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Successful PPA's; Industry Perspectives and Risk Sharing

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NAVFAC SW Solar MAC

- Covers DoN installations in CA, AZ, NV, UT, NM, CO, for Solar PPA's
- IDIQ fixed price, 5 yr ordering period
- Total ceiling of $200,000,000
- 5 MAC awardees
  - AECOM/Solar Power Partners
  - Chevron
  - SunDurance
  - SunEdison
  - SunPower

Perceived Risks For Government

- “Take or Pay”
- Unknown cost of “brown” power in out years
- Lot of Terms and Conditions in industry PPA not consistent with government contract
- Termination Liability
- Who is responsible for performance?
- Very little precedent, no true boilerplate
- Too hard

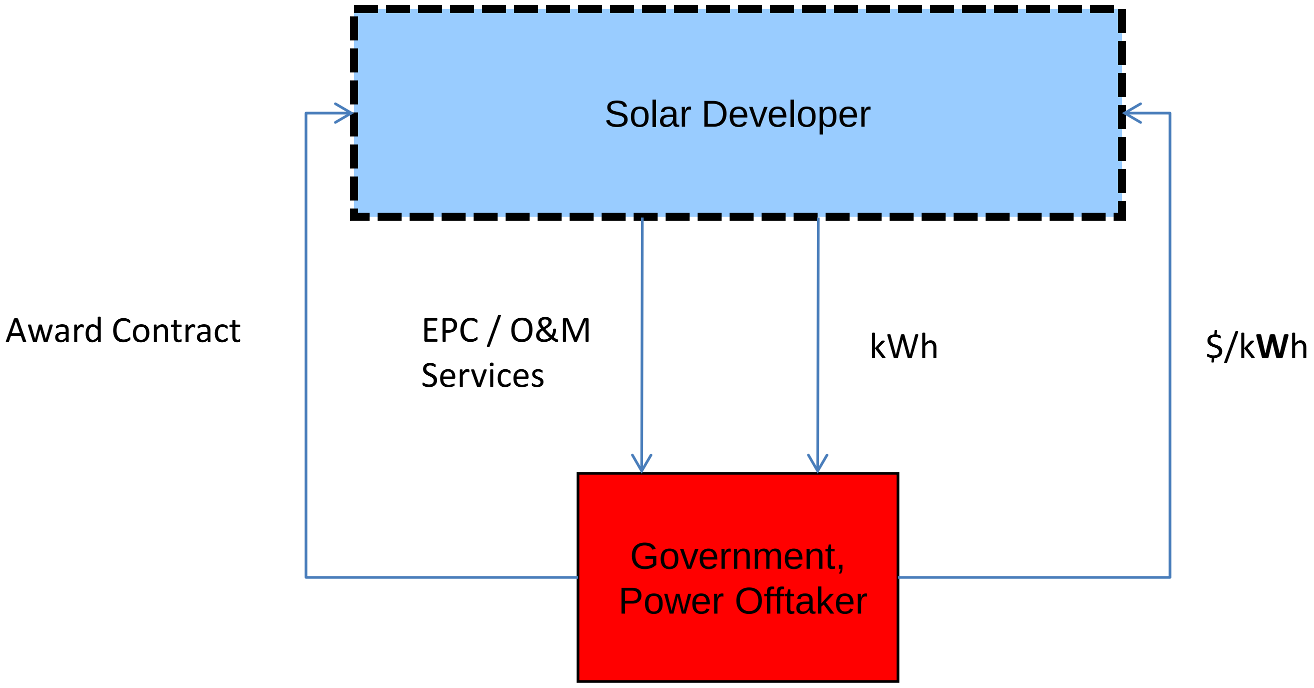
Perceived Risks For Industry

- Termination for Convenience
- Lack of Lender accommodations (Assignment, Step in Rights)
- Fear and loathing of FAR (and FAR clauses)
- Dispute Resolution
- Take or Pay (ability to take all that's produced)
- Site Access/Real estate documentation

