



MEMORANDUM FOR PBS REGIONAL COMMISSIONERS

FROM: TAMELA L. RIGGS *Tamela Riggs*
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OFFICE OF ACQUISITION MANAGEMENT (PGQ)

SUBJECT: Policy on Allocation of Energy Efficient Tax Deduction to Contractors

The Energy Policy Act of 2005 (P.L. 109-58) authorized the Energy-Efficient Commercial Buildings Tax Deduction for expenses incurred for qualified energy efficient building investments made by a building owner. The deduction may be taken in the year the energy-efficient improvements are placed in service. In government-owned buildings, the government may allocate this deduction to the person or persons primarily responsible for designing the qualified improvements. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) extended this deduction through December 31, 2013. The provisions authorizing the deduction are codified at 26 U.S.C. § 179D.

The Energy-Efficient Commercial Buildings Tax Deduction is a significant financial incentive for contractors to meet or exceed GSA's energy reduction requirements for new and existing buildings. In the event that a contractor requests an allocation of the tax deduction from GSA, GSA will allocate the deduction in the manner set forth in the attached Policy. This Policy will be attached to solicitations and task orders for all new construction, major and minor repairs, and alteration work for which the scope includes design or installation of interior lighting systems; heating, cooling, ventilation, and hot water systems; and building envelopes.

If you have any questions, please contact Lance Davis, Office of Chief Architect, at (202) 208-2038.

Attachment

cc: Assistant Commissioner, Office of Organizational Resources
Assistant Commissioner, Office of the Chief Architect
PBS Recovery Executive
Director, Office of Federal High Performance Green Buildings
Regional Procurement Officers
Regional Design and Construction Directors

GSA PUBLIC BUILDINGS SERVICE POLICY ON ENERGY EFFICIENT COMMERCIAL BUILDINGS TAX DEDUCTION

Owners of commercial buildings, both new and newly renovated, may be authorized to claim an Energy Efficient Commercial Buildings Tax Deduction (26 U.S.C. § 179D). Under IRS guidelines, the deduction for a government building may be allocated to the person(s) that created the technical specifications (the “designer”) for installation of the energy efficient property. The designer may be the architect, engineer, contractor, environmental consultant, or energy services provider. A person that merely installs, repairs, or maintains the property is not a designer.

The Project Manager is authorized to determine whether this tax deduction should be allocated. In the event a contractor asks GSA to allocate an Energy Efficient Commercial Buildings Tax Deduction, the following procedures will apply:

- Only a prime contractor may request an allocation. For the purposes of allocating this deduction, the Project Manager will recognize the architect-engineer as the prime contractor. For a design-build project or repair and alteration project for which there is no architect-engineer, the general contractor will be recognized as the prime contractor. For a design-build-bridging project, either the bridging architect or the design-build contractor may be recognized as the prime contractor. The Project Manager should make this determination based on the allocation of work; the deduction should be allocated to the contractor primarily responsible for the design for which the contractor is claiming the tax deduction. If possible, this determination should be clearly stated in the contract(s).
- A subcontractor that would like GSA to allocate a deduction to it must request it through its prime contractor.
- The prime contractor may propose an allocation of a full deduction (for a project that involves multiples systems) or a partial deduction (for a project that involves only the interior lighting system; heating, cooling, ventilation, and hot water system; or building envelope). In both cases, the prime contractor may split the allocation between more than one designer if more than one created the applicable technical specifications.
- The Project Manager will allocate the deduction based on the submission of the prime contractor and will issue the requested allocation in the form of the template posted at <http://insite.pbs.gsa.gov/pbsacqpolicy>. GSA is not responsible for the certification required by the Internal Revenue Service. The contractor(s) claiming the deduction are required to certify to the Internal Revenue Service that installation of the applicable property has resulted in the required energy cost reductions.

IRS guidance on allocation of the Energy Efficient Commercial Buildings Tax Deduction for government-owned buildings is set forth in Notice 2008-40, Internal Revenue Bulletin

2008-14, "Amplification of Notice 2006-52; Deduction for Energy Efficient Commercial Buildings." Notice 2008-40 can be found at http://www.irs.gov/irb/2008-14_IRB/ar12.html.