

**REQUEST FOR PROPOSAL FOR AN ENERGY PERFORMANCE CONTRACT  
WATERTOWN CITY SCHOOL DISTRICT**

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**NOTICE TO ENERGY SERVICES COMPANIES**

**GENERAL INFORMATION AND REQUEST FOR PROPOSALS FOR A  
DISTRICT-WIDE ENERGY PROJECT**

The Watertown City School District is issuing this Request for Proposals (RFP) for the selection of an energy services company (ESCO). You are invited to submit a proposal in accordance with this RFP.

**Proposals must be received no later than January 30, 2026, at 3pm local time.**

Late proposals will be returned unopened.

A mandatory pre-proposal building walk-through will be held on Friday, January 23, 2026, commencing at 9:00am local time. A walk-through inspection of the facilities will be performed per Appendix A.

An original and five (5) copies plus one electronic copy (PDF) of the proposal are required. Proposals may be mailed or hand delivered. To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows: **Proposal Response – Energy Performance Contract – Watertown City School District**

The district reserves the right to amend the RFP based on questions and issues raised prior to the proposal submission deadline. ESCO's will receive such amendments in writing.

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 to procure or contract for services. The District intends to award a contract on the basis of the best interest and advantage to the District, and reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with all qualified ESCOs, or to cancel this RFP in part or in its entirety, if it is in the best interest of the District to do so. The District may select as the successful Proposer that proposal which, in the District's sole discretion and with whatever modifications the District and the Proposer may mutually agree upon, best meets the District's requirements whether or not that proposal is the lowest priced. No Proposer shall have any legal, equitable, or contractual rights of any kind arising out of its submission of a proposal except as and to the extent that the District, in its sole discretion, shall enter into a contract with the Proposer that it selects as the successful ESCO.

If you have any questions concerning this RFP, please contact: Mrs. Brianne Durham, Asst. Superintendent for Operations & Finance 315.785.3714.

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## PROPOSAL INSTRUCTIONS AND CONDITIONS

### I. INTRODUCTION AND BACKGROUND

The objective of this RFP is to solicit proposals for an energy project to assist the district to become as energy efficient as possible through installation of energy conservation measures and implementation of optimal operation and maintenance procedures. The school district wishes to implement the proposed comprehensive energy project on an energy performance contract basis. (See State Energy Law, Article 9, attached as Appendix D).

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

This RFP requires adherence to Chapter 436 of the Laws of 1997 and Section 155.16 of the Regulations of the Commissioner of Education attached as Appendix E. Proposals must be consistent with the following requirements for energy performance contracts by school districts and Boards of Cooperative Educational Services:

- the amortization period shall not exceed the term of the energy performance contract;
- building aid attributable to the project is excluded in determining the cost savings under the energy performance contract;
- the performance contractor must guarantee the recovery of contract costs from energy savings realized by the school district over the term of the contract which shall not exceed 18 years; and
- subdivision 8 to section 9-103 of the Energy Law requires school districts and BOCES to comply with State Education Department regulations for the development and approval of energy performance contracts.

The regulations, published in the New York State Register on May 6, 1998, and effective July 1, 1998, are attached as Appendix F.

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It is currently planned that the school district will purchase, finance, and own any new equipment installed as a result of this project. Proposals are expected to include the proposer's services in connection with such arrangements. Proposers may wish to propose alternative arrangements (as long as they are permitted under New York State laws and regulations) for acquisition, financing, and ownership of such equipment.

Proposals should include financing provided directly by the ESCO or through a third party. If financing is proposed through a third party, the proposal should clearly explain how it is connected to other elements of the energy performance contract.

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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 school 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 serving the school district, including but not limited to:
  - 1. Performance of a Detailed energy audit.
  - 2. Services in connection with the design and specification of equipment and systems to be used in providing energy efficiency services.
  - 3. Procurement and installation of new equipment and refurbishing existing equipment.
  - 4. Commissioning of the equipment.
  - 5. Preventive and emergency maintenance and servicing of the equipment installed.
  - 6. Staff training on both operation and maintenance for newly installed systems and controls.
  - 7. Services in connection with arrangement of financing of the equipment.
  - 8. Energy savings performance guarantees.
  - 9. Identification of available financial incentives or rate reductions. This includes applications for rebates through utilities or government agencies such as NYSERDA.
  - 10. All actions necessary to obtain the required State Education Department building permit and assistance in obtaining State Building Aid and subsequent closeout of the project.
  - 11. All actions necessary to obtain any required local building permits and/or zoning variance approvals.
  
- 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, as applicable. Measures may involve controlling, modifying, adding or replacing equipment and systems.

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

- 1. Lighting and lighting control, including fixture replacement and occupancy sensors.
- 2. All major heating and cooling equipment, including HVAC air handling.
- 3. Installation of computerized energy management systems.
- 4. Envelope components such as doors, windows and insulation.
- 5. Demand limiting strategies, including cogeneration, if appropriate.
- 6. Assistance with the procurement of electric, gas, oil and other utilities.
- 7. Other energy measures identified by ESCO during walk through

All applicable codes and standards must be adhered to.

