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## ***Attachment H - Financing Solicitation Package***



**The Energy Services Coalition offers a collection of model procurement and contracting documents that represent Best Practices for state energy offices (SEOs) to launch and administer programs to increase energy efficiency through energy performance contracting. The documents draw from successful programs in various states and are continually updated to incorporate the latest strategies. They can be easily customized to meet the needs of any SEO or similar government department.**

### **DESCRIPTION –Financing Solicitation Package**

The financing agreement is a stand-alone agreement, separate from the energy performance contract, between the Institution and a financial organization and signed by the Institution at the same time as the performance contract. The two agreements are linked through the payment schedules and the savings guarantee provided by the ESCO that the annual guaranteed savings meet the annual debt service (plus any other related expenses imposed by the performance contract such as monitoring and verification).

Financing is typically provided by a financial organization which specializes, or has experience, in performance contracting projects. The financing instrument is typically a tax-exempt, municipal lease-purchase agreement as this instrument delivers the lowest finance rates.

This Financing Solicitation Package enables and authorizes the ESCO to seek competitive financing on behalf of the Institution. The ESCO can provide the necessary information to solicit competitive rates and can evaluate the full package of rates and services, recommending the best package for the Institution’s consideration and final decision. This eliminates the Institution’s need to issue a separate RFP for financing, and positions the financing as an integral part of the performance contracting approach.

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As an alternative, the Institution can provide other funds or financing mechanisms to fully fund or finance the project.

This is a model document only and does not attempt to identify or address all circumstances or conditions you may encounter or desire. Consult with your legal counsel and procurement staff to adapt it to meet your needs.

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***Attachment H – Financing Solicitation Package***

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## **REQUEST FOR PROPOSAL**

**RFP REFERENCE:** Institution Name

**RFP DATE:** Date

**RFP CLOSING DATE:** Date

**ESCO - CONTACT:** Name, Address, Phone, Fax, E-mail

### **Notice to Firms**

Invitations are extended for proposals using the attached proposal format

**SCOPE OF REQUEST:** Provide pursuant to a tax-exempt lease purchase agreement with Institution financing for energy and water savings measures for those certain facilities located at the Institution's campus.

**PROPERLY COMPLETED RESPONSES WILL INCLUDE:**

1. a signed and dated proposal letter in the format included
2. a redlined copy of the Model Lease Contract With Explanation of Any Changes proposed thereto
3. a signed and completed signature sheet
4. a schedule of payments and amortization schedule including any purchase options
5. escrow information (contact, Escrow Agreement and List of All Fees)

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## Proposal Information

### Specific Terms

- Lessee: BOARD OF INSTITUTION
- Lessor: THE PROVIDER OF THE FINANCING OR A MUTUALLY AGREEABLE NOMINAL LESSOR
- Contract: A MODEL LEASE CONTRACT BETWEEN LESSOR AND THE INSTITUTION. EACH FIRM IS REQUIRED TO REVIEW AND COMMENT ON THE MODEL LEASE CONTRACT, ATTACHED HERETO AS ATTACHMENT A. THE EXTENT AND CONTENT OF THOSE COMMENTS WILL BE IMPORTANT TO THE EVALUATION OF THE PROPOSALS. IF ANY CHANGES IN THE MODEL LEASE CONTRACT ARE PROPOSED, SUCH CHANGES MUST BE SPECIFICALLY IDENTIFIED IN THE PROPOSAL AND ALTERNATE LANGUAGE SET FORTH IN THE PROPOSAL. ALSO, ANY CHANGES SHOULD BE ACCOMPANIED WITH AN EXPLANATION CLARIFYING THE PROPOSED CHANGE.
- Security: THE LESSOR WILL BE SECURED BY THE INSTITUTION'S OBLIGATION TO PAY THE LEASE PAYMENTS, WHICH ARE SUBJECT TO ANNUAL APPROPRIATIONS AND BY A SECURITY INTEREST IN THE EQUIPMENT PURCHASED FOR THE ENERGY AND WATER SAVINGS MEASURES TO BE INSTALLED BY ESCO, WHICH CAN BE SALVAGED WITHOUT DAMAGE TO THE FACILITY TO WHICH SUCH EQUIPMENT IS ATTACHED.
- Interest Rate: A FIXED RATE OF INTEREST FOR THE TERM OF THE FINANCING. THE PROPOSAL SHOULD INCLUDE THE RELEVANT INDEX AND SPREAD ALONG WITH THE PERIOD OF TIME THE PROPOSED FIXED INTEREST IS COMMITTED
- Prepayment: THE FINAL TAX-EXEMPT LEASE PURCHASE AGREEMENT SHALL INCLUDE CERTAIN PREPAYMENT PROVISIONS PURSUANT TO A SCHEDULE TO BE AGREED TO BY THE PARTIES

