs and Contract Performance Term	ESPC Phase (as of September 30, 2017)
Fort Hood, Texas Delivery Order (DO) #1	\$11.4	Utility Monitoring Control System, Cooling Tower Improvements, and Lighting Upgrades. The ESPC has a performance phase term of 21 years with 11 years completed.	Performance
Fort Hood, Texas (DO #2)	38.5	Utility Monitoring Controls and Lighting. The ESPC has a performance phase term of 22 years with 9 years completed.	Performance
Fort Hood, Texas (DO #3)	33.5	Utility Monitoring Controls, Lighting, and Solar Thermal Water Heating. The ESPC has a performance phase term of 23 years with 5 years completed.	Performance
Fort Hamilton, New York (DO #1)	7.4	Lighting System Upgrades, Energy Management Control Systems and Water Measures. The ESPC has a performance phase term of 15 years, but the ECMs were replaced by ECMs incorporated from DO #2.	Performance
Fort Hamilton, New York (DO #2)	27.0	Solar PV, Building Envelope Improvements, Lighting Improvements, Direct Digital Controls Motors, HVAC Improvements, Water Conservation measures, Chiller Replacements, Boiler Upgrades and High Efficiency Transformers. The ESPC has a performance phase term of 18 years and is in the first year.	Performance
Fort Jackson, South Carolina	106.6	Lighting upgrades, water conservation, control systems, and central plant upgrades. The ESPC has a performance phase term of 22 years. The ESPC is in the first performance year.	Performance
Carlisle Barracks, Pennsylvania	16.3	Geothermal Heat Pumps, Direct Digital Controls, Heating Ventilation/Air Conditioning, and Lighting Efficiency Improvements. The ESPC has a performance phase of 17 years with 13 years completed.	Performance
Defense Intelligence Agency, Washington, D.C.	21.2	Lighting Improvements, High Efficiency Steam Boiler, Compressed Air Upgrades, Combined Heat and Power Plant, Water Conservation, Control Strategies, Solar Photovoltaics, and Demand Response Program. The ESPC has a performance phase of 21 years and is in the construction phase.	Construction

*DLA-Energy ESPC Projects Reviewed (cont'd)*

Installation	Contract Award Amount (in Millions)	Description of Primary ECMs and Contract Performance Term	ESPC Phase (as of September 30, 2017)
99th Regional Support Command	56.9	Boiler Plant Improvements, Building Automation Systems/Energy Management Control Systems, Heating, Ventilating & Air Conditioning, Lighting Improvements, and Renewable Energy Systems. Covers multiple 99th Regional Support Command locations throughout the northeastern United States. The ESPC has a performance phase of 21 years and is in the construction phase.	Construction
U.S. Army Garrison Rheinland-Pfalz	24.7	ESPC located at U.S. Army Garrison Rheinland-Pfalz headquarters, Sembach, Germany. Primary ECMs include three Combined Heat and Power generators. The ESPC has a performance phase term of 19 years and is currently in the construction phase.	Construction
<b>Total</b>	<b>\$343.5</b>		

Source: DLA-Energy ESPC contract files.

## Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance programs are operating as intended and to evaluate the effectiveness of the controls.<sup>8</sup> We identified internal control weaknesses concerning DLA-Energy officials' ability to validate contractor-claimed energy savings presented in M&V reports, and resolving disagreements over the contractor-claimed energy savings reported in annual M&V reports. We will provide a copy of the report to the senior official responsible for internal controls in the DLA.

<sup>8</sup> DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

## Finding

### DLA-Energy Can Improve Administration of Selected ESPCs

DLA-Energy contracting officials maintained competition in soliciting and awarding 10 ESPCs, valued at \$343.5 million. DLA-Energy contracting and base-level DPW officials properly administered four of the seven performance-phase ESPCs by appointing CORs, and validating contractor-claimed energy savings. However, DLA-Energy contracting and base-level DPW officials did not:

- document the validation of the contractor-claimed energy savings in 2 of 52 M&V reports for the Fort Hamilton Delivery Order No. 1 (DO #1) and the Fort Hood DO #1 that supported a total of \$0.9 million in contract payments,<sup>9</sup> and
- resolve a disagreement between DLA-Energy contracting and base-level DPW officials regarding \$1.8 million in contractor-claimed energy savings in the Fort Hamilton DO #2 PI report.

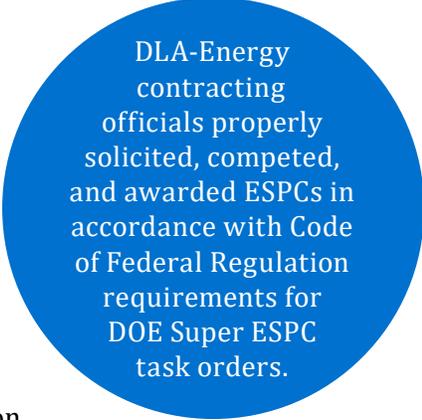
This occurred because DLA-Energy contracting officials had not established written standard operating procedures to implement FEMP requirements for administering ESPCs.

As a result, three performance-phase ESPC projects included \$2.7 million in questionable contract payments that do not fully comply with 42 U.S.C. § 8287 (2011) requirements. Furthermore, if DLA-Energy does not maintain standard operating procedures for ESPCs, DLA-Energy contracting officials may implement inconsistent oversight of ESPCs when validating contractor-claimed savings and overseeing the maintenance, repair, and replacement of energy conservation measures.

<sup>9</sup> The term Delivery Order (DO) in this report distinguishes between the different delivery orders awarded at the same location. DO #1 indicates the delivery order awarded first.

## DLA-Energy Officials Properly Solicited, Competed, and Awarded ESPCs

DLA-Energy contracting officials properly solicited, competed, and awarded ESPCs in accordance with Code of Federal Regulation requirements for DOE Super ESPC task orders. According to the Code of Federal Regulation, the DOE must prepare a list of qualified contractors, and Federal agencies must publish a notice in the Commerce Business Daily that synthesizes the proposed contract actions to solicit firms.<sup>10</sup> The guidance also allows Federal agencies the choice to use competitive selection procedures, consider unsolicited proposals from contractors on the DOE Super ESPC qualified contractor list, or use certified cost or pricing data to award ESPCs.<sup>11</sup>



DLA-Energy contracting officials properly solicited, competed, and awarded ESPCs in accordance with Code of Federal Regulation requirements for DOE Super ESPC task orders.

