

# **Town of Lima, New York**

## **Request for Proposal (RFP)**

### **Town of Lima Energy Service Conservation**

**Due Date: June 30, 2022 at 3:00 PM**

**Please Submit Your Sealed Proposal To:  
Town Supervisor Michael J. Falk  
Town of Lima  
7329 East Main Street  
Lima, NY 14485**

# **Town of Lima**

## **Energy Service Conservation**

### GENERAL INFORMATION AND REQUEST FOR PROPOSALS

The Town of Lima is issuing this Request for Proposal (RFP) for the selection of a project management and energy service company. You are invited to submit a proposal in accordance with this RFP.

**PLEASE BE ADVISED THAT FOR THE YEAR 2022 THE TOWN OF LIMA, NEWYORK WILL PUBLISH ALL PUBLIC BIDS AND PROPOSALS IN THE FOLLOWING:**

**THE RECORD**  
**EMPIRE STATE PURCHASING GROUP ([www.bidnetdirect/new-york](http://www.bidnetdirect/new-york))**

Enclosures: PROPOSAL INSTRUCTIONS AND CONDITIONS  
APPENDICES

# **SPECIFICATIONS**

## **PROPOSAL INSTRUCTIONS AND CONDITIONS**

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

This Request for Proposals (RFP) is to solicit qualification proposals for energy efficiency evaluation services for the Town of Lima (hereafter “Town”). The selected company will assist the Town in becoming as energy efficient as possible through the installation of energy efficiency measures and shall provide project management services for the construction of other energy related facility improvements at the Town. The Town wishes to implement energy conservation measures on an energy performance contract basis. (See State Energy Law, Article 9, attached as Appendix C.) All other construction measures shall be in accordance with the requirements of General Municipal Law and other applicable requirements of New York State law.

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

### **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 contract basis at facilities owned by the Town and for streetlights within the Town. Specifically, the Energy Service Company (ESCO) selected, as a result of the RFP will be expected to:

- A. Provide comprehensive energy and project management services for buildings and facilities serving the Town, including but not limited to:
  1. The performance of an investment quality energy analysis.
  2. The design and specification of equipment and systems to be used in providing energy efficiency services and other facility improvements requested by the Town.
  3. Services associated with the procurement and installation of facility improvements approved by Town under a guaranteed maximum price contract.
  4. Commissioning of the equipment.
  5. Preventive and emergency maintenance and servicing of the equipment installed.

6. Staff training.
  7. Other services in connection with arrangement of financing (depending upon financing approach) for the entire transaction in such manner that title to the equipment ultimately passes to Town.
  8. Energy savings performance guarantees.
  9. Complete all paperwork necessary for obtaining all necessary approvals as required by New York State law.
  10. Investigate other financial incentives (i.e. grants, rebates, etc.)
- 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 identify technical strategies utilized in past experiences and those strategies most likely to be implemented at properties. Measures may involve controlling, modifying, adding or replacing equipment and systems.
- C. Structure the terms of obligation to pay for the services provided on a guaranteed maximum price basis with savings guarantees. The ESCO will submit sample energy services agreement (“Agreement”) and if necessary, ancillary agreements that specifically meet the needs of the Town. ESCO may substitute an example of an executed energy service agreement that would be the basis for negotiation of an agreement with the Town.

ESCO’s 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.

The Town will not provide building specific data (copies of gas, electric, oil or other utility bills, drawings, etc.) at this time. There will not be any site visits scheduled until after the selection process. ESCO’s are expected to prepare a proposal that outlines their qualifications and experience only and will not be required to submit technical or financial information specific to properties. The technical and financial abilities of the ESCO should be highlighted in the experiences and reference section of the RFP. It is understood that the Town will be able to contact any or all references provided in response to this RFP.

Upon review of proposals received in response to the RFP, the Town will select a single contractor to provide all services for a term of five (5) years.

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

#### **A. Proposal Evaluation Criteria**

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

##### **1. Experience and Qualifications of the ESCO**

Consideration will be given to ESCO demonstrating strong capabilities, experience, and reputation in undertakings similar to those described in this RFP, and providing authoritative documentation of their financial soundness and stability. Similar experience will be understood to include development of performance contracts in public facilities.