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Assignment: THE LESSOR MAY ASSIGN ITS RIGHTS TO RECEIVE LEASE PAYMENTS AND ITS SECURITY INTEREST IN THE EQUIPMENT INSTALLED PURSUANT TO THE ENERGY PERFORMANCE CONTRACT BUT ONLY WITH THE ADVANCE WRITTEN CONSENT OF THE INSTITUTION. EACH ASSIGNMENT MUST SPECIFICALLY MENTION THE INSTITUTION'S RIGHTS REGARDING PREPAYMENT.

Amendment: THE INSTITUTION RESERVES THE RIGHT TO AMEND THE MODEL LEASE CONTRACT THAT IS ENTERED INTO PURSUANT TO THIS REQUEST FOR PROPOSAL. ANY SUCH AMENDMENT WILL BE IN WRITING AND SUBJECT TO THE MUTUAL CONSENT OF BOTH PARTIES.

Cost: THE PROPOSAL SHOULD IDENTIFY SPECIFICALLY ALL COSTS ASSOCIATED WITH THE TRANSACTION, IF ANY, THAT WOULD BE AN OBLIGATION OF THE INSTITUTION AS EITHER A DIRECT PAYMENT OR AS ADDITIONAL PROJECT COSTS FOR PURPOSE OF DETERMINING THE FUNDED LEASE AMOUNT AN/OR ONGOING LEASE PAYMENT OBLIGATION. THESE COSTS MUST BE ALL-INCLUSIVE AND MAY INCLUDE COMMITMENT FEES, LEGAL COUNSEL, TRUSTEE FEES AND ANY OTHER COSTS. THE MODEL LEASE AGREEMENT DOES NOT REQUIRE THE INSTITUTION TO PAY ANY SUPPLEMENTAL FINANCING COSTS, EITHER DIRECT (UPFRONT) OR AS AN ADDITION TO THE PROJECT COST.

Requirement of ESCO: THE PROPOSAL SHALL IDENTIFY SPECIFICALLY ANY REQUIREMENTS TO BE IMPOSED UPON ESCO AS A RESULT OF THIS FINANCING.

Requirement of Lender: THE LESSEE WILL AGREE THAT LESSOR WILL BEAR THE RISK OF LOSS IF THE EQUIPMENT IS DAMAGED OR DESTROYED, AND TO PAY LEASE PAYMENTS FROM FUNDS AVAILABLE FOR THAT PURPOSE, WHEN AND IF APPROPRIATED BY THE STATE LEGISLATURE.

**Conditions to Proposal**

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Cost of Preparing

Proposal:

THE COST OF DEVELOPING AND SUBMITTING THE PROPOSAL IS ENTIRELY THE RESPONSIBILITY OF THE FIRMS SUBMITTING A RESPONSE TO THIS REQUEST FOR PROPOSAL. THIS INCLUDES, BUT IS NOT LIMITED TO, COSTS TO DETERMINE THE NATURE OF THE ENGAGEMENT, PREPARATION OF THE PROPOSAL, SUBMITTING THE PROPOSAL, NEGOTIATING FOR THE CONTRACT AND OTHER COSTS ASSOCIATED WITH THIS REQUEST FOR PROPOSAL.

No Oral or Implied

Contracts:

THERE SHALL BE NO ORAL OR IMPLIED CONTRACTS RELATING THIS REQUEST FOR PROPOSAL.