The competitive selection option allows Federal agencies to use either a “one-step” or “two-step” selection process when soliciting through a notice of opportunity (NOO) to the DOE Super ESPC contractor list. Once the NOO is issued, the:

- one-step process allows the agency to select a contractor after review of all the preliminary assessments received in response to the NOO, and
- two-step process allows the agency to identify and select two or three potential contractors based on the evaluation of the preliminary assessments and then the agency performs a second round of requests and reviews the contractors’ second assessments to select the contractor.

Finally, the agency can select a contractor from unsolicited proposals submitted by a contractor on the DOE Super ESPC qualified contractor list or use certified cost or pricing data to award ESPCs.

DLA-Energy contracting officers used the one-step, two-step, and unsolicited proposal selection processes to properly solicit and compete the 10 ESPCs. For example,

- DLA-Energy contracting official used the one-step method to solicit and compete the U.S. Army Garrison at Rheinland-Pfalz, Germany ESPC, valued at \$24.7 million. On September 15, 2014, the DLA-Energy contracting officials issued the NOO to all 16 DOE Super ESPC contractors and 2 of the 16 contractors provided proposals in response to the NOO. Using the

<sup>10</sup> Commerce Business Daily lists notices of proposed Government procurement actions, contract awards, sales of Government property, and other procurement information.

<sup>11</sup> Title 10, Code of Federal Regulations, Chapter II Subchapter D, Part 436, Subpart B, Section 436.33.

selection criteria outlined in the NOO, the DLA-Energy officials selected the contractor proposal that represented the best overall value to the Government. The evaluation criteria included the contractor's past experience; pricing in performing previous projects of similar magnitude, complexity; and experience for similar overseas projects.

- DLA-Energy contracting officials used the two-step method to solicit and compete for a \$106.6 million ESPC at Fort Jackson, South Carolina. On December 9, 2010, DLA-Energy contracting officials issued an NOO to the 16 contractors on the DOE Super ESPC list. The NOO outlined the ESPC would be awarded to the contractor that provided the best technical approach for achieving the greatest level of savings using a holistic, comprehensive energy conservation approach. DLA-Energy received 10 proposals to the NOO, which they performed a review to identify the technically acceptable proposal. Based on this initial evaluation, the DLA-Energy contracting officials determined that 5 of the 10 contractor's proposals provided a sufficient technical approach address the requirements in the NOO. From those five contractors, the DLA contracting officials requested additional information relating to the merits, technical feasibility, projected energy savings, and price of the project. Each of the five contractors provided the requested additional information and DLA-Energy contracting officials evaluated the information and selected the contractor to conduct final negotiations.
- On March 6, 2002, DLA-Energy contracting officials received an unsolicited proposal for an ESPC at Carlisle Barracks, Pennsylvania from one of the DOE "Super ESPC."<sup>12</sup> DLA-Energy contracting officials reviewed the unsolicited proposal; decided to move forward with the proposal; developed and approved the sole source selection of the contractor; and entered into price negotiations to award the \$16.3 million ESPC.

Table 2 details the breakdown of which method DLA-Energy contracting officers used to solicit and compete the 10 ESPCs reviewed.

<sup>12</sup> The DOE "Super ESPC" in place in March 2002 allowed Federal agencies to award ESPCs based on unsolicited contractor proposals from any of the DOE "Super ESPC" contractors.

Table 2. DLA-Energy Solicitation Method for the 10 ESPCs

ESPC Name	Selection Method Used	Number of Bidder Responses	Payment Value (in Millions)
99th Regional Support Command	Two-Step	6	\$56.9
Defense Intelligence Agency	Two-Step	7	21.2
Fort Jackson	Two-Step	10	106.6
<b>Subtotal</b>			<b>\$184.7</b>
U.S. Army Garrison-Rheinland-Pfalz	One-Step	2	24.7
Fort Hamilton DO #2	One-Step	7	27.0
<b>Subtotal</b>			<b>\$51.7</b>
Carlisle Barracks	Unsolicited	N/A	16.3
Fort Hood DO #1	Unsolicited	N/A	11.4
Fort Hood DO #2	Unsolicited	N/A	38.5
Fort Hood DO #3	Unsolicited	N/A	33.5
Fort Hamilton DO #1	Unsolicited	N/A	7.4
<b>Subtotal</b>			<b>\$107.1</b>
<b>Total</b>			<b>\$343.5</b>

Source: DLA-Energy ESPC Contract Files.

## DLA-Energy Officials' Administration of ESPCs

DLA-Energy and base-level DPW officials properly administered four of seven performance-phase ESPCs by appointing CORs, and validating contractor-claimed energy savings in accordance with DOE guidance and the DoD COR Handbook.<sup>13</sup> However, the DLA-Energy contracting and base-level DPW officials could improve the administration of Fort Hamilton DO #1, Fort Hamilton DO #2, and Fort Hood DO #1, ESPCs by validating four annual M&V reports and resolving disagreements over contractor-claimed savings.

DLA-Energy and base-level DPW officials properly administered four of seven performance-phase ESPCs.

<sup>13</sup> DoD COR Handbook, March 22, 2012.

### ***DLA-Energy and Base-Level Officials Properly Administered ESPCs***

DLA-Energy and base-level DPW officials administered seven performance-phase ESPCs properly, in accordance with DOE FEMP guidance and the DoD COR Handbook. Specifically, they properly appointed CORs and oversaw the maintenance, repair, and replacement of the ECMs implemented under the ESPCs.

DLA-Energy contracting officers properly appointed CORs for the 10 ESPCs. The Federal Acquisition Regulation requires contracting officers, in accordance with agency procedures, to designate in writing a COR for other than firm-fixed-price contracts and orders, and for firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties.<sup>14</sup> Typical COR duties include reviewing and approving invoices and PI and the annual M&V reports. The DoD COR Handbook states that typically the requiring activity nominates the COR and the contracting officer appoints the COR. DLA-Energy contracting officers appointed CORs for the 10 ESPCs, for the entire period of performance with a COR appointment letter. Each COR appointment letter outlined the duties of the COR specific to the phase of the ESPC.

Fort Hood and Fort Hamilton base-level DPW officials provided proper oversight of performance-phase ESPC maintenance and repair. Specifically, Fort Hood DPW officials maintained and replaced ECM lighting, while the ESPC contractor performed maintenance and repair on the utility monitoring control system and the solar thermal water heating. In addition, Fort Hood DPW officials completed quarterly maintenance and repair task sheets to document the maintenance and reported when procedures were completed. Furthermore, Fort Hood DPW officials stated that the COR and the contractor jointly performed periodic walkthroughs of ECMs and the COR performed random ECM inspections.

