**Financing Solicitation**

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This document is part of 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 Savings 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 state energy office or similar government department. It should be noted that these documents do not constitute legal advice or legal opinion but are provided as samples for users to adapt to local laws and regulations.

**DESCRIPTION – Financing Solicitation Package**

The financing agreement is a stand-alone document, separate from the Energy Savings Performance Contract, between the Institution and a financial organization. It is signed by the Institution at the same time as the performance contract. The financing agreement and the performance contract are linked through the payment schedules and the ESCO’s guarantee 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 often provided by a financial organization which specializes, or has experience, in performance contracting projects. The financing agreement is typically a tax-exempt, municipal lease-purchase agreement as this approach typically delivers the lowest finance rates.

This Financing Solicitation can be used by the Institution to competitively select a financing company. Alternatively, the solicitation can be used by the ESCO to competitively select a financing company on behalf of the Institution.

When used by the ESCO, this document 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, evaluate the full package of rates and services, and recommend 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.

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.

The Financing Solicitation Package can be used to solicit competitive financing when in-house sources of funding are not available. Below is an overview of each element of the document.

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| **AT-A-GLANCE –** **FINANCING SOLICITATION PACKAGE** |
| **Overview****The Big Picture** – What does the financing solicitation package achieve?* Enacts a competitive solicitation process to procure financing for the performance contracting project
* Simplifies the state’s role by requiring the ESCO to conduct a competitive procurement on the state’s behalf, where the state makes the final selection

**Benefits of this Approach*** Gain the ESCO’s input on recommended best financing proposal
* Ensure the procurement process does not delay signing of the performance contract
* Provides the ESCO with immediate input on available interest rates that will impact the cash flow of the project

**Lease-Purchase Agreement*** A municipal tax-exempt lease-purchase agreement is the standard financing mechanism
* No standardized agreement is available
* It is expected that the responding firm will have an agreement that has already been used in the state, providing a working template
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| **AT-A-GLANCE –** **FINANCING SOLICITATION PACKAGE** |
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| **Section** | **Title** | **Description & Key Points**  | **Negotiating Items & Recommendations** |
| **RFP for ESCOs to Solicit Competitive Financing on Behalf of a Client** |
|  | Introduction | Basic solicitation of information | N/A |
|  | Notice of Invitation | Identifies the scope for funding or financing. Identifies response requirements of a proposal letter, model lease contract, schedule of payments and amortization schedule, and escrow information.  | The intent is for the ESCO to prepare the RFP and solicit responses on behalf of the client.  |
|  | Proposal Information - Specific Terms | Defines the basic parameters for the financing organizations to prepare their bid responses. Defines lessee, lessor, nature of the model lease contract, security required, desired terms of interest rate, pre-payment requirements, assignment rights, the need to specify all costs, requirements of the ESCO, and requirements of the lender.  | State whether client’s funds will be used as a down payment.  |
|  | Proposal Information – Conditions to Proposal | This section defines the conditions: the cost of developing the proposal is the respondent’s responsibility, there are no oral or implied contracts, the client has the right to accept or reject the proposal, the lessor is required to enter into a tax-exempt lease purchase agreement with the client if selected, and any amendments that become part of the contract, and standard contract requirements.  |  |
|  | Financing Proposal Letter | A prepared letter is provided for respondents to submit that includes the submittal requirements of lender information, financing structure (structure, security, proceeds, term, payments, prepayment, interest rate, closing costs, escrow account terms, model lease contract, payment and performance bond requirements (if any), credit approval, and closing date. The letter provides the opportunity for respondents to submit other information as well.  | The intent is for the ESCO to review the responses and present all responses to the client with the ESCO’s recommendations and comments on the most advantageous proposal.  |
|  | Signature Sheet | The ESCO will submit this sheet along with the proposal letter.  |  |
|  | Overview of Facility Improvement Projects | This section is prepared by the selected ESCO to describe the purpose of financing, including total installed cost, financed capital (including capitalized interest for the construction period), financing term, frequency of payments (minimum of quarterly), description of projects, and anticipated draw schedule.  |  |
|  | Model Lease-Purchase Agreement |  | If a model lease-purchase agreement is available that meets the requirements of the client or state legislation, include it as a reference.  |

**ATTACHMENTS**

Attachment A: Sample Provisions for Lease Contract

Attachment B: Financing Proposal Letter

Attachment C: Signature Sheet

Attachment D: Overview of Facility Improvement Projects

# 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 Institutionfinancing for energy and water savings measures for those certain facilities located at the Institution’s campus. See **Attachment D: Overview of Facility Improvements** for specific project details.

Properly Completed Responses will include:

1. Signed and dated proposal letter in the format included
2. Signed and completed signature sheet
3. Schedule of payments and amortization schedule including any purchase options
4. Escrow information (contact, Escrow Agreement and List of All Fees)
5. Copy of the Institution’s proposed Lease Agreement to be utilized for the financing (Refer to **Attachment A: Sample Provisions for Lease Contract**)

# Proposal Information

## Specific Terms

**Lessee:** Board of [Institution]

**Lessor:** The Provider of the Financing or a Mutually Agreeable Nominal Lessor

Contract: A Tax ExemptLease Purchase Agreement (“Lease”) between Lessor and the Institution.

**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~~.~~

**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. Indicate any additional interest rate lock options and associated costs.

Bank Qualified: Specify if Institution will be considered Bank Qualified or Non Bank Qualified for fiscal year \_\_\_\_\_\_\_.

**Prepayment:** The final Lease shall include certain prepayment provisions pursuant to a schedule to be agreed to by the parties

**Assignment:** The Lessor may assign its rights to receive lease payments and its security interest in the equipment installed pursuant to the Energy Savings Performance Contract and will so notify the Institution in writing upon occurrence of any assignment. Each assignment must specifically mention the Institution’s rights regarding prepayment.

**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 Lease should 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.

## Conditions to Proposal

**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 which complies with all local and state laws.

**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.

 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.

**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 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.

***NOTE: IF FINANCE RFP IS ISSUED BY ESCO, ADD THE FOLLOWING LANGUAGE:***

***[ESCO NAME] does not ACT AS, nor is [ESCO NAME] compensated as, a municipal advisor or fiduciary acting on its behalf.  Any and all financial AND OTHER information provided about or relating to securities or other financial products is provided for general informational and educational purposes only and should not be construed as advice, is provided “as-is” without warranty oF any kind (express or implied) and without any representation with respect to accuracy or completeness, and must not be relied upon in connection with any securities, investment or financial decision or other action/inaction.***