Acceptance or

Rejection:

THE INSTITUTION RESERVES THE RIGHT TO SELECT, ACCEPT OR REJECT ANY OR ALL PROPOSALS OR PART OF A PROPOSAL; TO WAIVE ANY INFORMALITIES OR TECHNICALITIES; CLARIFY ANY AMBIGUITIES IN PROPOSALS; MODIFY ANY CRITERIA IN THIS REQUEST FOR PROPOSAL; AND ESTABLISH FINANCING AT ANY TIME.

Contract:

THE SUCCESSFUL FIRM WILL BE REQUIRED TO ENTER INTO A TAX-EXEMPT LEASE PURCHASE AGREEMENT WITH THE INSTITUTION.

THE TAX-EXEMPT LEASE PURCHASE AGREEMENT SHALL BE SUBSTANTIALLY IN THE FORM SET FORTH ON ATTACHMENT A (MODEL LEASE CONTRACT). EACH FIRM IS REQUIRED TO PROVIDE COMMENTS AND SPECIFIC ALTERNATE LANGUAGE FOR THOSE ITEMS IN THE MODEL LEASE CONTRACT FROM WHICH THE FIRM WISHES TO DEVIATE.

Contract Documents:

THIS REQUEST FOR PROPOSAL AND ANY AMENDMENTS AND THE RESPONSE AND ANY AMENDMENTS OF THE SUCCESSFUL FIRM SHALL BECOME A PART OF THE WRITTEN CONTRACT, WHICH SHALL COMPOSE OF THE COMPLETE UNDERSTANDING OF THE PARTIES.

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IN THE EVENT A CONFLICT IN TERMS OF LANGUAGE AMONG THE DOCUMENTS, THE FOLLOWING ORDER OF PRECEDENCE SHALL GOVERN:

1. WRITTEN MODIFICATIONS TO THE EXECUTED CONTRACT;
2. TAX-EXEMPT LEASE PURCHASE AGREEMENT SIGNED BY THE PARTIES;
3. THIS REQUEST FOR PROPOSAL, INCLUDING ANY AND ALL ADDENDA

**Contract Formation:** NO CONTRACT SHALL BE CONSIDERED TO HAVE BEEN ENTERED INTO BY THE INSTITUTION UNTIL ALL STATUTORILY REQUIRED SIGNATURES AND CERTIFICATIONS HAVE BEEN RENDERED AND A WRITTEN CONTRACT HAS BEEN SIGNED BY THE SUCCESSFUL FIRM.

**Open records Act:** ALL PROPOSALS BECOME THE PROPERTY OF THE INSTITUTION. STATE STATUTE REQUIRES ALL INFORMATION CONTAINED THE PROPOSALS BECOME OPEN FOR PUBLIC REVIEW ONCE A CONTRACT IS SIGNED OR ALL PROPOSALS ARE REJECTED.

**Submission of Proposals:** A COPY OF THE FIRM'S PROPOSAL SHALL BE RECEIVED ON OR BEFORE TIME, DATE, ADDRESSED AS FOLLOWS:

NAME, ADDRESS

RESPONSES VIA EMAIL OR FACSIMILE WILL BE ACCEPTED PROVIDED THAT SUCH RESPONSE INCLUDES ALL OF THE REQUISITE INFORMATION.

PROPOSALS RECEIVED PRIOR TO THE CLOSING DATE SHALL BE KEPT SECURED UNTIL CLOSING. THE INSTITUTION SHALL NOT BE RESPONSIBLE FOR THE PREMATURE OPENING OF A PROPOSAL OR FOR THE REJECTION OF A PROPOSAL THAT WAS NOT RECEIVED PRIOR TO THE CLOSING DATE.

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Signature of Proposals: EACH PROPOSAL SHALL GIVE THE COMPLETE MAILING ADDRESS OF THE FIRM AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE WITH HIS OR HER NAME AND LEGAL TITLE TYPED BELOW THE SIGNATURE LINE.

Acknowledgement of Addenda: ALL FIRMS SHALL ACKNOWLEDGE RECEIPT OF ANY ADDENDA TO THIS REQUEST FOR PROPOSAL BY ORIGINAL SIGNATURE WITH HIS OR HER NAME AND LEGAL TITLE TYPED BELOW THE SIGNATURE LINE. EACH PROPOSAL SHALL INCLUDE THE FIRM'S SOCIAL SECURITY NUMBER OR FEDERAL EMPLOYER IDENTIFICATION NUMBER.

