NOTICE TO ENERGY SERVICES COMPANIES

GENERAL INFORMATION AND REQUEST FOR PROPOSALS
FOR AN ENERGY PROJECT

The Greater Amsterdam 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 1:00 PM Friday December 4, 2026.

An original and two (2) copies plus one electronic (PDF) copy (please submit via a USB flash memory drive) of the proposal are required. To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows:

PROPOSAL – ENERGY PERFORMANCE CONTRACTING SERVICES

Proposals should be addressed to:

Greater Amsterdam School District – District Office
Amsterdam High School (Admin. Wing)
140 Saratoga Avenue
Amsterdam, New York 12010

Proposals may be mailed, or hand delivered. Late proposals will be returned unopened.

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

If you have any questions concerning this RFP, please contact in writing:

Richard Ruberti, Superintendent
Greater Amsterdam School District – District Office
140 Saratoga Avenue
Amsterdam, New York 12010
rruberti@gasd.org
518-843-3180

Enclosures: **PROPOSAL INSTRUCTIONS AND CONDITIONS**

I. Introduction and Background

II. General Information

III. The Selection Process

IV. RFP Procedures

V. Proposal Format and Contents

APPENDIX A: Site Visits
APPENDIX B: Facility Profile
APPENDIX C: Minimum Standard Contract Clauses
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

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 either a guaranteed savings agreement or a shared savings agreement. For either form of agreement, Section 9-103(2) of the Energy Law requires an executory clause under which payments are subject to 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. 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 25 years; and
- sub-division 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.

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.

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 comprehensive 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.
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.
10. All paperwork necessary for obtaining a State Education Department building permit and assistance in obtaining State Building Aid and any other form of energy aid available.

Note: ESCO shall contract with the District's Architect and Engineer of Record (BCA Architects & Engineers) for all project related professional design services and SED submission process. Project fee of 6-percent of overall project costs to be included in proposed project.

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

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. 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.

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.

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 energy end use conditions must be maintained at the facility. Any efficiency measures proposed must allow for the maintenance of these conditions within building code or State Education Department standards, whichever is most restrictive.

E. Requirements for the Energy Audit

The proposal must include provisions for the performance and presentation of results of a Comprehensive 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 Comprehensive Energy Audit report that would 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.

The Comprehensive 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 Comprehensive 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 report will include an executive summary which lists all proposed energy efficiency measures with the implementation cost, estimated energy savings, energy cost savings, useful life of the equipment and the simple payback (individual and interactive). Payback of each measure should be reported without the inclusion of State Building Aid which may be available to the project.

III. THE SELECTION PROCESS

A. Timetable

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

1. Request for Proposal Released:	11/12/2026 (Thursday)
2. Closing Date for Written Questions:	11/20/2026 (Monday)
3. Deadline for submission of proposals:	12/4/2026 (Friday)
4. Select ESCO:	12/16/2026 (Wednesday)
5. Execute Project Development Agreement:	Within 30 Days of ESCO selection
6. Execute Energy Performance Contract:	April 2027

B. Proposal Evaluation Criteria

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

1. Experience and Qualifications of the Proposer

   Consideration will be given to proposers demonstrating strong capabilities, experience and reputation in undertakings like 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 to furnish energy efficiency and cogeneration 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

Richard Ruberti
Superintendent of Schools
rruberti@gasd.org
518-843-3180

B. Submission of Proposals

Proposals must be received by **1:00 PM Friday December 4, 2026,** Late proposals will be returned unopened.

An original, two (2) copies and an electronic PDF copy (please submit via a USB flash memory drive) of the proposal are required. To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows:

PROPOSAL – ENERGY PERFORMANCE CONTRACTING SERVICES

Address proposals to:

Greater Amsterdam School District – District Office
Amsterdam High School (Admin. Wing)
140 Saratoga Avenue
Amsterdam, New York 12010

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 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.

F. District's Architect/Engineer of Record

The district reserves the right to have its Architect/Engineer (BCA Architects & Engineers) review the energy conservation measures, energy audit, designs, selected equipment, specifications, SED paperwork, and other technical aspects and suggest/make changes with an understanding that it could affect the project finances and require revisions to the final contract.

