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# ENGINEERING AND CONSTRUCTION BULLETIN

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**SUBJECT:** Renewal of the Building Energy Efficiency Tax Deduction Policy

**CATEGORY:** Policy and Guidance

## 1. References:

- a. Energy Policy Act of 2005 (EPA05) §1331, 8 Aug 2005
- b. 26 U.S.C. §179D, Energy Efficient Commercial Buildings Deduction
- c. DAIM-ZA Memorandum, Implementation of Building Energy Tax Deduction Policy, 5 Apr 2011 (Enclosure 1)
- d. ASA (IE&E) Memorandum, Building Energy Efficiency Tax Deduction Policy, 17 Dec 2010 (Enclosure 1)
- e. ANSI/ASHRAE/IES Standard 90.1-2007 Energy Standard for Buildings except Low-Rise Residential Buildings, 2007
- f. Allocation Template (Enclosure 2)

**2. Purpose.** This Engineering and Construction Bulletin (ECB) reissues and updates the policy in ECB 2013-9, USACE Implementation of Building Energy Efficiency Tax Deduction Policy for Army Programs. It provides guidance on USACE roles and responsibilities in the process of allocating the Energy Efficiency Tax Deduction to eligible contractors, as established in EPA05 (Reference a) and required by Army implementation of section 179D of the Internal Revenue Code (Reference b). Department of the Army guidance memorandums (References c and d) include detailed guidance and are attached as Enclosure 1.

## 3. Background.

a. 26 U.S.C. § Section 179D (Reference b) initially provided a tax deduction for certain energy efficient commercial building properties put into service during a limited period. This period was then extended, and in December 2015 Congress passed legislation to renew the deduction through 2016 and updated the referenced standard to ASHRAE Standard 90.1-2007 (Reference e).

b. 26 U.S.C. § Section 179D allows itemized deductions for the cost of energy efficient commercial building property (up to a maximum cumulative amount of \$1.80 per square foot

which may be aggregated for prior taxable years), which may be allocated to the designer of government owned buildings. “Energy efficient commercial building property” is property installed as part of: the interior lighting system; heating, cooling, ventilation and hot water system; or the building envelope.

c. For the designer to be eligible to receive the deduction, the property must be installed in a building located in the United States and fall within the standards as currently articulated in ASHRAE Standard 90.1-2007 (Reference e).

**4. Procedures.** Procedures specific to USACE for the implementation of the aforementioned Army policy described below.

a. In the case of government owned buildings, the building owner may allocate the deduction to an eligible contractor. Army policy identifies the building owner who may make the allocation to be the Authorized Government Representative (AGR). The AGR is typically the IMCOM Regional Director for IMCOM-managed installations, the Garrison Commander for non-IMCOM installations, the Commanders of Regional Support Commands for Army Reserve installations, or the U.S. Property and Fiscal Officer of the respective state for Army National Guard installations. These individuals are authorized by the ACSIM to delegate AGR authority.

b. Reference c describes the Government representative who will perform the verification of the data in the contractor’s 179D submission package as the “Project Manager” (PM). On projects managed by USACE, and for the purposes of this ECB, the verification authority should be the USACE PM. The USACE PM will normally have developed the best base of knowledge concerning the project. In the event the current USACE PM is not the best qualified individual to verify the facts of the project, another individual may be delegated to fulfill that duty, but must be a USACE employee who has knowledge of the project—such as the Design Manager, Area Engineer, or Resident Engineer—who can best assist the PM in its role of providing the verification to the AGR.

c. When a contractor requests that the AGR allocate the deduction, the AGR will contact the USACE District and request assistance in validating the certification information. If the contractor requests the allocation directly from the USACE District, rather than the AGR, the District will contact the appropriate building owner to notify them of the request for the allocation and provide the contractor with the list of certifications required by Reference c, paragraph 4a (Enclosure 1) and the Allocation Template (Enclosure 2).

d. In order for a contractor to receive the allocation, it must inform the AGR or the PM of its interest in obtaining the deduction and provide certification of items 1-9 in paragraph 4a of Enclosure 1. The PM is responsible for reviewing this certification and validating the data. The PM will review the certification with the AGR, and, if the AGR concurs, the AGR may sign the allocation. Validation by the PM consists of confirming: that an independent and qualified engineer performed the requisite inspections; the date the energy efficient commercial building property was placed into service; that all requisite technical data and calculations were provided by the contractor; that qualifying software was used; and that the contractor was responsible to USACE for the design of the qualifying energy efficient commercial building property. (This is not intended to be a complete list, but rather is illustrative of what the PM’s role is as the

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verification authority.) Under no circumstances is USACE responsible or liable for the accuracy of the information provided by the contractor. Rather, USACE's role is limited to quality assurance review for completeness of the data provided in the certification and allocation template.

e. Solicitations for construction and A-E services will be remain silent respecting the Section 179D tax deduction.

5. **Update.** These requirements will become obsolete with the expiration of the driving tax policy which is currently set to occur at the end of this year. Therefore, there is no plan to incorporate them into permanent doctrine at this time.

6. **Point of Contact.** HQUSACE point of contact for this ECB is Eric Mucklow, CECW-CE, (202) 761-0522.

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JAMES C. DALTON, P.E.  
Chief, Engineering and Construction  
U.S. Army Corps of Engineers

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Enclosure 1 – Referenced DA Memorandums

Enclosure 2 - Allocation Template

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