The Fort Hamilton DPW officials established an effective system to oversee the contractor's maintenance, repair, and replacement of ECMs. In addition, Fort Hamilton DPW officials monitored digital controls for the heating and cooling ECM and immediately issued maintenance and repair work orders to personnel who corrected problems as necessary.

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<sup>14</sup> Federal Acquisition Regulation Part 1, "Federal Acquisition Regulations System," Subpart 1.602-2, "Responsibilities."

## ***DLA-Energy Officials' Validation Contractor-Claimed Energy Savings***

DLA-Energy officials and base-level DPW officials validated contractor-claimed energy savings for five of seven performance-phase ESPCs, valued at \$240.7 million, in accordance with DOE FEMP guidance. However, DLA Energy officials and Fort Hood and Fort Hamilton base-level DPW officials did not validate the contractor-claimed energy savings outlined in two annual contractor M&V reports for the two of seven ongoing performance-phase ESPCs.

DOE FEMP guidance requires agencies to validate contractor-provided PI and annual M&V reports to ensure installed ECMs are operational and generating the savings that the contractor guarantees. Contractors are required to provide PI and annual M&V reports for all Federal ESPC projects.<sup>15</sup> Validation of the PI and annual M&V reports provides Federal agencies with assurance that contractor-claimed savings will generate sufficient cost savings to pay for the project. DLA-Energy officials had not developed DLA-Energy-specific ESPC guidance regarding validation of contractor-claimed energy savings but stated that they follow the DOE FEMP guidance.

For the 7 performance-phase ESPCs we reviewed, the contractors submitted 7 PI reports and 52 annual M&V reports over the life of the ESPCs. DLA-Energy officials and the base-level DPW officials had validated the contractor-claimed savings reported in all 7 PI reports and 50 of 52 annual M&V reports. DLA-Energy and base-level DPW officials did not support validating the contractor-claimed savings reported in 2 of 52 annual M&V reports. Specifically, DLA-Energy contracting officers and:

- Fort Hood base-level DPW officials did not validate the contractor-claimed energy savings in 1 of 11 annual M&V reports for Fort Hood DO #1 ESPC that supported \$0.5 million in contract payments. Neither DLA-Energy nor Fort Hood DPW officials could document they performed a validation review. Fort Hood DPW officials stated that they performed reviews but did not maintain documentation due to an office move.
- Fort Hamilton base-level DPW officials did not document validating the contractor-claimed energy savings in 1 of 15 annual M&V reports for the Fort Hamilton DO #1 ESPC that supported a \$0.4 million contract payment.

<sup>15</sup> Department of Energy-Federal Energy Management Program – M&V Guidelines: Measurement and Verification For Performance-Based Contracts Version 4.0, November 2015.

As a result, the contractors were paid \$0.9 million for energy savings that were either not verified or the verification of the savings was not documented. Table 3 summarizes the two contractor M&V reports and DLA-Energy review records for these two ongoing performance-phase ESPCs.

Table 3. DLA Validation of Contractor M&V Reports

Contract	Location	First Performance Year Start	M&V Reports		
			Number of Reports Required for Validation	Number of Reports Not Supported	Total Payment Value Not Validated (millions)
SPO600-03-F-8274	Fort Hood DO #1	Sept. 1, 2005	11	1	\$0.5
SPO600-02-F-8257	Fort Hamilton DO #1	Oct. 1, 2002	15	1	\$0.4
<b>Total</b>			<b>26</b>	<b>2</b>	<b>\$0.9</b>

Source: DLA ESPC contract files.

The validation of the contractor-claimed energy savings outlined in the annual M&V reports is essential; it ensures that the installed ECMs are producing the guaranteed energy savings. In addition, the validation process provides the agency an opportunity to adjust the baseline to reflect the actual energy savings achieved. See Appendix B for a complete listing of the 52 contractor-submitted PI reports, annual M&V reports, and DLA-Energy official’s report validation for the 7 DLA-Energy ESPCs in the performance phase.

### **DLA-Energy Officials Did Not Resolve Disagreements Over Reported Contractor-Claimed Savings**

DLA-Energy contracting officials did not resolve a disagreement regarding a \$1.8 million contractor-claimed energy savings in the Fort Hamilton DO #2 PI report.

DLA-Energy contracting officials did not resolve a disagreement regarding a \$1.8 million contractor-claimed energy savings in the Fort Hamilton DO #2 PI report. A November 4, 2015, DLA-Energy contracting officer COR delegation letter to the Fort Hamilton DPW for the DO #2 ESPC stated in part that the COR was responsible for “Reviewing and approving invoices, progress and financial reports, and other items as required, including the post installation report and the annual M&V reports. In addition, the COR should

notify the contracting officer if required deliverables are not received within the designated timeframes or if reports or other items submitted are to be rejected.”

Specifically, Fort Hamilton DPW officials and DLA-Energy contracting officer disagreed on the methodology the contractor used to calculate \$1.8 million in claimed energy savings for the construction phase and the first performance year of the Fort Hamilton DO #2 ESPC.<sup>16</sup> Fort Hamilton base-level DPW officials concluded that the contractor could not support the contractor-claimed energy savings without providing additional data in the PI report to support the contractor calculations. Fort Hamilton base-level DPW officials stated that the contractor-claimed energy savings were inflated because PI report energy savings data were not representative of Fort Hamilton's actual energy usage. In addition, according to Fort Hamilton base-level DPW officials, the contractor refused to disclose additional information on the methodology and models used to calculate the \$1.8 million in contractor-claimed energy savings for two performance years.<sup>17</sup>

In her review, the DLA-Energy contracting officer concluded that the contractor did not have to provide additional data because the contractor calculated the energy savings using the model approved as a part of the contract. Furthermore, previous Fort Hamilton base-level DPW officials agreed with the contractor's calculation methodology. The DLA-Energy contracting officer explained to the COR that PI report review issues could be pursued through contract modification negotiations, not as part of the PI report review process. Despite the DLA-Energy contracting officer and Fort Hamilton base-level DPW officials having different conclusions about the accuracy of the contractor-claimed savings, the DLA-Energy contracting officer approved and paid the \$724,429 payment to the contractor for construction-phase savings for the period of July 2016 through August-2017. DLA-Energy contracting officials stated that as of the August 2017 payment, two-ECMs with a total annual payment value of \$564,954 remained in disagreement between the contracting officer and the Fort Hamilton DPW officials. The DLA-Energy contracting officer stated that she is working with the contractor to resolve these issues. Without written procedures for resolving internal Government disagreements about the accuracy of the contractor-claimed savings, DLA-Energy contracting officials may not know whether ESPC contract payments for the Fort Hamilton DO #2 ESPC will achieve the expected energy savings of \$1.8 million for the construction phase and initial performance year and may continue to make questionable payments in later performance years.

