



**U. S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

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**Special Attention of:**

Public Housing Agencies;  
HUD Directors of Public Housing;  
PIH Program Center Coordinators;  
Public Housing Division Directors;  
Regional Directors

**NOTICE: PIH-2008-22(HA)**

Issued: April 25, 2008

Expires April 30, 2009

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**Cross Reference:**

24 CFR § 85.36;  
24 CFR § 965.305;  
24 CFR § 965.308;  
24 CFR § 990.170;  
24 CFR § 990.180;  
24 CFR § 990.185.

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**Subject: Guidance on Energy Performance Contracts, including those with terms up to 20 years.**

1. **Purpose.** This Notice serves to reinstate the content of PIH Notice 2006-06 with updates and edits. It provides specific guidance on Energy Performance Contracts (EPCs) with terms up to 20 years, and on subtitle D – Public Housing, Section 151 (2) (B) of the Energy Policy Act of 2005 (PL 109-58). It also provides specific guidance about how existing energy performance contracts (EPCs) may have their terms extended, through a HUD-approved waiver, from the current 12 years up to 20 years. The energy performance contract may be expanded to develop and implement energy efficiency measures to produce additional cost savings that can reasonably be anticipated to service the debt of the new measures.

This Notice advises that, until such time as the regulation found at 24 CFR § 990.185 regarding the Operating Subsidy Utility Expense Level may be changed; the contract period is limited to 12 years. A Public Housing Agency (PHA) wishing to enter into performance contracts dependent on freezing the rolling base or the use of a subsidy add-on for a period greater than 12 years but not to exceed 20 years must request a waiver. Such requests must be submitted through the local Field Offices to the Assistant Secretary for Public and Indian Housing for final approval.

2. **Applicability.** This guidance is in accordance with the Public Housing Operating Fund Program found at 24 CFR Part 990 and Energy Performance Contracts found at 24 CFR Part 965, Subpart C and only applies to the Public Housing Program.

3. **Effective Date.** This Notice is effective April 25, 2008 and expires April 30, 2009.
4. **Background.** Section 519, Subtitle B, Part 1, of the Quality Housing and Work Responsibility Act of 1998 (P.L. 105-276), amended Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*, “the 1937 Act”). This amended section establishes the Public Housing Operating Fund to make assistance available to PHAs for operation and management of public housing. Section 9(e) (2) (C) of the 1937 Act authorizes PHAs to receive, in connection with the treatment of utility and waste management costs under the Public Housing Operating Fund formula, the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more public housing projects.

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (P.L. 109-58). Subtitle D of this Act – Public Housing, Section 151, amends Section 9(e) (2) (C) of the 1937 Act by adding a new paragraph (iii), which reads:

Term of Contract: – The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.

Sec. 229 of the Consolidated Appropriations Act, 2008, amended Section 9(e) (2) (C) of the United States Housing Act of 1937 (42 U.S.C. 1437g (e) (2) (C)) by adding the following new clause:

(iv) EXISTING CONTRACTS - The term of a contract described in clause (i) that, as of the date of enactment of this clause, is in repayment and has a term of not more than 12 years, may be extended to a term of not more than 20 years to permit additional energy conservation improvements without requiring the reprocurement of energy performance contractors.

Regulations at 24 CFR § 965.305 and 24 CFR § 990.185 describe permissible funding options for accomplishing cost-effective energy audits and energy conservation measures (ECMs). 24 CFR § 965.305 states that the cost of accomplishing ECMs shall be funded from operating subsidy of the PHA to the extent feasible. 24 CFR § 990.185 states that if a PHA undertakes ECMs that are financed by an entity other than HUD, the PHA may qualify for incentives listed in 24 CFR § 990.185.

5. **Energy Performance Contracts.** HUD encourages PHAs to employ innovative approaches such as EPCs to achieve programmatic efficiency and reduce utility costs, particularly as PHAs transition to asset management. In concert with HUD’s Energy Action Plan, HUD provides energy conservation guidance, outreach, training, and technical assistance to PHAs and residents to achieve

utility reductions. In addition, PHAs are provided maximum flexibility in program administration, specifically related to lowering utility consumption and costs in the most efficient and cost effective ways possible.

