

Commack Union Free School District Energy Performance Contract RFP

REQUEST FOR PROPOSALS
ENERGY PERFORMANCE CONTRACT MUNICIPAL LEASES

\$13,540,545 (TAX-EXEMPT)
\$1,000,000 (FEDERALLY TAXABLE)

TOTAL - \$14,540,545

COMMACK UNION FREE SCHOOL DISTRICT
SUFFOLK COUNTY, NEW YORK

Proposals Due By: 12:00 pm on July 11, 2019

Submit Proposals To: Laura Newman
Assistant Superintendent for Business and Operations
Commack Union Free School District
c/o Michael Loguercio
President
Munistat Services, Inc.
12 Roosevelt Avenue
Port Jefferson Station, New York 11776
Phone (631) 331-8888
Fax (631) 331-8834
E-mail: mloguercio@munistat.com

Estimated Lease Date: July 30, 2019

PROJECT DESCRIPTION

Commack Union Free School District (the “District”) has entered into an Energy Performance Contract (the “Contract”) with Johnson Controls, Inc. (“Vendor”) dated December 22, 2016 and amended by Contract Amendment 1 dated April 2, 2019 (copies attached), requiring the Vendor to upgrade; install and/or replace interior & exterior lighting, various energy management system(s), boiler(s)/burner(s), building envelope improvements-roof(s), renewable energy-photovoltaic electric generation, cogeneration plants, plug load controllers, air conditioning compressor controllers, energy efficient RTU(s), and ceilings and provide PM/engineering (the “Work”).

The total aggregate cost of the foregoing, including architectural/engineering fees, is \$14,540,545. The installed equipment (the “Equipment”) will be amortized over a fifteen (15) year period. The District expects to receive NYS Education Department (“SED”) Building Aid in the

Commack Union Free School District Energy Performance Contract RFP

amount of approximately 53.7% of authorized contract expenses. On April 18, 2019, the District received SED approval of the detailed plans and specifications for the Work.

To finance the cost of the Equipment, the District is seeking proposals from third parties interested in acting as Lessor pursuant to Municipal Lease/Purchase Agreements (the “Leases”) for a term of fifteen (15) years as authorized and defined under the New York State Energy Law, Article 9, Regulations of the Commissioner of Education, the General Municipal Law Section 109-b and other laws governing energy performance contracts and the regulations promulgated hereto. Lease payments will be made on a semi-annual basis. The Leases must conform with the laws of the State of New York, including, but not limited to, the Education Law, Energy Law, General Municipal Law and the Local Finance Law to the extent applicable.

The District will NOT designate the Leases Finance Agreements as a “qualified tax exempt obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

In an effort to analyze the full costs of the transaction to the District, all Proposers shall submit a sample lease package fully detailing required documentation, including any form of opinions of counsel, that must be submitted to complete the transaction. The proposal must state that the interest rate and other terms cited in the lease proposal will be good through the closing date. The Lease(s) shall not become effective until delivery of the funds by the Lessor to the escrow account(s). Following notification of award, the prospective Lessor must provide the District with a draft of its proposed financing documents for the transactions, together with notification of its credit approval immediately. The proposed form(s) of the lease purchase agreement, escrow agreement and related documents must be submitted with the proposal. All documents are subject to review and modification by the District’s counsel. Closing is subject to successful negotiation of all documents by the District’s counsel. The District reserves the right to rescind any award due to failure of the parties to agree to the terms and conditions of the final documents and to recover its costs in connection therewith.

FINANCIAL TERMS

Lessee: Commack Union Free School District, a school district of the State of New York.

Escrow Agent: To be selected by Lessor - all escrow agent and escrow fees shall be borne by the Lessor.

Bids: Must include a bid for each Lease and must state in a multiple of one-hundredth or one-eighth of 1% a rate of interest per annum which such Leases shall bear. Interest will be calculated on the basis of a 30-day month and 360-day year.

