

and alteration of vessels. Contracting officers use the information required by paragraph (d) of the clause to determine if the contractor is adequately insured. Contracting officers use the information required by paragraphs (f) and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

Contracting officers use the information required by the clause at DFARS 252.217-7018 to determine the place of performance under contracts for bakery and dairy products. This information helps to ensure that food products are manufactured and processed in sanitary facilities.

Contracting officers use the information required by the provision at DFARS 252.217-7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. This collection complies with 10 U.S.C. 2384, Supplies: identification of supplier and sources, which requires the contractor to identify the actual manufacturer or all sources of supply for supplies furnished under contract to DoD.

Contracting officers use the information required by the clause at 252.217-7028 to determine the extent of "over and above" work before the work commences. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 785,244.

Number of Respondents: 49,944.

Responses Per Respondent:

Approximately 1.5.

Annual Responses: 75,944.

Average Burden Per Response:

Approximately 10.3 hours.

Frequency: On occasion.

Summary of Information Collection

Each provision or clause requires the offeror or contractor to submit certain information:

a. Paragraph (d)(3) of the clause at DFARS 252.217-7012 requires the contractor to show evidence of insurance under a master agreement for vessel repair and alteration. Paragraphs (f) and (g) of the clause require the contractor to notify the contracting officer of any property loss or damage for which the Government is liable, and to submit to the contracting officer a request for reimbursement of the cost of replacement or repair with supporting documentation.

b. Paragraphs (b) and (c) of the clause at DFARS 252.217-7018 require the offeror or contractor to obtain contracting officer approval before changing the place of performance of a contract for bakery or dairy products.

c. Paragraph (b) of the provision at DFARS 252.217-7026 requires the apparently successful offeror to identify its sources of supply.

d. Paragraphs (c) and (e) of the clause at DFARS 252.217-7028 require the contractor to submit to the contracting officer a work request and a proposal for "over and above" work.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05-10912 Filed 6-1-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Contract Financing: Performance-Based Payments

AGENCY: Department of Defense (DoD).

ACTION: Response to public input.

SUMMARY: The Director of Defense Procurement and Acquisition Policy (DPAP) recently completed an internal assessment regarding the use of performance-based payments as a method of financing for DoD contracts. This assessment has resulted in recommendations for revisions to policy, guidance, and training on the use of performance-based payments.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, DPAP Policy Directorate, by telephone at (703) 847-7486, or by e-mail at david.capitano@osd.mil.

SUPPLEMENTARY INFORMATION: As part of the internal assessment, DPAP published a **Federal Register** notice on September 9, 2004 (69 FR 54651), requesting the views of interested parties on what they believe are potential areas for improving DoD's use of performance-based payments. Seven sets of public comments were received in response to the DPAP request.

The DoD internal assessment resulted in 47 recommendations for revisions to the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), the DoD User's Guide to Performance-Based Payments (User Guide), and DoD training programs. The anticipated completion dates for these actions are as follows:

- FAR Revisions—Final FAR Rule: July 2006
- DFARS Revisions—Final DFARS Rule—August 2006

- Revised User Guide—August 2006
- Revised DoD Training Programs—August 2006

A summary of the public comments and the DPAP responses are as follows:

A. Training on Methods of Designing Performance-Based Payment Milestones

Comment: One respondent states that the greatest needs are for training of contracting officers and requiring activity personnel on the methods of designing performance-based payment milestones that are (1) truly performance based and (2) tied effectively to incentives, where appropriate. The training should also emphasize the "preferred method" status of performance-based payments, and the collaborative effort (between contracting officers and the requiring activity/end user) that is necessary to design effective and meaningful performance-based payment schemes.

DPAP Response: DPAP plans to amend the current DoD training materials to address the design of milestones and to emphasize the preferred status of performance-based payments.

