

Department of Energy

§ 436.31

Subpart B—Methods and Procedures for Energy Savings Performance Contracting

Energy Conservation Policy Act, 42 U.S.C. 8287–8287c.

[60 FR 18334, Apr. 10, 1995, as amended at 60 FR 19343, Apr. 18, 1995; 65 FR 39786, June 28, 2000]

SOURCE: 60 FR 18334, Apr. 10, 1995, unless otherwise noted.

§ 436.31 Definitions.

§ 436.30 Purpose and scope.

As used in this subpart—

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts awarded on or before September 30, 2003. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

*Act* means Title VIII of the National Energy Conservation Policy Act.

*Annual energy audit* means a procedure including, but not limited to, verification of the achievement of energy cost savings and energy unit savings guaranteed resulting from implementation of energy conservation measures and determination of whether an adjustment to the energy baseline is justified by conditions beyond the contractor's control.

*Building* means any closed structure primarily intended for human occupancy in which energy is consumed, produced, or distributed.

(b) *Utility incentive programs.* Nothing in this subpart shall preclude a Federal agency from—

*Detailed energy survey* means a procedure which may include, but is not limited to, a detailed analysis of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy for the purpose of confirming or revising technical and price proposals based on the preliminary energy survey.

(1) Participating in programs to increase energy efficiency, conserve water, or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities;

*DOE* means Department of Energy.

(2) Accepting financial incentives, goods, or services generally available from any such utility to increase energy efficiency or to conserve water or manage electricity demand; or

*Energy baseline* means the amount of energy that would be consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, submetering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or some combination of these methods.

(3) Entering into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of each Federal agency.

*Energy conservation measures* means measures that are applied to an existing Federally owned building or facility that improves energy efficiency, are life-cycle cost-effective under subpart A of this part, and involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

(c) *Promoting competition.* To the extent allowed by law, Federal agencies should encourage utilities to select contractors for the conduct of utility incentive programs in a competitive manner to the maximum extent practicable.

*Energy cost savings* means a reduction in the cost of energy and related operation and maintenance expenses, from

(d) *Interpretations.* The permissive provisions of this subpart shall be liberally construed to effectuate the objectives of Title VIII of the National