**NEW YORK TREND: School Districts Use State Energy Law, Article 9, to Pursue**

**Affordable Solar System Ownership**

Recently, school districts throughout New York State have successfully utilized State Energy Law, Article 9, to pursue total solar system ownership. This is a departure from the past when tax exempt entities were forced to “rent” a solar project through a solar Power Purchase Agreement (PPA) or Solar Lease. Utilizing an Energy Performance Contract, Article 9 now gives districts the ability to own their systems long-term and monetize free power after the system’s payback period is complete. Depending on the school district’s State Reimbursement Rate, the payback period for solar projects ranges from 2-5 years.

The school district’s engineer of record should be brought into this process and help answer any questions throughout the RFP process & evaluate proposals. They will ultimately be the entity to work with the selected solar provider and permit the project(s) through NYSED.

**Benefits of Using Article 9 for Solar Ownership:**

* If school district demonstrates total project cost payback under 18 years, the project is eligible for State Aid Reimbursement at District’s rate.
* System ownership means free power after the payback period is complete.
* School Board can vote to approve Energy Performance Contracts without Public Hearing, quickening the process and ease of project implementation

**SAMPLE RFP**: **Enclosed is a sample RFP that can be used to start the process of evaluating the solar ownership through Article 9 for your District.** The Sample RFP is intended for on-site rooftop solar only.

Along with the RFP, School Districts should disclose the following information as a separate appendix for each of the following items:

1. List of addresses that should be evaluated for rooftop solar
2. Excel spreadsheet that breaks down each building’s total electric bill – **one full year of data is required**. If there is more than one electric bill for the School District (example: NYPA allocation, Consortium pricing, other ESCO, etc.) each of these should be separated and detailed in the breakdown.
3. Utility bills for each building and utility (12 months for each building)

A downloadable version of this document can be accessed by scanning the QR code below:

Qr code

Description automatically generated

**Additional Considerations:**

* Make sure the rooftop(s) that are proposed for solar are in good shape. You may want to consider a re-roof prior to a solar project if the roof condition is poor or the warranty is close to expiration.
  + Solar companies will be able to work with your roofing manufacturer to make sure any current roof warranty remains in place before, during, and after the installation.
* If your School District has municipal power, you will not be able to utilize this method of Ownership for your District, as this interconnection method applies to New York State Public Utilities only.

**PROPOSAL INSTRUCTIONS AND CONDITIONS**

**REQUEST FOR PROPOSALS FOR AN ENERGY PROJECT**

**FOR [SCHOOL] CENTRAL SCHOOL DISTRICT**

1. **INTRODUCTION AND BACKGROUND**
   1. The objective of this RFP is to solicit proposals for a solar power system. [SCHOOL DISTRICT] wishes to implement the proposed project on an energy performance contract (EPC) basis. (See State Energy Law, Article 9, attached as Appendix B) under strict adherence to Chapter 436 of the Laws of 1997(Appendix C). and Section 155.16 of the Regulations of the Commissioner of Education (Appendix D).
   2. The vendor can propose to provide the solar power system through an EPC utilizing any Remote Net Metering crediting option available to [SCHOOL DISTRICT] through their utility provider [utility], if the recommended option allows the resulting credits to offset all possible fees, including delivery, supply and demand charges. [SCHOOL DISTRICT] is seeking a solution that will offset maximum of their electric utility cost at [address(es)]. It shall consist of roof mounted systems located on-site.
   3. Under the EPC the only measure that will be included in the project is the solar power system. The EPC must guarantee the recovery of contract costs from energy savings realized by [SCHOOL DISTRICT] over the term of the contract. Simple payback must be less than 18 years. The amortization period shall not exceed the term of the energy performance contract.
   4. The vendor is responsible for all interconnection studies and fees to coordinate the interconnect with the utility.
   5. It is currently planned that [SCHOOL DISTRICT] will purchase, finance, and own any land and/or new equipment installed as a result of this project. Proposals are expected to include the proposer's services in connection with such arrangements.
2. **GENERAL INFORMATION**

The vendor selected as a result of this RFP will be expected to:

1. Verify the electric usage and utility expense for each building. Summaries of the electric bills for the last three fiscal years will be provided along will copies of bills for each account to be included in the Remote Net Metering submittal to the utility.
2. Coordinate the project development with local utilities and agencies as necessary.
3. Design the system, including structural, and electrical designs
4. Coordinate and submit design to engineer of record [engineering firm]
5. School District shall retain the service of an engineer of their choice to coordinate and review the energy performance contractor’s system design, as well as to submit the project documents to NYSED for project approval. Recognize that the engineer of record [engineering firm] shall prepare all SED paperwork and provide design services as necessary. All fees associated with said scope of work shall be carried as an expense line item in the project at 3%.
6. Recognize that the engineer of record shall submit complete paperwork, including all vendors design documents to 3rd party for review and to the New York State Education Department of Facilitates planning for building permit
7. Procure all supplies, equipment and material to furnish and install a fully operational solar power system
8. Commission & test system
9. Set up monitoring of usage and allow school district access to monitoring
10. Monitor electric usage and verify the savings through Measurement and Verification and report back to the school district once per quarter
11. Obtain all rebates available
12. Any utilities or structures the school district chooses to place at the site will be

owned and maintained by the school district.

1. The EPC provider shall carry an incidental line item in the project to cover additional expenses such as financial management, bond fees, legal fees, etc.
2. **SELECTION PROCESS**
3. **Timeline:**

Deadline for submission of proposals: [date]

Evaluation of proposals: [date]

Select Vendor/ Issue NOI: [date]

BOE Execute Contract: [date]

1. **Proposal Evaluation Criteria:**
2. *Experience and Qualifications (maximum 35 points)*

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.

1. *Technical Approach (maximum 20 points)*

Proposals will be evaluated on the soundness and detail of presentation of technical strategies proposed for meeting the [SCHOOL DISTRICT] energy efficiency objectives.

1. *Financial Terms (maximum 25 points)*

Consideration will be given to proposals that responsibly maximize the net economic benefit to [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.

*4. Ability to Implement Project Promptly (maximum 20 points)*

Preference will be given to proposals demonstrating an ability to carry out the tasks and responsibilities outlined in the proposal in a prompt and efficient manner.

1. **RFP PROCEEDURES**
2. SUBMISSION: Proposals must be received by **[DATE] at [TIME].** Late proposals will be returned unopened.

An original and two (2) copies 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 – Solar Power Project for [SCHOOL DISTRICT]***

**Proposals should be addressed to:**

**Attention:**

**Address:**

**Phone Number:**

1. PROPREIETARY 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. The designation of information by the proposer as “Confidential” or “Proprietary” does not guarantee that it is in fact confidential or proprietary.

1. MODIFACTION OR WITHDRAWL OF PROPOSAL

No proposal may be withdrawn or modified and must remain valid for 120 days from the date submitted and received by [SCHOOL DISTRICT] at the above address.

1. RIGHT TO REJECT PROPOSALS

This RFP does not commit [SCHOOL 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. [SCHOOL DISTRICT] intends to award a contract based on the best interest and advantage to [SCHOOL 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.

1. CERTIFICATION OF NON-COLLUSION

A fully executed Certification and signature form Affidavit of Non Collusion required (Appendix E)

1. **PROPOSAL FORMAT AND CONTENTS**

Proposals must be submitted in the format outlined in this section. Each of the described parts

and sections must be completed in full. Each proposal will be reviewed to determine if it is complete prior to actual evaluation. The [SCHOOL 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.

The proposal must include an executive summary not exceeding 4 pages including all charts and financial information.

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.

1. **Contractor Background and Qualifications**

**Section A-1: Project Management Summary**

In this section 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, and specifically reference the project team members’ prior experience in delivering solar projects in a K-12 environment

This section should describe the overall make-up of the project team and each member's

areas of responsibility. Include a chart depicting the management structure envisioned for the project.

Describe the process to be followed in selecting and managing prime subcontractors, if any.