The district is also interested in having their Architect/Engineer of Record (BCA Architects & Engineers) involved in the design and SED submission of the final energy conservation measures.

V. PROPOSAL FORMAT AND CONTENTS

Proposals must be submitted in the format outlined in this section. Each of the parts described 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 of the proposal must contain a project management summary including the make-up of the project team and the proposed assignment of responsibility for the major tasks involved in the total project. Include resumes for each of the individuals listed as lead personnel in Section A-1 as an appendix.

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

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

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

In a Section to be labeled Section A-2, 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.

In a Section to be labeled Section A-3, describe the prior relevant experience of the proposer or of the partners or parent thereof. 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 at proposal stage and at final contract.

(c) Type of contract (e.g., guaranteed saving, shared savings, sale, etc.).

(d) Name and telephone number of reference for the project.

(e) Brief description of the project's scope of services and status. (Include type of facility at which project was implemented, whether the project was timely completed and whether significant problems occurred that affected project performance. As appropriate, identify all prime contractors or subcontractors and their role in each project.)

(f) Level of energy cost savings projected in CEA and the level actually achieved subject to M&V.

The right to call the references provided by the proposer will be presumed by the school district.

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 energy efficiency measures
(d) Total Initial Project Costs

2. Annual Costs:

(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 valuated (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. Use a discount rate of __ percent. Assume no inflation in current energy prices. However, any anticipated escalation in annual costs should be identified and reflected in the cash flow. Assume an interest rate of __ percent 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) without State financial assistance
7. Net annual benefits (3-(4+5) with State financial assistance
8. Cumulative cash flow with State financial assistance
9. Net Present Value of cash flow with State financial assistance
10. Interest rate

D. Schedule for Construction and Completion

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

(a) Commencement and completion of comprehensive 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 personnel.
(h) Commissioning and commencement of normal operation.

E. Official Statement of Proposer

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

1. The proposer shall include a statement to the effect that the proposal is a firm offer for a minimum 120 day period. The proposal shall also provide the 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 Comprehensive Energy Audit will be at least 85% of the energy savings projected in the proposal; and
   (b) total project cost projected in the Comprehensive Energy Audit will be no more than 115% of the cost projected in the proposal.

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

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

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

Appendix A

PRE-PROPOSAL SITE VISITS

ESCO's wanting to visit the buildings prior to the RFP submission date may make arrangements for facility tours by contacting

Richard Ruberti Superintendent of Schools
rruberti@gasd.org
518-843-3180

These site visits are intended to provide general overview of the facilities included in this RFP and will be time limited.

Appendix B

FACILITY PROFILE

School	Address	AREA (Square Feet)
Amsterdam High School	140 Saratoga Ave, Amsterdam 12010	226,456
Lynch Middle School	55 Brandt Place, Amsterdam 12010	194,180
R.J. McNulty Elementary	60 Brandt Place, Amsterdam 12010	60,424
Marie Curie Elementary	9 Brice Street, Amsterdam 12010	52,700
William B. Tecler Elementary	210 Northern Blvd, Amsterdam 12010	65,400
William Barkley Elementary	66 Destefano Ave, Amsterdam 12010	41,318

District utility summaries will be shared by contacting BCA Architects & Engineers.

Appendix C
MINIMUM STANDARD CONTRACT CLAUSES

A. Labor Law; Affirmative Action, Prevailing Wage and Workers Compensation

The Contractor shall obey and abide by all the laws of the state of New York and the Federal government relating to the employment of labor and public work.

The Contractor agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin or ancestry, disability or other impermissible ground. The Contractor further agrees that every subcontract entered into for the performance of this Agreement will contain a provision requiring non- discrimination in employment, as herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

All State or Federal Laws and Regulations regarding the prevailing wage rates will be adhered to.

