



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

AUDIT REPORT

Energy Savings Performance Contract
Review Board

OAI-L-16-04

December 2015



Department of Energy
Washington, DC 20585

December 4, 2015

MEMORANDUM FOR THE DIRECTOR, SUSTAINABILITY PERFORMANCE OFFICE

Debra K. Solmonson
FROM: Debra K. Solmonson, Director
Eastern Audits Division
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on “The Energy Savings Performance Contract Review Board”

BACKGROUND

Department of Energy (Department) sites use performance-based contracts, such as Energy Savings Performance Contracts (ESPC), for implementing energy savings projects. Under an ESPC, a private-sector energy services company develops, finances, and installs energy improvement projects on a Federal site in exchange for a share of future savings over the term of the contract. ESPCs are an integral part of the Department’s sustainability strategy, which strives to improve management of energy and water resources while maintaining mission activities. As of January 2015, the Department had awarded 25 ESPCs valued at \$1.6 billion. The Department had plans to award another \$175 million in ESPCs in further support of the President’s challenge to use performance-based contracts, as detailed in the December 2011 memorandum *Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings*.

The Department’s Sustainability Performance Office, when under the Office of Energy Efficiency and Renewable Energy (EERE), used an ESPC Review Board (Review Board) comprised of various Headquarters technical experts to review ESPC proposals to identify potential issues and increase the probability of a successful ESPC. The Sustainability Performance Office encouraged sites to submit proposed ESPCs to the Review Board for review and comment. However, Review Board comments were advisory and sites were expected to respond to and resolve Review Board comments. In fiscal year 2016, the Sustainability Performance Office and the Review Board were transferred from EERE to the Office of Management. Due to the importance of ESPCs to the Department’s sustainability efforts, we initiated this audit to determine if the Sustainability Performance Office was effectively managing the ESPC Review Board.

RESULTS OF AUDIT

We identified an area in which the Review Board’s responsibilities and procedures could be clarified to help ensure that the Department’s ESPCs are in the Government’s best interests.

Specifically, we noted that some sites have demonstrated a reluctance to submit ESPC proposals to the Review Board because of concern over protecting procurement sensitive information. Action to clarify the Review Board's role in protecting the procurement sensitivity of ESPC proposals should enable the Sustainability Performance Office to better ensure that the Review Board receives ESPC proposals, identifies problems, and communicates issues prior to awarding ESPCs.

Procurement Sensitive ESPC Proposals

A number of sites have raised concerns about sending ESPC proposals to the Review Board because of their concern over the protection of procurement sensitive information. For example, we noted two occasions in which sites had requested deviations from the Review Board's normal review protocol because of procurement sensitivity concerns. In one instance, the Sustainability Performance Office agreed to forgo the Review Board's review of a proposed \$52.7 million ESPC wind farm project at the site's request. The site asserted that because it did not use the Department's master indefinite delivery/indefinite quantity ESPC vehicle, the proposals were procurement sensitive and should not be reviewed by the Review Board to ensure competitive integrity. In another instance, a site requested that Review Board members sign confidentiality and conflict-of-interest statements prior to allowing them access to an \$87.9 million ESPC proposal, an action that some Review Board members felt was unnecessary because they considered all proposed ESPCs to be procurement sensitive and protected them as such. Affirming its obligation and commitment to protect the competitive integrity of all proposals within its purview and conveying that obligation to the sites should help encourage sites to continue to submit their ESPC proposals to the Review Board and prevent delays in the review process.

SUGGESTED ACTION

To strengthen Review Board processes, we suggest the Director, Sustainability Performance Office, clarify and communicate the Review Board's responsibilities and processes for protecting ESPC procurement sensitive information to Departmental Program Offices and sites.

Attachments

cc: Deputy Secretary
Director, Office of Management
Under Secretary for Science and Energy
Chief of Staff

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The objective of the audit was to determine if the Sustainability Performance Office was effectively managing the Energy Savings Performance Contracts (ESPC) Review Board (Review Board).