B. Performance-Based Payments as the Method of Preferred Financing

Comment: One respondent believes that progress payments are preferable over performance-based payments. While progress payments are based on costs incurred, milestones for performance-based payments are highly influenced by the contractor and are skewed in their favor. The number of milestones on many programs may be greater than the line items on a contract, and the fact that the milestones are negotiated/established at the beginning of the contract does not take into account the fact that the contract changes over the lifetime. This makes many milestones dubious and/or unnecessary as the contract matures. This respondent also states that the time necessary to establish these milestones requires a number of additional negotiations during the life of the contract, which adds time to administration rather than streamlining the effort. While establishing milestones is supposed to flag problem contracts when a milestone is missed or not billed, the respondent believes that the loss position in a progress payment catches many more people's attention, since a single milestone could be lost in a myriad of milestones established in the contract. As such, the respondent believes that the policy of utilizing performance-based payments as the financing vehicle of choice is a bad idea.

Another respondent states that DPAP should issue policy stating that performance-based payments are the preferred method of financing on fixed-price contracts when the contractor concurs.

A third respondent states that progress payments are easier for the contract specialist because all the contract specialist has to do is make sure the FAR and DFARS progress payment clauses are in the solicitation. Conversely, performance-based payments are a tremendous amount of extra work. General milestones are included in the solicitation, and once award is made, detailed performance-based payment milestones must be negotiated. The respondent asserts that, in most cases, the milestones cannot be finalized in a competitive procurement. Depending on who gets the award, manufacturing processes may be different and events occur at different times. The respondent believes that, having used performance-based payments on five contracts, the experience will make it easier to use such payments in the future.

DPAP Response: Performance-based payments generally require more up-front work than progress payments. However, this is offset by the reduced administrative effort that results from the elimination of cost verifications. In addition, performance-based payments increase competition, since some commercial firms do not have accounting systems that are acceptable for progress payments. As such, performance-based payments should continue to be the preferred method of financing. To emphasize this preferred status, the FAR may need to provide a more assertive requirement for the use of performance-based payments. For example, when a contractor proposes performance-based payments but the contract includes progress payments, the FAR could require a contracting officer to document in the contract file why performance-based payments were not used. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

C. Indefinite-Delivery/Indefinite-Quantity Contracts

Comment: One respondent notes that establishing performance-based payments under indefinite-delivery/indefinite-quantity contracts at the "contract" level rather than the "order" level results in an administrative quagmire for both the Defense Contract Management Agency and the Defense Finance and Accounting Service. The

respondent recommends this issue be addressed as it has in the areas of progress payments. The respondent asserts that the similarity of each is highlighted at FAR 32.1001(c) and (d), Policy. These provisions state, in pertinent part, that "Performance-based payments are fully recoverable, in the same manner as progress payments * * *." The provisions further state "For Government accounting purposes, the Government should treat performance-based payments like progress payments based on costs under Subpart 32.5." The respondent recommends adding a paragraph to FAR 52.232-32, Performance-Based Payments, that is substantially the same as that at FAR 52.232-16(m), Progress Payments.

DPAP Response: FAR coverage may be needed to address indefinite-delivery/indefinite-quantity contracts, particularly with regard to if/how performance-based payments are established (*i.e.*, contract vs. order level). DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

D. Lesser of Cost and Performance Payment

Comment: One respondent states that FAR 32.1002 sets forth the basis or bases upon which performance-based payments might be made, none of which involve cost. There are instances where contract provisions have been included where performance-based payments are limited to the lesser of a specified performance-based payment schedule amount or incurred costs. The respondent asserts that this is inconsistent with the intent of performance-based payments.

