

# US ARMY INVESTS IN RENEWABLES

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The U.S. Army recently announced plans to solicit and award multiple indefinite delivery, indefinite quantity (ID/IQ) contracts as the predicate for power purchase agreement task orders in an aggregate amount of up to \$5 billion with individual task orders expected to range from \$50 million to \$900 million each. The renewable or alternative energy projects will be financed, constructed, operated and maintained by private contractors, and located on or near Army installations.

Pursuant to targets initially established in the Energy Policy Act of 2005 and then updated in the John Warner National Defense Authorization Act for Fiscal Year 2007, twenty-five percent of the energy purchased by the Department of Defense must come from renewable resources by 2025.<sup>1</sup> (The Army currently obtains just 2 percent of its electricity from renewable energy technologies.) Using the expressions of interest it has received thus far, the Army is determining how best to configure solicitations for specific projects and anticipates that multiple award ID/IQ contracts will be awarded beginning in 2013, with successful bidders permitted to compete for PPA task orders during the following five years.

Eligible energy resources under the solicitation will include solar, wind (subject to potential limitations on the height of wind turbines), geothermal and biomass projects, and may also include projects using alternative energy sources that reduce greenhouse gas emissions, reduce energy costs, or improve energy security. A key goal of the renewable energy initiative is achievement of the Army's "net zero" objectives for installations in the continental United States.

## EVOLUTION OF DOD ENERGY PROCUREMENT

The Department of Defense has previously approached renewable energy



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resource development projects using structures that did not include long-term PPAs. For example, the Fort Irwin Army Base announced a 500 MW solar project using an "enhanced use lease" (EUL) model, where rent on the project site would be paid by the project sponsor through in-kind services such as electric generation to serve on-base demand. In that case, the project was awarded to private developers in 2009, but has yet to begin construction. By contrast, the 15 MW solar installation at Nellis Air Force Base used a PPA between the Navy and the project owner, and in Fiscal Year 2010, the Department of Defense awarded over \$300 million in Energy Savings Performance Contracts or Utilities Energy Savings Contracts.<sup>2</sup>

Although it is expected that PPAs will be the primary vehicle used under the Army's solicitation, other mechanisms are not precluded. Also, the Army's prior experience with EUL's and energy savings performance contracts has led to some institutional reticence about departing from such structures in connection with future task orders for renewable energy. However, it appears that the Army's senior legal advisors have now concluded, based in part on authority granted pursuant to the Energy Policy Act of 2005,<sup>3</sup> that suitable procedures exist for the Army to approve and enter into PPAs with terms of up to thirty years.

## CENTRALIZATION OF RENEWABLE ENERGY DEVELOPMENT

On September 15, 2011, the Army established the Energy Initiatives Office Task Force (EIO), which is charged with streamlining existing acquisition processes and leveraging private investment to develop large-scale renewable and alternative energy projects on Army installations. By centralizing its efforts on large-scale projects, the Army hopes to attract the sub-

stantial private investment that it will need over the next 10 years to meet its internal goals and federal mandates.<sup>4</sup> This approach is in addition to base-specific development efforts already under way on various projects across the country.

EIO representatives have not yet specified the form that the solicitations will take, but have announced an Army Energy Initiatives Task Force Summit, which will be open to the public and will take place on November 3, 2011 at the Navy Yard in Washington, DC. (see [www.ArmyEIO.com](http://www.ArmyEIO.com)). It is anticipated that additional information will be forthcoming at that event, which will be broadcast via the EIO website.

## NET ZERO STATUS

In addition to assisting the Army in lowering greenhouse gas emissions and complying with its renewable energy mandate by 2025, the development of large-scale renewable or alternative energy facilities is also a key component of the Army's "net zero" objectives for U.S. installations.

The Army defines a net zero energy installation as one that produces as much renewable energy on site as it uses, on an annual basis. This includes conservation and efficiency efforts in addition to renewable energy generation. Similarly, a net zero water installation reduces the potable fresh water consumed, and repurposes or recharges an amount equal to that consumption on an annual basis (net zero waste installations use a similar methodology). Thus, the Army is interested in using waste-to-energy technologies as well as large scale energy storage, wind energy generation, geothermal energy, microgrids, solar energy and the design and installation of net zero homes to advance its broader policy objectives.<sup>5</sup>

The Army previously satisfied its renewable energy mandates through the purchase of renewable energy certificates or clean energy rather than on-site generation. Although the Army's recent solicitation is not restricted to on-site generation, projects on or near Army installations will serve the dual purpose of moving the Army towards achievement of both renewable energy mandates and net zero objectives, and are therefore likely to be preferred.

## CONCLUSION

Project sponsors should consider opportunities presented by the Army solicitation from a variety of perspectives. First, it is important to bear in mind that the Army's initiative likely will be implemented from both the "top down" and the "bottom up." Base commanders will have significant input to the procurement and selection process, while the Pentagon

Brass continue to establish and implement policy directives.

Second, although the Army's preliminary solicitation issued this summer sought expressions of interest from potential future bidders, the actual solicitations likely will prefer bidders having some or all of the following characteristics: (i) large organizations that can deliver a standardized offering to the Army at a number of locations (which may in turn offer financial and operational economies of scale), (ii) organizations that can deliver projects that are largely self-contained, without extensive supply chain or fuel requirements, (iii) organizations with multi-renewable resource capabilities, and (iv) organizations having pre-existing relationships with the Army.

In short, the Army's proposed procurement of renewable and alternative energy offers a variety of significant project opportunities, and successful sponsors will tailor their proposals to highlight both their own strengths in renewable energy development as well as their ability to support attainment of the Army's renewable energy mandates and net zero objectives.

<sup>1</sup>This goal is codified at 10 U.S.C. § 2911.

<sup>2</sup>Energy savings contracts typically involve the installation of energy efficiency equipment, where the contractor provides financing for the equipment and is repaid through a portion of the energy savings realized.

<sup>3</sup>See 10 U.S.C. § 2922A

<sup>4</sup>The Army has estimated that meeting the renewable energy targets will require \$7.1 billion in investment over the next ten years. Under the current solicitation, the Army has stated that it plans to issue task orders for \$5 billion in future projects.

<sup>5</sup>Fort Bliss recently closed a request for information related to achieving a net zero energy consumption on base by 2015, followed by net zero water and waste by 2018.

Ballard Spahr LLP has extensive experience with various forms of renewable energy, tax-exempt and public-private partnership finance structures involving the U.S. Army and other branches of the U.S. military as well as related experience in other aspects of renewable energy project development and finance. If you have any questions on opportunities regarding energy projects with the Army, please contact Roger D. Stark at 202.661.7620 or [starkr@ballardspahr.com](mailto:starkr@ballardspahr.com), or Darin Lowder at 202.661.7631 or [lowderd@ballardspahr.com](mailto:lowderd@ballardspahr.com).