Modification of Proposal: A FIRM MAY MODIFY A PROPOSAL BY WRITTEN NOTIFICATION AT ANY TIME PRIOR TO THE CLOSING DATE. ANY MODIFICATIONS RECEIVED AFTER THE CLOSING DATE SHALL NOT BE ACCEPTED.

Withdrawal of Proposal: A PROPOSAL MAY BE WITHDRAWN ON WRITTEN REQUEST FROM THE FIRM TO THE REPRESENTATIVE DESIGNED ABOVE.

Proposal Disclosures: AT THE TIME OF CLOSING, ONLY THE NAMES OF THE FIRMS WHO SUBMITTED PROPOSALS SHALL BE MADE AVAILABLE TO THE PUBLIC. NO INTEREST RATE INFORMATION WILL BE RELEASED UNTIL THERE IS AN AWARD AND CONTRACT.

Notice of Award: AN AWARD IS MADE ON THE EXECUTION OF THE WRITTEN CONTRACT BY THE ALL PARTIES. ONLY THE INSTITUTION IS AUTHORIZED TO ISSUE NEWS RELEASES RELATING TO THIS REQUEST FOR PROPOSAL, ITS EVALUATION, AWARD AND/OR PERFORMANCE OF THE TAX-EXEMPT LEASE FINANCING.

Prohibition of Gratuities: NEITHER THE SUCCESSFUL FIRM NOR ANY PERSON, FIRM OR CORPORATION EMPLOYED BY THE SUCCESSFUL FIRM IN THE PERFORMANCE OF THIS CONTRACT SHALL OFFER OR GIVE ANY GIFT, MONEY OR ANYTHING OF VALUE OR ANY PROMISE OF

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FUTURE AWARD OR COMPENSATION TO ANY INSTITUTION  
EMPLOYEE AT ANY TIME.

Third Party Beneficiaries: THIS REQUEST FOR PROPOSAL AND RESULTING TAX-EXEMPT  
LEASE PURCHASE AGREEMENT SHALL NOT BE CONSTRUED AS  
PROVIDING AN ENFORCEABLE OBLIGATION TO ANY THIRD  
PARTY.

No Liability: THE INSTITUTION SHALL HAVE NO LIABILITY, OBLIGATION NOR  
SHALL IT BE COMPELLED TO ENTER INTO ANY TAX-EXEMPT  
LEASE PURCHASE AGREEMENT OR ANY OTHER FINANCING  
ARRANGEMENT AS A RESULT OF ISSUING THIS REQUEST FOR  
PROPOSAL.

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## **FINANCING PROPOSAL LETTER**

PROPOSING FINANCING FIRMS: SUBMIT ON FIRM LETTERHEAD

Date

RE: Institution

Lender is pleased to submit the following financing proposal for Institution energy and water savings conservation project. This proposal is being submitted in response to your request for proposals dated Date.

### **I. Lender Information**

Lender Name:

Address:

Contact:

Telephone:

Fax:

Email:

Background: Discuss experience in financing state projects and / or performance contracts, with attention given to experience in the state, and what advantages your firm offers.

### **II. Financing Structure**

Purpose: Finance the energy and water savings conservation projects to be engineered, designed, constructed and commissioned by ESCO for Institution.

Structure: Tax-exempt Lease Purchase arrangement using the Model Lease Contract distributed with this request for proposals.

Security: First lien on the equipment  
Lessee appropriations

Proceeds: Approximately \$\_\_\_\_\_ plus capitalized interest for the \_\_\_\_\_ month construction period.

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Term: \_\_\_\_\_ months (\_\_\_\_ months of construction plus 144 months of amortization period)

Payments: Quarterly in arrears.

Prepayment: List prepayment terms / conditions / penalty

Interest Rate: \_\_\_\_\_% (This is a non-bank qualified financing)

Rate will be held until \_\_\_\_\_. After that date, the rate will be adjusted as follows:  
\_\_\_\_\_ (name and source of index).