SCOPE

We performed this audit from August 2013 to December 2015 at the Department of Energy's Office of Energy Efficiency and Renewable Energy in Washington, DC. Our audit focused on the Sustainability Performance Office's ESPC Review Board procedures, structure, and reviews performed for six ESPC projects that had recently been awarded or were in the developmental phase. The audit was conducted under Office of Inspector General project number A13OR050.

METHODOLOGY

To accomplish our object, we:

- Reviewed and evaluated the policies and procedures applicable to the Review Board;
- Interviewed Sustainability Performance Office officials and Review Board members to discuss the Board's procedures, structure, and ESPC project reviews;
- Evaluated the reviews performed on six ESPC projects that had been recently awarded or were in the development phase; and
- Discussed the Review Board's procedures, structure, and project reviews with the ESPC project teams located at the Pantex Plant, Y-12 National Security Complex, Argonne National Laboratory, Fermi National Accelerator Laboratory, Idaho National Laboratory, and Headquarters and Germantown Offices.

We conducted this performance audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective. Accordingly, we assessed significant internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed implementation of the *GPRA Modernization Act of 2010* and found performance measures had been established for alternative financing contract awards. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We did not rely on computer-processed data to accomplish our audit objective.

Management waived the exit conference.

RELATED REPORTS

Office of Inspector General

- Audit Report on *The Department of Energy's Administration of Energy Savings Performance Contract Biomass Projects* (DOE/IG-0892, August 2013). The review of the Energy Savings Performance Contract (ESPC) financed biomass project at the Oak Ridge National Laboratory (ORNL) identified planning and operational issues with the project. Specifically, the ORNL Site Office had not required site characterization testing and mitigation of adverse conditions prior to awarding the ESPC; mitigated the risk of bio-fuel shortages and cost fluctuations; and verified the quantity of bio-fuel deliveries. The problems identified with the ORNL Biomass Plant were due, in part, to inadequate guidance and oversight. Notably, the Department of Energy (Department) lacked sufficient guidance for managing the construction of large-scale ESPC projects. Also, the Department had not developed a process to identify, document, and disseminate lessons learned from ESPC projects across the Department complex.
- Audit Report on the *Management of Energy Savings Performance Contract Delivery Orders at the Department of Energy* (DOE/IG-0822, September 2009). The audit revealed the Department had not always effectively used ESPC orders to achieve energy savings. Specifically, the Department had not ceased payments to the energy services company after projects had stopped generating savings; verified the ESPC orders had generated the contractually required energy savings; ensured equipment installed was appropriately operated and maintained; and taken actions to include all costs necessary to implement the project when evaluating the project's cost-effectiveness. In addition, site offices had not ensured adequate management existed for individual orders; the Department had not implemented an effective training program for contract and technical support personnel; and the Federal Energy Management Program had not developed specific guidance regarding estimates of the costs of energy improvements.

Government Accountability Office

- Report on *Energy Savings: Performance Contracts Offer Benefits, but Vigilance Is Needed to Protect Government Interests* (GAO-05-340, June 2005). The Government Accountability Office (GAO) found that agency officials lacked technical and contracting expertise and information on past contracts was needed to effectively evaluate the ESPC proposals. As a result, agencies often relied on the energy services companies, calling into question the quality of the contract negotiated by officials. Moreover, GAO concluded that developing an ESPC is difficult, requiring both technical and contracting expertise. In particular, for the development phase of ESPCs, GAO determined that agencies frequently had difficulty with technical responsibilities such as accurately calculating energy-use baselines and forecasting utility rates. They found that expertise was lacking mainly because of inexperience with ESPCs, and information was lacking primarily because agencies are not required to collect and disseminate it.

FEEDBACK

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We aim to make our reports as responsive as possible and ask you to consider sharing your thoughts with us.

Please send your comments, suggestions, and feedback to OIG.Reports@hq.doe.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 253-2162.