- C. Structure the terms of the school district's obligation to pay for the services provided on an energy performance contracting basis and submit a suggested energy performance contract and if necessary, ancillary agreements that specifically meet the needs of the school district. Proposers may substitute an example of an executed energy performance contract with any ancillary agreements that would be the basis for negotiation of a contract with this district. Payments from the school district to the Contractor selected under the RFP must be contingent and based in some fashion on the level of energy savings achieved.

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Proposers attention is directed to Article 9 of the New York State Energy Law governing energy performance contracting in connection with public buildings and facilities. All proposed energy performance contracts and other financing arrangements proposed must be capable of being implemented under the laws and regulations of the State of New York.

Appendix A includes information about the **mandatory pre-proposal conference and walk-through inspection tour of the facilities.**

Each school district building identified in Appendix B of this solicitation must be evaluated for any potential savings. Appendix B also includes the square footage, and energy consumption and costs by fuel type for each building.

At the time of the pre-proposal conference the district will provide copies of gas, electric, oil or other utility bills as needed. For proposal preparation, this may require up to two years of billing data. Proposers are expected to prepare a baseline and usage profile from this information. Whenever possible, the district will make copies available of mechanical and electrical drawings of the facilities under consideration. The school district will provide information about any current construction projects under way or projects under consideration and any proposed changes in use or occupancy.

Upon review of proposals received in response to this RFP, the district expects to select a single ESCO to conduct a Comprehensive Energy Audit of the facilities to verify that the estimates in the proposal are valid. If a viable project is identified, the school district expects to negotiate an energy performance contract with the ESCO to provide for the implementation of the proposed project. A two-stage contract is required to allow provision for approval of the plans and specifications by the State Education Department prior to commencement of the equipment procurement and installation phase of the project.

**D. Energy Conditions to be Maintained**

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

**Minimum Temperature:** Temperatures in occupied areas during the hours of 6:00AM to 4:00PM must be maintained at no less than 72 degrees F during the heating season.

**Maximum Temperature:** Temperatures in occupied areas during the hours of 7:00AM to 4:00PM must be maintained at no more than 75 degrees F during the cooling season.

**Water Heating:** Hot water for kitchen use must be supplied at a temperature between 138 and 142 degrees F. Domestic hot water must be delivered at a temperature 118 and 122 degrees F.

**Indoor and Outdoor Lighting:** State Education Department lighting level standards must be maintained.

**Air Changes/Ventilation Requirements:** Within code at all times.

**E. Requirements for the Energy Audit to be provided after selection of the ESCO**

The proposal must include provisions for the performance and presentation of results of a Detailed Energy Audit for the school facilities identified in Appendix B. The selected ESCO will gather and analyze information and data and propose a project to the School District in a Detailed Energy Audit report that will reduce the District's expenses for energy. As part of the audit, the ESCO will conduct an on-site survey of the facilities and will interview appropriate personnel to learn the operating characteristics of the facility and the existing equipment and systems therein.

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The Detailed Energy Audit Report will present an analysis and discussion of the ESCO's proposed energy efficiency measures for each building. The report will detail the ESCO's proposed methodology for the calculation of baseline energy use and, at a minimum, a description of physical conditions, equipment counts, nameplate data, and control strategies prior to project implementation. The energy use allocation must be based on generally accepted engineering practices and must be reconciled with historic usage. In addition to presenting how the proposed baseline is derived, the proposal must define under what conditions it will be adjusted; for example, changes in weather, occupancy, and equipment usage.

For each measure recommended, the Detailed Energy Audit Report will provide a detailed description to include: total implementation costs for each measure, equipment counts, performance characteristics and efficiency levels of the equipment comprising the proposed measure, installation and maintenance costs, its useful life, and projected annual energy, demand and cost savings. Projected energy savings calculations must specifically account for energy savings on and off-peak, demand savings, and the interaction between recommended measures.

The contracting process has three phases:

- a) Detailed Energy Audit and Project Proposal Phase: A contract for the Detailed Energy Audit will be developed with the selected ESCO. This audit will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings and cash-flow over the proposed financing term. A project proposal will present aggregated measures that can be financed through guaranteed savings.
- b) Construction/Implementation/Commissioning and Financing Phase: An Energy Savings Performance Contract will be negotiated following the audit. This establishes the project scope and costs, and provides for construction and follow-up services to be provided during the financing term. A separate financing agreement will be developed.
- c) Post-Construction Guarantee/Monitoring Phase: After construction, the ESCO will offer a variety of services to ensure savings are met, such as a savings guarantee, staff training, follow-up monitoring, and contract maintenance services.

**III. THE SELECTION PROCESS**

**A. Timetable**

The school district expects to undertake the selection process according to the following tentative schedule:

Mandatory Pre-proposal Building Walkthrough .....	01/23/2026 at 9am
Closing date for written questions:.....	01/26/2026 at 3pm
<b>Deadline for submission of proposals.....</b>	<b>01/30/2026 at 3pm local time</b>
Interviews .....	02/06/2026
Selection of ESCO .....	02/24/2026
Completion of Detailed Energy Audit: .....	TBD
Public Referendum.....	TBD
Execute Energy Performance Contract: .....	TBD
SED submission: .....	TBD
Construction: .....	TBD

All dates are estimates and NOT a guaranteed timeline

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**B. Proposal Evaluation Criteria**

Proposals will be evaluated on the following criteria:

1. Experience and Qualifications of the Proposer

Consideration will be given to proposers demonstrating strong capabilities, experience in K-12 facilities project work and reputation in undertakings similar to those described in this RFP. Similar experience will be understood to include development of performance contracts, installation of building equipment and services, energy efficiency work, or facility improvements in public schools or commercial and institutional facilities of similar size and use.