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Amounts: \$13,540,545 (TAX-EXEMPT)
 1,000,000 (FEDERALLY TAXABLE)
 \$14,540,545 TOTAL OF ENTIRE LEASE

Term: Fifteen (15) years, plus a preceding six to twelve (6-12) month escrow period, if applicable; provided however, the initial term shall remain in effect until the last day of the District’s then-current fiscal year and automatically extended upon the successive appropriation of the District’s governing body of amounts sufficient to pay “Rental Payments” under the Agreement during the period coextensive with the District’s next fiscal period and in such number of additional extensions thereafter as may be necessary to pay the “Rental Payments” in full. The construction period is expected to begin in July, 2019 and be completed by December, 2019.

Payments and Rate: Semi-annual principal and interest payments pursuant to the terms of the Leases. The payments will commence on July 15, 2020 and will continue through and include **July 15, 2034**. Interested proposers should provide quotes which are calculated on a semi-annual basis and conform to New York State Local Finance Law level debt service requirements. **Each Proposer must submit an amortization schedule as part of its proposal.**

The Leases shall for the taxable portion and the tax-exempt portion separately state the principal and interest component of the periodic payments to be made thereunder. The total of these payments, which include both principal and interest components made by the District each year throughout the terms of the Agreements, shall result in substantially level or declining annual debt service. Each lease payment shall be detailed in an amortization schedule prepared by the Proposer. The proposed Leases shall define the purpose and objective of the financing. Each Lease must specify the applicable interest rate as well as the standard contractual terms and conditions. The form of lease purchase agreement, escrow agreement and related documents must be submitted with the proposals. Proposers must satisfy themselves that the credit approval will be granted prior to submitting a proposal. All finance documents are subject to modification by the District’s counsel. All agreements and contractual conditions are required to conform with the laws of the State of New York including but not limited to New York General Municipal Law, Local Finance Law, Education Law and the regulations of the New York State Education Department, Commissioner of Education and the Office of the New York State Comptroller. The District’s counsel will review and approve all documents before Board of Education consideration and action. Lessor shall provide the District with a statement and thirty days’ notification prior to each payment due date.

Prepayment: The District will have the right to prepay any or all of the principal portion outstanding on any payment date under each Lease upon payment of the then applicable termination value, which will be calculated as follows 100% of the outstanding principal balance and provided that the District gives a 30 day notice to the Lessor (as determined by the selected maturity schedule) of its intent to prepay. There shall be no prepayment penalty.

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Escrow: Upon closing, all Lease proceeds must be collateralized (in accordance with the District's investment policy, District Investments – Policy No. 5220 (attached hereto) (the "Investment Policy") and, if the collateral supplied is an irrevocable letter of credit, such letter of credit must be "evergreen" until such time as the funds remaining in the escrow account need not be secured pursuant to the Investment Policy) and deposited into an interest-bearing escrow account for each Lease established under the Lease purchase agreements by the Lessor to be utilized to purchase Equipment (the "Purchase Funds"). The District shall not be responsible for any costs related to the establishment, maintenance or transfer of the funds in the escrow accounts. The escrow agent must be a bank or trust company located in and authorized to do business in the State of New York. The bank or trust company must have an office in the State of New York and the office location must be reflected in the escrow agreement. Investments shall be made solely at the direction of the District and shall be made in accordance with the requirements of General Municipal Law sections 10 and 11 and the District's Investment Policy. The District is not authorized to invest in mutual funds or similar liquid investment vehicles. All monies and investments in the escrow funds are monies of the District and shall not be subject to levy, attachment, or lien by or for the benefit of the escrow agent or Lessor or creditor of either. All interest earnings on Purchase Funds shall accrue to the benefit of the District. *Please state the current estimated interest rate that can be expected to be received by the District on the deposited funds.*

The escrow agent shall invest the amounts on deposit in the Purchase Funds solely at the written direction of an Authorized Officer of the District. All investments made shall be subject to the following conditions:

1. (a) Such obligations shall be payable or redeemable at the option of the District within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event, at the option of the District, within two years of the date of purchase. Any obligation that provides for the adjustment of its interest rate on set dates shall be deemed to be payable or redeemable for purposes of this paragraph on the date on which the principal amount can be recovered through demand by the holder thereof.
- (b) Such obligations, unless registered or inscribed in the name of the District shall be purchased through, delivered to and held in the custody of the escrow agent. Such obligations shall be purchased, sold or presented for redemption or payment by such escrow agent in obligations only in accordance with prior written authorization from an Authorized Officer. All such transactions shall be confirmed in writing to the District by the escrow agent.
2. All investments described above shall be made and ownership recorded in accordance with all applicable requirements of Section 10 and Section 11 of the General Municipal Law.

