

Performance Contract for Operating Cost-Saving Measures Financing Solicitation

PURPOSE AND DISCLAIMER

This document is part of a collection of model procurement and contracting documents developed over decades by states and refined by the U.S. Department of Energy. They represent best practices for performance contracting projects. They can be easily customized to meet the needs of any project. These documents are provided as samples for adaptation to the laws and regulations of the user, not as legal advice or opinion, and do not attempt to identify or address all circumstances or conditions users may encounter or desire. Legal counsel is advised.

DESCRIPTION – Financing Solicitation Package

The financing agreement is a stand-alone document, separate from the performance contract, between the Owner and a financial organization. It is signed by the Owner 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 Owner 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 Owner.

When used by the ESCO, this document enables and authorizes the ESCO to seek competitive financing on behalf of the Owner. 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 Owner's consideration and final decision. This eliminates the Owner's need to issue a separate RFP for financing, and positions the financing as an integral part of the performance contracting approach. Note that federal regulations may restrict ESCOs to provide this service only in an advisory role.

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.

Request for Proposal

RFP Reference: [Owner 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 Owner, financing for energy, water and operational savings measures for those certain facilities located at the Owner'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 Owner'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 [Owner]
Lessor: The Provider of the Financing or a Mutually Agreeable Nominal Lessor
Contract: A Tax Exempt-Lease Purchase Agreement ("Lease") between Lessor and the Owner.
Statute Requirements: Refer to statute requirements (State government – NRS 333A.010-333A.150; Local government – NRS 332.300-332.440)
Security: The Lessor will be secured by the Owner'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 Owner 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 Owner in writing upon occurrence of any assignment. Each assignment must specifically mention the Owner'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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner. 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 Owner 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 Owner 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 Owner 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 Owner 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.

ATTACHMENTS

- Attachment A: Sample Provisions for Lease Contract
- Attachment B: Financing Proposal Letter
- Attachment C: Signature Sheet
- Attachment D: Overview of Facility Improvement Projects