2. Technical Approach

Proposals will be evaluated on the soundness and detail of presentation of technical strategies proposed for meeting the school districts' energy efficiency objectives. The proposal should include descriptions of improvements both to the physical facility and to the integration of other relevant services such as training, operations and maintenance practices, utilities procurement, and measurement and verification of savings.

3. Financial Terms

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

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

4. Ability to Implement Project Promptly

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.

## IV. **RFP PROCEDURES**

### A. **Point of Contact**

Mrs. Brianne Durham  
Assistant Superintendent for Operations & Finance  
Watertown City School District  
1351 Washington Street  
Watertown, NY 13601  
[bdurham@watertowncsd.org](mailto:bdurham@watertowncsd.org)  
315.785.3714

### B. **Submission of Proposals**

**Proposals must be received no later Friday, January 30, 2026, at 3:00pm local time.**  
Late proposals will be returned unopened.

An original and five (5) copies plus one electronic copy (PDF) of the proposal are required, **including the Non-Collusion Certification attached as Appendix G.** To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows: **Proposal - Energy Performance Contract for the Watertown City School District**

**Proposals should be addressed to: 1351 Washington Street, Watertown, NY 13601 C/O Mrs. Brianne Durham, Asst. Superintendent for Operations & Finance**

**Proposals shall also be e-mailed to David E. Tinker at the Ferrara Firm PC drop box link at <https://spaces.hightail.com/uplink/Ferrara-FiorenzaLawFirm>.**

### 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(d)(2) provides for exceptions to disclosure for records or portions thereof that are "trade secrets or are submitted to an agency 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 submittal. 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.

### 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 school district at the above address prior to the date and time set for receipt of proposals.

### 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 to procure or contract for services. The district intends to award a contract on the basis of the best interest 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 school district to do so. The New York State Energy Research and Development Authority may be providing technical assistance, but will not be awarding any

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contract and has no liability or responsibility for the project or for any activities in connection with the project or any contractual arrangements that may result from this RFP.

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

### A. Contractor Background and Qualifications

**Section A.1 - Statement of Qualifications** - Proposer must include the following elements in response to this RFP:

- Name and address of firm
- Telephone and fax numbers.
- Names, titles, and email address of key personnel authorized to represent the firm on this project, and answer any questions presented.
- Statement of project and industry experience for each of the key personnel on this project
- Approach to project management including make-up of the project team and the proposed responsibilities of the project team members.
- Describe the process to be followed in selecting and managing subcontractors.
- Description of the proposed project financing approach.

**Section A.2 – Financial Data** – Proposer must include the most recent annual reports, financial statements, or other financial information sufficient to permit the school district to evaluate the financial strength of the proposer. If the proposer is a joint venture or other entity with no prior financial history, submit information with respect to constituent or parent entities, as appropriate.

**Section A.3 – Project Experience** – Proposer must describe three to five projects that best exemplify the range of technical and financial services provided by the ESCO. Each project description should include:

- Customer's name.
- Total project capital cost at proposal stage and at final contract.
- Type of contract (e.g., guaranteed saving, shared savings, sale, etc.).
- Name and telephone number of reference for the project.
- 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.)
- Level of energy cost savings projected in energy audit and the level actually achieved subject to M&V.

The school district's right to call the references provided by the proposer is hereby authorized.

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**B. Technical Aspects of the Proposal**

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.

In a Section to be labeled **Section B-1**, describe the Comprehensive Energy Audit that will be conducted for this project after selection of an ESCO on the basis of this RFP. Your proposal must include information on the systems to be covered, the personnel to be involved, the general method to be used, the time frame, and the fee, if any, to be charged in the event the district decides not to proceed with project implementation. Attach a sample energy audit performed by your firm for a similar facility.

In a Section to be labeled **Section B-2**, describe in detail the method you will use to compute the energy baseline. Attach a sample computation from a previous project done by your firm, with full documentation of methods, assumptions and input data.

In a Section to be labeled **Section B-3**, provide a preliminary assessment of the energy efficiency opportunities available at the schools, based on the information provided in this RFP and a tour of the facilities. List the energy efficiency measures to be implemented under your proposal with the estimated implementation cost and the energy cost savings. Are there any potential improvements your company will not consider? If so, list these improvements.

In a Section to be labeled **Section B-4**, 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 enter into a project arrangement under which the school district will assume ownership of the energy efficiency improvements upon their installation and acceptance. The district also seeks to structure compensation to the contractor such that payments to finance equipment and public works services plus payments for ongoing project management services will be paid in full or in part 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.

