

*Administration of Barack Obama, 2011*

**Memorandum on the Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings**

*December 2, 2011*

*Memorandum for the Heads of Executive Departments and Agencies*

*Subject:* Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings

The Federal Government owns and operates nearly 3 billion square feet of Federal building space. Upgrading the energy performance of buildings is one of the fastest and most effective ways to reduce energy costs, cut pollution, and create jobs in the construction and energy sectors. We have a responsibility to lead by example, reduce our energy use, and operate our buildings efficiently.

Meeting that responsibility requires executive departments and agencies (agencies) to evaluate their facilities, identify potential savings, and appropriately leverage both private and public sector funding to invest in comprehensive energy conservation projects that cut energy costs. The Federal Government can do so by increasing the pace of the implementation of energy conservation measures, and improving the results from its energy efficiency investments.

In Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance), my Administration reaffirmed a commitment to reduce energy intensity in agency buildings. In addition, through my memorandum of June 10, 2010 (Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency), and through the Campaign to Cut Waste, my Administration has directed agencies to cut energy costs in agency facilities as part of a broader effort to reduce spending and shrink the Federal Government's real estate footprint. In order to ensure agencies fully meet these goals and maximize the cost reduction and job creation potential of making Federal buildings more energy efficient, I hereby direct the following:

*Section 1. Implement and Prioritize Energy Conservation Measures.* (a) Agencies shall fully implement energy conservation measures (ECMs) in Federal buildings with a payback time of less than 10 years, consistent with real property and capital improvement plans. Agencies shall prioritize ECMs with the greatest return on investment, leveraging both direct appropriations and performance contracting, consistent with guidance by the Office of Management and Budget (OMB).

(b) The Federal Government shall enter into a minimum of \$2 billion in performance-based contracts in Federal building energy efficiency within 24 months from the date of this memorandum. Each agency shall include its anticipated total performance-based contract volume in its plan submitted pursuant to subsection (d) of this section.

(c) In order to maximize efficiency and return on investment to the American taxpayer, agencies are encouraged to enter into installation-wide and portfolio-wide performance contracts and undertake comprehensive projects that include short-term and long-term ECMs, consistent with Government-wide small business contracting policies.

(d) Agencies shall prioritize new projects under this section based on return on investment, develop a planned implementation schedule, and reconcile all investments with actions undertaken pursuant to Executive Order 13576 of June 13, 2011 (Delivering an Efficient, Effective, and Accountable Government). Agencies shall ensure that any performance-based contracts are consistent with, and do not duplicate or conflict with, real property plans or planned capital improvements.

(e) No later than January 31, 2012, agencies shall report their planned implementation schedule described in subsection (d) of this section to the Department of Energy's Federal Energy Management Program (FEMP), OMB, and the Council on Environmental Quality (CEQ).

(f) Beginning in 2012, agencies shall incorporate the planned implementation schedule into their annual Strategic Sustainability Performance Plans in furtherance of Executive Order 13514.

*Sec. 2. Complete Required Energy and Water Evaluations.* (a) Agencies shall identify in the Department of Energy's Compliance Tracking System (CTS) any ECMs that have been implemented, and ensure that the CTS is regularly updated.

(b) Consistent with section 432 of the Energy Independence and Security Act of 2007 (42 U.S.C. 8253(f)(2)), agencies shall complete all energy and water evaluations and report the ECMs and associated cost saving opportunities identified through these evaluations to the CTS.

*Sec. 3. Transparency and Accountability.* (a) Agencies shall, where technically feasible, continue efforts to connect meters and advanced metering devices to enterprise energy management systems to streamline and optimize measurement, management, and reporting of facility energy use.

(b) The FEMP shall assist agencies with timely implementation of subsection (a) of this section. Consistent with its mission and responsibilities, FEMP shall also track Government-wide implementation progress. Subject to the protection of critical infrastructure information and avoidance of disclosure of sensitive information relating to national security, FEMP shall annually publish these results, as well as facility energy usage data, in machine readable formats on agency websites, consistent with applicable OMB guidance.

(c) The OMB shall continue to track agency implementation and progress towards goal achievement on its Energy and Sustainability Scorecard, and publicly report on agency progress, pursuant to the requirements of Executive Order 13514.

*Sec. 4. Applicability.* This memorandum shall apply to agency activities, personnel, resources, and facilities located within the United States. The head of an agency may apply this memorandum to activities, personnel, resources, and facilities of the agency that are not located within the United States, to the extent the head of the agency determines that doing so is in the interest of the United States.

*Sec. 5. Exemption Authority.* (a) The Director of National Intelligence may exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from the provisions of this memorandum, to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt particular facilities from the provisions of this memorandum where doing so is in the interest of national security. If the head of an agency

issues an exemption under this subsection, the agency must notify the Chair of CEQ in writing within 30 days of issuance of the exemption. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this memorandum.

*Sec. 6. Definitions.* For the purposes of this memorandum:

(a) "energy conservation measure" (ECM) has the same meaning as in 42 U.S.C. 8259(d).

(b) "energy savings performance contract" (ESPC), as authorized by 42 U.S.C. 8287, means a contract (or task order) awarded to an energy service company (ESCO) for up to 25 years that provides for the design, acquisition, financing, installation, testing, operation, and maintenance and repair of identified ECMs at one or more locations. Under an ESPC, the ESCO incurs the costs of project implementation, including audits, acquiring and installing equipment, and training personnel, in exchange for a predetermined price. Payment to the ESCO is contingent upon realizing a guaranteed stream of future savings, with excess savings accruing to the Federal Government.

(c) "performance-based contract" means a contract that identifies expected deliverables, performance measures, or outcomes, and makes payment contingent on their successful achievement. Performance-based contracts also use appropriate techniques, which may include consequences or incentives to ensure that the agreed-upon value to the agency is received. Performance-based contracts, which include ESPCs, can be performed by any qualified contractor, including utilities.

(d) "agency" has the same meaning as in Executive Order 13514.

(e) "United States" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and associated territorial waters and airspace.

*Sec. 7. General Provisions.* (a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

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