<sup>16</sup> The PI report supports \$724,429 in contractor-claimed performance year 0 energy payments and \$1.1 million of performance year 1 of contractor-claimed savings.

<sup>17</sup> Performance year 0 was FY 2017 (July 2016-August 2017), and performance year 1 is FY 2018 (July 2017 to August 2018) based on the contracting officer's acceptance of the PI report on August 18, 2018.

## DLA-Energy Officials Did Not Establish Written Standard Operating ESPC Procedures

Even though DLA-Energy contracting officers properly solicited, competed, and awarded the 10 ESPCs and, in most instances, administered 7 performance-phase ESPCs properly, DLA-Energy contracting officials did not have standard ESPC standard operating procedures to outline the DLA-Energy-specific guidance for soliciting, competing, awarding, and administering ESPCs. DLA-Energy contracting officials have a strong understanding of the Federal and DOE FEMP award and administrative requirements. However, the DLA-Energy contracting office does not have an internal written way to retain working knowledge for future staff if there is turnover in key personnel. DLA-Energy officials stated that they follow DOE FEMP policies and have not developed DLA-Energy-specific ESPC standard operating procedures. In addition, the DLA-Energy contracting officials stated that they rely on the clauses in the DOE Super ESPC task order to govern how they solicit and compete ESPCs. However, the DLA-Energy contracting office's lack of ESPC standard operating procedures contributed to the DLA-Energy officials not performing and documenting the validation of the two annual M&V reports and the disagreement between the contracting officer and the base-level DPW on validation of a PI report. Because the only criteria DLA-Energy officials follow is the DOE FEMP guidance, which provides only limited direction on soliciting and administering ESPCs, DLA-Energy officials will retain greater risk in effectively soliciting, competing, awarding, and administering ESPCs in the future. DLA-Energy is the exception among DoD Components in maintaining ESPC standard operating procedures. Each Military Department maintains ESPC guidance at the program office level. Military Department ESPC guidance documents include internal policy and manuals issued by the Department of the Army, the Naval Facilities Engineering Command, and the Air Force Civil Engineer Center.

DLA-Energy contracting officials properly solicited, competed, and, in most cases, administered, ESPCs appropriately.

Although DLA-Energy contracting officials properly solicited, competed, and, in most cases, administered, ESPCs appropriately, DLA-Energy officials should consider whether to develop, implement, and maintain adequate and appropriate standard operating procedures to provide for continuity of future ESPC program operations.

## DLA-Energy Officials May Not Know Whether Ongoing ESPCs Have Achieved Contractor-Claimed Energy Savings

DLA-Energy contracting officials' compliance with the statutorily required energy-savings validations will ensure that the contractors achieved the guaranteed energy savings and that DLA-Energy officials' payments to the contractor did not exceed the achieved savings.<sup>18</sup> Thus, until DLA-Energy fully supports validating energy savings for the three ESPCs, with approximately \$2.7 million in payments will remain unsupported. In addition, DLA-Energy officials should develop written standard operating procedures to implement FEMP guidance regarding the soliciting, competing, and overseeing of ESPC projects. Without such standard operating procedures, DLA-Energy and base-level DPW officials may use inconsistent methods and procedures to validate contractor PI and M&V reports and to oversee maintenance, repair, and replacement of ECMs.

## Recommendations, Management Comments, and Our Response

### **Recommendation 1**

We recommend that the Defense Logistics Agency–Energy Commander:

- a. **Direct Defense Logistics Agency–Energy contracting officials to validate energy savings performance contracts contractor-claimed energy savings achieved for:**
  1. **Fort Hood Delivery Order Number 1 (SPO600-03-F-8274) performance year 1 (September 1, 2005, through August 31, 2006);**
  2. **Fort Hamilton Delivery Order Number 1 (SPO600-02-F-8257) performance year 1 (October 1, 2002, through September 30, 2003), and**

### *Defense Logistics Agency-Energy Commander Comments*

The DLA Acquisition Deputy Director, responding for the DLA-Energy Commander, agreed with Recommendations 1.a.1 and 1.a.2. The Deputy Director stated that contracting officer validations from May 3, 2018, were provided to the DoD OIG.

### *Our Response*

Comments from the Deputy Director addressed all specifics of the recommendations. On May 25, 2018, the DLA provided us with contracting officer's validation of the Fort Hood DO #1, performance year 1, and

<sup>18</sup> Required energy savings validations per 42 U.S.C. § 8287 (2011).

Fort Hamilton DO #1, performance year 1 ESPCs. We verified that the DLA validated the contractor-claimed energy savings for the two ESPCs. Therefore, Recommendations 1.a.1 and 1.a.2 are closed.

**3. Fort Hamilton Delivery Order Number 2 (SPO600-15-F-8001) post-installation period completed August 17, 2017, and performance year 1 (August 18, 2017, through August 17, 2018).**

*Defense Logistics Agency-Energy Commander Comments*

The DLA Acquisition Deputy Director partially agreed with the recommendation. The Deputy Director stated that the DLA-Energy contracting officer, with the concurrence of the Fort Hamilton base-level DPW officials, accepted the contractor's PI report on August 17, 2017. The Deputy Director also stated that new Fort Hamilton base-level DPW officials subsequently disagreed with these actions and that the disagreement did not invalidate the prior contracting officer PI report acceptance. The Deputy Director stated that any adjustments ultimately agreed upon with the contractor would need to be through contract modification rather than by the PI report review process. The Deputy Director stated that the DLA contracting officer, the contractor, and Fort Hamilton base-level DPW officials were in continuing discussion about such modifications. In addition, the Deputy Director stated that the DLA did not agree with our draft report characterization of the DLA contracting officer – Fort Hamilton base-level DPW disagreement as a “dispute.”

