

Procurement and CFP, CFFP, Mixed-Finance, EPC, Energy Star *and more!*

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Housing for the 2010 Sustainable Homes
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Procurement – the Wrong Way

NATION

Navy pays \$544 for \$10.77 part

- *A House panel is investigating possible price gouging by the maker of an unmanned reconnaissance aircraft after a contractor charged*
- *The Navy \$544 for a spark plug connector available at hardware stores for \$10.77*

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Procurement Training

Four Main Areas

- Key Principles
- Sealed Bidding
- Competitive Proposals
- Contract Administration



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Key Laws and Guidance

HUD Regulations

-24 CFR 85.36 “Common Rule”

Sets standards which must be met in conducting procurements

HUD Guidance

- Handbook 7460.8 REV-2

Contains specific guidance, “how to” instructions and samples



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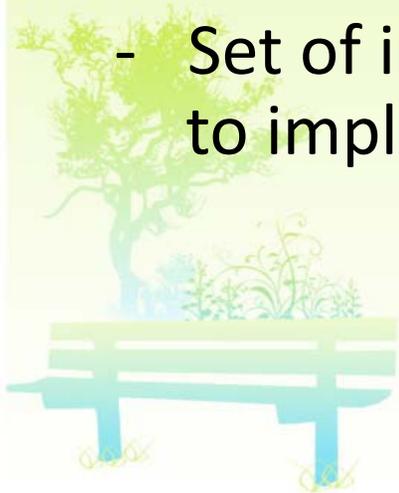
Key Laws and Guidance

Housing Authority Procurement Policy

- HA's own policy to implement the requirements of 24 CFR 85.36
- Established by Board Resolution

PHA Operating Procedures

- Set of internal HA policies and procedures to implement the Procurement Policy



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Sealed Bidding

Key Steps in Sealed Bidding

- Identify the requirement
- Prepare specification
- Ensure sufficient funds are available
- Issue Public Notice
- Issue Invitation for Bids (IFB)
- Receive and safeguard bids
- Conduct public bid opening



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Sealed Bidding

Key Steps in Sealed Bidding (Cont.)

- Determine low bidder
- Determine price **REASONABILITY**
- Determine **RESPONSIVENESS & RESPONSIBILITY** of low bidder
- Award Contract
- Obtain Bonds
- Issue Notice to Proceed
- Conduct post-award/pre-construction conference

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Competitive Proposals

Key Steps In Competitive Proposals

- Identify the requirement
- Prepare the Statement of Work
- Develop Evaluation Criteria
- Develop Individual Evaluation Plan
- Ensure sufficient funds are available
- Issue public notice



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Competitive Proposals

Key Steps in Competitive Proposals

- Issue Request for Proposals (RFP)
- Receive & safeguard proposals
- Evaluate proposals (No public Bid Opening)
- Conduct cost or price analysis
- Determine competitive range
- Conduct discussions
- Obtain best and final offer
- Evaluate best and final offers



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Competitive Proposals

- Determine price REASONABILITY
- Determine RESPONSIBILITY of most advantages offeror
- Notify unsuccessful offerors

NOTE: Each step must be fully documented



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Required Documentation

- Contracts Over \$100,000- must be advertised in local Newspaper
- Construction Contracts Over \$100,000 – Bid package needs the following documents:
 - 1. Specifications and drawings- use “or equal clause” for Brands
 - 2. General Conditions HUD-5370 or HUD-5370-EZ for Contracts under \$100,000.
 - 3. Davis-Bacon Wages
 - 4. Invitation for Bids
 - 5. Instructions to Bidders HUD-5369
 - 6. Reps., Certifications & Other Statements , HUD-5369A
 - 7. Bid Guarantee (Bid Bond Form-SF-24)
 - 8. Non-Conclusive Affidavit- part of HUD-5369A

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Contract Administration

- Gain full cooperation by both parties
- Assure that the contractor does the work called for in the contract
- Assure quality
- Assure timely performance
- Assure performance within budget



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Contract Administration

- 1. Bilateral modifications or Supplemental Agreements, are those changes signed by both the contractor and the Contracting Officer. Money and time.
- 2. Unilateral Modifications, signed only by the Contracting Officer. Contractor is required to complete work on a Unilateral Modification.