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3. The escrow agent must expressly acknowledge that the Lessee is not authorized to invest in mutual funds registered with the Securities Act of 1933, as amended and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, including no-load money market mutual funds limited to investments in obligations of or guaranteed by the United States of America or in obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or any similar mutual fund or other money market or liquid deposit investment vehicles.

UCC Filing: The District will not provide a legal description for each District property in connection with this financing. In the event the winning Proposer requires this information for the purposes of making a fixture filing pursuant to the applicable provisions of the Uniform Commercial Code, the winning Proposer may obtain such information at its own efforts and expense.

Commitment/Facility Fee: The Proposer must detail any commitment fees on the lease transaction summary forms. However, Lessor shall be responsible for all origination and commitment fees and expenses. The District shall not incur or absorb any fees of Lessor related to Lessor's proposal, negotiations or closing or other activities related to this RFP or the proposed transaction. In the event that a transaction does not close because of the successful Proposer's failure to meet the terms of this RFP, the successful Proposer shall be responsible for any and all costs incurred by the District in connection with the failed transaction and its negotiation.

Use of Proceeds: To finance the lease/sale of the Equipment from the Vendor to the District.

Collateral: First security interest in the Equipment only. Neither the escrow agent nor the Lessor shall have an interest in the Purchase Funds, the escrow account or any investments made on behalf of the Lessee.

Warranties: All manufacturers' warranties, expressed or implied with respect to the Equipment acquired shall be assigned by the Lessor to the District upon receipt.

Other: All proceeds are to be disbursed through an escrow fund for each Lease. The escrow account(s) established by the financing entity must be held in a bank or trust company located in and licensed to do business in the State of New York, with investment solely at the direction of the District. Upon closing, funding proceeds will be placed in an interest bearing escrow account(s) and disbursed to the Vendor upon presentation of evidence that the installation of certain portions of the Equipment has been completed and accepted by Lessee. Interest on an escrow balance shall accrue for the benefit of the Lessee. Lessor shall be responsible for all fees of Lessor's legal, issuance and closing costs. Funds held in the escrow(s) account must comply with the provisions of sections 10 and 11 of the General Municipal Law.

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The District will not defend or hold the Lessor harmless from any adverse changes in the tax status of the transaction, after tax yield or cash flows resulting from changes in the Federal or State tax codes or regulations.

General Terms and Conditions: Without limiting the inclusions of standard provisions for energy performance contract lease financing the Lessor agrees the following terms and conditions shall apply:

Any contract entered into by the District 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 by the political subdivision beyond the amount of such monies. The installment purchase contract is not a general obligation of the District. Neither the full faith and credit nor the taxing power of the District are pledged to the payment of any amount due or to become due under such installment purchase contract. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make state monies available for the purpose of the contract.”

All lease payments shall be subject to appropriation each year by the District’s Board of Education. In the case of a failure to appropriate, the sole security under each Lease shall be the applicable Equipment. In the event that no funds or insufficient funds are appropriated by the District to pay the Lease, the applicable Equipment may be acquired and sold by or on behalf of the Lessor, provided that any excess proceeds from such a sale, after deduction for and payment of fees, expenses and any taxes levied on the sale, shall be paid to the District. Prior to the sale or seizure of any Equipment, the District shall be provided adequate written notice of no less than ninety (90) days to cure any default. Should such a sale or seizure take place, the parties shall cooperate and there shall be no disruption to the District’s operation to the extent possible.

Assignment of the Leases and related documents by a successful proposer and/or the escrow agreements by the escrow agent shall be subject to the prior, written consent of the District which may be granted or withheld at the District’s sole and absolute discretion. Assignment of the escrow agreement(s) by the escrow agent shall not be proposed or made to a bank or trust company which is not located in and authorized to do such business in the State of New York. Each Lease must state that any assignment or transfer of the Lessor’s interest shall not be effective until the District has received prior, written notice, signed by the Lessor, of the name, contact person, address, telephone number, and tax identification number of the proposed assignee and the District has given its consent in writing. No assignment will be valid unless the Lessor has received the District’s prior written consent. The Lease shall further provide that certificates of participation shall not be executed and delivered without the express written approval of the District, which approval may be withheld by the District in its sole and absolute discretion.