DPAP Response: The benefits of performance-based payments are significantly reduced when there is a requirement to use the lesser of cost or the value of the performance payment. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

E. Responsible Official for Reviewing/Approving Performance-Based Payments

Comment: The respondent notes that, under FAR 32.1007(a), the contracting officer responsible for administration of the contract shall also be responsible for review and approval of performance-based payments. Where contracts are administered by other than the Procuring Contracting Officer (PCO), the contract administration function of

reviewing and approving/disapproving contractors' requests for either performance-based payments or progress payments are normally not retained by the PCO, but delegated to the Administrative Contracting Officer (ACO). However, there have been instances where review and approval of performance-based payments are not delegated to ACOs, notwithstanding the delegation of all other contract administration functions. The respondent asserts that this is an inefficient practice, given the ACOs' presence in or proximity to contractor manufacturing facilities, and familiarity with contractors' business and other systems. The respondent recommends that FAR 42.302(a) (or alternatively DFARS 242.302) require that performance-based payments be delegated to the ACO, unless the PCO can demonstrate compelling circumstances as to why the function should not be delegated.

DPAP Response: FAR 32.1007(a) requires that the contracting officer responsible for administering the contract also be the one responsible for reviewing and approving the performance-based payments. However, FAR 42.302(a)(12) is a function that may be retained by the PCO, *i.e.*, not delegated to the ACO. Thus, the ACO could administer most of the contract, but the PCO could retain the review/approval function for performance-based payments. In such cases, the contracting officer responsible for administering the contract would not be the same as the contracting officer responsible for reviewing/approving performance-based payments. DPAP has recommended that this possible inconsistency in the existing FAR provisions be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

F. Valuation of Performance-Based Payment Events

Comment: One respondent recommends that valuation of performance-based payment events receive increased emphasis, because the respondent believes it continues to be a weakness of contracting officers.

DPAP Response: The User Guide currently discusses the need for valuations to be commensurate with work performed, but does not include specific examples. DPAP plans to amend the User Guide and training to provide examples of inappropriate valuations (*e.g.*, front or back-loading of payments).

G. Increased Education and Emphasis on Use of Performance-Based Payments

Comment: One respondent notes the reluctance of some PCOs to include performance-based payments, even when the contract is a good candidate for use of such payments. This respondent recommends more education and emphasis on the use of performance-based payments. Another respondent also recommends more education. This respondent asserts that “contractors and DoD Buying Commands truly are unaware of the benefits of performance-based payments and especially how to structure a performance-based payment contract to achieve the mutual benefits performance-based payments provide. Progress payments are most acquisition personnel’s (Government and private) comfort zone. They understand them and have used them for years.” This respondent suggests increasing education via a “Performance-Based Payment Road Show” presented by the Office of the Secretary of Defense (OSD), with assistance from DoD personnel who have a wealth of performance-based payment experience and knowledge. This respondent suggests presentations by OSD personnel to contractors would also be beneficial.

DPAP Response: Increased training will facilitate the use and effectiveness of performance-based payments. DPAP will review the current training plan and revise it as necessary to maximize the effectiveness of DoD’s performance-based payment training.

H. Advantages/Disadvantages of Performance-Based Payments

Comment: One respondent identifies the following advantages and disadvantages of performance-based payments:

Advantages of Performance-Based Payments

- Performance-based payments drive the Program Team to focus on performance events and consequently the related performance-based payments billing.

- Performance-based payments help maintain the program schedule. Progress payments do not provide an insight into schedule performance.

- Performance-based payments provide the contractor an opportunity for increased cash flow; if the billing event is completed ahead of schedule, then payment is received earlier.

- Performance-based payments reduce the cost of administration and streamlined oversight. Progress payments require a separate system

approval by the Government. Material Management and Accounting Systems are not required for performance-based payment contracts.

Disadvantages of Performance-Based Payments

- Use of performance-based payments requires the agreement of both parties to the contract. This complicates the source selection process and can disadvantage the offeror seeking the use of performance-based payments.

- Additional effort is required to track each performance-based payments event due date and monitor completion status of each event. This is particularly difficult in a production build environment. The performance-based payments billing schedule is often made more complicated than necessary.

- Despite the Government’s policy that performance-based payments is the preferred method of financing, certain contracting officers have not fully adopted the practice. This puts the contractor offering performance-based payments at a disadvantage in a competitive source selection, and could even cause the offeror to be declared non-responsive.

