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# Homer Central School District

## NOTICE TO ENERGY SERVICES COMPANIES GENERAL INFORMATION AND REQUEST FOR PROPOSALS FOR AN ENERGY PROJECT

The Homer Central School District (District) is issuing this Request for Proposals (RFP) for the selection of an energy services company (ESCO) to implement a comprehensive energy plan for the Public School District facilities identified below.

**Proposals must be received no later than [enter time and date].**

An original and four (4) copies of the proposal are required. To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows:

### **Proposal - Energy Project for the Homer Central School District**

Proposals should be addressed to:

[Contact at School District]

[School District Name]

[Street Address]

[City, State, Zip Code]

**Proposals may be mailed or hand delivered.**

The District will conduct a pre-proposal conference and walk-through inspection tour of the facilities included in this RFP on [enter date]. The pre-proposal conference will be held first at [enter time and location], with the walk-through to begin immediately thereafter. District officials will be present to answer questions regarding the RFP and the project. ESCOs interested in attending the conference should contact [Contact at School District], [Title] at [telephone number] no later than [enter date].

**Proposals will be accepted only from ESCOs represented at the pre-proposal conference.**

Following the conference, arrangements can be made for additional visits to the site for the purpose of gathering additional information by contacting the person named above.

The District reserves the right to amend the RFP based on questions and issues raised prior to and at the pre-proposal conference. ESCOs represented at the pre-proposal conference will receive any such amendments in writing.

If you have any questions concerning this Request for Proposal, or to reserve a place at the pre-proposal conference, please contact [Contact at School District], [Title].

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Enclosures: PROPOSAL INSTRUCTIONS AND CONDITIONS

- I. Introduction and Background
- II. General Information
- III. The Selection Process
- IV. RFQ Procedures
- V. Proposal Format and Contents

APPENDIX A: New York State Energy Law

APPENDIX B: Chapter 436 of the Laws of 1997

APPENDIX C: Regulations for the Development and Approval of Energy  
Performance Contracts

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# **Homer Central School District**

## **PROPOSAL INSTRUCTIONS AND CONDITIONS REQUEST FOR PROPOSALS FOR AN ENERGY PROJECT AT THE Homer Central School District**

### **I. INTRODUCTION AND BACKGROUND**

The objective of this Request for Proposals (RFP) is to solicit proposals for an energy project to assist the Homer Central School District (District) in making its facilities as energy efficient as practical through the installation of energy conservation measures and implementation of optimally efficient operation and maintenance procedures. The District wishes to implement the proposed energy project on an energy performance contract basis. (See State Energy Law, Article 9, included in the attached Appendices).

Under this solicitation, it is expected that only one energy service company (ESCO) will be selected to perform all of the work for the District. The District will consider energy performance contract proposals based on either a guaranteed savings agreement or a shared savings agreement. For either form of agreement, Section 9-103(2) of the Energy Law requires an executory clause under which payments are subject to availability of annual appropriations.

It is expected that savings or guarantees provided by the ESCO selected pursuant to this RFP will fully offset the project costs involved for the District. Proposers should propose arrangements for acquisition, financing, and ownership of equipment to be installed as part of this project that responsibly maximize the net economic benefit to the District or reduce the risk to the District.

Proposers may include financing provided directly by the ESCO or through a third party where doing so will be advantageous to the District. Proposals including alternative financing should clearly explain the advantages connected to it.

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## II. GENERAL INFORMATION

Proposals are requested for the provision of services for the reduction of energy consumption and for maintenance and operational services on an energy performance contracting basis at buildings and facilities owned by the District. Specifically, the ESCO selected as a result of this RFP will be expected to:

A. Provide comprehensive energy services for buildings and facilities, including but not limited to:

1. The performance of an investment quality comprehensive energy audit.
2. The design and specification of equipment and systems to be used in providing energy efficiency services. **List any mandatory measures.**
  - a. The selected firm will utilize the District's pre-designated design firm, Hunt Engineers, Architects and Surveyors to prepare and submit all necessary design work to the New York Education Department for approval. The estimated cost for this service is to be included in the ESCO's proposal and charged against savings.
3. Services associated with the procurement and installation of new energy efficient equipment.
4. Commissioning of the equipment.
5. Preventive and emergency maintenance and servicing of the equipment installed.
6. Staff training.
7. Services in connection with arrangement of financing,
8. Energy savings performance guarantees.
9. The energy services company must work cooperatively with facility management and the District in coordinating this project.
10. Financial incentives and rate reductions available from companies supplying oil, gas, electricity, or transmission or distribution service for gas or electricity.