Detailed Financial Information Required: In a Section to be labeled **Section C-1**, based on the information provided in this RFP and your inspection of the facilities, estimate the following costs:

**1. Initial Project Costs:**

- (a) Comprehensive Energy Audit
- (b) Designs and specifications for energy efficiency measures
- (c) Implementation costs for the energy efficiency measures
- (d) Total Initial Project Costs

**2. Annual Costs:**

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- (a) Maintenance costs
- (b) Training costs
- (c) Measurement and Verification
- (d) Other service fees (specify)

In a Section to be labeled **Section C-2**, outline the proposed terms of the contract with the school district covering:

- (a) Duration of the contract
- (b) Methods by which the level of payments to the contractor will be determined including: level of guarantees, methods by which energy savings will be valued (i.e. values to be used for unit prices of fuels and electricity)
- (c) The nature and operation of any guarantee provisions, including conditions under which the guarantee can be invoked and the methods for adjusting payments to the contractor.
- (d) Ownership of the equipment (Specify if alternative financing and ownership is proposed and provide explanation in **Section F**).
- (e) Conditions for the early termination of the contract, or parts thereof, by the district and the contractor.

In a Section to be labeled **Section C-3**, please complete the annual financial projections indicated below for the length of the proposed contract. Do not use a discount rate. Assume no inflation in current energy prices. However, any anticipated escalation in annual costs should be identified and reflected in the cash flow. Assume a proposed interest rate and that payments will be made annually at the end of the period. You may present a second pro-forma with alternative assumptions. If you choose to present a second pro-forma you should describe why the alternative assumptions are reasonable.

	YEAR	1	2	3	4	5 ...
1.	Annual energy costs without improvements					
2.	Annual 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) <b>without</b> State financial assistance					
7.	Net annual benefits (3-(4+5) <b>with</b> State financial assistance					
8.	Cumulative cash flow <b>with</b> State financial assistance					
9.	Net Present Value of cash flow <b>with</b> State financial assistance					
10.	Interest rate of 4.5%					

**D. Schedule for Construction and Completion**

The proposer must provide a complete schedule for achievement of all major project milestones including:

- (a) Commencement and completion of Detailed energy audits.
- (b) Preparation of list of proposed improvements, baseline calculations, and final contract proposal.
- (c) Execution of energy performance contract.
- (d) Obtaining all required permits and government approvals.
- (e) Procurement of all major equipment.
- (f) Commencement and completion of construction.
- (g) Training of school district personnel.
- (h) Commissioning and commencement of normal operation.

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**E. Official Statement of Proposer**

**Section E.1** - 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 following information: 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 state acceptance of the minimum standard clauses intended to be used by the school district. The standard clauses are included here as Appendix C. If unable or willing to indicate such acceptance, the proposal shall identify and explain any exceptions or deviations.
3. The proposer shall specifically guarantee:
  - (a) total energy savings projected in the Detailed Energy Audit will be at least 85% of the energy savings projected in the proposal; and
  - (b) total project cost projected in the Detailed Energy Audit will be no more than 115% of the cost projected in the proposal.

If these conditions are not met, the school district may: terminate the agreement to conduct a Detailed Energy Audit without cost or penalty; renegotiate with the ESCO; or begin negotiations with another ESCO.

**Section E.2** – The proposer shall include a proposed Letter of Intent to proceed to a Detailed Energy Audit for the next phase of project development. This document shall include the criteria to proceed to development of the energy audit, the deliverables to be included, and the associated cost of completing the Detailed Energy Audit.

**F. Addendum Relating to Alternative Financing (Optional)**

In a section to be labeled, **Section F**, the ESCO may propose an alternative to the school district purchasing, financing and owning the new equipment to be installed as a result of this project. The proposal should clearly identify the advantages to the school district of this alternative.

**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	
Part I:	Project team information
Part II:	Prime contractor information
Section A-2	Annual reports or financial statements
Section A-3	Work experience

Section B - Technical Aspects of the Proposal

Section B-1	Energy Audit: Attach sample
Section B-2	Baseline and energy savings: Attach sample
Section B-3	Proposed energy efficiency measures
Section B-4	Description of on-going services

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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

Section D - Schedule for Completion of the Project

Section E - Official Statement by the Proposer - Attach a suggested energy performance contract with proposed terms and conditions

Section F - Addendum Relating to Alternative Financing (Optional)

Appendices - Resumes of key personnel  
Other relevant documentation

**Appendices**

APPENDIX A: Pre-proposal Building Walkthrough  
APPENDIX B: Facility Profile  
APPENDIX C: Minimum Standard Contract Clauses, see APPENDIX C-1  
APPENDIX D: New York State Energy Law  
APPENDIX E: Chapter 436 of the Laws of 1997  
APPENDIX F: Regulations for the Development and Approval of Energy Performance Contracts  
APPENDIX G: Non-Collusion Certification

## Appendix A

### PRE-PROPOSAL CONFERENCE AND SITE VISITS

The school district will conduct a mandatory pre-proposal conference and walk-through inspection tour of the facilities included in this RFP on Friday, January 23, 2026. The pre-proposal conference will be held commencing at 9:00am local time at the District Office located at 1351 Washington Street, NY, with a building tour to follow. School district officials and project consultants will be present to answer questions regarding the RFP and the project. Contractors interested in attending the conference must contact Mrs. Brianne Durham, Asst. Superintendent for Operations & Finance no later than Friday, January 16, 2026.