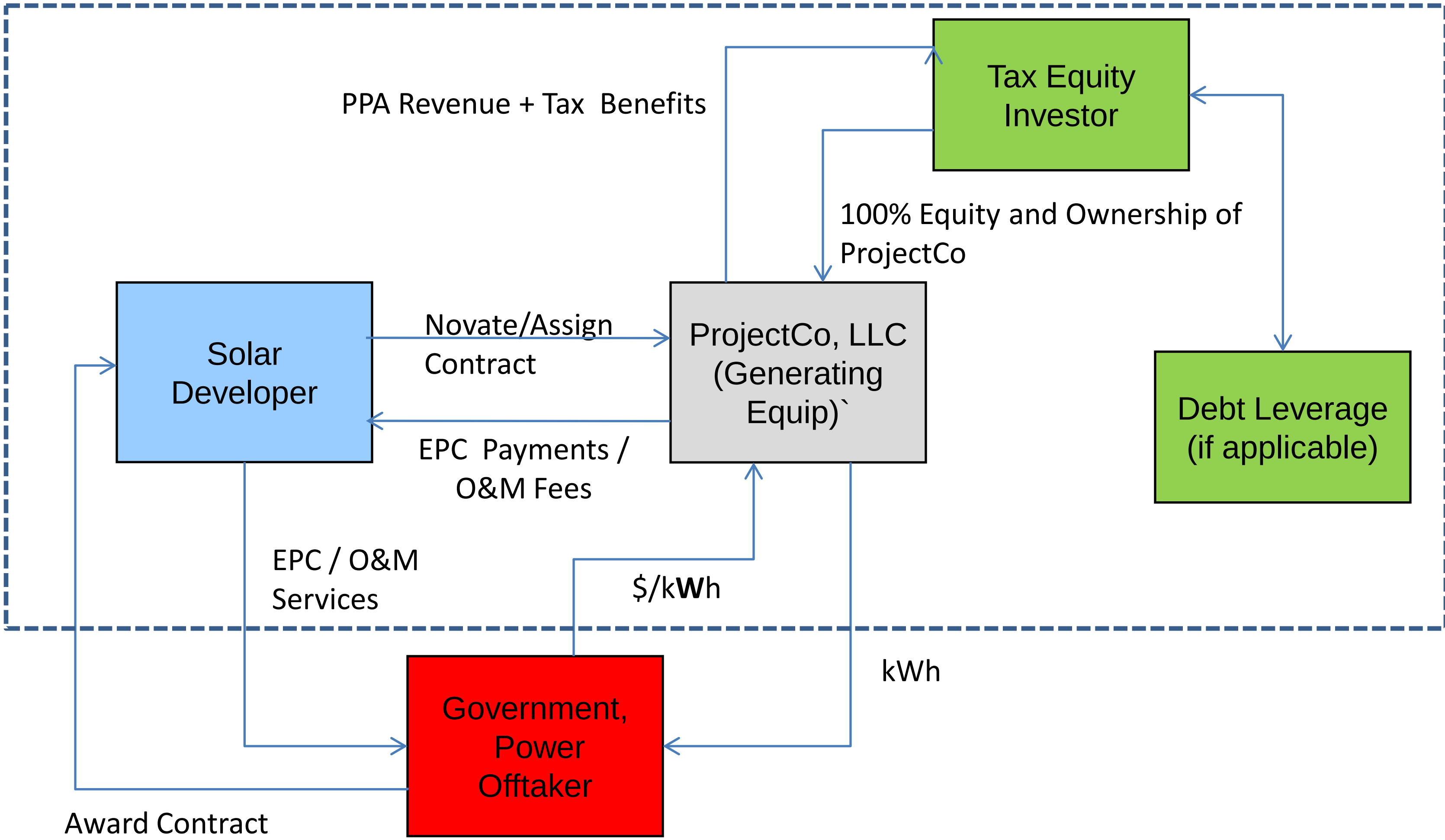
Perceived Risks For Industry (continued: back up slide)

- Rolling FAR's down to Subs
- Cost/timing of development
- KO experience (willingness to push envelope)
- NEPA timing and costs
- End of term removal (depending on size)
- Protest/Exposure/Timing

Government Perception of Arrangement



“Typical” Developer/Financier Arrangement



Note: Renewable Energy Certificates or other state incentives usually retained by ProjectCo

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What's the deal behind "The Deal"?

- Tax Equity – someone wants the tax benefit
- Assets must be sold to that "someone"
- The LLC represents that asset, and is sold/transferred as such at "market value" (separate for each project)
- Long term Fixed Revenue (think Annuity)
- Other financial benefits (Accelerated Depreciation, Renewable Attributes)
- Basic structure used throughout, with some differences

How do we get there from here?

- Look “inside the box” conceptually
- Engage with those that understand the risks
- Educate
- Assess benefits vs. risks
- Industry “Top 4”
  - Termination for Convenience
  - Assignability of Contract
  - Unfamiliarity of FAR
  - Take or Pay

Getting over the Hump
Termination for Convenience

- Gov't has right to Terminate at any time
  - High risk potential for financier
- Intent of T for C is that Government will pay for costs incurred and costs associated with termination
- Termination schedule (comfort level of what to expect for industry)
  - Termination values are not known until deal is signed with financier
- Assess risk of T for C, why we would, and under what circumstances

Getting over the Hump
Assignability of the Contract

- Developer requires ability to assign the contract and assets to the LLC
- Gov't needs to recognize these arrangements up front (contrary to how typical "assignments" are allowed)
  - Transfer of title and obligation to perform (successor of interest)
  - Developer can remain fully liable for performance
- Sale and lease back arrangement also may be used
  - Ownership of system is not required to perform
- "Step in rights" very important
- Assignment of payments

Getting over the Hump
Fear of the FAR

- A lot of unknowns to industry
- Unclear what the penalties are for non-compliance
- Clauses by reference represents risk to financing entity
  - Clear delineation of which clauses apply to each term and condition
  - Clauses that apply for performance included in full text
  - Strengthen or clarify clauses with additional verbiage
- Disputes Resolution
  - How long?

Getting over the Hump
Take or Pay

- Investor wants guaranteed revenue stream vs. Gov't pays for only what it consumes.
  - Size of System vs. load
  - Net metering (where applicable)
  - Level of production vs. consumption
    - Instantaneous vs. annual (or over term of contract)
  - Balancing of account or true-up
  - Extend contract
  - Penalty for under production