**Section A-2:** **Describe prior relevant experience of the proposer**

The selected respondent must be able to demonstrate a history of successfully completing projects through NYSED review, permitting and construction on behalf of a public school. **The proposer must provide a minimum of ten (10) projects successfully completed through NYSED**. For each of the examples, provide:

1. School District’s Name
2. Brief description of the project & scope of services preformed
3. NYSED permit number
4. Completion date
5. Engineer of Record

In addition, provide five (5) other relevant project references. For each organization, include the information listed below:

1. Customer's name
2. Name and telephone number of references for the project
3. Brief description of the project's scope of services and status
4. Completion date
5. Engineer of record

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

1. **Technical Aspects of the Proposal**

**Section B-1:** Your proposal must explain the approach your organization will take in delivering the comprehensive technical services required to design, install, and maintain the proposed solar project. Actual designs/specifications are not required at this time. Provide:

1. High-level site plan
2. Proposed major equipment (panels, inverters, racking)
3. Installation method
4. Proposed interconnection method

**Section B-2:** 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:

1. Scheduled preventative maintenance
2. Emergency service
3. 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.

1. **Financial Aspects of the Proposal**

[SCHOOL DISTRICT] 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.

**Section C-1**: **Detailed Financial Information Required**

Based on the information provided in this RFP and your inspection of the facilities, estimate the following costs:

**1. Initial Project Costs:**

1. Total Initial Project Costs for a turnkey solar array

**2. Annual Costs:**

1. Maintenance cost for all new equipment and grounds
2. Measurement and Verification

In a Section to be labeled **Section C-2**, outline the proposed terms of the contract with the school district covering:

1. Duration of the contract
2. Methods by which the level of payments to the contractor will be determined
3. 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.
4. Ownership of the land and equipment
5. Conditions for the early termination of the contract, or parts thereof, by the school 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 4.0% 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 4.0 percent and that

payments will be made annually at the end of the period.

Items to include in the projections:

1. Annual energy costs without new system
2. Annual energy cost savings
3. Payments for financing equipment
4. Payments for on-going services
5. Net annual benefits (3-(4+5) **without** State financial assistance
6. Net annual benefits (3-(4+5) **with** State financial assistance
7. Cumulative cash flow **with** State financial assistance
8. Net Present Value of cash flow **with** State financial assistance
9. Interest rate 4%
10. Rebates and grants will be identified
11. Clearly state the value of the Remote Net Metering Credit, including an annual escalator of no more than 1%.
12. Use existing baseline energy expense with an escalator of 1%
13. [SCHOOL DISTRICT] current NYSED Aid ratio is approximately \_\_\_\_ for this EPC.
14. Show the utility interconnection cost for selected site
15. [SCHOOL DISTRICT] Engineer’s fee of 3% of project cost to be paid as follows:

- 20% upon submission of project plans and specifications to NYSED

- 30% upon completion of NYSED project review and approval

- 30% through construction

- 20% upon substantial completion

1. **Schedule for Construction and Completion**

Provide a complete schedule for achievement of all major project milestones.

1. **Official Statement of Proposer**

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.
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 A**. If unable or willing to indicate such acceptance, the proposal shall identify and state the reason and request for non-compliance.
3. The proposer shall specifically guarantee:
4. total energy savings projected in the Comprehensive Energy Audit will be at least 50% of the energy savings projected in the proposal; and
5. 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.

1. **Insurance and Risk Management Requirements**

**Section F-1: Insurance**

1. Commercial General Liability (CGL) on a form at least equal to ISO form #CD 00 01 12 07 with no restrictive endorsements and limits at least equal to $1,000,000 per occurrence, $2,000,000 aggregate. Policy endorsed to:
   1. [SCHOOL DISTRICT] (ENTITY)
   2. Provide that the policy will be primary to and non-contributory with any other insurance available to the additional insured.
   3. The certificate of insurance must describe the specific service provided by the Vendor that are covered by the commercial general liability policy and the umbrella policy.
2. Automobile Liability
3. Workers Compensation
4. Umbrella Excess Liability
5. NYS Disability Benefits Law Coverage required by law.
6. Provide letter from bonding company stating that Proposer can provide Payment and Performance bond for combined total project value of portfolio in a single occurrence.

Additional Insurance requirements may be provided at the RFP descope/ review.

**Section F-2: Risk Management**

1. Provide Experience Modification Rating (EMR)
2. **Warranty Information**

**The energy performance contractor shall provide a system wide warranty for the duration of the project payback history**. All components that fail during the project payback history that

jeopardize guaranteed energy savings shall be replaced at no cost to the owner. Provide warranty information for all major equipment (panels, inverters, racking)