The Contractor shall procure and maintain during the life of this Agreement a policy covering the obligations of the Contractor in accordance with the Workers Compensation Law and the Disability Benefits Law covering all operations under this Agreement whether performed by the Contractor or its Subcontractors

B. Executory Clause and Termination

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 therefore 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. Contractor and the School District acknowledge that this Agreement is subject to 8 NYCRR 155.20 and, as such, requires the approval of the Commissioner of Education of the State of New York. This Agreement shall not be executory until the Commissioner's approval is obtained. Upon receiving the Commissioner's approval and building permits, the cash flow for the Project will be recalculated with current energy costs, utility rebates, building aid and current interest rates. If the recalculation of cash flow does not yield a positive cash flow for the School District, the School District will work with the Contractor to adjust or modify the scope of work to obtain a satisfactory cash flow. Moreover, in the event that building aid for the Project is reduced and/or eliminated, the School District, in its sole discretion, shall have the right to modify the Agreement or to reduce the scope of Work as necessary to achieve a positive cash flow for the School District. The price and payment terms will be adjusted by Change Order or amendment to this Agreement to reflect any necessary modifications resulting therefrom. Upon request by the School District, Contractor will assist the School District in obtaining additional aid for the Project which may include building aid and/or rebates. The School District also may terminate this Agreement for its convenience at any time. This right may be exercised by the School District in its complete discretion. It is understood that if the School District terminates this

Agreement for its convenience, the Contractor shall only be compensated for services properly performed and reimbursable expenses incurred up to the date of such termination.

C. Transfer of Title

D. Right-of-Way

The necessary rights-of-way for any construction to be done across or in private property will be obtained by the district. The Contractor shall take due and proper precautions against any injury to adjacent structures

E. Indemnification/Hold Harmless

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the School District and its officers, board members, agents, and employees harmless from and against any suits, claims, damages, losses, or expenses, including but not limited to attorneys' fees and litigation costs, arising out of or resulting from the negligence, misconduct or breach of the Contractor or its agents, servants, subcontractors and employees or any other person or entity for whom it may be liable. This provision shall not be construed to require the Contractor to indemnify the School District for the negligence of the School District to the extent such negligence proximately caused the damages resulting in the complaint. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described herein. The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of this Agreement with respect to any claims based on facts or conditions which occurred prior to termination.

F. Performance and Payment Bonds

A Performance Bond and a Labor and Material Payment Bond will be required of the successful bidder from the Contractor for the full value and full term of the Agreement in terms acceptable to the School District. Such Bonds shall be written on AIA Document A311 by a company licensed to act as a surety in New York State and to which the School District has no reasonable objection and shall secure all obligations of the Contractor pursuant to the Performance Contract. If at any time the School District shall be or become dissatisfied with the surety or sureties or if the surety bonds shall cease to be adequate security to the School District, the Contractor shall, within 5 days after notice from the School District to do so, substitute another bond or bonds and sureties, both of which shall be acceptable to the School District. No payments on current estimates shall be deemed due nor shall be made until the new surety shall have qualified and been accepted by the School District. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated within 5 days thereafter, substitution of another bond and surety acceptable to the School District shall be made.

Appendix C
MINIMUM STANDARD CONTRACT CLAUSES

G. Standard of Services

The Contractor shall provide all design and construction necessary to provide and install the equipment and to perform the work specified in the Performance Contract, schedules, addenda and Exhibits.

Design services shall be performed by qualified architects, engineers and other professionals selected by Contractor, subject to the approval of the School District, which shall not be unreasonably withheld, and shall be paid for by Contractor. The professional obligations of such persons shall be undertaken and performed in the interest of Contractor, and of the School District as a third party beneficiary. Construction services shall be performed by qualified construction contractors and suppliers, selected by Contractor, subject to the approval of the School District, which shall not be unreasonably withheld, and shall be paid for by Contractor. Such contractors and suppliers shall be deemed to be acting in the interest of Contractor, and of the School District as a third party beneficiary. Nothing contained in the Contract Documents shall create a contractual relationship between such persons and the School District, except that the School District is an intended third party beneficiary of all contracts with design professionals, contractors and suppliers, and all subcontracts, purchase orders and other agreements between Contractor and third parties related to the Project. Contractor shall incorporate the obligations of this Agreement with the School District in its respective contracts with design professionals, contractors, and its subcontracts, supply agreements, purchase orders and other agreements.

