

CHAPTER 17. UTILITY PURCHASING, ENERGY CONSERVATION LOANS, AND ENERGY PERFORMANCE CONTRACTING

17.1 General

This chapter discusses the contracting methods associated with energy conservation loans (subsidy add-on), energy performance contracting and utility purchasing. For additional information related to energy conservation opportunities, project planning, monitoring, performance contracting models, financing and other related energy subjects, refer to the resources section cited in 17.6.

17.2 Energy Conservation Loans (Operating Subsidy Add-On)

Under this financing incentive, a PHA obtains a loan to finance energy improvements. The PHA receives a subsidy add-on under 24 CFR 990.185 to cover the cost of amortizing the improvement loan during the term of the contract. The amount of the add-on must not exceed the cost savings generated each year by the energy conservation measures (ECMs) installed under the contract.

Before initiating an energy conservation loan, a PHA must procure a Comprehensive Energy Analysis (CEA) from a qualified vendor and must have the CEA, along with the list of identified improvements, reviewed and approved by HUD. HUD must also review and approve the loan document. The improvements are procured in the same manner as any other purchases addressed in this handbook.

17.3 Energy Performance Contracting (Frozen Rolling Base Incentive)

A. General. Energy performance contracting allows the PHA to qualify for the incentive to freeze the utility rolling base (see 24 CFR 990.185). A PHA's utility expense level (UEL) will be calculated at the pre-retrofit consumption level. The PHA keeps 100 percent of the savings that result from the decreased consumption due to the energy efficiency measures installed, of which 75 percent must be used to pay off the debt and related project costs.

B. Third-Party Energy Performance Contracts (EPCs). With a third-party EPC, the energy performance contractor must be procured in a manner that provides full and open competition consistent with the instructions in this handbook and 24 CFR 85.36. Typically, this means procurement by competitive proposals.

For Third-Party EPCs, HUD approval is required of:

- A. The CEA, which the PHA must procure from a qualified vendor
- B. The RFP for the energy contractor, prior to advertisement. Approval will be based upon a determination by HUD that payments under the contract can be funded from the reasonably anticipated energy cost savings.
- C. The final performance contract negotiated between the PHA and the energy performance contractor.

C. Self-Managed Energy Performance Contracts. PHAs may, at their discretion, seek to self-manage an energy performance contract. The energy improvements are procured in the same manner as any other purchases addressed in this handbook.

PHAs must be designated Standard Performers or High Performers under the Public Housing Assessment System (PHAS) to complete energy projects without an energy services company. HUD will consider requests on a case-by-case basis from PHAs designated as Troubled under PHAS when an authority is able to show it has the appropriate capabilities to successfully complete the project.

For self-managed EPCs, HUD approval must be secured for the following:

1. In lieu of the RFP commonly used with third-party EPCs, the PHA must provide a detailed energy project plan. The project plan will include an assessment of its facility needs; PHA statement of capabilities and internal project processes; an assessment of the agency's energy opportunities, including capital costs and estimated savings; financial cash flow projections; a project commissioning and preventative maintenance plan; and a measurement & verification plan. PHAs must have on their team a licensed (bonded) professional engineer familiar with performance contracting, commissioning, measurement & verification, state and local codes.
2. An initial plan must be submitted to the HUD field office for review and approval to proceed. After a detailed engineering study is completed, the PHA will submit its detailed project plan for field office review and approval. The detailed study will be based on actual quotes for construction, finance, maintenance, and other costs. The PHA must also identify how it will complete design and construction and integrate the energy project with its ongoing modernization program. Included in its energy project plan the PHA will include a detailed description of its construction management practices and associated financial controls. The description should include protocols for design, construction inspections, construction draws, and requisition approvals.

17.4 Utility Purchasing

Deregulation and restructuring in the utility industry allows utility providers to operate like other open markets, with greater competition and choices. These changes offer utility consumers such as PHAs an opportunity to achieve lower utility costs by purchasing energy directly from the utility providers at lower rates, based on a direct rate reduction or from new consumer rate strategies. Where deregulation has occurred and there are multiple providers, PHAs must competitively procure utilities in accordance with 24 CFR § 85.36.

Alternately, where deregulation has not occurred (a publicly regulated rate environment where there is one utility provider for gas, electric, fuel, oil and/or water), the PHA is not required to competitively procure utilities. Further, unlike other sole source procurements, the PHA does not need to justify the reasonableness of the price charged or require HUD approval.

17.5 Procurement Regulations Pertaining to Energy Conservation Loans and Energy Performance Contracting

Conceptually, both strategies are nothing more than financing methods that result in energy savings over a period of time. Both operate within the guidelines of all Federal procurement regulations specified elsewhere in this handbook.

- A. PHAs must adhere to applicable State and local procurement requirements, as well as the PHA's Procurement Policy. For example, the PHA must include the form HUD-5370, General Conditions of Contracts for Construction, with all construction contracts for more than \$100,000; or form HUD-5370-EZ for construction contracts between \$2,000 and \$100,000;
- B. PHAs must treat the energy improvement measures as any capital program and follow requirements for Federally funded construction projects;
- C. In capturing the savings, PHAs must conform to the requirements defined in the Operating Fund rule (24 CFR Part 990);
- E. With respect to third-party EPCs, negotiating terms and conditions can be a crucial component of the procurement process.

17.6 Resources

Additional information and expertise on energy conservation loans, energy performance contracting, and other energy conservation measures can be found at:

- A. Relevant Public Housing Notices and Guidebooks
 - 1. *Energy Performance Contracting for Public and Indian Housing – A Guide for Participants*, prepared by HUD/DOE (2/92). This guidebook, which outlines the details of preparing, implementing, and managing an energy performance contract is available at HUD User (1-800-245-2691), www.huduser.org or the HUD PIH Energy Conservation Clearinghouse webpage at: <http://www.hud.gov/offices/pih/programs/ph/phecc/index.cfm>
 - 2. *Energy Conservation for Housing – A Workbook* prepared by HUD 9/98. This guidebook outlines the details of preparing, implementing, and managing an energy performance contract. The workbook is available from the Public and Indian Housing Information and Resource Center (PIH IRC) at 1-800-955-2232 or the PIH Energy Conservation Clearinghouse webpage at: <http://www.hud.gov/offices/pih/programs/ph/phecc/index.cfm>
 - 3. Training Materials for Streamlining Energy Performance Contracting can be obtained at: <http://www.hud.gov/offices/pih/programs/ph/phecc/eperformance.cfm>
 - 4. These documents are available from HUD User (1-800-245-2691 or www.huduser.org or Public and Indian Housing energy site <http://www.hud.gov/offices/pih/programs/ph/phecc/>)
 - a. Any successor or related notices, handbooks, or guidebooks.
- B. Local HUD. From the beginning of the planning process, view the local HUD Field Office as a partner in the process. Involving the HUD field office early and throughout the project should help to obtain a timely review and approval by HUD. HUD is required to approve key documents in the process and will be able to provide guidance proactively in order to expedite the approval process. The local

HUD field office will be able to provide information on other PHAs using performance contracting and sources of technical assistance in the area.

- C. If no relevant technical expertise exists within the PHA, the PHA should consider engaging the services of a qualified consultant. These fees can be paid from the savings generated or the capital budget. (Note: Such an individual or firm may not later be included, or compete, in a solicitation for the energy performance contract.)
- D. Other Federal and private energy-conservation programs or local utility providers.
- E. Other PHAs who have successfully implemented these utility conservation measures. HUD's energy website related to "Success Stories" can be helpful - <http://www.hud.gov/offices/pih/programs/ph/phecc/success.cfm>.