*Our Response*

Comments from the Deputy Director addressed all specifics of the recommendation. The Fort Hamilton DPW subsequently disagreed with the DLA-Energy methodology used to validate \$1.8 million in contractor-claimed energy savings in the PI report.<sup>19</sup> The DLA contracting officer noted that the methodology used was based on what was agreed to in the contract and that changes to that methodology would require a contract modification. Based on the Deputy Director's comments, we concluded that modification of the Fort Hamilton DO #2 ESPC is an acceptable alternative action to the recommendation. Therefore, we consider Recommendation 1.a.3 to be resolved but open. Once DLA-Energy contracting officials determine whether a contract modification, is required and issue the modification we will close the recommendation. In addition, we revised final report narrative, where warranted, to change the term “dispute” to “disagreement” in the discussion of Fort Hamilton DO #2 contract administration.

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<sup>19</sup> The PI report supports \$724,429 in contractor-claimed performance year 0 energy payments and \$1.1 million of performance year 1 of contractor-claimed savings.

- b. Direct Defense Logistics Agency–Energy contracting officers, based on the result of the validation, as mandated by law, to take appropriate contractual action (if necessary), such as recovering unrealized guaranteed energy savings or buying out the remaining portion of the applicable contracts.**

#### *Defense Logistics Agency–Energy Commander Comments*

The Deputy Director agreed with the recommendation, stating that no further DLA contractual action is needed based on DLA responses to Recommendations 1.a.1, 1.a.2, and 1.a.3.

#### *Our Response*

The Deputy Director comments addressed all aspects of the recommendation. While we agree that no further action is needed regarding the Fort Hood DO #1 and Fort Hamilton DO #1 ESPCs, additional actions may be required for the Fort Hamilton DO #2 ESPC. DLA–Energy contracting officials need to determine, if a contract modification is needed, for the Fort Hamilton DO #2 ESPC and issue the contract modification, if required. Therefore, we consider Recommendation 1.b to be resolved but open and will close the recommendation once the DLA–Energy contracting officials make the determination on whether a contract modification is required and issued.

- c. Consider developing standard operating procedures regarding the solicitation, competition, award, and administration of energy savings performance contracts to implement Federal Energy Management Program guidance regarding:**
  - 1. developing and implementing energy savings performance projects; and**
  - 2. validating contractor-claimed energy savings reported in post installation and annual measurement and verification reports.**

#### *Defense Logistics Agency–Energy Commander Comments*

The Deputy Director partially agreed with the recommendations, stating that the DOE FEMP is responsible for and provides comprehensive guidelines and standards for developing and implementing ESPCs under the DOE indefinite delivery, indefinite quantity contracting vehicle. The Deputy Director stated that the DLA considered the recommendations and determined that additional supplemental DLA guidance or standard operating procedures are unnecessary.

### *Our Response*

Comments from the Deputy Director partially addressed Recommendations 1.c.1 and 1.c.2; therefore the recommendations are unresolved. As noted in the finding, the Army, Navy, and Air Force each maintain ESPC guidance at the program office level. DLA-Energy remains the exception among DoD Components in operating an ESPC program without standard operating procedures. The lack of standard operating procedures have not resulted in any major ESPC program concerns. However, this may be the result of the stability and expertise of the present DLA-Energy ESPC contracting officials. Having such standard operating procedures would aid in assuring that the quality of the present DLA ESPC program will continue into the future. We request additional comments from the DLA-Energy Commander as to why a DLA-Energy procedure for award and administration of ESPCs, including validation of contractor claimed energy savings, are unnecessary.

- d. Develop and implement a standard operating procedure regarding resolving internal Government disagreements over the contractor-claimed energy savings reported in post-installation and annual measurement and verification reports.**

### *Defense Logistics Agency-Energy Commander Comments*

The Deputy Director did not agree with the recommendation, stating that additional formal guidance was unnecessary and could potentially limit contracting officer options in settling intra-government disagreements. In addition, the Deputy Director stated that an Interagency Agreement between the DLA and the requiring activity addresses the respective roles and responsibilities of the DLA-Energy officials and the customer along with an agreement by the parties to resolve any dispute through consultation and escalation, as needed, within their respective organizations until resolved.

### *Our Response*

Comments from the Deputy Director addressed all specifics of the recommendation even though the Deputy Director disagreed with the recommendation. An Interagency Agreement is another vehicle to outline the process, roles, and responsibilities for resolving disagreements between the DLA-Energy officials and its customer. According to a DLA-Energy official, DLA implemented the Interagency Agreements starting in October 2017.<sup>20</sup> The agreements included language to resolve disagreements in DLA-Energy developing, implementing, and administering ESPCs for its customers. Thus, we consider Recommendation 1.d closed.

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<sup>20</sup> We reviewed two agreements issued DLA-Energy issued since October 2017.

## Appendix A

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### Scope and Methodology

We conducted this performance audit from August 2017 through March 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### ***Guidance for ESPC Project Management***

To determine whether DLA-Energy officials properly solicited, competed, awarded, and administered the 10 ESPCs, we reviewed Federal, DoD, and DOE regulations and guidance, to identify the Federal and DoD ESPC program management requirements. We referenced the following primary guidance used during the review.

- Title 10, Code of Federal Regulations, Chapter II, Subchapter D, Part 436, Subpart B, Section 436.33
- Section 8287, title 42, United States Code
- Federal Acquisition Regulation Part 1, “Federal Acquisition Regulations System,” Subpart 1.602-2, “Responsibilities.”
- Federal Acquisition Regulation Part 46, “Quality Assurance,” Subpart 46.4, “Government Contract Quality Assurance”
- “Department of Energy Federal Energy Management Program M&V Guidelines: Measurement and Verification for Performance-Based Contracts,” Version 4.0, November 2015
- “DoD Contracting Officer’s Representative Handbook,” March 22, 2012

### ***Review of DLA-Energy Soliciting and Competing ESPCs***

According to DLA-Energy officials, as of August 2017, DLA-Energy had an inventory of 11 ongoing ESPC projects, valued at \$992.8 million, awarded between 2001 through 2016. We deferred review of the DLA-Energy ESPC of the Oklahoma City-Air Logistics Center at Tinker Air Force Base, Oklahoma, valued at \$649.3 million, until a later date. We reviewed 10 ESPCs, valued at \$343.5 million, to determine whether DLA-Energy contracting officials’ methods for ESPC solicitation, selection, and award were consistent with Federal and DOE ESPC

requirements.<sup>21</sup> For 5 of the 10 DLA-Energy ESPCs, valued at \$236.4 million, solicited, competed, and awarded using either the one-step or two-step selection process, we reviewed the DLA-Energy contracting officer's issued NOOs, the contractor's responses to the NOOs, and the DLA-Energy evaluation and selection of the contractor for the ESPC. For the other five DLA-Energy ESPCs, valued at \$107.1 million, where DLA-Energy contracting officers used an unsolicited proposal method, we reviewed the unsolicited proposals submitted by the contractor, and justifications and approvals to support the sole-source award. In addition, we interviewed the DLA-Energy contracting officers to determine DLA-Energy's process for soliciting, and competing ESPCs.