**Proposals will be accepted only from contractors represented at the pre-proposal conference.** Following the conference, arrangements can be made by contacting the person named above to make an additional site visit(s) for the purpose of gathering additional information.

## Appendix B

Facilities to be Evaluated:

Facility	Street	Use	Total Sq ft
Wiley Intermediate School	1351 Washington Street	School/Education/DO	180,795
Watertown High School	1335 Washington Street	School/Education	287,074
Case Middle School	1237 Washington Street	School/Education	159,052
Sherman Elementary School	836 Sherman Street	School/Education	51,905
Knickerbocker Elementary School	739 Knickerbocker Drive	School/Education	52,228
Ohio Elementary School	1537 Ohio Street	School/Education	52,056
Starbuck Elementary School	430 East Hoard Street	School/Education	27,398
North Elementary School	171 East Hoard Street	School/Education	103,523
Massey Learning Center	532 South Massey Street	Maintenance/Office	26,275

Utility information will be provided to attendees after the pre-proposal walkthrough.

## **Appendix C**

### **MINIMUM STANDARD CONTRACT CLAUSES**

Titles to typical Standard Clauses in the proposed Agreement and see attached Appendix C-1.

- A. Labor Law; Affirmative Action, Prevailing Wage and Workers Compensation
- B. Executory Clause
- C. Transfer of Title
- D. Right-of-Way
- E. Indemnification  
Hold Harmless
- F. Performance and Payment Bonds
- G. Standards of Services
- H. Licenses and Permits
- I. Contract Modifications
- J. Assignment or Subletting of Contract
- K. Conflict of Interest
- L. Independent Contractor
- M. Certificate of Insurance
- N. Cancellation of Insurance
- O. Severability

**Appendix C-1**

**MINIMUM STANDARD CONTRACT CLAUSES**

**APPENDIX C-1**

**Watertown City School District  
Energy Services Performance Contract**

- A. Governing Laws, Statutory Compliance, Prevailing Wage, Workers Compensation, and the Customer's Policies and Procedures
1. ESCO shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws, rules, regulations, building codes, and zoning regulations, including applicable licensing and variance requirements.
  2. ESCO covenants and agrees to comply in all respects with all federal, state and local laws and ordinances regarding services for a New York State school district including but not limited to Workers' Compensation and Employers' Liability Insurance, Affirmative Action, hours of employment, wages, and human rights.
  3. ESCO covenants and agrees to comply in all respects with all New York State Education Law and the regulations, requirements, and guidelines promulgated by the New York State Education Department applicable to ESCO's work under the Agreement.
  4. The Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law principles. Any litigation or other proceeding arising under the Agreement shall be commenced in the New York State Supreme Court with jurisdiction over the Customer's location with venue in the County where the Customer is located.
  5. ESCO shall pay prevailing wages and benefits in compliance with New York State law.
  6. ESCO shall cause all persons performing work pursuant to the Agreement to comply with all instructions pertaining to conduct and building regulations issued by Customer. All such persons shall wear readily visible identification that is satisfactory to Customer. The Customer may promulgate and modify from time-to-time rules and regulations relating to conduct as the Customer, in its sole discretion, may determine, and ESCO shall cause all persons performing work to comply with them.
  7. The ESCO shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss, including but not limited to all infectious disease exposure precautions. The ESCO represents and warrants to the Customer that its services and compensation contemplate compliance with all of the Customer's applicable policies and procedures and all current and reasonably foreseeable federal, state, and local orders, regulations, including but not limited to regulations and guidance from the NYS Education Department and the NYS Department of Health. Accordingly, the ESCO hereby waives any claim for an increase in compensation or a change to the Substantial Completion date due to said compliance.
  8. The ESCO shall at all times observe and comply with all Federal and State Laws, and all applicable Ordinances and Regulations, in any manner affecting the work under the Agreement, and all such orders as exist at present and those which may be enacted later, by

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bodies or tribunals having jurisdiction or authority over the work under the Agreement, and the ESCO shall indemnify and save harmless the Customer and its officers, agents or employees against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation or order, whether by its employees or agents.

**B. Executory Clauses**

1. The Agreement incorporates by reference the provisions of 8 NYCRR 155.20 Energy performance contracts, including but not limited to the definitions set out at 8 NYCRR 155.20(b) and the provisions set out at 8 NYCRR 155.20(d). The Agreement shall be effective only to the extent of the funds appropriated or available for the purposes of the Agreement and no liability shall be incurred by Customer beyond the amount of such funds. ESCO hereby acknowledges and accepts that Customer has no obligation to request, appropriate or make available funds for the purpose of the Agreement.
2. ESCO acknowledges that under the applicable, governing provisions of 8 NYCRR 155.20, the Agreement and any amendment of the Agreement requires the approval of the Commissioner of Education of the State of New York, and it shall not be binding on the Customer until approval of the said Commissioner is obtained.

**C. Indemnification**

1. To the fullest extent permitted by law, ESCO shall indemnify and hold harmless the Customer and its directors, trustees, officers, employees, agents, consultants, interim administrators, authorized volunteers and committee members, students, teachers, auxiliary instructors, and members of the Board of Education (collectively "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance under the Agreement, when such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work of the Agreement), but only to the extent caused, in whole or part, by the acts or omissions, or other culpable conduct, of the ESCO, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnitee.