B. Identify the most effective measures that can be taken to reduce consumption and costs for heating, cooling, ventilation, lighting, water heating, and other energy uses in each facility. The proposal should address consumption of all energy sources, including oil, gas, and electricity. Measures may involve controlling, modifying, adding, or replacing equipment and systems.

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The technical strategies addressed by the proposal must include, but need not be limited to, the following items:

1. Lighting and lighting controls, including fixture replacement and occupancy sensors.
2. All major heating and cooling equipment.
3. Installation of computerized energy management systems.
4. Envelope components, such as roofs, doors, windows, and insulation.
5. Demand limiting strategies, including cogeneration.
6. In a building served by a steam system, the condition of the system, traps, condensate, etc.
7. Calibration and repair of temperature control systems.

All applicable codes and standards must be adhered to.

C. Structure the terms of the District's obligation to pay for the services provided on an energy performance contracting basis. Payments from the District to the ESCO selected under the RFP must be contingent and based in some fashion on the level of energy savings achieved.

D. Each building identified in this solicitation must be evaluated for any potential savings.

Upon review of proposals received in response to this RFP, the District expects to select a single ESCO to conduct a Comprehensive Energy Audit (CEA) of the facility to verify that the estimates in the proposal are valid. If a viable project is identified, the ESCO and the District will then negotiate an energy performance contract to provide for the implementation of the proposed project.

### **III. THE SELECTION PROCESS**

#### **A. Timetable**

The District expects to undertake the selection process according to the following schedule:

Deadline for submission of proposals:	<b>INSERT DATE</b>
Complete Interviews:	<b>INSERT DATE</b>
Select ESCO:	<b>INSERT DATE</b>
Execution of Agreement to Conduct CEA:	<b>INSERT DATE</b>
Execution of Energy Performance Contract:	<b>INSERT DATE</b>

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## **B. Proposal Evaluation Criteria**

Proposals will be evaluated and scored on the basis of the following criteria:

### 1. Experience and Qualifications of the Proposer (Maximum 20 points)

For the purpose of ranking the written proposals, points will be awarded based on the quality and experience of the project team and for demonstrated experience with similar projects. Experience with similar projects will be understood to include development of performance contracts to furnish energy services in institutional or commercial facilities of similar size, systems, and use.

### 2. Technical Approach (Maximum 20 points)

Proposals will be evaluated on the soundness, application, and detail of presentation of technical strategies proposed for meeting the facility's energy efficiency objectives. The proposal should include descriptions of improvements both to the physical facility and to plant operations.

### 3. In-House Capabilities (Maximum 20 points)

Additional consideration will be given to the Proposer who can demonstrate “in-house” capability for energy auditing, project construction management, energy use monitoring, servicing and maintaining all conservation measures (ECM’s) and equipment. Because of the District’s strong desire to have a “one-source” relationship for the project engineering, project management and control for during the entire contract period maximum points will be awarded for this category to any Proposer with such “in-house” capabilities.

### 4. Financial Terms (Maximum 15 points)

Consideration will be given to proposals that responsibly maximize the net economic benefit to the facility over the term of the proposed energy services agreement and that responsibly minimize the risk to the District in connection with the proposed transaction.

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Factors that will be considered include: the proposed term (length) of the energy services agreement, the projected net dollar benefit to the District from entering into the transaction, the methods that will be used to determine the amount of the proposer's compensation, and the degree to which the proposer has minimized risk to the District in connection with the project. Such risks may include interruptions to building operations and financial risks. Additionally, if financing is proposed, the proposer's sources of financing and purchase option terms (both during the term of and at the end of the energy services agreement) will be considered.