DPAP Response: DPAP is in the process of updating the User Guide. As part of this update, each of these potential advantages and disadvantages will be reviewed and, as appropriate, included in the Guide.

I. Performance-Based Payments “Required” Rather Than “Preferred”

Comment: One respondent notes that the FAR language stating “performance-based payments are the *preferred* Government financing method when the contracting officer finds them practical” provides considerable discretion for the Contracting Officer to include progress payments, which are much easier to include in the solicitation. The respondent recommends revising FAR 32.1001(a) to require performance-based payments. The respondent asserts that there should be very few circumstances where progress payments are used. This respondent states that the OSD(AT&L) policy letter of November 13, 2000, requested that performance-based payments be the sole financing method by fiscal year 2005. The respondent recommends that OSD(AT&L) issue an update to the November 13, 2004, policy letter. The letter should emphasize performance-based payments as the “mandatory” form of contract financing.

DPAP Response: It is not advisable to mandate a particular form of contract financing. However, the FAR could provide a more assertive requirement for the use of performance-based payments.

In particular, the FAR should be reviewed to determine whether more emphasis should be added to the “preferred” use of performance-based payments. For example, when a contractor proposes performance-based payments, but the contract includes progress payments, the FAR could require a contracting officer to document in the contract file why performance-based payments were not used. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

J. FAR 52.232–28, Invitation To Propose Performance-Based Payments

Comment: One respondent states that FAR 52.232–28, Invitation to Propose Performance-Based Payments, requires the contracting officer to include evaluation criteria in competitive solicitations. The respondent believes this not only increases the complexity of the evaluation, but also discourages offerors from proposing performance-based payments due to the potential downgrading of the proposal. The respondent recommends revising FAR 52.232–28 to delete Alternate I, thereby eliminating the penalty for offering performance-based payments.

DPAP Response: The regulations should not penalize or discourage contractors that propose performance-based payments. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

K. Facilitating Implementation of Performance-Based Payments

Comment: One respondent states that use of performance-based payments can be facilitated if performance-based payments discussions between the PCO and the contractor begin immediately after a proposal is submitted. A PCO may require additional detail (expenditure profile by contract line item) or may want to talk to the ACO. By the time pre-award negotiations begin, the PCO should be well aware of the performance-based payments financing request with no opportunity for “delay pending availability of supplemental data or outstanding questions.” In certain situations, it may be feasible to delegate responsibilities for establishing the performance-based payments criteria to the ACO. This respondent states that performance-based payments can be further facilitated by requiring a detailed performance-based payments plan and

supporting expenditure profile to be submitted with the proposal.

DPAP Response: DPAP plans to amend the User Guide and training to emphasize the need to address performance-based payments as early in the acquisition process as practical, including during pre-award negotiations.

L. Developing Performance-Based Payment Billing Events

Comment: One respondent recommends updating the DoD Guide on Performance-Based Payments to provide additional examples on how to develop billing events. Emphasis should be on milestones relative to the expenditure profile, and not individual contract line item prices and schedules. A second respondent recommends mandatory training on how to establish payment criteria.

A third respondent recommends issuing guidance stating that, as part of the acquisition planning and contract formation process, each performance-based payments event shall be formulated so that it is objective, quantifiable, and as easy to measure as possible. For example, tying performance-based payments events to already defined program reviews, tests, or manufacturing plan milestones or other events on the integrated program schedule for manufacturing activities is often the best course. For services, tying performance-based payments events to program reviews, key performance milestones, or other suitable events is good business practice. This respondent also notes that defining a performance-based payments event as "100% completion" of tasks should be avoided, since there are frequently minor action items left open even when a major milestone is otherwise considered accomplished. This respondent recommends revising FAR 32.1007(d), which prohibits payment of performance-based payments for incomplete performances to address cases where the milestones are materially met, but not by a 100 percent standard. This respondent recommends that FAR be revised to "allow for Contracting Officer (CO) discretion for payment of partial amounts of performance-based payments when a specified milestone is not met." This respondent states that this change would address those instances when a milestone is not achieved by a very small margin.