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Contracting Problems

1. Bid Protests
2. Dealing with Performance Problems
 - a. Document problems
 - b. Issue Cure Notice – 10 days to correct
 - c. Issue Show Cause letter- If response to cure notice is unacceptable.
 - d. Terminate for default- Contractor fails to perform terms of the contract.
 - e. Terminate for Convenience- CO must make fair and prompt settlement with the contractor.



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Contract Problems

- a. General File
 1. Construction Award Letter, Signed contract, etc.
 2. Notice to Proceed Letter.
 3. Contractor's Schedule.
 4. Contractor's schedule of costs.
- b. Submittal File - If a substitution is accepted, get A/E's approval
- c. Construction Inspection File: File written inspection reports.
- d. Contractor's payrolls conforming with Davis-Bacon
- e. Final project Closeout and Warranty File.

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Capital Fund Due Dates

- 9.13.11: 2007 Expenditure Deadline Date
- 9.14.11: 2009 Obligation deadline date
- 6.12.12: 2008 Expenditure Deadline Date
- 9.14.13: 2009 Expenditure Deadline Date



*Important
DATE!*



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When Are Funds Obligated?

- Not when planned for or included in PHA Plan
- Not when IFB or RFP is issued
- Not when bids are received
- Must have executed contract, PO
- For force account, must be sequentially related items
- CFP – 2 years to obligate
- Monthly LOCCS reporting of obligations required



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Environmental Review Requirements

- All CFP grants, even if utilizing 1406 for 100% of the funds, must be covered by an Environmental Review worksheet and accompanied by a letter on the Responsible Entity's (RE) letterhead
 - See 24 CFR part 58
 - The RE signer should work for the local government. They *cannot* be a PHA employee.
 - Funds are “locked” until the requirement is met



Environmental Review Requirements Cont...

- Most PHAs put money into 1406 or rehab without change in size or capacity of more than 20%
 - This guidance pertains to those situations only
 - Contact your FMS if the PHA is engaging in more extensive work

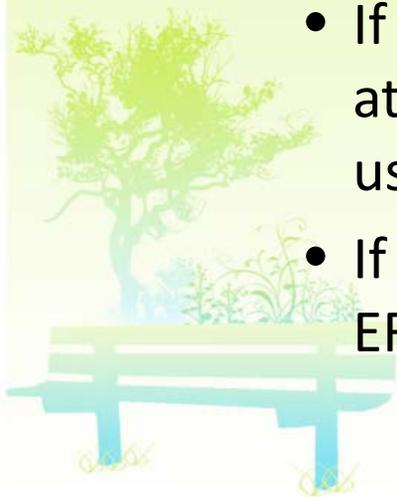


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Environmental Review Requirements Cont...

- Steps to take after the RE is identified:
 - Decide which grants the RE is going to review and gather budgets/work items for each of those years
 - Attach items to the worksheet and take to the RE
 - Include information the RE will need that pertains to items on the ERR Statutory Worksheets
 - If funds are going to 1406, use ERR Worksheet 2 and attach operating budgets to show what the funds will be used for
 - If doing capital improvements as described above ERR Worksheet 3



Environmental Review Requirements Cont...

Good news:

Environmental Review worksheets and letters can cover more than one grant.

- An RE can sign for an entire 5 Year Plan period
- The only annual requirement is a letter or email from the PHA stating that the planned activities have not changed from what was reviewed by the RE (e.g. if a PHA alters its 5 Year Plan, another letter and worksheet are required).



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Environmental Review Requirements Cont...

- Most REs will categorize work as “Categorically Excluded and *not* subject to 58.5”. If so, send the paperwork to your FMS. No further action is needed.

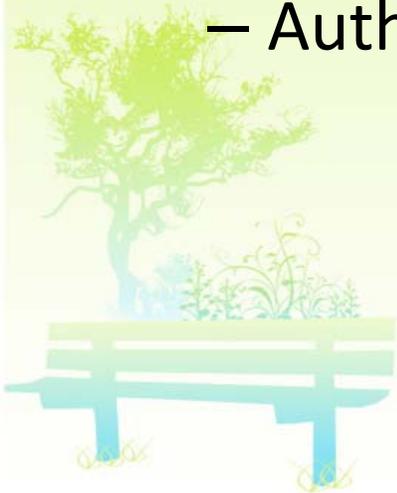


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Environmental Review Requirements Cont...

- If categorized as “Categorically Excluded and subject to 58.5 statutory requirements”, the following are required:
 - NOI/RROF Notification
 - RROF and Certification Form (Form 7015.5)
 - Authority to Use Grant Funds (form 7015.16)



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Weatherization

- 5 billion in new funding directed towards the states
- Targeted developments whose must be at or below 200% of the poverty level to be eligible to apply
 - List: http://www1.eere.energy.gov/wip/multifamily_guidance.html
 - Some eligible properties aren't on the list due to a lack of centralized income and address data.
- Email energyaction@hud.gov with building info to get added



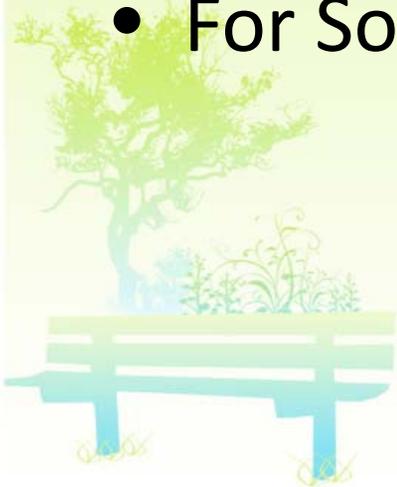
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Weatherization Cont.

- For Colorado, visit:
 - http://www.rechargecolorado.com/index.php/programs_overview/weatherization_program
- For Montana, visit:
- For North Dakota, visit:
- For South Dakota, visit:



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Weatherization Cont.

- For Utah, visit:

<http://housing.utah.gov/wap/contact.html>

- For Wyoming, visit:

<http://dfsweb.state.wy.us/economic-assistance/lieap/index.html>



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Weatherization Cont.

- Note that Single-Family dwellings are eligible
 - PHA must have units added to eligibility list and provide income information on tenants
- Not a grant, rather services are provided related to:
 - caulking and sealing, insulation, windows, furnaces, new appliances, lighting, heating and cooling systems



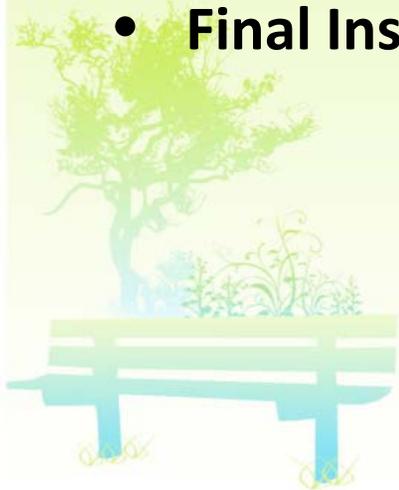
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Weatherization Steps

- **Determine Eligibility (HUD has assisted the DOE for PH)**
- **EOC calculates budget**
- **Identify Measures**
- **Sign Contract Agreement**
- **Solicit Bids**
- **Install Measures**
- **Final Inspection**



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Lead Based Paint-LSHR

- Lead Safe Housing Rule – changes effective April 2010
 - www.hud.gov/offices/lead/enforcement/regulations.cfm
 - Contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 **must be certified** and must follow specific work practices to prevent lead contamination

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LSHR-Certification Requirement

- Who must be certified?
 - Renovation contractors
 - Maintenance workers in multi-family housing
 - Painters and other specialty trades
- The EPA's rule is that one person on the job be certified BUT HUD requires that all persons working on the job be a Certified Renovator or be trained by a Certified Renovator.
 - The Certified Renovator must take the 4 hr. refresher course



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LSHR-Do I have LBP?

- HUD's LSHR
 - EPA-recognized test kits cannot be used to say paint is not LBP. Only a certified LBP inspector or risk assessor may determine whether LBP is present.