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Tax Opinion – \$13,540,545 Tax-Exempt Lease: The successful proposer for the \$13,540,545 lease (the “Tax-Exempt Lease”) will be furnished, without cost, with the tax opinion of the law firm of Hawkins Delafield & Wood LLP (“Bond Counsel”). The tax opinion of Bond Counsel shall contain statements to the effect that, in the opinion of said law firm, under existing statutes and court decision and assuming continuing compliance with certain tax certifications described in the Tax Certificate of the District, (i) the portion of the rental payment designated as and constituting interest paid by District and received by successful proposer during the term of the Tax-Exempt Lease is excluded from successful proposer’s gross income for federal income tax purposes under Section 103 of the Code; and (ii) such interest component is not treated as a preference item in calculating the alternative minimum tax under the Code. The Tax Certificate of the District, which will be delivered concurrently with the delivery of the Tax-Exempt Lease will contain provisions and procedures relating to compliance with applicable requirements of the Code. In rendering its tax opinion, Bond Counsel will rely upon the opinion as to the validity of the lease and the reliance letter delivered by Lamb & Barnosky (“School Attorney”), without undertaking to verify the same by independent investigation.

\$1,000,000 Taxable Lease: The interest component of the semi-annual lease payments for the \$1,000,000 lease (the “Taxable Lease”) is included in gross income for Federal income tax purposes pursuant to the Code; however it is exempt, under existing statutes, from personal income taxes imposed by the State of New York or any political subdivision thereof, including the City of New York.

Opinion of the School Attorney: At closing, the District shall furnish an opinion of the School Attorney, dated the closing date, to the effect that there is no controversy, litigation of any nature pending or threatened to restrain or enjoin the execution or delivery of the installment financing agreements by the District.

Amendments to RFP: Any verbal information obtained from or statements made by the representative of the District or its designee at the time of examination of the documents or site shall not be construed as, in any way, amending the RFP documents or binding upon the District. Only corrections or addenda that are issued during RFP process will become a part of the RFP.

During the evaluation process, the District reserves the right, to request additional information or clarification from proposers, or to allow corrections of error or omissions.

Basis for Award: The District reserves the right, in its sole and absolute discretion, to reject any and all proposals, or any part thereof, received in response to this Request for Proposals, to resolicit for new proposal, to waive formalities, to request additional information from any Proposer, and to award and negotiate the terms of the contract with any Proposer. The District intends to select the one firm whose proposals will be most advantageous to the District and best meet the District’s needs for both Leases, and not necessarily the firm with the lowest cost proposal. In determining which proposals are most advantageous and in the District’s best interests, the District will evaluate, among other things, the overall financing cost (inclusive of any interest and fees) to the

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District, the responsiveness of each proposal to the terms of this RFP and applicable law, the terms and conditions of the proposed agreements, and the experience and qualifications of the Proposer. The District will not have any liability to any Proposer for any costs or expenses incurred in connection with its response to this request for proposals. The adequacy of qualifications of respondents shall be determined by the District and will not be subject to appeal.

All proposals shall be hand signed by an individual legally authorized to bind the proposing firm and the signer's name shall also be typed or printed on or under the signature together with his/her title or designation.

ADDITIONAL INFORMATION

Munistat Services, Inc. has assisted the District as financial advisor in certain matters with respect to the preparation of its Request for Proposal. A copy of the District's fiscal year ending June 30, 2016 through and including fiscal year ending June 30, 2018 audited financial statements, as well as the Statement of Annual and Operating Information for the fiscal year ending June 30, 2018, can be found on the Munistat website: www.munistat.com. Additional Disclosure is available upon request.

Additional information may be obtained from the office of Laura A. Newman, Assistant Superintendent for Business and Operations Commack Union Free School District, Hubbs Administration Center, 480 Clay Pitts Road, East Northport, New York, 11731 telephone number (631) 912-2005 and email: lnewman@commack.k12.ny.us, or from the office of Munistat Services, Inc. Michael Loguercio, President, 12 Roosevelt Avenue, Port Jefferson Station, New York 11776, telephone number (631) 331-8888.