### ***Review of DLA-Energy Validation of Contractor-Claimed Savings Reported in PI and M&V Reports***

We reviewed the seven performance-phase DLA-Energy ESPCs, valued at \$240.7 million, to determine whether DLA-Energy contracting and Army base-level public works officials properly validated contractor-claimed energy savings submitted in the PI and annual M&V reports. Specifically, we reviewed the PI reports supporting each of the seven performance-phase ESPCs. In addition, we reviewed the 52 annual M&V reports supporting the seven performance-phase ESPCs to determine whether DLA-Energy had performed and documented reviews to verify contractor-claimed energy savings.

### ***Review of DLA-Energy and Base-Level DPW Oversight of ESPCs***

We nonstatistically selected five ESPCs, valued at \$117.8 million, at two Army installations with multiple performance-phase ESPC projects to determine whether the base-level DPW was overseeing the ESPC. We selected Fort Hood, Texas, and Fort Hamilton, New York, because each installation had multiple ESPC projects in the performance phase. Specifically, we evaluated the DLA-Energy and Army officials' onsite monitoring of the ESPC maintenance, repair, and replacement of the ECMs implemented under the ESPC. We interviewed DLA-Energy contracting office and Fort Hood, Texas, and Fort Hamilton, New York, base-level DPW officials; reviewed DLA-Energy ESPC contract files and base-level public works records; and toured various ECMs implemented at Fort Hood and Fort Hamilton.

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<sup>21</sup> We did not review the validity of DLA-Energy contracting officer's price reasonableness determinations for the 10 ESPC awards.

## Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

## Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the DoD Office of Inspector General (DoD OIG), the U.S. Army Audit Agency (USAAA), and the Naval Audit Service issued eight reports discussing Department of the Army, Department of the Navy, or Department of the Air Force award and administration of ESPCs. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>. USAAA and Naval Audit Service reports are not available over the Internet.

## GAO

Report No. GAO-17-461, “Defense Infrastructure: Additional Data Guidance Needed for Alternatively Financed Energy Projects,” June 20, 2017

The GAO reviewed 16 DoD alternatively financed energy projects, including 11 ESPCs. The GAO reported that some potential costs for these alternatively financed energy projects, such as costs associated with operation and maintenance and repair and replacement of equipment, add to overall project costs and may not be included in the total contract payments. The GAO recommended that the Military Services collect and provide the DoD complete and accurate data on all alternatively financed energy projects and that the DoD update its guidance to clarify requirements for verifying utility energy savings contract savings.

Report No. GAO-15-432, “Energy Savings Performance Contracts: Additional Actions Needed to Improve Federal Oversight,” June 2015

The GAO found that contractors reported their calculated savings according to their contracts with agencies. However, contractors were not required to reduce the amount of savings they report or measure the effects of factors that cause a reduction in project savings. Because contractors were not required to report the reductions in savings, the contractor reporting becomes unclear. Without clear reporting of savings not being achieved, the GAO concluded agencies may be unable to determine what, if any, corrective actions should be taken.

## **DoD OIG**

Report No. DODIG-2018-050, "Naval Facilities Engineering Command Administration of Selected Energy Savings," December 19, 2017

Naval Facilities Engineering Command officials did not properly administer seven ESPCs, valued at \$822.7 million. Naval Facilities Engineering Command contracting officials did not tailor quality assurance surveillance plans to the specifics of each implemented energy conservation measure, describe how to validate contractor-submitted energy-savings reports, and oversee contractor maintenance, repair, and replacement of energy conservation measures. Additionally, Naval Facilities Engineering Command contracting and base public works office officials did not properly validate 9 of 11 contractor-proposed currency escalation modifications for the ESPC at Commander Fleet Activities, Yokosuka, Japan.

Report No. DODIG-2017-044, "Naval Facilities Engineering Command Management of Energy Savings Performance Contracts Needs Improvement," January 26, 2017

Naval Facilities Engineering Command officials 38 ongoing performance-phase ESPCs, valued at \$1.55 billion. Naval Facilities Engineering Command officials did not initially appoint CORs, did not validate PI or M&V reports, and did not perform higher-level reviews of the contractor-claimed energy savings. This lack of review and validation of PI and M&V reports resulted in \$67.6 million in questionable contractor-claimed energy savings.

Report No. DODIG-2016-087, "Air Force Civil Engineer Center Management of Energy Savings Performance Contracts Needs Improvement," May 4, 2016

Air Force Civil Engineer Center officials did not centrally manage 52 existing ESPCs, collectively valued at \$849 million, effectively. Specifically, Air Force Civil Engineer Center did not perform post-award project management, track project status, verify energy savings resulting from the ESPC projects, track required ESPC training, and maintain an Air Force ESPC lessons learned program. As a result, Air Force officials did not know whether the 52 projects achieved contractor-guaranteed energy savings, which were the basis of compliance with statutory requirements.

Report No. DODIG-2015-138, "The Air Force Did Not Monitor the Energy Savings Performance Contract at Joint Base McGuire," June 29, 2015

The Joint Base McGuire contracting officer did not delegate a COR; did not perform contractor surveillance, document contractor compliance with contract requirements, or validate actual contractor energy savings; and in conjunction with civil engineering officials, directed payment of four invoices, totaling \$18.96 million and did not approve the contractor's PI report prior to payment. Air Force officials did not know whether the approximately \$19 million spent on the Joint Base McGuire ESPC achieved energy savings and whether planned future payments of approximately \$115 million for the remaining 16 contract performance years will result in energy savings.

### ***U.S. Army Audit Agency***

Report No. A-2015-0046-MTP, "Measurement and Verification Controls for Energy Savings Performance Contracts," March 15, 2015

USAAA reviewed M&V controls supporting ESPCs at four Army bases. Multiple contracting agencies awarded the ESPCs from January 2009 through May 2011. At three of four sites reviewed, USAAA concluded that although ESPCs resulted in some reduction in energy usage, M&V controls sometimes were not in place and or operating. These controls included, but were not limited to, commissioning of installed equipment, surveys and inspections, and validation of PI reports and annual M&V reports. The controls were not in place or operating because Army guidance for ESPC implementation conflicted on when PI reports were due; key personnel did not have sufficient ESPC training; the Army did not sufficiently develop M&V plans to ensure proper government monitoring; and the ESPCs were not properly administered. As a result, as of December 10, 2013, two of the four installations paid approximately \$13.3 million with little assurance that they achieved 100 percent of their guaranteed savings. USAAA concluded that unless the two installations strengthened their controls, they could continue to pay about \$127.4 million over the life of the ESPCs and not have assurance that they will achieve the future guaranteed savings.