An EPC is a process in which the PHA utilizes the services of a third-party to develop an investment grade energy audit (IGEA). The IGEA identifies utility cost reduction measures, estimates their potential for reducing utility costs, and develops a combination of measures into an economically viable package. The IGEA also identifies the reasonably anticipated savings attributable to the development and implementation of the ECMs, required to service the debt. The energy consumption and cost savings produced by the energy project must be sufficient to cover all project related costs (including but not limited to such elements as financing, ongoing maintenance, monitoring and verification services, and resident education on energy conservation) over the contract term.

In order to utilize an EPC, a PHA requires a qualified third party, which may be either an Energy Services Company (ESCO) or, if the PHA elects to do a self-developed project, a licensed professional engineer.

When using energy incentives, the PHA assumes the performance risks for the implemented ECMs. These risks can be mitigated by careful preparation of the IGEA and project development activities in the energy services agreement. When using an ESCO, performance risk can additionally be managed by linking the ESCO's compensation to the measured performance of the integrated package of services delivered by the ESCO in the contract. A PHA with a self-developed project can purchase an insurance policy to cover its risks. The cost of the insurance is an eligible cost of the project. In the cases of Moving to Work (MTW) PHAs, refer to the individual PHA MTW Agreement for specific provisions.

The energy and utility conservation measures may include but are not limited to, the following:

- Heating efficiencies, including programmable thermostats;
- Improvements in envelope design and function, e.g. penetration sealing, wall insulation, attic insulation, roof replacement, windows, storm doors and vent dampers;
- Lighting controls;
- Irrigation; and
- Advanced energy savings technologies such as cogeneration and water utility technologies such as grey water.

In addition to traditional ECMs, HUD strongly encourages PHAs to consider using solar, wind and other renewable energy sources, and other green construction and rehab techniques when they are procuring design services for an energy project.

Metering devices, while remaining an energy or utility measuring related cost, are not considered primary energy conservation measures. Most metering devices do

not inherently reduce consumption, i.e., the device is designed to measure flow and is not designed to reduce consumption. Metering device savings result mostly from secondary behavior adjustments in the user. Savings resulting from metering devices are primarily dependent on PHA policies related to surcharges and allowances.

## **6. Contract Period for an Energy Performance Contract.**

The term EPC throughout this notice will be used to describe ESCO and PHA self-developed processes. The term energy engineering firm refers to ESCOs or other energy engineering firms hired by the PHA to undertake part or all of an energy project.

The terminology “contract period” use in 24 CFR § 990.185 has caused confusion among HUD’s Field Offices, PHAs and energy engineering firms. In an EPC there are several distinct contract periods associated with:

- Financing and payback,
- Construction,
- Add-on or frozen rolling base incentives, and,
- Energy services agreement.

Those contract periods may be discrete timeframes depending on the stages and complexities of the project. For the frozen rolling base incentive, the governing contract period is the HUD approved term (start and completion date) of the frozen rolling base not to exceed 20 years.

For the add-on subsidy incentive, the governing contract period is the approved term (start and completion date) of the HUD add-on subsidy not to exceed 20 years.

Other contract periods related to various energy project stages such as financing, payback or construction are not standardized, but should be sufficiently flexible to provide an opportunity to maximize savings and mitigate risk to the PHA.

**Paramount to all EPCs for HUD approval, regardless of the selected incentive, is that the PHA must demonstrate that it is reasonable to assume that savings generated through an energy performance contract will pay for the energy conservation measures and related project costs.**

## **7. State Laws Affecting Energy Performance Contracts.**

In addition to the Federal Law requirements, PHAs must comply with States and local governments that have also issued legislation on the duration of EPCs. PHAs must follow applicable State and local laws and regulations, provided they conform to applicable Federal Law requirements. For example, a PHA may not enter into an EPC for a term exceeding 20 years regardless of a State law authorizing a longer term.

If a PHA is subject to a State law limiting EPC terms to 10 years, then the PHA must abide by the State law limit regardless of the higher Federal Law limit. HUD's PIH website <http://www.hud.gov/offices/pih/programs/ph/phecc/eperformance.cfm> provides a listing of current State legislation with a brief description of the term limits to be used as a starting point for compliance with State Laws. Please note that the laws on this list may change and additional laws may exist which are not on this list. PHAs should review their State and local laws with their counsel. PIH Directors should consult with Field Office Counsel on conflict of laws questions.