5. Ability to Implement Project Promptly (Maximum 10 points)

Preference will be given to proposals demonstrating an ability to carry out the tasks and responsibilities outlined in the proposal, including the procurement of any necessary financing, and the performance of all contract obligations throughout the contract term in a prompt and efficient manner.

6. Curriculum Enhancement/Behavior Modification Program (Maximum 15 Points)

Preference will be given to proposals that contain an organized and sustainable program that will educate the staff and students in the fields of energy conservation and environmental issues. Details of the program contents complete with deliverables and target audience should be included as well as the methodology for delivery. The intent is to maximize the effectiveness of the performance contracting initiative while at the same time educate and provide incentives for the staff and students in these endeavors.

**C. Oral Interviews**

At the option of the District oral interviews might be held with the top ranked ESCOs to obtain clarification on issues raised by earlier stages of the evaluation process and to assess the qualifications of the ESCO project team. Selection of the winning ESCO will be based on information supplied for the Request for Qualifications, this RFP, and if elected, the oral interview.

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## IV. RFP PROCEDURES

### A. Point of Contact

**[Contact Name], [Title]**  
**[School District Name]**  
**[Street Address]**  
**[City, State Zip Code]**  
**[Contact Telephone Number]**

### B. Submission of Proposals

Respondent should submit an original and four (4) copies of its proposal. Proposals must be received by **[enter time and date]**.

### C. Proprietary Information

The New York State Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that are "trade secrets or are submitted to an District by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information that the proposer wishes to have treated as proprietary and confidential trade information should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. Such information will be treated in accordance with the provisions of Public Officers Law, Section 89(5).

### D. Modification or Withdrawal of Proposals

Any proposal may be withdrawn or modified by written request of the proposer, provided such request is received by the District at the above address prior to the date and time set for receipt of proposals.

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## E. Right to Reject Proposals

This RFP does not commit the District to award a contract, pay any cost incurred in the preparation of a proposal in response to this RFP, or procure or contract for services.

The District intends to award a contract on the basis of the best interest of and advantage to the District, and reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified proposers, or to cancel this RFP in part or in its entirety, if it is in the best interest of the District to do so.

## V. PROPOSAL FORMAT AND CONTENTS

Proposals must be submitted in the format outlined in this section. Each of the described parts and sections must be completed in full (except those sections described as optional). Each proposal will be reviewed to determine if it is complete prior to actual evaluation. The District reserves the right to eliminate from further consideration any proposal deemed to be substantially or materially non-responsive to the requests for information contained herein.

Each of the sections and parts described below should begin on a separate page, and each page should clearly state the name of the proposer.

### A. ESCO Background and Qualifications

Proposals must be submitted in the format outlined in this section. Each of the described parts and sections must be completed in full (except those sections described as optional). Each proposal will be reviewed to determine if it is complete prior to actual evaluation. The district reserves the right to eliminate from further consideration any proposal deemed to be substantially or materially non-responsive to the requests for information contained herein.

Each of the parts and sections described below should begin on a separate page, and each page should clearly state the name of the proposer.

**Section A-1** of the proposal must contain a project management summary including the make-up of the project team and the proposed assignment of responsibility for the major tasks involved in the total project. Include resumes for each of the individuals listed as lead personnel in Section A-1 as an appendix.

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If the proposer will only have single source responsibility for all portions of the project, they need only respond to Part I. If the proposal anticipates additional prime contractors with individual responsibility to the district, describe the selection process for selection of these prime contractors in Part II.

**Section A-2** of the proposal must contain information about the proposer, including the make-up of the project team and the proposed assignment of responsibility for the major tasks involved in the total project. If the proposer will have single source responsibility for all portions of the project, it need respond only to Part I. If the proposal anticipates additional prime contractors with individual responsibility to the District, describe the selection process for selection of these prime contractors in Part II.

**PART I:** Part I should describe the overall make-up of the project team and each member's areas of responsibility, with address, telephone numbers, names of contact persons and of lead personnel. Include a chart depicting the management structure envisioned for the project. Describe the process to be followed in selecting subcontractors, if any.