## ***Naval Audit Service***

Report No. N2013-0031, "Followup on Internal Controls Over Department of the Navy Energy Funding and Financing Tools," June 13, 2013

The Naval Audit Service conducted a followup audit of recommendations from a March 2011 Naval Audit Service report on Navy energy projects including ESPCs. The March 2011 Naval Audit Service report found that Navy did not effectively manage energy projects to verify energy reductions and cost savings. The Naval Audit Service determined that the recommendation to Commander, NAVFAC to ensure acquisition officials performed their assigned duties, strengthened controls, and oversight of procurement performance management remained open. The Naval Audit Service recommended NAVFAC officials establish detailed procedures to verify the accuracy of the M&V reports and to provide oversight to ensure that NAVFAC officials adhered to those procedures.

## Appendix B

### DLA-Energy Validations of Contractor PI and M&V Reports

Year	Contractor Annual M&V Report Date	PI Validation Performed	M&V Validation Performed	Dollar Value of PI Validation Not Completed (in Millions)	Dollar Value of M&V Validation Not Completed (in Millions)
<b>Fort Hood DO #1</b>					
0	05/21/2005	Yes	N/A	0*	\$0
1	09/1/2006	N/A*	No	0	0.5
2	08/30/2007	N/A	Yes	0	0
3	08/21/2008	N/A	Yes	0	0
4	08/31/2009	N/A	Yes	0	0
5	08/17/2010	N/A	Yes	0	0
6	08/24/2011	N/A	Yes	0	0
7	02/27/2013	N/A	Yes	0	0
8	08/23/2013	N/A	Yes	0	0
9	08/21/2014	N/A	Yes	0	0
10	08/26/2015	N/A	Yes	0	0
11	08/31/2016	N/A	Yes	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>10 Yes, 1 No</b>	<b>0</b>	<b>0.5</b>
<b>Fort Hood DO #2</b>					
0	01/25/2008	Yes	N/A	0	0
1	03/12/2009	N/A	Yes	0	0
2	03/3/2010	N/A	Yes	0	0
3	02/28/2011	N/A	Yes	0	0
4	02/28/2012	N/A	Yes	0	0
5	03/5/2013	N/A	Yes	0	0
6	03/12/2014	N/A	Yes	0	0
7	03/18/2015	N/A	Yes	0	0
8	03/24/2016	N/A	Yes	0	0
9	03/15/2017	N/A	Yes	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>9 Yes, 0 No</b>	<b>0</b>	<b>0</b>

## DLA-Energy Validations of Contractor PI and M&amp;V Reports (cont'd)

Year	Contractor Annual M&V Report Date	PI Validation Performed	M&V Validation Performed	Dollar Value of PI Validation Not Completed (in Millions)	Dollar Value of M&V Validation Not Completed (in Millions)
<b>Fort Hood DO #3</b>					
0	08/5/2013	Yes	N/A	0	0
1	09/19/2013	N/A	Yes	0	0
2	10/30/2014	N/A	Yes	0	0
3	10/30/2015	N/A	Yes	0	0
4	08/24/2016	N/A	Yes	0	0
5	01/20/2017	N/A	Yes	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>5 Yes, 0 No</b>	<b>0</b>	<b>0</b>
<b>Carlisle Barracks</b>					
0	10/26/2004	Yes	N/A	0	0
1	06/14/2005	N/A	Yes	0	0
2	05/08/2006	N/A	Yes	0	0
3	05/21/2007	N/A	Yes	0	0
4	05/29/2008	N/A	Yes	0	0
5	04/30/2009	N/A	Yes	0	0
6	04/30/2010	N/A	Yes	0	0
7	11/10/2011	N/A	Yes	0	0
8	05/4/2012	N/A	Yes	0	0
9	08/1/2013	N/A	Yes	0	0
10	05/16/2014	N/A	Yes	0	0
11	05/15/2015	N/A	Yes	0	0
12	07/25/2016	N/A	Yes	0	0
13	05/30/2017	N/A	Yes	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>13 Yes, 0 No</b>	<b>0</b>	<b>0</b>
<b>Fort Jackson</b>					
0	02/17/2017	Yes	N/A	0	0
1	No M&V Reports Submitted yet	N/A	N/A	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>N/A</b>	<b>0</b>	<b>0</b>

## DLA-Energy Validations of Contractor PI and M&amp;V Reports (cont'd)

Year	Contractor Annual M&V Report Date	PI Validation Performed	M&V Validation Performed	Dollar Value of PI Validation Not Completed (in Millions)	Dollar Value of M&V Validation Not Completed (in Millions)
<b>Fort Hamilton DO #1</b>					
0	2/2/2004	Yes	N/A	0	0
1	9/20/2004	N/A	No	0	0.4
2	6/16/2005	N/A	Yes	0	0
3	July 2006	N/A	Yes	0	0
4	February 2007	N/A	Yes	0	0
5	5/2/2008	N/A	Yes	0	0
6	March 2009	N/A	Yes	0	0
7	December 2009	N/A	Yes	0	0
8	December 2010	N/A	Yes	0	0
9	December 2011	N/A	Yes	0	0
10	March 2013	N/A	Yes	0	0
11	6/16/2014	N/A	Yes	0	0
12	11/10/2014	N/A	Yes	0	0
13	November 2015	N/A	Yes	0	0
14	January 2017	N/A	Yes	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>13 Yes, 1 No</b>	<b>0</b>	<b>0.4</b>
<b>Fort Hamilton DO #2</b>					
0	8/9/2017	Yes*	N/A	0	0
	<b>Subtotal</b>	<b>1 Yes, 0 No</b>	<b>N/A</b>	<b>0</b>	<b>0</b>
<b>Total 52</b>		<b>7 Yes, 0 No</b>	<b>50 Yes, 2 No</b>	<b>0</b>	<b>\$0.9</b>

<sup>1</sup> Yes\* = Fort Hamilton DO #2 PI review results disputed by base-level DPW.

<sup>2</sup> N/A = indicates an annual performance period where a report is not required.