Example: This rate will be held until \_\_\_\_\_. After that date, the rate will float at 75 basis points over the 10 year treasury, constant maturity, as published daily in the Federal Reserve Bulletin Statistical Release H-15.

Closing Costs: \$\_\_\_\_\_ (if any)

Escrow Account Terms: Agent name and all costs associated with opening and maintaining the escrow, including any investment management fees, if any. Include a copy of the escrow agreement as part of the response documents.

Documents: A Model Lease Contract is included with this response and is customized for the state and the institution type, meeting all legislative requirements, and/or it contains the edits to a Model Lease Contract that we require in order to execute the agreement.

Payment and Performance Bonds: We do / do not require to be named as dual obligee on the payment and performance bonds.

Other Conditions Of ESCO:  
\_\_\_\_\_  
\_\_\_\_\_

Credit Approval: The transaction is / is not subject to credit approval of the lender. If the financing is not approved, please list requirements and time frame required for approval.

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Estimated Closing

Date:                      Within 60 days of the award of the financing.

Other Requirements or conditions:

***III. Other Information***

Please provide any other information that you would like to share regarding your firm's qualifications, references, contacts, etc.

Thank you for the opportunity to provide this proposal. If you have any questions or would like to discuss this proposal in further detail, please let us know.

Sincerely,

**By:** \_\_\_\_\_

**Title:**                      \_\_\_\_\_

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

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**SIGNATURE SHEET**

ITEM: Tax-exempt lease financing for Institution energy and water conservation projects.

ENTITY: Board of Institution

We submit a proposal to furnish the financing for the term of the contract in accordance with the specifications and schedule of supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one, which a reasonable person would think would compromise the open competitive bid process.

ADDENDA: The undersign acknowledges receipt of the following addenda:

1. Proposal letter dated \_\_\_\_;
2. Model Lease Contract – Attachment A;
3. List of energy and water savings measures and the associated capital cost – Attachment B;

Legal Name of Person, Firm or Corporation: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City & State: \_\_\_\_\_ Zip: \_\_\_\_\_

FEIN Number: \_\_\_\_\_

Please indicate taxes currently registered for in the State:

Corporate Income Tax [  ]; Sales Tax [  ]; Withholding Tax [  ]

Compensating Use Tax [  ]; None [  ]

The undersigned attests this bidder is not in arrears in taxes due the State.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name of Signature: \_\_\_\_\_ Title: \_\_\_\_\_

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

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Address\_\_\_\_\_

City & State\_\_\_\_\_ Zip Code\_\_\_\_\_

Telephone\_\_\_\_\_ Fax\_\_\_\_\_

Email\_\_\_\_\_

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## Overview of Facility Improvement Projects

ESCO:

Contractual

Arrangement: ENERGY PERFORMANCE CONTRACT BY AND BETWEEN ESCO  
AND BOARD OF INSTITUTION

Total Installed Costs: \$\_\_\_\_\_, SUBJECT TO ADJUSTMENT BASED UPON  
FINAL ANALYSIS BY ESCO

Financed Capital: APPROXIMATELY \$\_\_\_\_\_, WHICH IS THE TOTAL  
INSTALLED COSTS PLUS CAPITALIZED INTEREST FOR THE \_\_\_\_\_  
MONTH CONSTRUCTION PERIOD

Term: \_\_\_\_\_ MONTHS (\_\_\_\_ MONTHS OF CONSTRUCTION PLUS  
\_\_\_\_\_ MONTHS OF AMORTIZATION PERIOD)

Payments: NO MORE FREQUENT THAN QUARTERLY AND SUCH PAYMENT  
SHALL BE IN ARREARS

Projects: ENERGY AND WATER SAVINGS MEASURES INCLUDING BUT NOT  
LIMITED TO:

- ITEM 1
- ITEM 2

A MORE DETAILED DESCRIPTION OF THESE MEASURES IS  
INCLUDED WITH THIS REQUEST FOR PROPOSAL ALONG WITH AN  
ESTIMATE OF THE CAPITAL COST ASSOCIATED WITH EACH.

Anticipated Draw

Schedule: