



LFN 2011-17

June 16, 2011

Local Finance Notice

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Lori Grifa
Commissioner

Thomas H. Neff
Director

Contact Information

Director's Office

V. 609.292.6613
F. 609.292.9073

Local Government Research

V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance

V. 609.292.4806
F. 609.984.7388

Local Finance Board

V. 609.292.0479
F. 609.633.6243

Local Management Services

V. 609.292.7842
F. 609.633.6243

Authority Regulation

V. 609.984.0132
F. 609.984.7388

Mail and Delivery

101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web: www.nj.gov/dca/dlgs

E-mail: dlgs@dca.state.nj.us

Distribution

Municipal and Freeholder Clerks
Municipal and County Chief
Financial Officers
Local Authority and Fire District
Officials
School Business Administrators
Local Procurement Officials

Update on Implementing Energy Savings Improvement Programs

This Local Finance Notice provides guidance concerning Energy Savings Improvement Program (ESIP) matters that affect local units covered under the Local Public Contracts Law (LPCL, N.J.S.A. 40A:11) and the Public School Contracts Law (PSCL, N.J.S.A. 18A:18A).

The Notice covers a model ESCO (Energy Services Company) Request for Proposal document and provides information on using the "Do-It-Yourself" process for implementing an ESIP. This Notice supplements [Local Finance Notice 2009-11](#) concerning ESIPs.

Model ESCO Request for Proposal Document

General Issues

The Division of Local Government Services and the Board of Public Utilities have completed development of a model ESCO Request for Proposal Document. It is designed to assist all organizations (contracting units) covered by the LPCL and PSCL hire an energy services company (ESCO) to develop and implement an Energy Savings Plan (ESP) as part of an Energy Savings Improvement Program as authorized under N.J.S.A. 40A:11-4.6 and 18A:18A-4.6.

Specifically, the document serves as the starting point for these government agencies to select an ESCO through the competitive contracting procedure (N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq.).

Notwithstanding the efforts of the State agencies to ensure that the RFP is consistent with all relevant procurement procedures, laws, and regulations, there are several issues contracting unit personnel should keep in mind:

- 1) Local legal advisors should review the document to ensure it is consistent with any allowable local practices and legal considerations.
- 2) The individual responsible for managing the project should review the entire RFP in order to be able to answer questions and ensure the document meets local needs.
- 3) Forms have been carefully designed to meet the need of this specific process. Care should be taken if proposed forms are removed and replaced with ones normally used by the contracting unit.

Feedback from users about the model is encouraged and the Division plans to update it as experience warrants. To start this feedback process two immediate options are available to users.

1. An [ESIP webpage](#) has been established for ESIP issues (the model document will be posted there as well) and it has the ability for users to [email comments](#) directly to the Division.
2. The Division will hold a meeting to accept comments from interested parties on the RFP. The meeting is scheduled for Thursday, July 28, 2011 at 9:30, to take place at DCA offices at 101 South Broad Street in Trenton. **Attendees are asked to register (via [email](#))** if they plan to attend or speak; if too many people sign up, we may move the location and will need to contact attendees. **This is not an educational session** – there will be no staff presentations on the RFP and is expressly to take comments that are not submitted in writing. It is expected that professional organizations will sponsor training sessions this fall.

As changes are made, they will be noted in text or in a tracked document and posted to the website. Users are urged to check the site to be sure they are using the latest version. The [GovConnect Local Procurement](#) role will be used to notify procurement officials when a new version has been posted.

Using the Model ESCO RFP

The Model ESCO RFP is broken into several self-explanatory sections:

- Part A. Instructions to Proposers
- Part B. Terms and Conditions
- Part C. Scope of Work
- Part D. Proposal Evaluation
- Part E. Form of Proposal and Content
- Part F. Appendix
- Part G. Proposal Forms

It is designed to be used by contracting units under the LPCL and PSCL, but it requires the user to edit the document to reflect the specific type of contracting unit. These edits are substantive and reference-related edits, and are listed below.

The RFP is designed to minimize the amount of drafting of technical issues related to an ESIP effort. Since development of an Energy Savings Plan (ESP) is based on an audit that meets the statutory requirements previously conducted by the contracting unit, it is the responsibility of the contracting unit to provide proposers with a copy of the audit as part of the ESCO RFP package (or linked to an online posting of the audit).

The audit should guide contracting units to make preliminary decisions concerning energy conservation measures to include in their ESIP. To inform proposers of these decisions, Appendix A of the RFP must be completed by the contracting unit to inform proposers of the projects to be undertaken and any special considerations that proposers are to incorporate into their proposal.

The RFP also uses a formal process for potential proposers to submit questions and requests for clarifications. Appendix B is a form for the submission of these requests and is referred to throughout the text.

Contracting units are also reminded the Competitive Contracting process does not allow for negotiating proposals. While legal elements of the contract (project development agreement) may require legal determinations and modifications, the process does not allow for negotiation of price or related substantive elements and any element that would have provided less than a level playing field for proposers.

Contracting units are also cautioned that setting qualification standards that arbitrarily limit competition is inconsistent with public bidding requirements.

Office of State Comptroller Filing: Contracting units are also reminded of their obligations to meet [State Comptroller requirements for public contracts](#). In accordance with N.J.S.A 52:15C-10, contracting units must notify OSC as early as practicable, but no later than 30 days before advertisement, of any negotiation or solicitation of a contract that may exceed \$10 million. Contracting units must also provide post-award notification for any contract for an amount exceeding \$2 million. Notification must be given within 20 days of the award.

Substantive Edits:

Several sections are highlighted in green. These sections should be carefully edited to meet contracting unit needs. This has important application to evaluation criteria in Section D. Once finalized, the green highlight should be removed.

Section B-16; Insurance should be reviewed by the contracting unit's Risk Management professionals to be sure the standards are appropriate to the contracting unit and the work to be done.

The following Sections also require local decisions and editing:

- A-3: # of copies of proposal and # of CDs to be submitted
- A-4: Web posting address, if desired
- A-5: If extra credit is to be provided on evaluation scoring for attending site walk through
- B-11: Delete LPCL or PSCL section as appropriate
- B-34: Use only if PSCL
- C-1: Explanation of type of audit information
- C-3(k): Include if ESCO is to provide financing option
- Use of Appendix F and Proposal Requirements #8: These forms are related to submission of Political Contribution Disclosure forms. Only PSCL agencies are required to use these forms as pursuant to Public School Fiscal Accountability Procedures (N.J.A.C. 6A23A-6.3). The forms and references to it should be removed for all LPCL users.

Reference Editing:

<Brackets> are used to highlight text that requires user editing. Users need to review each set and edit as necessary to properly reflect the contracting unit's circumstances. For example, brackets are used to reflect statutory references (i.e., LPCL or PSCL listings), the name of owner, or refer to a website. It is urged that preparers use the search function to locate brackets to be sure all references are corrected.

Header: the header section should be edited to reflect the name of the contracting unit

Footer: The footer includes a reference to the version of the RFP document. It is recommended that the reference be removed when the RFP is circulated.

The model includes a draft Cover letter to send to potential proposers. Located immediately following the cover page, it should be removed and used as a separate document, not part of the RFP.

Consider how to refer to the owner's full name or where "owner" is used.

The ESIP Alternative to ESCO: the "Do-it-Yourself" Process

The ESIP law (see [Local Finance Notice 2009-11](#)) allows two approaches to taking advantage of the financing options the law provides. It allows development and implementation using an ESCO and permits a "Do-It-Yourself" (DIY) option.

The DIY approach involves the contracting unit properly procuring services from different organizations to perform the various elements of an ESIP (i.e., audit, ESP preparation, developing construction plans and specification, etc.). It is an alternative to the ESCO approach, where a single organization provides a wide range of services.

Under both contracting models, it is important that contractors performing a range of services do not have conflicts (e.g., the firm developing plans and specifications cannot conduct the final system verification, or the firm that conducts the audit cannot serve as an ESCO).

The DIY approach allows the contracting unit to contract for an energy audit from a NJ Division of Property Management and Construction (DPMC) approved energy auditor. At the conclusion of the audit, the contracting unit can choose to specify energy conservation measures (ECM's) in its ESP than can be implemented through a DIY process. The process (ESCO or DIY) also requires that an independent organization verify the ESP.

Once the governing body approves the ESP, the contracting unit can then hire (subject to procurement law) a DPMC approved professional architect or engineering firm to design the improvements and prepare the plans and specifications for implementing the Energy Savings Plan. In these cases, subject to the contracting unit procurement requirements, the firm conducting the audit and preparing the ESP, if DPMC qualified, may also provide the services necessary to develop plans and specifications for the contracting unit to use for bidding purposes, as long as they provide the contracting unit Errors and Omissions insurance coverage.

Under the ESIP DIY approach, there would be no conflict in a properly procured single organization conducting the audit, developing the ESP, then preparing plans and specifications. This does not apply when using the ESCO approach, where the auditor and ESCO must be independent.

Once construction plans and specifications are complete, the contracting unit would then conduct the bidding process as it would any public works construction project: manage the project as it sees fit (the firm that did the plans could also serve as construction manager), and then contract as necessary for commissioning and final third party verification. The two verification steps (the ESP and verifying implementation) must be performed by an organization independent of the ones preparing the ESP, overseeing construction and commissioning.

By following this process, the contracting unit can then apply to the Local Finance Board for the issuance of ESIP-based energy saving obligations or enter into appropriate lease financing.

The ESIP approach to energy improvement provides a range of options for contracting units to accrue energy savings while improving the environment, taking advantage of low-cost financing and state and federal incentives. DLGS and the BPU encourage comments and questions (through the ESIP web page) on this new opportunity so we can improve it as time goes on.

Approved: Thomas H. Neff, Director, Division of Local Government Services

Table of Web Links

Page	Shortcut text	Internet Address
1, 4	Local Finance Notice 2009-11	http://www.nj.gov/dca/lgs/lfns/09lfns/2009-11.doc
2	ESIP webpage	http://www.nj.gov/dca/lgs/lpcl/esip.htm
2	email comments	mailto:lpcl@dca.state.nj.us
2	to register (via email	mailto:lpcl@dca.state.nj.us
2	GovConnect Local Procurement	http://www.nj.gov/dca/surveys/ppsurvey.htm
3	State Comptroller requirements.	http://www.nj.gov/comptroller/compliance/index.html