DPAP Response: DPAP plans to amend the User Guide and training to address the development of the performance metrics, including the targeting of milestone requirements that

are integral and necessary to completion of the contract. However, it is not advisable to provide for partial payments of performance-based payments milestones. The solution to this issue is in the development of the milestone metrics. If there are minor tasks that are not an integral part of the milestone completion, the metric for the milestone could list these minor tasks and state that they are not part of the milestone completion requirements. This would ensure that the parties agree up-front on what the metrics are, rather than arguing later about "partial payment." In addition, partial payment raises an issue of how to make such a payment (how do the parties determine how much of the payment is made) and significantly reduces the effectiveness of performance-based payments, which are predicated on satisfactory performance of the milestone requirement.

M. Increasing Use of Performance-Based Payments

Comment: One respondent states that current policy and regulatory implementation of performance-based payments are generally adequate. DoD policy clearly states that performance-based payments are the preferred form of contract financing employed by the Government. However, the initial effort involved in identifying objective payable events may cause some contracting officers to remain reluctant to adopt the use of performance-based payments. The respondent recommends adopting a policy stipulating that, for all major fixed-price production programs in which the end item delivery cycle exceeds 12 months, the contracting officer must obtain a waiver from the head of the contracting activity in order to use progress payments rather than performance-based payments.

DPAP Response: It is not advisable to require a waiver to use performance-based payments or progress payments. This decision should be made by the contracting officer.

N. Revising Milestones

Comment: One respondent notes that sometimes new leadership (program manager or PCO) wishes to revise the initially established events, which tends to negate the benefits of performance-based payments by adding administrative effort. The respondent recommends issuing a policy stating that previously established milestones or criteria should remain stable unless payments are in violation of the general restrictions on financing payments in FAR Part 32.

DPAP Response: It is not advisable to preclude the contracting officer's ability

to modify performance-based payments events. Note that in the absence of a change in contract performance requirements, modifying the performance-based payments events generally requires mutual agreement of the parties.

O. Verification of Incurred Cost for Performance-Based Payments

Comment: One respondent recommends prohibiting verification of incurred costs as part of performance-based payments. The respondent states that one important advantage of performance-based payments is the elimination of Government auditing of incurred costs. In addition, it is not clear what the Government intends to do with the incurred cost information. Regardless of the costs incurred to achieve a performance milestone, the payment terms in the contract will prevail. If there is a need to limit payments to a percentage of incurred costs, the original contract terms should establish progress payments as the correct contract payment mechanism. The respondent is concerned that the language at FAR 32.1004(a)(3)(ii) may be causing contracting officers to request incurred cost data for each milestone. The respondent notes that the second sentence of this paragraph states that "the contracting officer may request expenditure profile information to confirm that the contractor's investment is sufficient." The respondent recommends that the FAR be revised and/or guidance be issued to make it clear that the expenditure profiles may only be requested during the contract pre-award stage.

DPAP Response: Including verification of costs incurred as a requirement for payment significantly diminishes the value of performance-based payments. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

P. Single Financing and Liquidation Rate

Comment: One respondent recommends establishing one financing and liquidation rate. The respondent believes that one rate will make it much simpler for DoD and the contractor to administer, pay, and close out contracts.

DPAP Response: It is important for the contracting officer to have the flexibility in the negotiation of the contract financing and liquidation rates, rather than forcing a single financing and liquidation rate for all contracts.