##### **2. Project Approach**

Proposals will be evaluated on the technical strategies proposed and successfully implemented in other facilities. Strong emphasis will be put on the ability of the ESCO to commission and service any installed equipment. It is understood that the Town may contact any or all references and schedule site visits to assess the technical merit and construction abilities of the contractor.

##### **3. Financial Terms**

A financial representative should be listed with each reference provided. It is understood that the Town may contact any or all references for discussion of the ESCO's ability to meet the financial expectations of the customer. Consideration will be given to proposals that responsibly maximize the net economic benefit to the Town over the term of the proposed energy services agreement and that responsibly minimize the risk to the Town in connection with the proposed transaction.

##### **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. 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 ESCO 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 accepted. The Town reserves the right to determine what information may be considered “Confidential” or “Proprietary” based on its interpretation of the Freedom of Information Law.

## **B. Modification or Withdrawal of Proposals**

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

## **C. Right to Reject Proposals**

This RFP does not commit to award a contract, pay any cost incurred in the preparation of a proposal in response to the RFP or to procure or contract for services. The Town intends to award a contract on the basis of the best interest and advantage to the Town and reserves the right to accept or reject any or all proposals received as a result of this request, 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 Town to do so.

## **V. INSURANCE**

The selected proposer will be required to procure and maintain at their own expense the following insurance coverage:

1. Commercial general liability and contractual liability on an occurrence basis with the following limits of coverage: bodily injury, property damage and personal injury, One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (\$2,000,000) general aggregate.
2. Professional Liability/Errors & Omissions of at least One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (\$2,000,000) aggregate (*If applicable*).
3. Workers compensation insurance as required by law and including employer's liability insurance. Statutory disability benefits insurance as may be required by law.
4. Commercial umbrella coverage of Five Million Dollars (\$5,000,000).

Each policy of insurance required shall be in form and content satisfactory to the Attorney for the Town, and shall provide that:

1. The Town is named additional insured on a primary and non-contributing basis.

2. The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the Attorney for the Town's Office.
3. The insurance policies shall be automatically renewed upon expiration and continued in force unless the Attorney for the Town is given sixty (60) days written notice to the contrary.

No work shall be commenced under the contract until the selected proposer has delivered to the Town or its designee, proof of issuance of all policies of insurance required by the Contract to be procured by the selected proposer. If at any time, any of said policies shall be or become unsatisfactory to the Town, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the Town for approval. Upon failure of the selected proposer to furnish, deliver and maintain such insurance as above provided, this Contract may, at the election of the Town, be forthwith declared suspended, discontinued or terminated. Failure of the selected proposer to procure and maintain any required insurance shall not relieve the selected proposer from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected proposer concerning indemnification.

#### **VI. CONFLICT OF INTEREST**

No director, officer, employee, agent, contractor, or subcontractor of the contractor shall be deemed to be an agent, servant, and/or employee of the Town, past or present. The contractor shall not employ as a director, officer, employee, agent, contractor, or subcontractor, directly or indirectly in any capacity, any elected or appointed official of the Town, the two school districts that serve the Town, or any member of their immediate family, past or present.

The contractor agrees that it will require all its directors, officers, employees, agents, contractors, or subcontractors shall be bound by and adhere to the Code of Ethics of the Town (**if interested, copies of the Code of Ethics may be obtained from the Attorney for the Town's Office**). The contractor further acknowledges and agrees that all of its employees must comply with all applicable laws relating to this agreement, or the performance thereof, and that the refusal to supply such evidence and/or testimony shall be the cause for immediate disqualification of the Vendor's proposal by the Town.

#### **VII. TERMINATION FOR CAUSE**

The Town reserves the right to terminate this contract at any time for cause. The violation of any provision or condition contained in this contract, or the refusal, failure, or inability to carry out any provisions of this contract shall constitute sufficient grounds to terminate this contract for cause. Should the Town elect to terminate this contract for cause, the Town will notify the Contractor ten (10) days prior to the termination date and shall specify the cause for termination as well as the date the termination shall be effective. This termination notice will be issued via a written letter sent by certified U.S. mail. Immediate dismissals may be executed if deemed necessary by the Town.

### **VIII. TERMINATION WITHOUT CAUSE**

The Town may terminate this contract without cause. Written notice of termination must be sent via certified U.S. mail no later than thirty (30) days prior to the termination date.

