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Budgeting, Funding, and Scoring

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What is Scoring?

- Measuring changes in government spending or receipts
- Measuring spending actions taken by:
  - Legislative Branch
    - Keeping track of legislation that affects spending or receipts
    - Holding Congress accountable for its power of the purse
  - Executive Branch
    - Measuring execution of Congressional appropriations (apportionment and accounting)
    - Holding Agencies accountable for spending actions
- What governs scoring?
  - OMB Circular A-11
  - Budget Enforcement Act (1990)
  - Gramm-Rudman-Hollings (1985)

Who Participates in Scoring?

- **Congressional Budget Office (CBO) – Focus:**
  - **LEGISLATIVE:** What is the cost of new legislation? CBO checks to see if legislation exceeds congressional spending limits
- **Office of Management and Budget (OMB) – Focus:**
  - **LEGISLATIVE:** Checks to see check if legislation exceeds Congressionally-legislated limits
  - **BUDGET EXECUTION:** Looks at how much of an agency's appropriations will it have to use when it executes on Congressional appropriations (such as for leasing)
    - Guidelines for Capital projects are found in OMB Circular A-11, Appendix B
    - Implements **Anti-deficiency Act** (ADA) – no agency can obligate the Government to pay more than the amount appropriated

"Why" do we do scoring (applicable laws)?

- The Constitution
- Antideficiency Act (codified in Chapters 13 and 15 of Title 31, United States Code
- 11 USC 31 .
- Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344), as amended.
- Balanced Budget and Emergency Deficit Control Act of 1985
- Budget Enforcement Act of 1990
- The Budget Enforcement Act of 1997
- Government Performance and Results Act of 1993

Reference: http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/concepts.pdf

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Capital vs. Operating Expenditures

Operating Costs:

Costs that keep the government "operating"

Capital Costs:

Expenditures that are equivalent to the purchase of a capital, or fixed asset (such as a building, piece of machinery, aircraft carrier).

OMB A-11 defines capital assets as: land, structures, equipment, intellectual property that are used by the Federal government and have an estimated life of two years or more.

How does OMB Define "Alternative Financing"?

OMB Circular A-11 http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc requires:

Agencies are **required to submit to their OMB representatives the following types of leasing and other non-routine financing proposals** for review of the scoring impact:

- Any proposed **lease** of a capital asset where total Government payments over the full **term of the lease would exceed $50 million**. It should be assumed that options to renew will be exercised.
- All **financing proposals that are non-routine** in nature and involve unique or unusual concepts or characteristics such as those listed below:
  - **Outlease-leaseback** mechanisms;
  - Establishment of public-private partnerships or limited liability corporations;
  - Issuance of **debt by a third party** that includes an explicit "full faith and credit" guarantee of debt repayment by the Government or an **implicit guarantee** of repayment from Federal funds that removes a substantial amount of the investor's risk.
  - **Special purpose assets** for which there is no real private sector market;
  - Enhanced-use leases with leasebacks with annual payments above threshold levels
  - Projects constructed or located **on Government land**

Examples of Alternative Financing Transactions

- Debt backed by full faith & credit of the US
- Capital leases
- Public/private partnerships
- Share-in-savings contracts
- Enhanced use leases
- Outlease/leasebacks

Common characteristic – defer cash payments while giving the Government the use of assets

Source: OMB

Public/Private Partnership Defined

- Applies only to government lease-backs from public/private partnerships with substantial private participation.
- Includes special purpose entities for which the Government is a beneficiary.
- Substantial private participation means:
  - Non-Federal partner has majority ownership share of the partnership and its revenues;
  - Non-Federal partner contributed at least 20 percent of the total value of the assets owned by the partnership; and
  - Government has not provided indirect guarantees of the project, such as a rental guarantee or a requirement to pay higher rent if it reduces its use of space.

Source: OMB

Public/Private Partnerships (continued)

- Total value includes assets contributed by Government (except land) and all improvements made to the asset.

- Contributions by the non-Federal partner of cash, real assets, and loans for which the non-Federal partner is responsible for repayment count towards meeting the 20 percent threshold.

- Federal direct loans or loan guarantees do not count towards the 20 percent threshold.

Source: OMB

Traditional Scoring of Public/Private Partnerships

- If part governmental, considered totally governmental
- Treat borrowing by the partnership as Federal borrowing
- Require agency to obligate BA equal to the amount borrowed

CBO continues to take this position when it scores legislation.

Source: OMB

Legislative Authorities for Acquisition of On-Site Renewable Energy Projects

General: Alternate Finance Investments involve private sector entity borrowing money to make investments on Army asset, paid back over time from savings or power sales:

- **Energy Savings Performance Contracts (ESPCs)** – Contractor improves Army facilities, paid back out of energy savings
- **Power Purchase Agreement (PPA)** – Army contracts for long-term delivery of renewable power, private investor builds plant to meet this need
- **Enhanced Use Lease (EUL's)** – Army makes available land for renewable power generation, private investor builds plants, sells some power and Army receives in-kind payment i.e. power
- **Utility Energy Service Contract (UESC)** – Local utility invests in Army facilities, paid back through reduced demand

Each process is complex and governed by different authorities, but all require energy project development expertise

How Does Scoring Apply to Energy Projects?

Acquisition Approaches	Potential Scoring Triggers
Power Purchase Agreement (PPA)	• Government has an implicit guarantee • Service contracts where the contractor is required to acquire or construct assets valued over $50M
Energy Service Contracts (ESC)	• Government has an implicit guarantee
Energy Savings Performance Contracts (ESPC)	Exempt from scoring per "Federal Use of Energy Savings Performance Contracting" (memorandum from Jacob Lew to the heads of executive branch departments and agencies, July 25, 1998) • Full cost of Federal investment for improvements is covered by savings to be generated • Sufficient discretionary budgetary resources are required to complete the first fiscal year's contract costs; discretionary budget authority and outlays are recognized annually for subsequent years
Utility Energy Service Contracts (UESC)	

How Does Scoring Apply to Energy Projects?

<table>
<tr><th>Land and Realty Outgrant Agreements</th><th>Potential Scoring Triggers</th></tr>
<tr><td>Energy EUL with a Portion of Power Purchased (or with Power Provided In-Kind)</td><td>• Government has an implicit guarantee
• Government participates as a partner in a joint venture or LLC
• Service contracts where the contractor is required to acquire or construct assets valued over $50M
• Share in savings that result in acquisition of real property</td></tr>
<tr><td>Energy EUL with 100% Power Purchased</td><td>• Government has an implicit guarantee
• Service contracts where the contractor is required to acquire or construct assets valued over $50M
• Share in savings that result in acquisition of real property</td></tr>
<tr><td>Easement</td><td rowspan="3">Do not trigger scoring unless they result in a capital investment or are used in conjunction with a PPA or ESPC</td></tr>
<tr><td>License / Permit</td></tr>
<tr><td>Lease</td></tr>
</table>

Army Energy Scoring Do's and Don'ts

Allowable under OMB A-11	Not Allowable under OMB A-11
Can provide ground lease underutilized real property / assets to developer (can be 50 years)	Cannot link land agreement to PPA or ESC
Must transfer ownership risks and costs to developer	Cannot provide federal guarantee of financing of developer
Ground lease "in-kind rent" can include provision of services or power	Variable/contingent rent on ground lease could trigger capital lease on lease back
Power must be secured through competition under "operating lease" guidelines	Cannot have link between decision-making on acquisition agreement and contingent power purchase

Consequences if Scoring is Triggered

- Budget authority used more rapidly than expected
- Retroactively found to violate the Anti-Deficiency Act (ADA)

Thank You

- Questions
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