**D. Bonding Requirements**

1. All surety bonds for the work of the Agreement shall be issued by a qualified surety reasonably satisfactory to the Customer and authorized to conduct business in New York State. ESCO must furnish bonds covering faithful performance of its obligations under the Agreement and payment of obligations arising thereunder. Each bond must be maintained throughout the duration of the work of the Agreement. ESCO must deliver the required bonds prior to beginning any work at the site, but no later than ten (10) days after execution of the Agreement, using modified form, AIA Document A312-2010 Performance Bond and Payment Bond. The Performance and Payment Bonds furnished by ESCO shall apply solely to the construction services identified in the Agreement (the "Construction Work") and for a period of 12 months from the acceptance and final payment of the Construction Work. The Performance and Payment Bonds shall NOT be applicable to any services (including guarantees) related to the Measurement and Verification Program and the Maintenance Service and Technical Support specified in the Agreement or any energy savings guarantees. The Amount of each Bond shall be One Hundred Percent (100%) of the Contract Price.

**The Performance Bond shall contain the following modification to be set forth in §16:**

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Surety hereby waives notice of and consents to any addition, alteration, omission, change, extension of time, or other modification of the Construction Contract. Such addition, alteration, omission, change, extension of time, or other modification of the Construction Contract, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety from its obligations hereunder. Surety further agrees that it is obligated under this bond to any successor, grantee, or assignee of the Owner.

Surety agrees that in the event of a default by the Owner in the performance of the Owner's obligations to the Contractor under the Construction Contract, the Contractor or Surety shall provide written notice of default to the Owner and the Owner shall have thirty (30) days from receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of the default is such that it can't be cured within thirty (30) days.

Notwithstanding anything to the contrary contained in the Construction Contract between the Contractor and the Owner or herein, no meeting among Owner, Contractor, and Surety, or any combination thereof, is required as a pre-condition to Owner declaring Contractor in default or prior to Owner terminating the Construction Contract with Contractor. Any such requirements contained herein are waived by the Contractor and the Surety and are unenforceable against the Owner.

This Bond includes performance by the Contractor of any correction and/or warranty obligations contained in the Construction Contract, including such performance after the date of Substantial or Final Completion.

This Bond is given as a statutory bond or as required by the Construction Contract and section 13 applies without exception.

**The Payment Bond shall contain the following modification to be set forth in §18:**

Surety hereby waives notice of and consents to any addition, alteration, omission, change, extension of time, or other modification of the Construction Contract. Such addition, alteration, omission, change, extension of time, or other modification of the Construction Contract, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety from its obligations hereunder. Surety further agrees that it is obligated under this bond to any successor, grantee, or assignee of the Owner.

Surety agrees that in the event of a default by the Owner in the performance of the Owner's obligations to the Contractor under the Construction Contract, the Contractor or Surety shall provide written notice of default to the Owner and the Owner shall have thirty (30) days from receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of the default is such that it can't be cured within thirty (30) days.

This Bond is given as a statutory bond or as required by the Construction Contract and section 14 applies without exception.

All Bonds shall be maintained in full force for a period of twelve (12) months after the date of the ESCO's acceptance of final payment or as set forth in the bonds, whichever is longer, as guarantee that the ESCO will make good any faults or defects in the work under the Agreement arising from improper or defective workmanship or materials which may appear during the period after acceptance of final payment.

**E. Contract Modifications**

1. Any modification of the Agreement, after its signed by the Parties and approved by the Commissioner of Education of the State of New York, shall require a written amendment signed by the Parties and approved by the Commissioner of Education of the State of New York.

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**F. Assignment and Subletting**

1. ESCO shall not assign the Agreement as a whole or in part without written consent of the Customer. Any assignment or attempted assignment by the ESCO shall be void and unenforceable and shall be deemed a material breach of the Agreement.

**G. Conflict of Interest Statement**

1. ESCO certifies that no member of the Customer's Board of Education or its administration has any financial interest in the ESCO or the ESCO's performance under the Agreement.

**H. Insurance Requirements**

1. The types and amounts of insurance coverage required by the Agreement do not limit the type or amount of liability on the part of the ESCO. Notwithstanding anything to the contrary contained in the Agreement, there is no limitation of the ESCO's liability for its performance under the Agreement.
2. The ESCO shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and one to which the Customer has no reasonable objection, such insurance as will protect the ESCO from claims which may arise out of or result from the ESCO's operations and completed operations under the Agreement and for which the ESCO may be liable, whether such operations be by the ESCO or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
3. The required insurance coverage must be evidenced by reasonably acceptable certificates of insurance which describe the services to be provided by the ESCO, be reasonably acceptable to the Customer, and shall be submitted to the Customer prior to commencement of the work under the Agreement; and thereafter upon renewal or replacement of each required policy of insurance. The certificates and the insurance policies required by this Agreement shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Customer. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the requirement for such coverage. Information concerning reduction of coverage shall be furnished by the ESCO with reasonable promptness. The ESCO shall provide written notification to the Customer of the cancellation or expiration of any required insurance. The ESCO shall provide such written notice within five (5) business days of the date the ESCO is first aware of the cancellation or expiration or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.
4. If the work of the Agreement involves asbestos abatement, the insurance coverage shall specifically cover the risks associated with asbestos abatement and include the words asbestos abatement work and shall specify any limitations on completed operation time period and if there is a limitation, it will be at the Customer's discretion to accept or reject the limitation.
5. Insurance must remain in effect until final payment and at all times thereafter when ESCO may be correcting, removing, or replacing defective Work.
6. ESCO agrees to indemnify the Customer for all applicable deductibles and self-insurance retentions.

