U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Public Housing Agencies and
Related Interests

Notice PIH 2018-20

Issued: November 6, 2018

This notice remains in effect until amended, superseded or rescinded.

Cross Reference: 24 CFR § 990.185, 24 CFR § 965 Subpart C, 2 CFR part 200 and Notice PIH 2011-36.

SUBJECT: Partnering with Utility Companies on Energy Performance Contracts

1. PURPOSE

This Notice serves to provide supplemental guidance for Notice PIH 2011-36 and any update thereto which concerns implementing Energy Performance Contracts (EPCs) at Public Housing Authorities (PHAs). This notice introduces a new initiative called the EPC Utility Partnership Program (UPP). The purpose of EPC-UPP is to encourage more PHAs, especially small- and medium-sized PHAs to consider the potential benefits of implementing an EPC in partnership with utility companies. This Notice also includes a new simplified approval and verification process for low-risk EPC projects.

2. APPLICABILITY

This Notice applies to all PHAs administering the Public Housing program and provides guidance under the Public Housing Operating Fund Program (pursuant to 24 CFR § 990.185) and for EPCs (pursuant to 24 CFR § 965 Subpart C). PHAs in the Moving to Work program with self-approval authority are subject to the same EPC requirements outlined in Notice PIH 2011-36 and any update thereto.

3. BACKGROUND

Notice PIH 2011-36 provides guidance on HUD policies related to EPCs under Section 9(e)(2)(C) of the United States Housing Act of 1937 and 24 CFR § 990.185. EPCs enable PHAs to leverage third-party financing to fund capital improvements that reduce utility costs for the

PHA through the implantation of Energy Conservation Measures (ECMs). Common ECMs include lighting, low flow water fixtures, and heating system upgrades. HUD provides PHAs with financial incentives based on actual utility cost savings that facilitate the repayment of third-party funds used to implement the ECMs. EPCs are an effective strategy for PHAs to finance necessary capital improvements while reducing long-term energy costs. HUD encourages PHAs to utilize EPCs as a tool to reduce operating costs without using limited HUD Capital Funds. Historically, most EPCs have been implemented in large- or medium-sized PHAs, which are often located in densely populated urban areas. In contrast, the majority of PHAs are classified as small- or medium-sized.

Currently, only a limited number of PHAs have executed EPCs, and as indicated above, most of these EPCs have been implemented by large PHAs utilizing Energy Service Companies (ESCOs) to facilitate the process. A smaller set of PHAs have self-developed and self-managed EPCs. The reasons why so few small- and medium-sized PHAs have implemented EPCs may be due to a variety of factors including: limited resources to manage the EPC project, a lack of familiarity with the EPC process, and difficulty securing financing for smaller projects.

4. ADVANTAGES TO UTILITY PARTNERSHIPS

Each PHA must carefully weigh the potential risks and benefits of EPCs, and each PHA must make its own determination about the type of EPC partner with which it chooses to do business. PHAs interested in pursuing an EPC may find that working with a utility company offers the following advantages:

- ***Familiarity***: Utility companies have an interest in maintaining a good relationship with the PHAs in their service territory. PHAs may find it advantageous to work with a utility company with whom they have an established, multi-year, preexisting relationship. Utility companies also have extensive knowledge of historical consumption, costs, and regional trends.

- ***Expertise***: Utility companies, particularly those already working with Federal agencies, often have extensive experience with the Department of Energy's Utility Energy Service Contracts (UESC) program—a program similar to HUD's EPC-UPP program. Many utility companies competitively select and partner with qualified ESCOs, contractors, and banks to assist customers in efficiently executing an EPC from the audit through project financing and construction.

- ***Motivation***: Utility companies need to manage and often reduce overall energy consumption in their service territory to avoid making costly investments to address growing capacity needs. Therefore, utility companies may demonstrate an interest in pursuing EPC projects with PHAs, even for projects which might not otherwise have attracted the interest of ESCOs, which are mostly profit-driven.

- ***Financing***: In some cases, utility companies may finance part or all of the project directly. In other cases, utility companies may be able to help PHAs secure third-party financing at favorable rates. Once financing is secured, utility companies may help simplify the repayment process by invoicing the PHA for EPC costs as a separate line item on the PHA's monthly utility bill. Partnering with a utility company may also facilitate the use of alternate strategies to improve the economic feasibility of small- or medium-sized projects, which might otherwise not attract interest from financial institutions.

5. EPC UTILITY PARTNERSHIP PROCESS

The process for PHAs entering into an EPC with a utility company is similar to the process for PHAs entering into an EPC with an ESCO. See Section 6 below for differences related to low risk EPC utility partnerships. Pursuant to Federal procurement guidelines (2 CFR part 200 and HUD's procurement handbook for PHAs), PHAs need to issue an initial Request for Proposal (RFP) to ensure fair and open competition amongst the regulated utility companies (typically the electric, natural gas, and water utility provider), as well as any ESCOs and other service providers that may want to bid on the project. Regardless of whether a PHA selects a utility company or an ESCO to manage the EPC, the PHA must still submit relevant documentation to the Energy Center for approval per Notice PIH 2011-36 and any update thereto.