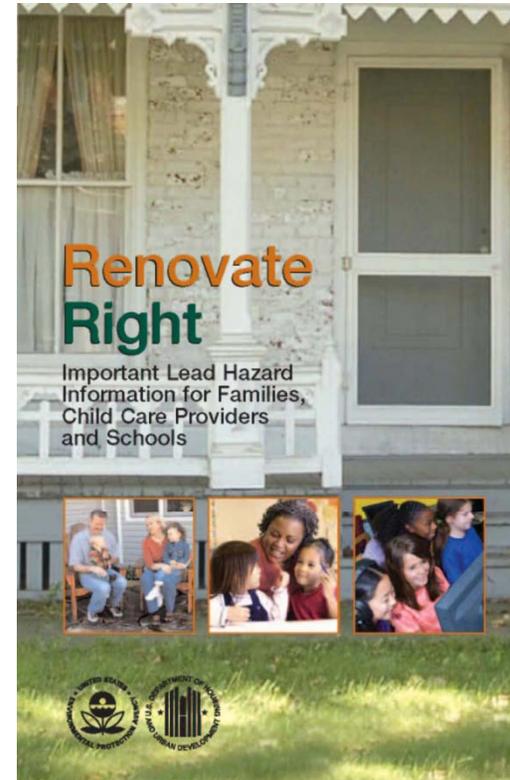


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RRP Rule's Pre-Renovation Education is in Effect Now

- New brochure “Renovate Right” developed for all covered renovations must be used (began 12/22/08).
- The older “Protect Your Family” brochure is still used for real estate Disclosure and general outreach.



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Capital Fund Program

- 1998 Congress Modifies modernization program as part of QHWRA and creates Capital Fund Program (CFP)
- Funding is Formula Based
- All PHAs are eligible
- CFP Activities are described in PHA Plan



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CFP Cont.

- General Rule – Follow 24 CFR Part 968 except where pre-empted by statute
- Obligation and Expenditure Deadlines
 - 2 years to obligate – 90% of funds
 - 4 years to expend



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Capital Fund Formula 24 CFR Part 905.10

- Formula allocation based on relative needs
- Relies on Unit & Bldg. data submitted by PHAs in PIC. PHAs are now required to certify the Bldgs & Units in PIC every year.
- Number of projects
- Number of buildings
- Number of units
- Number of bedrooms



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Capital Fund Formula Cont.

- Performance Reward Factor for PHAs designated “High Performers” under PHAS can receive a bonus that is:
 - 5% above base formula amount



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Eligible Activities

- Undertaking activities described in the approved Five-Year Action Plan and Annual Statement.
- Emergency work approved by Head Quarters. HA must repay from future year CFP funds.



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Eligible Activities

- Eligible alterations, betterments, additions, replacements and non-routine maintenance.
- Management Improvements
- Demolition and replacement- Demolition and disposition must be approved by SAC.
- Resident Relocation
- Security and Safety
- Audit Costs on the program



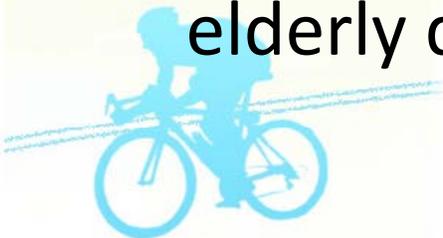
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Eligible Activities

- 504 Improvements – Based on HA's 504 Needs Assessment Self-Evaluation.
- Energy Conservation Measures- Based on the HA's energy audit.
- Maintenance and remodeling of Office and Community Space.
- Air Conditioning- Initial installation or replacement of air conditioning in family or elderly developments.



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Eligible Activities

- Provision of additional dwelling space to enlarge room sizes, provide storage or add additional bedrooms is an eligible cost.
- Property Purchase- property purchases for non-dwelling use are eligible costs and shall be charged to Account 1440- Site Acquisition. Please notify your FMS as there are other requirements, e.g., appraisal, sole source justification, DOT, etc.