Q. Financing Rates Should Provide Financing Incentives for Performance-Based Payment Use

Comment: One respondent recommends that the financing rates for performance-based payments offer incentives above that which could be achieved with the no-risk, administratively burdensome 80 percent progress payment option. The FAR currently states that performance-based financing must be prudent and must not exceed 90 percent of the contract price. The respondent asserts that there have been numerous situations where the actual performance-based payments rates awarded provide lower effective financing than the 80 percent progress payment option. This trend is a disincentive for contractors to accept the risks associated with meeting performance-based financing events. The respondent recommends that DPAP issue guidance to the field advising PCOs to use performance-based payments rates that offer true financial incentives. The guidance should state that the 90 percent rate will be used on an ordinary basis and that lower rates should be used only when significant justification exists.

DPAP Response: Providing performance-based payments financing at or below the effective rate for progress payments inhibits the use of performance-based payments. DPAP has recommended that this issue be addressed as part of the FAR case to review/revise the current FAR coverage on performance-based payments.

R. Use of Production Lead Times In Lieu of Performance Events

Comment: One respondent recommends permitting performance-based payments based on production lead times for mature programs with reliable production processes, rather than using performance events. The respondent states that this is a common commercial practice and is appropriate in situations when the lead times and production processes are well known. The respondent asserts that this would result in a contract that is both simple to award and simple to administer, since the effort to validate and approve events would be eliminated.

DPAP Response: The passage of time is not an acceptable performance-based event, even when the lead times and production processes are well known. When the production processes are well known, it should not be difficult to establish objective performance milestones in a manner that requires minimal validation effort.

S. Eliminate Requirement To Bill at Contract Line and Accounting Classification Reference Number (ACRN) Level

Comment: One respondent recommends simplifying the contract administration and payment process by eliminating the requirement for contractors to bill and for the Defense Finance and Accounting Service (or other payment offices) to pay performance-based payments financing requests by contract line and ACRN. The respondent asserts that performance-based payments financing should be treated the same as progress payment financing by having the DoD payment systems allocate the billing amount to all ACRNs on the contract. The respondent asserts that adoption of this recommendation would eliminate the need for preparation of complex billings and the maintenance of manual spreadsheets by the contractor and DoD.

DPAP Response: The current DFARS case, Payment and Billing Instructions (DFARS Case 2003-D009), addresses the respondent's concern (proposed rule published at 69 FR 35564 on June 25, 2004). This case will revise the DFARS to provide the contracting officer with twelve options, including the ability to have the payment office allocate the costs at the contract line item/ACRN level.

T. Segregation of Billings Into Multiple Invoices

Comment: One respondent recommends permitting billings to be segregated into multiple invoices where a problem with a funding source, accounting station, or foreign military sales customer is expected to delay payment. The respondent believes that this option provides contractors with the ability to receive payment on time for a portion of the billing when problems arise with a particular funding source, accounting station, or foreign military sales customer, while also minimizing reconciliation efforts and the risk of expiring funds.

DPAP Response: DPAP has established a DFARS case to address instances in which a portion of the invoice is payable but other portions are not due to problems with a funding source, accounting station, or foreign military sales customer.

U. Corrected or Delayed Billings of Prior Month Do Not Preclude New Billings

Comment: One respondent recommends that guidance be issued stating that a corrected or delayed billing from a prior month does not

preclude a contractor from issuing a new billing for performance-based payment events achieved in a subsequent month.

DPAP Response: DPAP plans to amend the User Guide and training to address the processing of current invoices when there are corrected and/or delayed billings from a prior period.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05-10910 Filed 6-1-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF ENERGY

[Docket No. EA-178-B]

Application To Export Electric Energy; Edison Mission Marketing and Trading, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Edison Mission Marketing and Trading, Inc. (EMMT) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 5, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery & Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202-586-9506 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 29, 1998, the Department of Energy (DOE) issued Order No. EA-178 authorizing EMMT's predecessor, Citizens Power Sales, LLC (CP Sales) to transmit electric energy from the United States to Mexico as a power marketer. On May 3, 2000, in Order No. EA-178-A, DOE renewed the CP Sales authorization to export electric energy to Canada for a five-year term that expired on May 3, 2005.

Subsequently, EMMT's parent, Edison Mission Energy, acquired CP Sales on