Contractor shall submit Construction Documents for review and approval by the School District. Construction Documents shall include technical drawings, schedules, diagrams and specifications, setting forth in detail the requirements for construction of the Work, and shall:

establish the scope of work in greater detail;
provide information necessary for the use of those in the building trades;
and include documents required for regulatory agency approvals.

Contractor shall also provide shop drawings, product data and samples for the School District's review and comment.

Contractor shall prepare and assist the School District in filing the documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

Contractor shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

Appendix C
MINIMUM STANDARD CONTRACT CLAUSES

Contractor shall keep the School District informed of the progress and quality of the Work in writing.

Contractor shall correct Work which does not conform to the Contract Documents.

Contractor warrants to the School District that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements shall be corrected by Contractor.

Contractor shall pay all sales, consumer, use and similar taxes which apply to the Project, if any, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. Contractor acknowledges that the School District is a tax-exempt entity and shall not include sales or use taxes in its charges to the School District.

Contractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities relating to the Project.

Contractor shall pay applicable royalties and license fees, shall defend suits or claims for infringement of patent rights and shall defend, indemnify and save the School District harmless from loss on account thereof.

Contractor shall be responsible to the School District for acts and omissions of Contractor's employees and parties in privity of contract with Contractor to perform a portion of the Work, including their agents and employees.

The Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work, Contractor shall remove from and about the Project Contractor's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

Contractor shall prepare Modifications for the School District's approval and execution and shall have authority to make minor changes in the design and construction consistent with the intent of the Contract Documents not involving an adjustment in the contract sum or an extension of the contract time. Contractor shall promptly inform the School District, in writing, of minor changes in the design and construction.

Contractor shall notify the School District when the Work or an agreed upon portion thereof is substantially completed by issuing a Certificate of Substantial Completion in accordance with the Performance Contract.

Contractor shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, and Modifications, marked currently to record changes made during construction. These shall be delivered to the School District upon completion of the design and construction and prior to final payment.

The School District shall not be liable to the Contractor and/or any subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the School District for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the claims procedure set forth herein. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the School District or its agents, including scheduling and coordination of the Work; the preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction or hindrance for any cause whatsoever by the School District, its agents, or any other contractor on the project, whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefor shall be an extension of time, if appropriate. **IT IS EMPHASIZED THAT NO MONETARY RECOVERY MAY BE OBTAINED BY THE CONTRACTOR FOR DELAY AGAINST THE SCHOOL DISTRICT BASED ON ANY REASON AND THAT THE CONTRACTOR'S SOLE REMEDY, IF APPROPRIATE, IS ADDITIONAL TIME.**

H. License and Permits

The Contractor shall perform its obligations in compliance with any and all applicable federal, state, and local laws, rules, and regulations, including but not limited to all applicable licensing requirements, environmental and hazardous materials laws and regulations and applicable building codes, and according to licensed architecture, engineering and safety standards and practices, and in compliance with any and all reasonable rules of the School District relative to the Premises. The Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as required to perform its obligations, including but not limited to approval of the State Education Department.

I. Contract Modifications

The School District may order changes in the Work within the general scope of the Contract Documents, consisting of additions, deletions or other revisions, and the contract sum and contract time shall be adjusted accordingly by written agreement of Contractor and the School District. Such changes in the Work shall be authorized by Modifications and shall be performed under applicable conditions of the Contract Documents. No changes may be directed which cause the agreement to become non-compliant with the New York Energy Law 9-101 et seq.

Appendix C
MINIMUM STANDARD CONTRACT CLAUSES

J. Assignment or Subletting of Contract

In the execution of the Agreement it may be necessary for the Contractor to sublet part of the work to others. Upon SED approval or as soon thereafter as practicable, Contractor shall furnish to the School District in writing the name of persons or entities which will be engaged as contractors or subcontractors for the Project. The School District's reservations or objections with respect to particular persons or entities, if not unreasonable, shall be accepted or alternates provided until mutual agreement is reached, without liability to the School District.

The Contractor shall be fully responsible to the School District for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the subcontractors, as it is for the acts and omissions of persons directly employed by it in connection with the performance of this project.

Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the School District.

The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or any part hereof, or its right, title or interest in the same or any part thereof, without the previous written consent of the School District. The Contractor shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Agreement, without the previous written consent of the School District.

K. Conflict of Interest

L. Independent Contractor

The relationship between the School District and the Contractor is that of independent contractor and the Contractor agrees to do all things legally required to maintain its status as an independent contractor. Contractor is not and shall not hold itself out to be an authorized representative or agent of the School District and the employees and agents of one party shall not be deemed to be employees or agents of the other.

M. Certificate of Insurance

Comprehensive General Liability Insurance

The Contractor shall procure and shall maintain in effect during the life of this Agreement Comprehensive General Liability Insurance written on an occurrence basis with coverage issued to and covering the liability of the Contractor and each subcontractor for all the work and operations related thereto and all the obligations assumed by the Contractor, under this Agreement, in an amount not less than $5,000,000 each occurrence and $5,000,000 aggregate for Bodily Injury Liability and $5,000,000 each occurrence for Property Damage Liability. In addition, Comprehensive General Liability Insurance shall include coverage in such amount for Personal and Advertising Injury Liability (including employment related suits), Independent Contractors Liability, Blanket Contractual Liability, Premises Operations including coverage for loss caused by explosion, collapse and underground, and Products and Completed Operations

Liability. The School District shall be named as an additional insured on the Comprehensive General Liability Insurance on a primary and non-contributory basis with waivers of subrogation in favor of the School District.

Comprehensive Automobile Liability Insurance

The Contractor shall procure and maintain in effect during the life of this Agreement Comprehensive Automobile Liability Insurance with limits of $5,000,000 each occurrence for Bodily Injury and Property Damage Liability. Such coverage is to include Employers Non-Owned and Hired Car Liability and is to cover all vehicles owned, leased, operated by or for or on behalf of the Contractor. The School District shall be named as an additional insured on the Automobile Liability Insurance on a primary and non-contributory basis with waivers of subrogation in favor of the School District.

All insurance required to be furnished by Contractor under this Agreement, including insurance referred to in other paragraphs hereof, shall be written by a company licensed to do business in New York State and to which the School District has no reasonable objection, and shall name the School District as an additional insured on a primary and non-contributory basis with waivers of subrogation in its favor. The Contractor shall provide such certificates or other evidence of insurance as the School District shall require. All such insurance policies shall provide that the insurance company shall give at least 30 days' written notice to the Owner prior to cancellation, termination or non-renewal of such policy.

N. Cancellation of Insurance

All such insurance policies shall provide that the insurance company shall give at least 30 days written notice to the Owner prior to cancellation, termination or non-renewal of such policy.

O. Severability

P. Governing Law

This Agreement shall be governed by the law of the State of New York. The parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the Agreement or performance of the Work shall be commenced and maintained in New York State Supreme Court located in the County where the School District is located. Nothing contained herein is intended to alter or replace any provisions of the laws of the State of New York relating to claims made against the School District or to relieve the Contractor from any obligations thereunder.

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 therefore 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."

Appendix D

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 contacts.

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 sub clauses 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 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.

Appendix E

(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, and 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) Solar and/or other renewables

(9) Resiliency Solutions

(10) installation of energy efficient window/doors;

co-generation; or

(11) the installation, maintenance or management of other energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility.

(d) Every energy performance contract entered into by a school district or BOCES to which this section applies and every amendment to an energy performance contract entered into on or after July 1, 1998 by 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 that the project complies with all applicable provisions of section 155.2 of this Part;

(2) describe the scope and nature of the work to be performed;

(3) demonstrate that the types of projects included in the energy performance contract are appropriate in accordance with subdivision (c) of this section.;

(4) provide a detailed breakdown of the energy performance savings to be derived each year and for the duration of the energy performance contract in the project summary form, which shall include:

(i) a description of each energy conservation measure included in 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) he 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 25 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 25-year payback limitation, it shall be calculated by dividing the initial contract cost by the first year cost savings. If another analysis is used to support the certification, it should be submitted with the certification;

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

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

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

(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.