If a PHA selects a utility company, shortly after award, the utility company will oversee or manage an investment grade energy audit (IGEA), help to secure project financing, oversee implementation of the EPC, and support the PHA in performing Measurement and Verification (M&V) and other associated responsibilities. The utility company may choose to subcontract some or all of the work to a qualified ESCO selected through a competitive process.

Several additional considerations relevant to EPC utility partnerships are highlighted below:

- ***Procurement Requirements:*** Utility companies must be selected through a competitive solicitation process. PHAs must follow all standard procurement procedures under 2 CFR part 200 and state and local requirements, but may consider the following exceptions:

    - **Intergovernmental Agreements:** Pursuant to 2 CFR 200.318(e) and Chapter 14.2 of the HUD Procurement Handbook, PHAs are permitted to enter into intergovernmental procurement agreements in which a PHA can use an existing contract mechanism currently in use by another state or local entity, without going through a separate competitive procurement process. This means that if a utility company already has EPC contracts in place with other state or local entities (e.g., schools or hospitals) or another PHA in its service territory, the utility company may be able to include other PHAs in its existing procurement contract provided it meets the requirements of 2 CFR part 200 and state and local laws. Intergovernmental agreements are subject to review and approval by HUD’s Office of General Counsel.

- **Other Exceptions:** Pursuant to 2 CFR § 200.320(f), non-competitive procurement exceptions may be allowed if one or more of the following applicable circumstances apply:
  1. The item is available only from a single source (2 CFR 200.320 (f)(1));
  2. Competition is determined to be inadequate after solicitation of several sources (2 CFR 200.320(f)(4); or
  3. An exception is granted by HUD based on good cause in response to a written request by a PHA to contract directly with a preferred utility partner. (2 CFR 200.320(f)(3))

- ***Project Bundling***: PHAs may consider bundling together and issuing a single RFP to partner with a utility company on the basis of a single award. Such an approach could attract the interest of more utility companies and banks and, in turn, could produce more options for PHAs. PHAs pursuing joint procurement actions need to ensure in any contract or financing documents that each individual PHA is solely responsible for debt and other liabilities stemming from only their properties included in the EPC. Utility companies may be able to work with financial institutions to bundle individual projects so that PHAs may be able to obtain more favorable rates and/or financing terms.

- ***Outreach***: In pursuit of facilitating new EPC utility partnerships, HUD is prepared to provide outreach by taking the following steps.

  - **Stakeholder Meetings**: For all utility companies interested in pursuing an EPC partnership with a PHA, HUD’s Office of Public Housing Programs and the Energy Center may organize informational webinars for interested PHAs and/or utility companies. This webinar will provide an opportunity for HUD, utility companies, and interested PHAs to discuss potential opportunities to create new partnerships.

  - **Feedback**: HUD is also interested in any feedback from relevant stakeholders on additional ways this process could be improved to more effectively incentivize small- and medium-sized PHAs to enter into EPCs. Any feedback should be sent to this Notice’s point of contact, located in Section 7 below.

6. SIMPLIFIED PROCESS FOR LOW RISK EPC PROJECTS

In addition to the UPP program described in Section 4 above, as part of this Notice, HUD is also introducing a modified EPC process for projects that present a reduced risk for both the PHA and HUD. Subject to approval by HUD, any PHAs implementing EPCs that meet all the following criteria may be eligible for this new process:

- Total project costs, including financing, do not exceed $275,000. The $275,000 threshold shall escalate 3% annually starting in FY 2019
- The project has a repayment period of not more than 5 years
- The project is implemented by a PHA with less than 250 units
- The debt-to-savings ratio for the project is in the range of 75–85%[1]
- The project elects to receive the Add-On Subsidy and/or the Resident Paid Utility incentive (not the Frozen Rolling Base) and agrees to use M&V method 'Option A,' stipulated energy savings, to calculate the incentive[2]
- The PHA must also have a current and effective Declaration of Trust on all property subject to the EPC and meet all other requirements for an eligible EPC as enumerated in Notice PIH 2011-36 and any successor notice.

EPC projects that meet the requirements above also may be eligible for a streamlined review and application process. For eligible projects, the Energy Center will target 45 business days to either approve/reject the project and/or provide written feedback to the PHA requesting additional information.

In addition, approved projects that meet the above criteria may also utilize a modified M&V process. These projects will complete a normal M&V report for the first full year of project performance. However, in subsequent years, provided the project continues to generate enough savings to repay third-party debt, the PHA will not be required to submit formal M&V reports. Instead, the eligible PHA can utilize Energy Star Portfolio Manager to monitor future savings. Each year, the PHA will use the Portfolio Manager to simply submit to HUD its energy and water benchmarking score, and/or other metrics, as requested.

[1] For example: For an EPC that has $10,000 in annual project costs (e.g., loan obligation and approved replacement costs), the project should have $11,765 - $13,333 in annual projected savings (HUD incentives) in order to have a debt-to-savings ratio in the 75-85% range.

[2] See Notice PIH 2011-36, or any successor notice, more details.

7. FURTHER INFORMATION

For additional information or questions regarding this notice, please contact Allison Ackerman at Allison.L.Ackerman@hud.gov or 202-402-5445. Any persons with hearing or speech impairments may access this contact by calling the Federal Information Relay Service at 800-877-8339.

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for Public and Indian Housing