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7. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 NY 2014/05) must be included with the certificates of insurance. For any “Yes” answers on Items G through L on this Form – additional details must be provided in writing.
8. ESCO shall maintain the following insurance for the duration of this Agreement and shall maintain Products and Completed Operations insurance coverage in effect for a period of two (2) years after Final Completion of the work to be performed under the Agreement:
  1. Comprehensive General Liability Insurance naming the Customer as an Additional Insured, containing an Additional Insured Endorsement, and a Waiver of Subrogation Endorsement. The additional insured coverage shall be primary and a non-contributory on a follow form basis to any of the Customer’s insurance policies and shall apply to both ongoing and completed operations on a per project and per location basis:

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$300,000
Medical Expense	\$10,000

Including Bodily Injury and Property Damage, Damage for Premises/Operations, Products and Completed Operations and coverage provided by the General Liability coverage form CG00010 1/96 in connection with work to be completed by the ESCO and all subcontractors and consultants, with the Customer named as an Additional Insured. Coverage must be provided on a per project, per location basis.

2. Commercial Automobile Liability Insurance covering owned and rented vehicles operated by the ESCO with policy limits of not less than one million (\$1,000,000) combined single limit and aggregate for bodily injury and property damage. Including Bodily Injury and Property Damage for the operation of Any Auto (Symbol 1) used in connection with Work to be completed by the ESCO and all subcontractors and consultants, with the Customer named as an Additional Insured and a Waiver of Subrogation Endorsement.
3. Umbrella Liability Insurance coverage shall provide additional limits of liability coverage over and above the General Liability and Automobile Liability coverages required by this Agreement on a follow-form basis with the Customer named as an Additional Insured and a Waiver of Subrogation Endorsement. Umbrella Liability Insurance:

Each Occurrence Limit	\$5,000,000
Aggregate	\$5,000,000

4. Worker’s Compensation Insurance covering the obligations of the ESCO in accordance with applicable law at statutory limits and Employer’s Liability Insurance with a policy limit of not less than required by applicable law, covering all operations under this Agreement, whether performed by the ESCO, its subcontractors or consultants, containing a Blanket Waiver of Subrogation Endorsement.
5. If required, ESCO shall provide Contractor’s Pollution Liability Coverage and Asbestos Abatement Liability Coverage naming the Customer as an Additional Insured, in the amount of \$2,000,000 for Each Occurrence, for a period of three (3) years following the acceptance by Customer of a Certificate of Substantial Completion. The Asbestos Abatement Liability Insurance shall specify any limitations on the completed operations time period, subject to the Customer’s approval which may be withheld at the Customer’s option. The Asbestos Abatement Liability Insurance shall indemnify the Customer and provide the Customer with a

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defense should there be an occurrence creating potential liability for the Customer. If the Asbestos Abatement Liability Coverage required herein is not available from an insurance carrier licensed to do business in the state of New York, ESCO must notify Customer in writing as soon as practical.

6. The ESCO waives all rights against Customer and any of its agents, and employees for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement, except such rights as it has to proceeds of such insurance. The policies of insurance purchased and maintained by the ESCO shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**I. Severability**

1. If, during the term of this Agreement, a specific provision of the Agreement is determined by a court of competent jurisdiction or an administrative agency with jurisdiction to be illegal or unenforceable under Federal or State law, the remainder of the Agreement, not affected by such ruling, shall remain in full force and effect.

**J. Architect of Record for the Project**

1. The design and specification or approval of equipment and systems to be used in providing energy efficiency services will be provided by the Customer's Architect/Engineer of Record for the Project. Their costs for services as the Architect/Engineer of Record for the Project are included within the contract cost shown in this Agreement. ESCO agrees to work cooperatively with the Architect/Engineer and the Customer in coordinating this Project.
2. ESCO hereby certifies that the Customer's Architect/Engineer of Record does not have a financial interest in the ESCO which conflicts with the proper completion of the energy audit and any design work associated with the Agreement and that full disclosure has been made to the Customer detailing all financial compensation paid or to be paid by the ESCO to

**K. Time is of the Essence**

1. **TIME IS OF THE ESSENCE IN THE COMMENCEMENT, PROSECUTION AND COMPLETION OF THE WORK OF THE AGREEMENT.** ESCO shall be responsible for all direct damages to Customer arising from any inexcusable delay by ESCO, its Subcontractors and suppliers, in performing or completing the work of the Agreement in accordance with the time requirements of the Agreement. For purposes of the Agreement, delays resulting from supply chain issues and disruption shall not constitute an excusable delay.