CFP Annual Statements Budget Line Items (BLI)

- Sample Annual Statement/Performance and Evaluation Report- Parts I, II , III should be filled out . Submit annually with PHA Plan. New form is available on HUDCLIPS, 50075.1. Executive Director must sign form.
- Part II- Should have defined elements of work filled out. The elements of work should be per development. Costs per development are reported to SAC during the demo/disposition process.
- Part III- Planned obligation and expenditure date. Must be within the 2 years to obligate & 4 years to expend.



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Budget Line Items

1406- Operations- HAs smaller than 250 units may use 100% of their Capital Funds in Operations. Large HAs may use 20% .

1408- Management Improvement- This account shall be charged with all costs incurred by the HA for management improvements, including non-technical salaries, consultant fees, etc. Computer software should be charged to 1408 and Computer hardware should be charged to 1475-Non-Dwelling Equipment. Budget for 1408 should not exceed 20% of CFP funds except for High Performers.



Budget Line Items

1410-Administration- Costs necessary for the planning, design implementation and monitoring of management improvements:

- a. Salaries for technical & non-technical
- b. Preparation of documents
- c. Resident participation
- d. Litigation Expenses- Prior HUD approval is required before an HA incurs litigation expenses.

Admin. Costs cannot exceed 10% of the funds.



Budget Line Items

1411-Audit- This account shall be charged with the cost of the Independent Audit (IA) specifically authorized for the CFP.

1430- Fees and Costs- Architectural and Engineering Fees, Consultant Fees, Permit Fees, Inspection Costs and Miscellaneous Planning Costs.



Budget Line Items

1440-Site Acquisition-Property purchases, survey maps, appraisals, Title information, legal costs, option negotiations, current tax settlements, miscellaneous site costs.

1450- Site Improvements- Any site improvements, roads, sidewalks, irrigation systems, external lighting, etc.

1460- All remodel work on dwelling structures.



Budget Line Items

1465- Dwelling Equipment- Nonexpendable
Refrigerators, ranges, stoves, ovens, hot
water heaters, furnaces. HA is required
to buy Energy Star Appliances.

1470- Nondwelling Structures- Offices,
maintenance bldgs., garages.



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Budget Line Items

1475-Nondwelling Equipment-office furniture and equipment, maintenance equipment, community space equipment, computer equipment, automotive equipment.

1485- Demolition- All costs incurred by the HA demolishing and clearing existing public housing structures, disconnecting utilities and clearing of site. Demolition must be in PHA Plan and SAC approved (X amount of Units).



Budget Line Items

1490- Replacement Reserve-This line item is no longer used (since 2007). Any HA with replacement reserve funds should obligate and expend as soon as possible. It is no longer on the 50075.1 form.

1495- Relocation Costs- relocation and other assistance as a direct result of rehabilitation, demolition or acquisition for a CFP Activ



Budget Line Items

- 1499- Development Costs- cost for the development of low rent housing. Please contract your FMS if you are contemplating building new units. The costs should be approved by a development application. Replacement Housing Factor RHF Grants must remain in Account 1499 until HA has accumulated adequate funds to proceed with the development proposal.



Budget Line Items

1502- Contingency- HA s may budget 8% for contingencies. Funds must be re-budgeted into eligible accounts.

Line Items, 21, 22, 23, 24, 25, and 26 – These Line Items should be filled out accordingly.



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Program Requirements

- Capital Fund Obligation and Expenditure Deadlines
 - PHAs must obligate 90% of funds not later than 2 years and expend funds not later than 4 years after the date funds are available.



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Program Requirements

- Obligation Extensions
 - The Secretary, under special circumstances may grant an extension to a PHA if failure to obligate is due to:

Litigation

Complying with environmental regs.

Relocating residents

Any event beyond the control of the PHA



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Program Requirements

- Compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act.
- Modernization Standards Handbook 7485.2
- Contracting Requirements
-24 CFR Part 85.36



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Program Requirements: Force Account

- A HA may use force account labor if approved by HUD in the CFP Annual statement. No prior approval is needed if the HA is a designated High Performer.
- Force account Work Requires the Following:
 - a. Justification of why force account work is needed.
 - b. Detailed cost estimate, specs & drawing.
 - c. Cost comparison demonstrating force account is beneficial to government.
 - d. Accurate cost accounting of labor & materials.
 - e. Third party inspection and monitoring.