- 8. Use of Heating Degree Days.** As applicable, Heating Degree Days (HDD) or average daily outdoor temperatures may be used to compare baseline and current year energy use for weather dependent energy conservation measures. Permission or a waiver to use HDD or temperature data for adjustments is not required. International Performance Measurement and Verification Protocol (IPMVP) and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Guideline 14 can be used to provide guidance on minimum acceptable levels of performance in determining energy and demand savings.

- 9. Investment Grade Energy Audit.**

An IGEA, required in an EPC, is a detailed and documented technical and economic feasibility analysis of cost-effective measures for reducing utility consumption and costs of a facility. An IGEA must identify all aspects of major energy consuming processes and components, accurately estimate implementation costs and consumption savings and recommend a package of energy efficiency measures.

IGEAs should include conservative assumptions for cost and consumption savings and analyze critical energy system components such as ratings and capacities of energy equipment, historical data on energy consumption, assessment of utility consumption factors by type and use, inventory of energy-consuming equipment, implementation costs of energy efficiency actions, and explain and include demonstrations of retrofit technology. IGEAs should be a complete and clear guide to implementation of any anticipated energy efficiency retrofit to a PHA. HUD recommends that PHAs require that IPMVP and ASHRAE Guideline 14 be used as the minimum acceptable levels of analysis in determining energy and demand savings.

An energy engineering firm conducts an IGEA of selected facilities to determine the potential for energy savings through such measures as high-efficiency equipment replacements, building upgrades and improved management systems. Some energy engineering firms are also able to perform general facility retrofit and upgrades. Based on the audit results, the energy engineering firm makes recommendations that, when implemented, must generate sufficient energy and cost savings to pay for the entire cost of the project over the term of the contract.

## 10. HUD's Energy Incentives.

A principal advantage to the use of HUD's incentives is that the use of energy savings in lieu of capital or operating funds allows housing agencies to direct their Capital Funds to more emergent as well as long-term modernization efforts and Operating Funds to operational and management expenses or emergencies. In an austere period of capital funding, an EPC provides an opportunity to rehab or replace energy related capital equipment that results in lower operating expenses. The reduction in operating expenses, maintenance and utilities, has a favorable impact on operating ratios that enhance the position of PHAs seeking outside investment for major asset improvements.

Under an EPC, the PHA may propose to HUD to follow one or more of the four following energy incentives provided that the incentives do not overlap, i.e., apply to the same equipment.

Frozen Rolling Base - Under 24 CFR § 990.185, a PHA may request that HUD freeze its rolling base consumption to generate savings and allow the PHA to retain 100 percent of the savings from the decreased energy consumption for the term of the contract. With the HUD-approved EPC in place, the rolling base consumption level (RBCL) existing before the EPC is used to compute the PHA's Utility Expense Level (UEL) payments during the incentive period.

For HUD approval of the EPC incentive the PHA must use at least 75 percent of the projected cost savings to pay off the debt, i.e., pay off the bank loan. During the performance period if less than 75 percent of the cost savings is used for debt payment, HUD retains the difference between the actual percentage of cost savings used to pay off the debt and 75 percent of the projected cost savings. Any remaining savings may be used to pay for hardware, maintenance reserves, or other eligible operating expense and/or prepay the contract. Under the provisions of the Energy Policy Act of 2005 and an approved waiver of the 12 year maximum contract period set forth in 24 CFR § 990.185(a), HUD may freeze a PHA's base period RBCL for the period of the contract agreement not to exceed 20 years.

Under the provisions of the Energy Policy Act of 2005 and an approved waiver of the 12 year maximum contract period set forth in 24 CFR § 990.185(a), HUD may freeze a PHA's RBCL for the period of the contract agreement not to exceed 20 years.

Add-On Subsidy – An add-on subsidy is an increase in total operating subsidy provided by HUD as an energy incentive, as described in 24 CFR § 990.185. The additional subsidy is for amortization of the loan that is used to finance the energy conservation measures and other direct costs related to the energy project during the term of the contract. At the completion of the construction period the PHA must report to HUD the actual project costs and the post-construction estimates of the savings in consumption and costs so that HUD may determine the eligible add-on incentive.