**PART II:** Part II should provide information about the areas of responsibility for additional prime contractors and the process to be followed in their selection.

**Section A-3** should include abbreviated resumes for each of the individuals listed as lead personnel in Section A-2.

**Section A-4** should describe the three projects that best exemplify the range of technical and financial services provided by the ESCO for a project similar to this one. Each project description (not to exceed 1 page) should include:

- (a) Customer's name.
- (b) Total project capital cost.
- (c) Type of contract (e.g., guaranteed savings, shared savings, etc.).
- (d) Name and telephone number of reference for the project.
- (e) Brief description of the project's scope of services and status. (Include type of facility at which project was implemented, whether the project was timely completed and whether significant problems occurred that affected project performance. As appropriate, identify all prime contractors or subcontractors and their role in each project.)
- (f) Level of projected energy cost savings.

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Permission to contact the references provided by the proposer will be presumed by the District.

**Section A-5** may be used to describe any additional information the Proposer which to have considered by the District. (Optional)

## **B. Technical Aspects of the Proposal**

### 1. Scope of Services

Your proposal must explain the approach your organization will take in delivering the comprehensive technical services required to design, install, and maintain the proposed energy efficiency improvements. Actual designs/specifications are not required at this time.

### 2. Energy Conditions to be maintained

The following energy end use conditions must be maintained at the facility. Where applicable, any efficiency measures proposed must allow for the maintenance of these conditions:

Minimum Temperature: Temperatures in occupied areas during working hours must be maintained at no less than  degrees F during the heating season.

Maximum Temperature: Temperatures in occupied areas during working hours must be maintained at no more than  degrees F during the cooling season.

### 3. Requirements for the Comprehensive Energy Audit

The proposal must include provisions for the performance and presentation of results of a Comprehensive Energy Audit for each of the buildings comprising the facility. The audit must at a minimum include the following:

- (a) Baseline energy use, showing how it is derived and how it may be adjusted for appropriate variables.
- (b) An allocation of total energy use among end uses. The allocation must be reconciled with actual usage, and must be based on generally accepted engineering practices.
- (c) A description, without specifications and drawings, of recommended energy conservation measures covering improvements to the physical plant and operating procedures. For each measure, the proposer must provide estimates of initial costs for design and installation, efficiency levels or performance

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characteristics of the equipment comprising the proposed measure, ongoing maintenance costs, annual energy and cost savings, the useful life of the measure, and a life cycle cost analysis.

Projected energy savings must account for interaction between selected measures.

#### 4. Content of Technical Proposal

**Section B-1** should include information on the systems to be covered by, the personnel to be involved in, and the time frame, for the Comprehensive Energy Audit, and the fee, if any, to be charged for it in the event the District decides not to proceed with project implementation. Unless otherwise agreed in writing, if the ESCO is paid a fee for the Comprehensive Energy Audit, the audit will be the property of the District. Attach a sample audit report performed by your firm for one of the projects profiled in **Section A-4**.

**Section B-2** should provide a preliminary assessment of the energy efficiency opportunities available at the facility, based on the information provided in this RFP and a tour of the facility. List the energy conservation measures to be implemented under your proposal, with the estimated implementation cost, annual energy savings, and annual energy cost savings. Energy savings should be reported by fuel type in appropriate units.

Include documentation on the basis of the estimated energy conservation measure implementation costs and energy savings. Cost estimates for proposed energy conservation measures must include disposal costs for replaced equipment. Describe the relationship of the preliminary baseline used in estimating potential energy savings and the energy consumption profile in Appendix A. Explain if there are any potential improvements your company will not consider. List these improvements, if any.

**Section B-3** should describe the services your company will provide in designing, specifying, and overseeing the installation of energy conservation measures. Explain how these operations will be coordinated with the daily operations of the facility.

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**Section B-4** should describe the ongoing project monitoring and maintenance services your company will provide. Specifically, describe the personnel, schedules, conditions, equipment covered, and extra costs (if any) of the following services:

- (a) Scheduled preventative maintenance
- (b) Emergency service
- (c) Training of on-site staff
- (d) Monitoring of energy use

Identify who will have supervisory responsibility for your firm's maintenance and monitoring operations in this project. Indicate how this work will be coordinated with the daily operations of the facility.

### **C. Financial Aspects of the Proposal**

The District seeks to structure the project such that payments to finance equipment and public works services plus payments for ongoing project management services will be paid in full by the value of measured energy savings resulting from the project.

The proposer may propose any underlying project financing mechanism so long as it meets the objectives above and complies with New York State laws, rules, and regulations.

**Section C-1** should identify the Detail Financial Information Required based on the information provided in this RFP and your inspection of the facilities, estimate the following costs:

#### **1. Capital Project Implementation Costs:**

- (a) Comprehensive Energy Audit
- (b) Designs and specifications
- (c) Implementation costs for the energy conservation measures
- (d) Other implementation phase costs (specify)
- (e) Total capital project implementation costs (sum of a, b, c, and d)

#### **2. Ongoing Project Management Costs (First Year Costs):**

- (a) Maintenance costs
- (b) Training costs
- (c) Energy savings measurement and verification costs
- (d) Energy savings guarantee
- (e) Other service fees (specify)
- (f) Total annual project costs (sum of a, b, c, d, and e)
- (g) Contract term (# years)

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- (h) Escalation rate for service agreement

**Section C-2** should outline the proposed terms of the contract with the District covering:

- (a) Methods by which the level of payments to the contractor will be determined.
- (b) The cost, nature, and operation of energy savings guarantee provisions, including conditions under which the guarantee can be invoked and the methods for adjusting payments to the contractor.
- (c) Project financing.
- (d) Ownership of the equipment.
- (e) Conditions for the early termination of the contract by the District and the contractor.

**Section C-3**, please complete the annual financial projections indicated below for the length of the proposed contract. Assume no inflation in current energy prices. Use a discount rate of percent to calculate the net present value of the projected cash flow.

1. Energy costs without improvements
2. Energy costs with improvements
3. Annual energy cost savings (1-2)
4. Payments for financing equipment
5. Payments for on-going services
6. Net annual benefits [3-(4+5)]
7. Cumulative cash flow
8. Net Present Value of cash flow
9. Interest rate

#### **D. Schedule for Construction and Completion**

In a Section to be labeled **Section D**, the proposer must provide a complete schedule for achievement of all major project milestones including:

1. Commencement and completion of energy audits.
2. Preparation of list of proposed improvements, baseline calculations, and final contract proposal.
3. Obtaining all required permits and government approvals.
4. Procurement of all major equipment.
5. Commencement and completion of construction.
6. Training of facility personnel.
7. Commencement of normal operation.

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## **E. Official Statement of Proposer**

In a Section to be labelled **Section E**, the proposer must provide statements to the following effect, signed by an individual authorized to bind the proposer:

1. The proposer shall include a statement to the effect that the proposal is a firm offer for a minimum 120-day period. The proposal shall also provide the: name, title, address, and telephone number of individual(s) with authority to negotiate and contractually bind the company and also who may be contacted during the period of proposal evaluation.
2. The proposer shall specifically guarantee:
  - (a) total energy savings projected in the Comprehensive Energy Audit will be at least 85% of the energy savings projected in the proposal; and
  - (b) total project cost projected in the Comprehensive Energy Audit will be no more than 115% of the cost projected in the proposal.
3. If these conditions are not met, the District can: terminate the Agreement to Proceed with the Comprehensive Energy Audit without cost or penalty, renegotiate with the ESCO, or begin negotiations with the second ranked ESCO.

## **F. Curriculum Enhancement/Behavior Modification Program**

A detailed description of how the respondent intends to provide a behavior modification program for the staff and students should be included. Specific programs by grade, complete with deliverables and instrumental materials, should be detailed and explained in this section. Incentives and “real life” experiences will be given additional considerations.

## **G. Outline of Proposal Contents**

The following is an outline of the required proposal contents as detailed above:

### Section A - Contractor Background and Qualifications

- Section A-1 Update to Statement of Qualifications and Experience
- Section A-2 Part I: Project team information  
Part II: Prime contractor information
- Section A-3 Project team resumes
- Section A-4 Project experience
- Section A-5 Additional information from Proposer (Optional)

### Section B - Technical Aspects of the Proposal

- Section B-1 Energy Audit: Scope-of-Work (Attach sample Comprehensive Energy Audit)
- Section B-2 Proposed energy conservation measures
- Section B-3 Description of design and installation services
- Section B-4 Description of monitoring and maintenance services

### Section C - Financial Aspects of the Proposal

- Section C-1 Total initial and annual project costs
  - Section C-2 Financial contract terms
  - Section C-3 Financial projections
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Section D - Schedule for Completion of the Project  
Section E - Official Statement by the Proposer  
Section F – Curriculum Enhancement and Behavior Modification Program  
Section F-1 Program Overview  
Section F-2 Program Details

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## Appendix A

### NEW YORK STATE ENERGY LAW ARTICLE 9 – ENERGY PERFORMANCE CONTRACTS IN CONNECTION WITH PUBLIC BUILDINGS AND FACILITIES

#### Section

- 9-101. Purpose
- 9-102. Definitions
- 9-103. Energy performance contracts.

#### **§9-101. Purpose**

The purpose of this article is to obtain long-term energy and cost savings for agencies and municipalities by facilitating prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision and control of agencies or municipalities, in cooperation with providers of such services and associated materials from the private sector. Such arrangements will improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity.

#### **§9-102. Definitions**

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context.

1. “Agency” means any state department, agency, board, commission, office, or division.
2. “Municipality” means a municipal corporation, as defined in section two of the general municipal law, school district, board of cooperative educational services, fire district, district corporation or special improvement district governed by a separate board of commissioners.
3. “Public authority” means any public authority, public benefit corporation, or the port authority of New York and New Jersey, to the extent its facilities are located within the state of New York.
4. “Energy performance contract” means an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling, steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.

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### **§9-103. Energy performance contracts**

1. Notwithstanding any other provision of law, any agency, municipality, or public authority, in addition to existing powers, is authorized to enter into energy performance contracts of up to thirty-five years duration, provided, that the duration of any such contract shall not exceed the reasonably expected useful life of the energy facilities or equipment subject to such contract.
2. Any energy performance contract entered into by any agency or municipality shall contain the following clause: “This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligations to request, appropriate or make available monies for the purpose of the contract.”
3. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be an ordinary contingent expense, and shall in no event be construed as or deemed a lease-purchase of a building or facility, for purposes of the education law.
4. Agencies, municipalities, and public authorities are encouraged to consult with and seek advice and assistance from the state energy office and the New York state energy research and development authority concerning energy performance contracts.
5. Notwithstanding any other provision of law, in order to convey an interest in real property necessary for the construction of facilities or the operation of equipment provided for in an energy performance contract, any agency, municipality or public authority may enter into a lease of such real property to which it holds title or which is under its administrative jurisdiction as is necessary for such construction or operation, with an energy performance contractor, for the same length of time as the term of such energy performance contract, and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real property may remain useful to such agency, municipality or public authority for the purpose for which such real property was originally acquired or devoted or for which such real property is being used.
6. In lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance contractor by issuing and advertising a written request for proposals in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state finance law, the executive law, the general municipality law, or the public authorities law, as the case may be.
7. Sections one hundred three and one hundred nine-b of the general municipal law shall not apply to energy performance contract for which a written request for proposals is issued pursuant to subdivision six of this section.

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8. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to: a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts which contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date.

Added L.1985, c.733, §2, amended L. 1989,c.638, §§1,2; amended L. 1994, c.368 §§1,2; amended L.1995, c.83, § 47; amended L. 1997, c.436, § 78.

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## Appendix B

### CHAPTER 436 OF THE LAWS OF 1997 Sections Relevant to School Districts and BOCES Energy Performance Contracts From 1997 Senate bill 5788 Signed by Governor Pataki on August 20, 1997

AN ACT to amend the education law, in relation to the calculation and payment of state aid to school districts and boards of cooperative educational services \*\*\*, to amend the energy law, in relation to energy performance contracts\*\*\*

#### PART A

Section 1. Section 305 of the education law is amended by adding a new subdivision 27 to read as follows:

27. The commissioner shall promulgate regulations in consultation with the New York state energy research and development authority concerning the development and approval of energy performance contracts for school districts and boards of cooperative educational services in accordance with subdivision eight of section 9-103 of the energy law.

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§40. Paragraph i of subdivision 6 of section 3602 of the education law, as added by chapter 474 of the laws of 1996, is amended to read as follows:

- i. Approved expenditures for debt service.

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(5) Notwithstanding any inconsistent provisions of this paragraph, for the purpose of calculating an appointment pursuant to this subdivision:

(i) current approved expenditures for debt service for energy performance contracts authorized pursuant to section 9-102 of the energy law shall mean approved debt service incurred by a school district under such contract during the school year related to the financing of such construction, acquisition, reconstruction, rehabilitation or improvement of any school building, provided that as a condition of eligibility for aid:

- A. The amortization period shall not exceed the term of the energy performance contract.

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§41. Clause (i) of subparagraph 5 of paragraph i of subdivision 6 of section 3602 of the education law, as added by section forty of this act, is amended by adding two new subclauses B and C to read as follows:

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B. Any state building aid attributable to such project shall be excluded in determining the cost savings under the energy performance contract.

C. The energy performance contractor shall guarantee recovery of contact costs from energy savings realized by the school district during the term of the energy performance contract, which shall not exceed eighteen years.

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§78. Section 9-103 of the energy law is amended by adding a new subdivision 8 to read as follows:

8. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to the requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to : a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date.

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§119. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 1997, except that:

(1) sections one and seventy-eight of this act shall take effect immediately, and the commissioner of education is authorized and directed to promulgate the regulations necessary to implement the provisions of such sections with 180 days of such effective date:

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(5) section forty of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after the effective date on section 41 of chapter 474 of the laws of 1996;

(6) section forty-one of this act shall take effect immediately;

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**Appendix C**

**REGULATIONS OF THE COMMISSIONER OF EDUCATION  
(8 NYCRR §155.20)**

Pursuant to sections 101,207 and 305 of the Education Law, section 9-103 (8) of the Energy Law and Chapter 436 of the Laws of 1997, Section 155.16 of the Regulations of the Commissioner of Education is added, effective July 1, 1998, to read as follows:

155.16 Energy Performance contracts. (a) The following procedures consistent with Energy Law section 9-103(8), and Education Law sections 305(27), and 3062 (6)(i)(5)(i)(b) and (c) shall apply to energy performance contracts entered into by a school district or a board of cooperative educational services (BOCES) on or after July 1, 1998, provided that this section shall not apply to energy performance contracts for which a request for proposals was entered into prior to July 1,1998.

(b) Definitions: For the purpose of this section:

(1) Energy Performance Contract shall mean an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.

(2) Simple payback period shall mean a measure of the length of time required for the cumulative cost savings, net of cumulative future costs, from an investment in an energy conservation project to pay back the investment cost, without taking into account the time value of money, or the Differential Energy Price Escalation Rate, or the State building aid payable for the project.

(3) Energy Savings shall mean the positive difference between the energy and associated cost before the retrofit and its estimated cost after the retrofit of a proposed alternate building system, taking into account all types of energy effected.

(4) Cost savings shall mean the positive difference between the operation and maintenance cost before the retrofit and its established operation and maintenance cost after the retrofit.

(5) Co-generation shall mean the simultaneous production of electricity and thermal energy. Typical systems utilize natural gas engines to turn electric generators thereby producing electricity, which reduces utility costs. Waste heat captured from the natural gas combustion process can be used to produce domestic hot water, provide space heat in winter or air conditioning in summer when used in conjunction with absorption chillers.

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(c) The appropriate type of projects that qualify to be completed under an energy performance contract may include, but are not limited to:

- (1) replacement of lighting fixtures;
- (2) installation of energy efficient boiler/furnace, heating, ventilation, air conditioning (HVAC) equipment;
- (3) installation of vestibules;
- (4) installation of automatic setback thermostats;
- (5) energy management system;
- (6) upgrade domestic hot water system;
- (7) roof insulation;
- (8) installation of energy efficient window/doors;
- (9) co-generation; or
- (10) the installation, maintenance or management of other energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility.

(d) Every energy performance contract entered into by a school district or BOCES to which this section applies and every amendment to an energy performance contract entered into on or after July 1, 1998 by the board of education or a BOCES shall be subject to approval by the Commissioner of Education and shall contain a provision that such contract shall not be executory until approval of the Commissioner is obtained. In order to obtain approval by the Commissioner of Education to enter into an energy performance contract, the school district or BOCES shall:

- (1) demonstrate that the project complies with all applicable provisions of section 155.2 of this Part;
- (2) describe the scope and nature of the work to be performed;
- (3) demonstrate that the types of projects included in the energy performance contract are appropriate in accordance with subdivision (c) of this section;
- (4) provide a detailed breakdown of the energy performance savings to be derived each year and for the duration of the energy performance contract in the project summary form, which shall include:
  - (i) a description of each energy conservation measure included in the energy performance contract;
  - (ii) the cost of each energy conservation measure;

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- (iii) the project energy savings and cost savings;
  - (iv) the useful life of each energy conservation measure; and
  - (v) the simple payback period;

(5) state any maintenance and monitoring charges that are part of the energy performance contract in clear and conspicuous manner separately in the contract;

(6) provide the interest rate applicable to the energy performance contract and length of borrowing. The interest rate will be compared to the U.S. Treasury rate for like terms as published in the Wall Street Journal and must be comparable;

(7) provide the following certifications:

(i) The sole trustee, the president of the board of trustees or board of education, or the president of the BOCES shall certify that in lieu of competitive bidding, the energy performance contract was procured pursuant to a request for proposal (RFP) process in accordance with the school district's or BOCES' procurement policies and procedure adopted pursuant to applicable provisions of General Municipal Law section 104-b;

(ii) The energy performance contractor shall certify that such energy performance contractor has guaranteed recovery of contract costs from energy savings realized by the school district during the term of the energy performance contract, which shall not exceed 18 years, or the useful life of the equipment installed, whichever is less. This certification shall be based on an analysis of energy costs and savings, which shall not include any cost savings attributable to state building aid. If a simple payback calculation is used to demonstrate compliance with the 18 year payback limitation, it shall be calculated by dividing the initial contract cost by the first year cost savings. If another analysis is used to support the certification, it should be submitted with the certification;

(iii) The energy performance Contractor shall certify that measurement and verification techniques for determining cost savings will be performed in accordance with the North American Energy Measurement and Verification Protocol, March 1996, (U.S. Department of Energy, Washington, D.C. 20585: available at the Office of Facilities Planning, Room 1060 State Education Building Annex, Albany, NY 12234);

(iv) The energy performance contractor shall certify that any state building aid attributable to such project has been excluded in determining the cost savings and payback period under the energy performance contract; and

(v) The architect and/or engineer of record shall certify that he or she is free from financial interest in the energy performance contractor which conflicts with the proper completion of the audit and any design work associated with the energy performance contract and that full disclosure has been made to the school district and/or BOCES detailing all financial compensation received from the energy performance contractor.

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(e) The administrative and technical review by the State Education Department shall include:

- (1) review of project scope and its appropriateness to be done under an energy performance contract and its eligibility for building aid;
- (2) review the project's compliance with applicable provisions of section 155.2 of this Part;
- (3) review of detailed breakdown of the energy savings to ensure compliance with Education Law section 3602 (6)(i)(5)(1);
- (4) review of certifications by the president of the board of cooperative education, energy performance contractor and architect/engineer as specified in regulations;
- (5) review of interest rate and comparison to the U.S. Treasury Rate for like terms;
- (6) review of technical specifications for compliance with the Uniform Fire Prevention and Building Code, State Education Department standards and other applicable standards,

(f) Capital construction costs and associated incidental costs such as architect/engineer fees, administrative costs and feasibility costs may be eligible for building aid. Costs associated with operation and maintenance, repairs extended warranties and service agreements are not eligible for building aid and should be separated in a clear and conspicuous manner from those eligible expenses.