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Revisions to CFP

- Provide a revised Annual P & E report with the revisions in the revised columns- Parts I Part II and Part III (form HUD-50075.1)
- The work shown in the revision must be originally shown in the Annual Plan or the 5 Year action plan. If it is not, then it would require a significant amendment to the HA plan.



Significant Amendment to the PHA Plan

- Consult with Resident Advisory Board. Record any comments by the RAB.
- Advertise 45 days prior to a public hearing
- Conduct a Public Hearing.



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5 Year CFP Action Plan

- Provide a Five Year plan per each development (see example Exhibit 2). New form 50075.2.
- Do a physical assessment of the property developments prior to preparing the 5 year plan. If necessary hire an A/E firm to help develop projects and cost estimates. Funds from the capital fund can be used for this purpose. Program into the 5 year plan, energy audits, 504 assessments, Energy Conservation projects.
- Incorporate as many types of work as possible into the 5 year plan so that a Significant Amendment is not needed for a budget revision.



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LOCCS Draws

- PHAs must have written documentation to support the requisition, such as bills, invoices from vendors, etc. PHAs must have in their files form HUD –50080-CFRG (Exhibit 3).
- Payments are disbursed to a PHA within 3 days
- PHAs must disburse funds within 3 days of receipt.



LOCCS Monthly Reporting

- If a PHA is late reporting obl/exp information, eLOCCS will prevent drawdowns for ALL grants in program areas.
- Advance Reporting
 - eLOCCS supports reporting of obl/exp info prior to the end of the reporting month



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Project Close-Out

- PHAs are to submit Form HUD-53001, Actual Comprehensive Grant Cost Certificate (ACGCC) when funds are expended
- An Original and one copy to HUD
- Upon receipt of form, HUD will enter a Pre-Audit date in LOCCS



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Project Close-Out

- Field Office compares ACGCC to the final P&E Report
- Compares with eLOCCS
- If PHA failed to expend 100% of funds by the deadline, funds are recaptured
- If ACGCC is correct, advise PHA in writing approved for audit



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Project Close-Out

- If audit is not required, approve ACGCC
- FO submits ACGCC to Fort Worth Accounting Center
- Post Audit Date in LOCCS is entered, which completely closes out grant.
- The End.



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Capital Fund Financing Program (CFFP)

- 1). PHAs may use a portion (33%) of their yearly capital funds to pay a 20 year loan to fund a large capital project.
- 2). Project may be funded by loans or bonds.
- 3). The loans or bonds are obligations of the PHA, HUD does not guarantee or ensure these loans or bonds.



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CFFP Program Guidelines

1. **Approval-** PHAs must request approval from the Assistant Secretary for PIH.
2. **CF Pledges-** No more than 33% of a PHA's current annual Capital Funds
3. **Term –** No more than 20 years
4. **Public Housing Requirements-** any CFFP transaction must follow all statutory requirements.
5. **Other Financing /Approvals-** If a PHA uses proceeds that will require other HUD approvals, separate approvals must be obtained.



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CFFP Application

Request to HQ - Requirements:

1. Cover Letter with justifications:
 - a) Statement that a physical needs assessment (PNA) was conducted
 - b) Description of Modernization
2. A completed Term Sheet
3. A debt service schedule



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CFFP Application

4. A copy of PHA Plan Information
5. A Board Resolution
6. A Sources and Use schedule detailing cost of issuance/closing and all associated fees.
7. A schedule of Effective Cost Financing
8. A Fairness Opinion- from a qualified independent Financial Advisor.
9. A Management Assessment –Independent qualified party.



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CFFP Application

10. Contact list
11. All Bond and Loan Documents
12. Draft of PHA Counsel's Opinion
13. A Copy of the Declaration of Trust (DOT) for each public housing property the bond proceeds will be used on.
14. A Depository Agreement- HUD form 51999 for CFFP proceeds



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CFFP Resources

A. CFFP web site

www.hud.gov/offices/pih/programs/pih/capfund/cffp.cfm

Includes all forms needed

B. Contacts- HQ

Kevin Gallagher or Tom Shelton: (202) 402-4192



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Mixed Financing

- 1). Mixed Financing is used to fund large remodeling and new construction developments from 2 million to 50 million.
- 2). Mixed Financing is accomplished when a PHA needs a large project but they are not eligible for a HOPE VI project or unable to obtain HOPE VI funds.