### **IX. NON COLLUSIVE STATEMENT**

The submission of this statement certifies that the prices in the proposal to be delivered have been arrived at independently without collusion, consultation, communication, or arrangement for the purpose of restricting competition as to any matter relating to such prices with any other proposer with any competitor.

### **X. 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 Town 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 ESCO in the upper right corner.

#### **A. Contractor Background and Qualifications**

**Section A-1** of the proposal must contain information about the ESCO including the make-up of the project team and the proposed assignment of responsibility for the major tasks involved in the total project. The ESCO will have single source responsibility for all portions of the project. Describe the overall make-up of the project team and each member's areas of responsibility with address, telephone numbers, and names of contact persons and of lead personnel. Describe the process to be followed in selecting subcontractors, if any.

In a Section to be labeled **Section A-2**, include the most recent annual reports, financial statements, or other financial information sufficient to permit to evaluate the financial strength of the ESCO. If the ESCO is a joint venture or other entity with no prior financial history, submit information with respect to constituent or parent entities, as appropriate.

In a Section to be labeled **Section A-3**, describe the prior relevant experience of the ESCO. References that were installed or are being serviced by the local/regional office submitting this proposal will receive added consideration. For each organization,



include the information listed below. (If more than ten projects are relevant to this RFP, remaining examples of experience may be briefly summarized):

- (a) Customer's name.
- (b) Total project capital cost.
- (c) Type of contract (e.g., sale, lease, shared savings, guaranteed maximum price, etc.).
- (d) Name and telephone number of reference for the project (financial and technical).
- (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 and the level actually achieved.

The right to call the reference and/or visit the project sites provided by the ESCO will be presumed by the Town.

In a Section to be labeled **Section A-4**, (optional) include any additional information about the project team, its personnel, financial condition, or qualifications regarded as being pertinent.

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

In a Section to be labeled **Section B-1**, describe the energy audit(s) that will be conducted for this project after selection of an ESCO on the basis of this RFP. The proposal must include provisions for the performance and presentation of energy audit results for each building. Each audit must include the following:

- (a) Allocation of total energy use among end uses. Allocation must be reconciled with actual usage and should be based on bin calculations or other methods acceptable to the Town.
- (b) A list of recommended energy efficiency measures covering improvements to the physical plant and operating procedures. For each item on the list, the ESCO must be willing to provide estimates of initial costs for installation, ongoing maintenance costs, annual energy savings, and the useful life of the measures.
- (c) A calculation of baseline energy use, showing how baseline is derived and how it will be adjusted for changes in outdoor temperature, occupancy, and if appropriate, equipment usage.

Your proposal must include information on the type of systems to be covered, the personnel to be involved, and the general method to be used. Attach a sample 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 done by your firm, with full documentation of methods, assumptions and input data.

In a Section to be labeled **Section B-3**, describe the services your company will provide in designing, specifying, and overseeing the installation of energy efficiency and other measures. How will these operations be coordinated with the daily operations of the facility?

In a Section to be labeled **Section B-4**, describe the ongoing project monitoring and maintenance services your company will provide. Specifically, describe how the following services will be delivered and describe the personnel who will be providing these services (i.e. in-house or sub-contract):

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

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 Town seeks to enter into a project arrangement under which the Town will assume ownership of all equipment and facilities installed or modified under this agreement. The Town 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 ESCO 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.

In a Section to be labeled **Section C-1**, outline the proposed terms of the contract with covering:

- (a) Recommended 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 evaluated.

- (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).
- (e) Conditions for the early termination of the contract by and the contractor.

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

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

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

#### **E. Official Statement of ESCO**

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

1. The ESCO 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 ESCO shall specifically state acceptance of the minimum standard clauses intended to be used by. The standard clauses are included here as Appendix B. If unable or unwilling to indicate such acceptance, the proposal shall identify and explain any exceptions or deviations.

#### **F. 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 Project team information

- Section A-2 Annual reports or financial statements
- Section A-3 Work experience
- Section A-4 Additional information from ESCO (Optional)

Section B – Technical Aspects of the Proposal

- Section B-1 Energy Audit: Methodology (Attach sample)
- Section B-2 Description baseline calculation methodology (Attach sample)
- Section B-3 Description of design and installation services
- Section B-4 Description of maintenance services

Section C – Financial Aspects of the Proposal

- Section C-1 Describe contract terms and calculation methodologies

Section D – Schedule for Completion of the Project

Section E – Official Statement by the ESCO

## NON-COLLUSIVE CERTIFICATION

1. Every proposal herein made to the Town, or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the proposer and affirmed by such proposer as true under the penalties of perjury:  
Non-Collusive Certification.
  - a. By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:
    - i. The prices in this 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 competitor;
    - ii. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening directly or indirectly to any other proposer or to any competitor; and
    - iii. 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.
  - b. A proposal shall not be considered for award, nor shall any award be made, where 1.a. (ii) and 1.a.(iii) above have not been complied with; provided however, that if in any case the proposer cannot make the foregoing certification, the proposer shall state and furnish with the proposal a signed statement which sets forth in detail the reasons therefore. Where 1.a.(i), 1.a.(ii), and 1.a.(iii) above have not been met, no award shall be made unless the head of the purchasing unit of the Town of Lima, to which the proposal is made, or their designee, determines that such disclosures were not made for the purpose of restricting competition.

The fact that a proposer (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers or proposed or pending publication of new or revised price lists of such items, or (c) has sold the same items to other customers at the same prices being proposed does not constitute, without more, a disclosure within the meaning of subparagraph 1(a).
2. Any proposal hereafter made to the Town, or official thereof, by a corporate proposer for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such proposal contains the certification referred to herein shall be deemed to have been

authorized by the board of directors of the proposer and such authorization shall be deemed to include the signing and submission of the proposer and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

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DATED

LEGAL NAME: PERSON, FIRM OR CORPORATION

BY: \_\_\_\_\_ (SIGNATURE)

SIGNATORY NAME: \_\_\_\_\_ (PLEASE PRINT OR TYPE)

TITLE: \_\_\_\_\_

(CORPORATE  
SEAL)

**NON-COLLUSIVE CERTIFICATION (cont'd)**

**PLEASE COMPLETE INFORMATION BELOW:**

**POST OFFICE ADDRESS OF PROPOSER:**

\_\_\_\_\_  
Street

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Town                      State                      Zip

\_\_\_\_\_  
Fax #

**IF A CORPORATION:**

NAME

ADDRESS

\_\_\_\_\_  
President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF A FIRM:**

NAME

ADDRESS

\_\_\_\_\_

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**XI. QUESTIONS**

Inquiries or questions regarding this request shall be forwarded to the Purchasing Agent via e-mail. All questions will be received no later than **2:00 PM on Wednesday, June 29, 2022**. All questions will be compiled and answered in the form of an Addendum. All agencies on record with the Purchasing Office will receive a copy of the Addendum. Questions received after this date will not be answered. Only questions answered by formal written Addenda will be binding. Oral or other interpretations or clarifications will be without legal effect.

**E-mail questions to:  
Michael J. Falk  
Town Supervisor  
supervisor@townoflima.org**

**XII. SUBMISSION**

All Proposals to be considered must be received in a sealed envelope up until no later than **3:00 PM on June 30, 2022** and shall be directed to the Town of Lima, Office of the Town Comptroller, Bureau of Contracts & Procurement. Proposals received after the above noted time will not be accepted. All sealed envelopes should be clearly marked "**Town of Lima Energy Service Conservation.**" Vendor shall submit One (1) original and Four (4) copies of their proposal to:

**Town Supervisor Michael J. Falk  
Town of Lima  
7329 East Main Street  
Lima, NY 14485**

**Facsimile or electronic submissions WILL NOT be accepted.**



APPENDIX A

**FACILITIES TO BE EVALUATED**

**All Town owned or operated facilities or equipment as directed by Town**

## APPENDIX B

### MINIMUM STANDARD CONTRACT CLAUSES

Titles to typical Standard Clauses in the proposed Agreement to be supplied by Counsel and attached as Appendix B.

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

## APPENDIX C

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

#### **Sections**

- 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 electric, 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.”
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 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 the section.

Added L.1985, c. 733, section 2; amended L.1989, c.638, subsection 1,2,L.1994, C.368, subsection 1,2.