A PHA may use the add-on subsidy to install the ECM(s) directly or pay contractors to install the ECM(s). In addition to receiving the add-on subsidy, the PHA is able to retain 75 percent of the cost savings in accordance with 24 CFR § 990.170. In case of the add-on subsidy, the RBCL is not frozen but continues to be calculated following 24 CFR § 990.180. The actual annual savings must be sufficient to cover the amortization of debt. Any shortfall between estimated savings and the actual savings, as determined by HUD, is taken from the next year's subsidy request in accordance with 24 CFR § 990.185 (a) (3) (i). The burden is on the PHA to coordinate with HUD to ensure that various project stages such as the construction stage, energy loan terms and add-on subsidy approval term are coordinated to maximize savings, sufficient to amortize the energy loan.

In the case that HUD's annual budget is insufficient to fully fund the operating subsidy eligibility for all PHAs, HUD funds the operating subsidy eligibility, including the energy loan amortization add-on, at a prorated amount.

Resident Paid Utilities - PHAs undertaking energy conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive. This incentive allows a PHA to exclude from its Operating Fund rental income calculations any rents received that are as a result of decreased utility allowances resulting from decreased consumption. The PHA may exclude from its calculation of rental income the increased rental income due to the difference between the baseline allowance and the revised allowances of the projects for the duration of the contract period. The PHA must use at least 75 percent of the projected savings to finance the cost of the improvement.

Rate Reduction – The rate reduction incentive is included in this Notice to provide an all-inclusive discussion of HUD's incentives. If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals, or legal actions to reduce the rate it pays for utilities, then the PHA is permitted to retain 50 percent of the annual savings realized from these actions. No time limit exists on the rate reduction incentive, provided the actions continue to be cost effective.

The rate incentive may be combined with the frozen base and additional subsidy incentives. When used together, the baseline utility costs and savings under the performance contract shall be calculated as the baseline consumption times the prevailing utility rate for the budget year for which lower rates were negotiated. The rate incentive savings are shared between the agency and HUD per 24 CFR 990.185(b) and are calculated as the difference between the post-retrofit consumption times the prevailing and negotiated utility rate. The rate incentive must be calculated each year the agency seeks the incentive.

## **11. Utility Surcharges.**

Some PHAs have installed check meters to monitor each unit's utility consumption. PHAs using check meters can determine if a resident's consumption has exceeded its utility allowance (UA). The PHA may in those cases charge the resident a surcharge (charge for consumption in excess of the UA) in accordance with provisions in 24 CFR § 965.506. Also where check meters have not been installed in units served by PHA-furnished utilities, PHAs must establish schedules of surcharges for excess consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment, e.g., air conditioning. The PHA shall accurately report those surcharges each year to HUD on form HUD-52722, Line 19. Prior to CY 2007, the surcharges were reported as other income on the old form HUD-52723.

Under an EPC, a PHA is not eligible to retain resident surcharges as savings to amortize an energy project loan. HUD requires PHAs to report resident surcharges as a component of the eligibility calculation for operating subsidy funds. Utility consumption in excess of the allowances for PHA-paid utilities is included in the rolling base, which forms part of the basis of a PHA's subsidy eligibility. There is no exception that precludes reporting the surcharge on HUD-52722 when a PHA enters into an EPC.

The additional funds that the PHA receives from resident surcharges are due back to HUD to offset the cost of utilities paid as part of the operating subsidy. Permitting the PHA to retain the resident's surcharge and receive reimbursement for the same consumption through the operating subsidy amounts to reimbursing the PHA twice for the same charge.

To ensure surcharges are not included in savings, verification of savings must compare the post-retrofit actual utility bill usage to the pre-retrofit baseline utility bill usage using IPMVP Option C and ASHRAE Guideline 14 regression techniques, not comparisons using calculated allowances.

## **12. Life Cycle Costs.**

Energy engineering firms will include life cycle cost analyses when developing an EPC. When selecting and proposing equipment, appliances or energy systems to replace obsolete or unreliable systems, energy engineering firms will take into account the useful life of the equipment under consideration including replacement costs. Life cycle cost analyses permit PHAs to consider long-term economic impact of purchase decisions. This information is particularly crucial when considering the project costs over a 20-year life cycle period. Life cycle cost analyses also assist PHAs in development of appropriate asset maintenance schedules and reducing associated operating costs by identifying potential future repairs.