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Mixed Financing

Sources of Funding for a Mixed Finance Project

1. Tax Credit Program

a) Developer receives tax credits for low income housing.

2. CFFP Program

a) PHA applies 30% of their capital fund over 20 years to partially fund project.

3. Energy Performance Contract

a) Can fund lighting, water closets, faucets, boilers, HVAC part of the project.



Mixed Financing

Approval Process for Mixed Finance Projects

- a. Demolition/Disposition- SAC
- b. CFFP – HQ Capital Improvements
- c. Tax Credits – State Tax Credit Program
- d. Mixed Finance- HQ Cap. Improvements



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Mixed Financing

How do you start?

1. Feasibility Study

- a. Is the Project land/location attractive to a developer?
- b. Are tax credits available in your state ?
- c. Is there a feasible relocation plan during the course of the project ?

2. May want to hire a consultant for study



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Mixed Financing

Next Step

1. Contact your FMS and describe project.
2. Send a letter to Dominick Bloom to be assigned a Mixed Finance Coordinator from HQ
 - a) MF coordinator will guide you through the process and is the liaison for the HQ review boards.



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Mixed Finance Resources

A. Mixed Finance web site

www.hud.gov/offices/pih/programs/ph/hope/mfph

- a) Rental term sheet-HUD-50030
- b) Sample – MF ACC Amendment



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Energy Star



- Energy Star is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency.
- HUD, EPA and DOE have signed a formal partnership to promote Energy Star throughout HUD's Affordable housing programs.
- Notice PIH 2005-25 dated July 13, 2005- **Using ENERGY STAR to Promote Energy Efficiency in Public Housing-** HAs are strongly encouraged to Purchase Energy Star products unless the energy star appliance is not cost-effective to the agency.



Energy Star Products

- Energy Star Manufacturers and savings calculators can be found on the Energy Star website: www.energystar.gov.
- Appliances will have the *Energy Star* Logo
- Refrigerators Heating equipment
- Clothes washers Ventilation fans
- Dishwashers Insulation
- Lighting Fixtures roof products
- Room and central air conditioners, etc.



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Energy Star DOE Bulk Purchase

- HUD approves use of DOE's Quantity Quotes
Website: www.quantityquotes.net
- Obtaining 3 quotes from the DOE website satisfies 24 CFR 85.36(d) for purchases from \$2,000 to \$100,000
- A. Purchaser makes request
- B. Suppliers respond via web site
- C. Purchaser follows up with Supplier
- If less than three quotes are received then PHA must obtain another quote from other sources



Energy Performance Contracting

- A. Energy Performance Contracting is a HUD program enabling Housing Authorities to complete energy saving projects via an alternate funding source. The energy savings generated from the projects pays for the projects. (plus additional savings).
- B. Savings are generated as HUD freezes the utility base (at its current level) for the life of the project (usually 12 years). There is also an add-on subsidy that can be used.



Energy Performance Contracting

- C. The HA obtains a loan to finance the energy conservation projects. An Energy Service Company (ESCO) performs the energy audit, project designs, project management and assists the HA to obtain the loan. The energy savings that pay off the loan are guaranteed by the ESCO.
- D. Usually ESCOs are interested in projects over \$500,000.
- E. HQ in HUD is also coming out with an ESCO Light. The PHA would act as the ESCO, assisted by a Mechanical Engineer.



5 Steps to an EPC

- 1. Decide if Performance Contracting is right for you. Assess your needs & potential benefits.
- 2. Select an Energy Service Company-Develop a RFP- The RFP must be approved by HUD Field Office prior to solicitation.
- 3. ESCO identifies energy-saving opportunities. Develop an audit contract-Must be approved by HUD Field Office.
- 4. Negotiate an Energy Performance Contract-Must be Field Office approved. Verify savings and enjoy benefits.
- 5. Monitor long-term performance.
- Please contact your FMS for guidance and information.

