

Insights and Commentary from Dentons

The combination of Dentons US and McKenna Long & Aldridge offers our clients access to 1,100 lawyers and professionals in 21 US locations. Clients inside the US benefit from unrivaled access to markets around the world, and international clients benefit from increased strength and reach across the US.

This document was authored by representatives of McKenna Long & Aldridge prior to our combination's launch and continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

A Renewable Investment

New private sector investments will bring renewable energy to American military bases

By Robert E. Tritt

American military bases will soon be receiving another round of large-scale private sector investments. While the prior round was focused on military family housing, this initiative will center on powering military bases with renewable electric energy.

More than a decade ago, the military services turned to the private sector to meet an important need—the transformation of military family housing. That process is now largely completed, with more than \$30 billion of private sector funding so far. It is widely regarded, even among its initial critics, as highly successful.

Now the renewable energy programs of the military services stand at the same threshold.

And while there are legal, regulatory, engineering, and other challenges, there is certain inevitability that these programs will be largely implemented. That inevitability is based on the law of supply and demand.

A clear demand

First, the demand: All branches of military services want to dramatically increase their usage of renewable energy. A recent White House announcement pegged that level at 1,000 megawatts each for the Army,

Air Force, and Navy/Marine Corps, to be achieved by 2025, 2016, and 2020, respectively. This level is roughly the amount of electric energy needed to power 250,000 homes. The services are committed to expanding their renewable energy levels for multiple reasons, which they insist have nothing to do with whether or not it may be politically correct.

Foremost, it enhances energy security. There are countless examples of large sections of the electric grid going down for hours, days, or even longer because of weather, equipment failure, or other events. The electric grid can also be a prime terrorist target. However, if a significant portion of the energy that an installation needs is generated on base, the risk that the installation will be left in the dark significantly decreases.

Further, the military services are committed to meeting the renewable energy mandates that Congress has set for them—25 percent renewable by 2025—in the Defense Authorization Act of 2007. The Navy has established an even higher goal of 50 percent renewable electric energy on on-shore installations by 2020. In 2011, DoD reported 8.5 percent of its electric energy coming from renewable resources, leaving it with a con-

siderable distance to travel.

Finally, the military services want to manage their long-term cost of electric energy. While renewable energy is generally more expensive than conventional forms of energy, there are regions of the country where either state laws or availability of sun, wind, biomass, geothermal, or other resources makes renewable energy more competitive. This is especially true when the long-term pricing available through long-term power purchase agreements is balanced against the uncertainties of what electric energy in the future may otherwise cost.

As much as the military services may want to expand their renewable portfolio, they recognize that, as with family housing, the private sector is in the best position to do that for them. We are undoubtedly in a time of reduced DoD budgets. Finding extra billions for DoD to construct its own renewable projects is not likely. The private sector, however, has those extra billions that it can and will invest if it receives a long-term power purchase or similar agreement from the military service involved. And because tax credits of approximately 30 percent are available to the private sector when building renewable energy projects (which are not available

to DoD), the private sector can build these projects far less expensively than the DoD could build them. While there could be many variations of how a transaction may be structured, in a typical model, the military service enters into a long-term lease of portions of a military base to the private sector developer, who then designs, builds, owns, and operates a renewable energy project and sells the electric energy to the military service under a long-term contract.

A healthy supply

If DoD has the demand, the private sector has the supply. All manner of private sector companies are seeking opportunities to be part of the solution when the military services begin to award significant projects. These companies include traditional defense contractors that are experienced in dealing with DoD. They now will offer energy and energy services, including micro-grid management, in addition to the other engineering solutions they provide DoD. Then there are the renewable developers—with experience in solar, wind, biomass, geothermal, and other technologies—who bring a successful track record of developing these technologies for themselves and for public utilities. In addition, there are the public utilities themselves that are either the in-place regulated public utilities serving the installation (and they want very much to protect their own turf) or they are operating through their unregulated affiliates that are in the business of providing energy without regard for regulated territory.

Meeting renewable needs

As evidenced during the privatization of military family housing, the military services are organized and are looking to meet their renewable needs in different ways.

The Secretary of the Army formed the Army's Energy Initiative Task Force (EITF) to identify, plan, and

“The military services are organized and are looking to meet their renewable needs in different ways.”

engage the private sector to develop “large” (meaning 10 megawatts or larger) renewable energy projects on Army bases. The EITF is beginning to develop how those projects will be procured.

The recent Request for Information (RFI) issued by the U.S. Army Corps of Engineers is a good case in point. The RFI was published in February 2012 as a draft Request for Proposal (RFP) in order to obtain industry input and comments. Comments were submitted in March 2012 from approximately 900 companies, and the Corps of Engineers is expected to reissue the document, commencing a formal procurement process as an RFP. Assuming the basic structure remains unchanged as the document is revised and reissued, the Army will screen and select companies in four different categories (although companies can be selected in more than one category): solar, wind, biomass, and geothermal. The companies that are on the list in each of those categories will be able to compete for projects in their categories when the projects are released for competition. The draft provides that the scope of the contracts that could be awarded under the document is \$7 billion over a 10-year

period, a number big enough to garner wide-spread attention.

The opportunity is not just for the mega-firms. The RFI set forth a process for smaller projects—those under 4 megawatts—to be reserved for small businesses.

The other services will have their own procurement processes, and the Army will employ other methods as well. This RFI nevertheless gives insight into the size of the market and the scale of the opportunities, leaving little reason to doubt why companies of all types are interested in the projects that may arise.

While the process will not be exactly the same in all services, look for each service to manage the process, and generally award the projects, on a centralized basis. The complexities of the projects, particularly if they are of any size, may exceed what an individual base or garrison can do on its own, particularly if the legal authority to be used requires approval at DoD level.

An achievable goal

It is an ambitious undertaking—far more complicated from an engineering and legal perspective than military family housing. Yet the model of military family housing and the success of that program are regularly referred to in briefings by senior leaders of the military services.

Before the military family housing program, there was serious question about whether a program of massive private sector investment on military bases could work. The military family housing program proved that it could, and now the question is whether that success can be repeated in a more difficult landscape. But with the powerful forces of DoD demand and private sector supply converging, it is likely to succeed. ■

Robert E. Tritt is a partner with McKenna Long & Aldridge, an international law firm. Reach him at rrtritt@mckennalong.com.