HUD recommends that PHAs include such life cycle cost factors in the initial purchase price; the estimated useful life of the equipment, and operating and maintenance costs. These factors will assure persistence of savings, manage rate

risk, and adjust energy costs by energy efficiency factors.

The energy engineering firms must consider in its calculations of cost: projected and actual savings, the useful life of the equipment, and the replacement cost of the equipment during the life of the contract. This value consideration is especially important to the PHA when the proposed term of the contract is up to 20 years and the useful life of the equipment is less, e.g., estimated useful life of a standard refrigerator is 6-10 years.

With proper preventative maintenance and routine repairs of minor components, furnaces and boilers can be expected to perform 15-25 years; high efficiency air conditioning and central chillers 15-25 years; lighting systems 20 years; toilets and faucets 15-25 years; and refrigerators 6-10 years. Projects of 12 years and less in duration terminate before most retrofits reach the end of their useful lives. Projects that extend up to 20 years, however, will require some equipment to be replaced midterm. Replacement equipment should be funded through the EPC to the maximum extent possible. If, however, the equipment is replaced by public funds, the PHA shall not retain any further energy savings from that equipment. EPC documents language shall address replacement as appropriate.

If the energy engineering firm does not contemplate replacing equipment with a useful life less than the contract period, the savings stream from the equipment must stop at the end of its useful life. This value consideration is especially important to the PHA when the proposed term of the contract is up to 20 years and the useful life of the equipment is less, e.g., estimated useful life of a standard refrigerator is 6-10 years.

More important for 20-year terms than for 12-year terms will be the need for savings to persist over the entire term of the energy project. Over the life of the contract, HUD recommends that the PHA obtain an annual third party measurement and verification audit to include reconciliation of savings to the form HUD-52722 of the consumption and cost savings related to HUD-approved saving incentives to ensure compliance with contract provisions and projected savings.

It is further recommended that the period of the measurement and verification audit coincide with the July 1 – June 30<sup>th</sup> actual annual consumption level reporting requirement in 24 CFR § 990.180. Cost of the annual measurement and verification audit is an eligible energy project expense. A copy of the audit shall be provided to the local Field Office and reviewed in conjunction with the PHA's subsidy eligibility.

Maintenance is also an important contributor to the persistence of savings and the life of equipment. Many older boiler and chiller systems use outside services contracts and incur large demand charges for energy. Retrofits savings to eliminate these charges are eligible for capture and use for further investing in retrofit technologies. Replacing an old steam boiler system, for example, reduces the need for specialty contractors and eliminates costly staff overtime hours for equipment failures during winter. PHAs should consider having their third party

provide training for PHAs in the area of maintenance and routine repairs or provide maintenance and routine repairs of equipment installed by the contractors as part of the EPC.

The project expense level (PEL) calculated under 24 CFR § 990.165 include the cost associated with maintenance, among other expenses. Replacing older, outdated energy equipment may result in maintenance cost savings. HUD permits PHAs to retain maintenance cost savings under the current PEL calculation. While the maintenance cost savings are not considered utilities, and therefore are not eligible for use in calculating EPC savings, any maintenance savings do represent reduced operational costs.

- 13. Asset Management.** Energy and water conservation are critical components of asset management because energy and water costs represent 24 percent of public housing operating expenditures. PHA transition to asset management is expected to result in greater accountability, more effective use of resources including utilities, and better quality housing. Asset management is a management model that emphasizes property-based management as well as long term and strategic planning. Energy projects that may extend up to 20 years clearly involve a long term, strategic planning component.

For CY 2007 and going forward, terms in a new energy project plan, IGEA and energy services agreement must include savings contribution, equipment costs, and savings broken out by individual project. This requirement is in keeping with 24 CFR § 990.170(f) (2), which requires PHAs to keep utility records at the AMP level.

