

# Utility Energy Services Contract Structure

Hybrid financing allows utility to provide financed energy projects without risks associated with traditional financing



## The Challenge

Typically, financed projects using GSA Areawide Agreements traditionally have required the contracting utility to directly sell the future payments associated with a Task Order (TO) to a third party lender under a Master Purchase Agreement (commonly referred to as a “sale of receivables” transaction). In doing so, the utility has had to negotiate and execute the MPA and then take on direct financial responsibility for delays in project implementation and acceptance by the government.

In a traditional MPA, the utility is required to make interim interest payments to the Lender in the event project acceptance is delayed and the government does not begin to make payments as scheduled. In addition, the Lender has the option to require the utility to repurchase the TO payments in the event that acceptance is not achieved within the contractually agreed upon maximum time period. Typically the repurchase price is equal to the government’s termination price (the outstanding principal amount due plus accrued interest and a termination premium of two to seven percent).

The delay or termination costs incurred by the utility could presumably be passed through to an energy services company subcontractor, but the utility would still be liable for gaps between the TO and its ESCO subcontract as well as supporting the credit

of its subcontractor. More importantly, because of the lender’s right to require a pre-acceptance repurchase of the TO payments, the utility is often required to record construction draws received from the lender as debt until final government acceptance is received. This can be problematic for a public utility that must obtain regulatory approval before issuing debt.

## The Solution

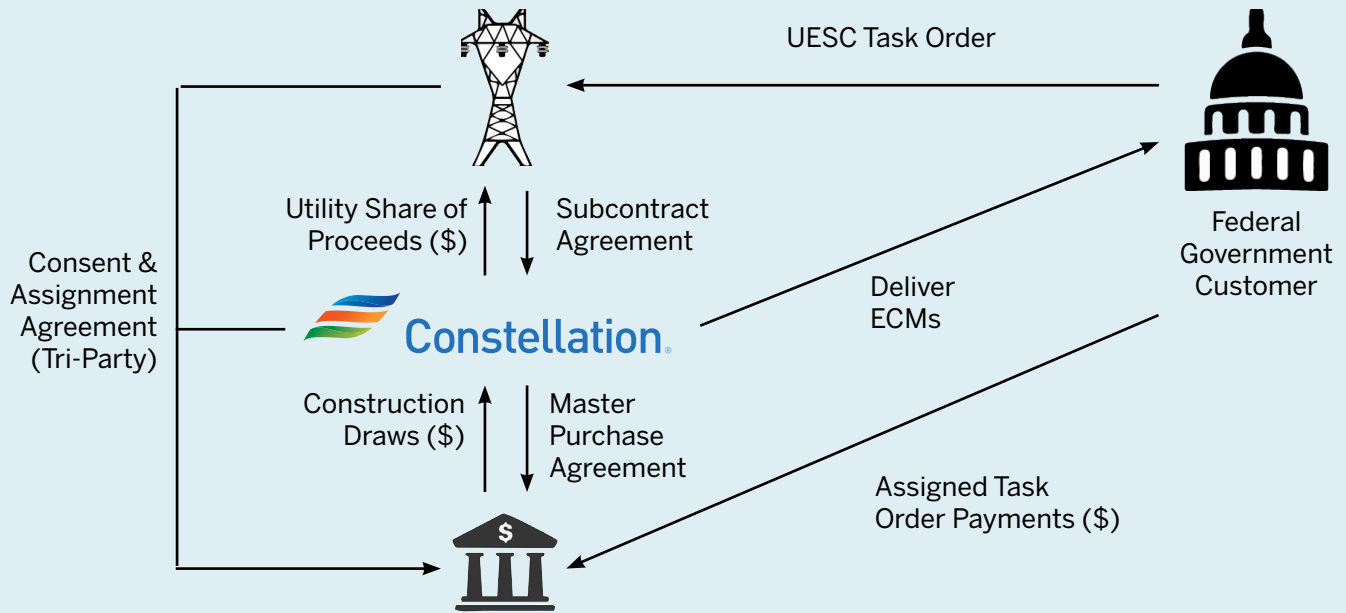
The hybrid financing structure solves this problem by making Constellation, acting as the ESCO subcontractor, directly liable to the lender for pre-acceptance construction issues. In this structure, Constellation (and not the utility) negotiates and executes the MPA. This is possible because of Constellation’s investment grade credit rating (as supported by its parent Exelon Generation LLC) and its willingness to commit balance sheet support to UESC projects. The utility is only required to execute a simple document assigning to the lender the payments due from the Government under the Task Order.

As in the traditional structure, the Subcontract Agreement defines the scope of work to be performed by Constellation – mirroring the utility’s TO with the government. The payment terms differ in that the utility agrees to assign to Constellation all of the government payments associated with the scope of work.



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## UESC Financing Structure Overview



Constellation in turn agrees to pay the utility a fee that is incorporated into the TO price.

Constellation will competitively select a lender to purchase the future TO payments assigned to it by the utility in the Subcontract Agreement. Since the payments are still going directly to the lender from the Government, the interest rate reflects the Government's credit worthiness and Constellation's investment grade credit rating. The proceeds of this sale fund construction of the project including the payments to Constellation and the utility. Under the MPA, Constellation assumes direct responsibility for any pre-acceptance construction and acceptance issues that impact the lender. As in a traditional MPA, the entire transaction is transparent to the government customer.

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