**L. Project Records**

1. ESCO shall maintain complete and accurate records, accounts, and other documents related to the Agreement. These records must be maintained by ESCO for seven (7) years after final completion of the Work under the Agreement or for the period the savings guarantee is effective, whichever is longer. The Customer and entities entitled to examine the Customer's records shall have access to ESCO's records for the project upon reasonable request.

**M. Miscellaneous Provisions**

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1. Notwithstanding any provision of the Agreement or any ancillary document to the contrary, there shall be no limitation of the liability of the ESCO in connection with its performance under the Agreement as amended by this Addendum.
2. Notwithstanding any provision of the Agreement or any ancillary document to the contrary, no change in the ESCO's costs because of tariff increases or other causes shall be a basis to change the total cost to Customer as set out in the Agreement as amended by this Addendum.
3. Any change or modification to the Agreement, including but not limited to a change to the fees or amount of the guaranteed savings, will not be effective unless made in writing. Such written modification must specifically indicate that it is an amendment, change, or modifications, and must be signed by both Parties and approved by the Commissioner of Education of the State of New York before it shall be effective.
4. The failure of ESCO or the Customer to insist upon, or to delay enforcing the strict performance of the terms and conditions hereof, or any right or remedy, as provided herein, shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with the Agreement in the event of a continuing or subsequent default on the part of ESCO or the Customer.

**N. Construction Coordination**

1. ESCO agrees to coordinate its work under the Agreement with other contractors, the Customer, the Customer's Architect/Engineer of Record, and the Customer's Construction Manager, if any.

**O. Dispute Resolution**

1. Claims, disputes, or other matters in controversy arising out of or related to the Agreement are subject to mediation upon mutual agreement of the Parties.
2. The Parties shall endeavor to resolve their claims by mediation which, unless the Parties mutually agree otherwise, shall be administered in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of this Agreement. However, the American Arbitration Association will not be involved in the mediation unless the Parties mutually agree. A request for mediation shall be made in writing, delivered to the other Party to the Agreement. The Parties shall select a mutually acceptable mediator. The request may be made concurrently with the filing of binding dispute resolution proceedings (litigation) but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.
3. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
4. If for any reason the claim or dispute is not resolved by the mediation or the Parties fail to agree on mediation as a dispute resolution process, then the claim or dispute shall be resolved in New York State Supreme Court in the County where the Project is located. The prevailing Party shall be entitled to recover its reasonable attorney's fees and costs. The Customer and ESCO consent to exclusive jurisdiction of the New York State Supreme Court with jurisdiction over the County in which the Project is located and waive any and all objections to the jurisdiction of such court.

## Appendix D

### 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 purposes 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.

#### § 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 obligation to request, appropriate or make available monies for the purpose of the contract."

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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 or 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 municipal 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 an energy performance contract for which a written request for proposals is issued pursuant to subdivision six of this section.

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 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.

## Appendix E

### 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.

\* \* \*

§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.

\* \* \*

(5) Notwithstanding any inconsistent provisions of this paragraph, for the purpose of calculating an apportionment 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 current 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.

\* \* \*

§ 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:

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 contract costs from energy savings realized by the school district during the term of the energy performance contract, which shall not exceed eighteen years.

\* \* \*

§ 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

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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.

\* \* \*

§ 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 within 180 days of such effective date;

\* \* \*

(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 of section 41 of chapter 474 of the laws of 1996;

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

\* \* \*

## Appendix F

### REGULATIONS OF THE COMMISSIONER OF EDUCATION

(8 NYCRR §155.16)

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 purposes 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 alternative 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.

**(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, ventilating, air conditioning (HVAC) equipment;
- (3) installation of vestibules;
- (4) installation of automatic setback thermostat;
- (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.

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(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 a 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 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;
  - 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 a 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 procedures 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 being 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

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to the school district and/or BOCES detailing all financial compensation received from the energy performance contractor.

**(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 of 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 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.

**Appendix G**

**NOTE: This certificate must be included with your Proposal. Failure to include a properly executed Non-Collusion Certification may result in rejection of your Proposal as non-responsive.**

**NON-COLLUSION CERTIFICATION**

**PROJECT:** 2026 Energy Performance Contract

**SCHOOL DISTRICT:** Watertown City School District

**PROPOSER:** \_\_\_\_\_ (herein “Proposer”)

Pursuant to applicable NYS General Municipal Law, by submission of its proposal in response to a request for proposals for the district-wide implementation of energy conservation measures on a guaranteed performance contracting basis, each person signing on behalf of the Proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in the Proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any potential competitor.
2. Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed prior to the date set for opening proposals, directly or indirectly, to any other proposer or to any potential competitor.
3. No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not submit a proposal for the purpose of restricting competition.
4. No member of the Board of Education of the School District, nor any officer, employee, or person whose salary is payable in whole or in part from the treasury of the said Board of Education is directly or indirectly interested in the Proposal or in the materials, equipment, or services to which it relates, or in any portion of the profits thereof.
5. The Proposer has examined the RFP, including its schedules and specifications prepared under the direction of the Board of Education and will, if its Proposal is accepted by the School District, deliver and install at the prices bid and within the time stated, all materials, equipment, and services for which the Proposal is made.

The undersigned certifies that he/she is authorized by the Proposer to make this certification.

**Name and Title of Authorized Officer:** \_\_\_\_\_

\_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Proposer’s Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_