- 14. EPC Approval Requirements.**

The regulation at 24 CFR § 965.308 requires that PHAs obtain HUD approval of the solicitations for energy performance contracts prior to issuance and prior to award. These HUD approvals are needed for a PHA to qualify for the incentives, including the appropriate contract period of the incentive. HUD approval of these incentives is based on many factors, including that payments under the contract can be funded from reasonably anticipated energy cost savings; the contract period does not exceed 12 years or 20 years with a HUD approved waiver; and, the supporting life cycle cost analyses documentation is complete.

PHAs must comply with HUD procurement regulations in 24 CFR § 85.36, which specifically require under 24 CFR § 85.36(c) that all procurement be done in a manner that provides full and open competition. Regulations at 24 CFR § 965.308 and 24 CFR § 85.36(d) (4) (i) (A) require that EPCs be procured through competitive proposals unless services are available only from a single source and justification is provided.

A 20-year contract poses more risk to HUD's Operating Fund if the unit inventory under contract changes. If unit inventory changes due to demolition or disposition for units with an approved frozen rolling base or energy loan amortization add-on, HUD may consider making the appropriate adjustments.

## **15. Waiver Requests for Extending EPCs Not To Exceed 20 Years.**

As previously stated, for PHAs who may want to extend existing energy performance contracts to a term of not more than 20 years, a waiver request is required until 24 CFR § 990.185(a) is revised to reflect the new term limit. The PHA shall submit, through the local HUD Field Office, its waiver request to the Assistant Secretary of Public and Indian Housing for approval. The waiver request shall include an IGEA and amortization schedule.

PHAs with an existing energy performance contract may request to extend their use of HUD's energy incentives to a term not to exceed 20 years. The PHA may also initiate a new project using a qualified third party, or terminate their existing contract to take advantage of a new contract with longer terms. If the existing contract is terminated and a new procurement is initiated, the agency may add additional properties for a term not to exceed 20 years to its proposal. The PHA should carefully review the termination clauses in its contract and consider the terminations costs.

HUD will continue to consider waiver requests for a new contract or self developed project not to exceed 20 years. When considering an extension of an existing contract, the PHA should carefully consider the benefits of procuring or self developing a totally new energy project. For example, a new energy project can include new ECMs for projects under the existing contract in addition to other projects in the PHA's portfolio.

In addition, the IGEA associated with a newly developed EPC project will give the PHA an objective, comprehensive consumption and performance picture of existing ECMs under the original contract and also provides a means for combining other properties and measures not in the original contract. PHA-wide and project-based data provides a more accurate representation of proposed ECM requirements and savings. Most importantly, under a new project, the PHA can get approval for a contract term not to exceed 20 years versus only a maximum of an additional 8 year extension for an existing 12 year contract. The new ESCO or self-developed project can provide larger retained savings for the new contract, resulting from the longer term and open competition among energy engineering service providers or consultants.

An existing EPC may be extended without the re-procurement of energy performance contractors for only those specific sites or projects included in the original EPC to permit additional energy conservation improvements. For an existing EPC, the PHA shall submit, through the local HUD Field Office, its waiver request to the Assistant Secretary for approval. The waiver request must contain sufficient information for the Assistant Secretary to make a determination of good cause for the waiver, as provided at 24 CFR 5.110. Documents that would be helpful in demonstrating good cause include an IGEA, amortization schedule, and a measurement and verification report that verifies savings have exceeded repayment in the prior 2 years using main meter utility bill analysis as defined in IPMVP Option C and ASHRAE Guideline 14.

Additional ECMs may be added or replace current ECMs in the original projects as supported by the IGEA. The utility baseline for each utility type in the IGEA shall be the most recent consumption levels as reported on the form HUD-52722 to determine projected savings. The baseline must be provided by site or project as described in the original contract. Savings from ECMs under the original EPC in conjunction with the savings from the new ECMs in the extension request may be used to amortize the longer contract terms.

PHAs shall require and third parties shall include in the IGEA life cycle cost analyses the estimated useful life of the ECMs under the original contract and proposed extension. In addition, HUD recommends that PHAs, as part of its additional energy conservation measures, not replace equipment with more than 30% of its useful life remaining unless the energy engineering firm can demonstrate through the IGEA that replacement is cost effective.

Another way that an EPC can be extended up to the 20-year limit is if the energy cost savings are less than the amount necessary to meet amortization payments specified in a contract. However, this is only possible when HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may be extended only to accommodate debt service.