<sup>3</sup> 0\* = indicates that there is no dollar value for PI validation and M&V validation not completed

Source: DLA-Energy ESPC Contract Files.

# Appendix C

## Potential Monetary Benefits

Recommendation	Type Of Benefit	Amount Of Benefit	Account
1.a.3	Questioned Costs	\$1.8 million*	DLA-Energy ESCP Task Order number SPO600-15-F-8001

\* Benefit amount includes \$1.8 million in contractor-claimed energy savings disagreement by base-level DPW officials.

# Management Comments

## Defense Logistics Agency-Energy Commander



DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD  
FORT BELVOIR, VIRGINIA 22060-6221

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Response to DoD OIG Draft Report "Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts" (Project No. D2017-D000CI-0179.000)

Attached is the DLA response to the subject Draft Report. We appreciate the opportunity to review and comment on the finding and recommendations. The point of contact for this audit is Mr.

[REDACTED]

  
ROXANNE J. BANKS  
Deputy Director, DLA Acquisition

Attachment:  
As stated

## Defense Logistics Agency-Energy Commander (cont'd)

**Final  
Report Reference**

**Defense Logistics Agency Comments to DoD OIG Draft Report “Defense Logistics Agency Award and Administration of Energy Savings Performance Contracts,” dated May 1, 2018 (Project No. D2017-D000CI-0179.000)**

Recommendation 1

We recommend that the Defense Logistics Agency Energy Commander:

- a. Direct Defense Logistics Agency Energy contracting officials to validate energy savings performance contracts contractor-claimed energy savings achieved for:
  - 1. Fort Hood Delivery Order Number No. 1 (SPO600-03-F-8274) performance year 1 (September 1, 2005, through August 31, 2006);
  - 2. Fort Hamilton Delivery Order Number No. 1 (SPO600-02-F-8257) performance year 1 (October 1, 2002 through September 30, 2003);
  - 3. Fort Hamilton Delivery Order Number No. 2 (SPO600-15-F-8001) post-installation period completed on March 31, 2017, and performance year 1 (April 1, 2017, through March 31, 2018) (DLA NOTE: The performance year one period of performance as stated is incorrect. It is August 18, 2017 through August 17, 2018.)

**Revised**

DLA response to Recommendation 1.a.1.: Concur.

This action was completed May 3, 2018. Supporting documentation of Contracting Officer’s validation has been provided to the DoD OIG under separate cover.

DLA response to Recommendation 1.a.2.: Concur.

This action was completed May 3, 2018. Supporting documentation of Contracting Officer’s validation has been provided to the DoD OIG under separate cover.

DLA response to Recommendation 1.a.3.: Partially Concur with Comment.

DLA does not agree with the characterization of a dispute or the use of that term in this circumstance. The original file documentation provided to the DoD OIG in October 2017 validates that the Contracting Officer, with concurrence from the Fort Hamilton base-level DPW officials, accepted the contractor’s post-installation report (PIR) on August 17, 2017. Documentation further shows that the contractor performed in accordance with the contract terms and payments were made in accordance with the contract payment schedule and that no adjustment was therefore necessary. As discussed with the DoD OIG, a new base-level DPW official disagreeing with the actions or methodologies of a previous official does not invalidate those actions. It was further explained to the DoD OIG that any adjustments that may ultimately be agreed upon between the government and the contractor would appropriately need to be addressed through contract modification and not through the PIR review process. DLA and the contractor, with the participation of Fort Hamilton base-level DPW officials, are in continuing discussions about modifications that may be required going forward due to other issues.

**Revised**

- b. Direct Defense Logistics Agency Energy contracting officers, based on the result of the validation, as mandated by law, to take appropriate contractual action (if necessary), such as recovering unrealized guaranteed energy savings or buying out the remaining portion of the applicable contracts.

## Defense Logistics Agency-Energy Commander (cont'd)

DLA response to Recommendation 1.b.: Concur with Comment.

DLA Energy has determined that no further contractual action is required based on the Contracting Officer validations conducted under 1.a.1. and 1.a.2., and the Contracting Officer's review and acceptance of the post-installation report cited under 1.a.3.

c. Consider developing standard operating procedures regarding the solicitation, competition, award, and administration of energy savings performance contracts to implement Federal Energy Management Program guidance regarding:

1. developing and implementing energy savings performance projects; and
2. validating contractor-claimed energy savings reported in post-installation and annual measurement and verification reports.

DLA response to Recommendation 1.c.1. and 1.c.2.: Partially Concur.

DLA recognizes the value of the establishment of strong policy guidance. The Department of Energy Federal Energy Management Program (DOE FEMP) is responsible for and provides comprehensive guidelines and standards for developing and implementing ESPCs under the DOE indefinite delivery, indefinite quantity (IDIQ) contracting vehicle, including measurement & verification procedures, and validation of contractor-claimed energy savings. DLA Energy ESPC personnel are trained on and perform in accordance with the DOE FEMP standards. DLA has considered the recommendation and determined that additional supplemental DLA guidance and/or standard operating procedures are unnecessary.

d. Develop and implement a standard operating procedure regarding resolving internal government disputes over the contractor-claimed energy savings reported in post-installation and annual measurement and verification reports.

DLA response to Recommendation 1.d.: Non-Concur with Comment.

The Contracting Officer's authority, along with their responsibility to act impartially and independently in carrying out a contract, is an integral part of the internal control within the contracting process and is not something that should be subject to a standard operating procedure. Additionally, the standard Interagency Agreement between DLA and the requiring activity addresses the respective roles and responsibilities of DLA Energy and the customer along with an agreement by the parties to resolve any dispute through consultation and escalation, as needed, within their respective organizations until resolved. Additional formal guidance is unnecessary and could potentially limit the options available to the Contracting Officer in settling intra-government disagreements.

## Acronyms and Abbreviations

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<b>COR</b>	Contracting Officer's Representative
<b>DLA</b>	Defense Logistics Agency
<b>DO</b>	Delivery Order
<b>DOE</b>	Department of Energy
<b>DPW</b>	Department of Public Works
<b>ECM</b>	Energy Conservation Measure
<b>ESPC</b>	Energy Savings Performance Contract
<b>FEMP</b>	Federal Energy Management Program
<b>M&amp;V</b>	Measurement and Verification
<b>NOO</b>	Notice of Opportunity
<b>PI</b>	Post-Installation
<b>U.S.C.</b>	United States Code

# **Whistleblower Protection**

## **U.S. DEPARTMENT OF DEFENSE**

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