#### **16. Other Considerations for Energy Performance Contracts.**

EPC contract extensions not to exceed 20 years do not require competitive procedures. Competitive quotes are only required for new contracts.

All EPCs will be submitted to the HUD local Field Office for review and approval before award. PHAs shall issue competitive quotes (24 CFR § 85.36) for financing and evaluate quotes based on total interest payments, capitalized interest, securitization, and other factors.

#### **17. HUD - Field Office Responsibilities for Energy Performance Contracts.**

24 CFR § 965.308 (b) requires that EPCs shall be submitted to the HUD Field Office for review and approval before award. In conjunction with a contract review, HUD Field Offices are responsible for reviewing the engineering and financial basis of energy finance projects, processing subsidy requests, and assuring regulatory compliance. Field Offices can expect to spend more review, approval and ongoing regulatory compliance time with 20-year projects and in particular, with waiver requests to extend existing contracts not to exceed 20 years.

Basic documentation that shall be maintained at the Field Office to enable contract performance and regulatory compliance include: Request for Proposal; approved contract; IGEA; Energy Services Agreement; amortization schedules; change agreements to the basic contract; forms HUD-52722 and HUD-52723 over the life of the contract; annual monitoring and verification audits with

reconciliation to form HUD-52722; and correspondence to waive requests, approvals, etc.

## **18. Public Housing Agency Responsibilities for Energy Performance Contracts.**

PHAs should work closely with their HUD Field Offices throughout the process to ensure common understanding of options, requirements, and outcomes. This interaction should begin during project planning and carry through into project repayment.

EPCs are contracts between the PHA and energy engineering firms. HUD is not party to the contract. PHAs, therefore, fully assume the risk for the following: (1) generating reasonable sufficient savings to cover payments related to the cost of the energy project; and, (2) savings shortfalls attributable to projected rate increases that may not materialize. PHAs should understand their risks and responsibilities in undertaking an energy project with an energy engineering firm or as a self-developed project. A critical aspect for a 20-year term over a 12-year term will be the need for savings to persist over the entire term of the energy project.

PHAs must provide an annual monitoring and verification audit to the local Field Office reconciling the documented savings to the annual form HUD-52722 and HUD-52723. The PHAs' annual submission of the monitoring and verification report and reconciliation constitute a certification that the savings are true and accurate.

## **19. Conflicts of Interest.**

If in-house expertise is not available, HUD recommends that housing agencies consider hiring qualified engineering and financial contractors for assistance. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36.

No third party contractor to the PHA will participate in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the contractor, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

A perception issue also arises when a consulting firm, e.g., financial, working for an energy engineering firm also worked for the housing agency and uses their former relationship with the housing agency to give preferential treatment or conditions that better serve the energy engineering firm without proper negotiation.

The consulting firm must provide a certification to the PHA with a copy to the local Field Office that a conflict of interest does not exist. For more information, see the Procurement Handbook 7460.8 Rev 2 paragraph 4.4.

HUD encourages energy engineering firms and other third party consultants seeking to assist PHAs reduce energy consumption to market their services, products, qualifications and expertise in energy conservation. They, however, shall refrain from any activities that involves paid or free technical assistance specifically related to the preparation of energy procurement documentation, such as a statement of work, request for proposals/qualifications for which their firm may directly or indirectly compete for an award.

All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36. No firm shall participate in the preparation, selection, award, or administration of a contract supported by Federal funds if a conflict of interest, financial or otherwise, real or apparent, would be involved.

- 20. Technical Resources.** Request for technical assistance related to audits, procurement, training, templates or other energy guidance should be initially referred to the local HUD Field Office and HUD's Energy website <http://www.hud.gov/offices/pih/programs/ph/phecc/eperformance.cfm>.
- 21. Information Contact.** If you have any questions regarding this policy, please contact Nicole Faison, Director, Office of Public Housing programs at (202) 708-0744.
- 22. Paperwork Reduction Act.** The HUD forms referenced in this notice have been approved under the Paperwork Reduction Act - OMB Control Number 2577-0029.

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/s/  
Paula O. Blunt, General Deputy Assistant Secretary  
for Public and Indian Housing