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REQUEST FOR ENERGY PERFORMANCE CONTRACT

MUNICIPAL LEASE FINANCING

IN THE AGGREGATE AMOUNT OF \$14,540,545 CONSISTING OF A \$13,540,545 (TAX-EXEMPT) AND & \$1,000,000 (FEDERALLY TAXBLE)

FOR

COMMACK UNION FREE SCHOOL DISTRICT
SUFFOLK COUNTY, NEW YORK

PROPOSALS DUE BY: 12:00pm on July 11, 2019

**PROPOSAL FORM (1)
ENERGY PERFORMANCE MUNICIPAL LEASE
FOR
COMMACK UNION FREE SCHOOL DISTRICT
\$13,540,545 (TAX-EXEMPT)**

To: Laura Newman
Assistant Superintendent for Business and Operations
Commack Union Free School District
c/o Michael Loguercio
President
Munistat Services, Inc.
12 Roosevelt Avenue
Port Jefferson Station, New York 11776
Phone (631) 331-8888
Fax (631) 331-8834
E-mail: mloguercio@munistat.com

Type of Equipment: Energy Management Equipment

Transaction Size: \$13,540,545 (Tax-Exempt)

Structure: Initial interest payment, and subsequent semi-annual payments of principal and interest, in arrears

Lease Term: **Please provide amortization schedule for 15 years with semiannual principal and interest payments beginning on July 15, 2020.**

**15 Years
First Payment
July 15, 2020**

Average Annual Interest Rate: _____ %

All-In Interest Rate: _____ %

Payment Structure:

(include total principle payments including any Costs of Issuance):

Total Interest over term of Agreement: \$ _____

15 Years
First Payment
July 15, 2020

Purchasers Costs: \$ _____

Total Cost to District over Agreement Term: \$ _____

Semi-annual Payment Amount: \$ _____

Prepayment: The District will have the optional right to prepay any or all of the principal portion outstanding on any date under the Lease/Purchase upon payment of the then applicable termination value, which will be calculated as 100% of the outstanding principal balance and provided that the District gives a 30 day notice to the Lessor (as determined by the selected maturity schedule). **Please feel free to provide any other redemption provisions the District should consider.**

ATTACH AMORTIZATION SCHEDULE

Proposal must identify any costs associated with this proposal and cap these costs. The following costs must be itemized and will be taken into account to determine the all-inclusive cost of borrowing:

First Payment
July 15, 2020

Other Expenses: \$ _____

The undersigned Proposer certifies this proposal is firm for **45 days** from the date of submittal. It is the intent of the District to formally award the bid to the selected winner by _____.

Signed: _____

Title: _____

Date: _____

**PROPOSAL FORM (2)
ENERGY PERFORMANCE MUNICIPAL LEASE
FOR
COMMACK UNION FREE SCHOOL DISTRICT
\$1,000,000 (FEDERALLY TAXABLE)**

To: Laura Newman
Assistant Superintendent for Business and Operations
Commack Union Free School District
c/o Michael Loguercio
President
Munistat Services, Inc.
12 Roosevelt Avenue
Port Jefferson Station, New York 11776
Phone (631) 331-8888
Fax (631) 331-8834
E-mail: mloguercio@munistat.com

Type of Equipment: Energy Management Equipment

Transaction Size: \$1,000,000 (Federally Taxable)

Structure: Initial interest payment, and subsequent semi-annual payments of principal and interest, in arrears

Lease Term: Please provide amortization schedule for 15 years with semiannual principal and interest payments beginning on July 15, 2020.

**15 Years
First Payment
July 15, 2020**

Average Annual Interest Rate: _____ %

All-In Interest Rate: _____ %

Payment Structure:

(include total principle payments including any Costs of Issuance): _____

Total Interest over term of Agreement: \$ _____

**15 Years
First Payment
July 15, 2020**

Purchasers Costs: \$ _____

Total Cost to District over Agreement Term: \$ _____

Semi-annual Payment Amount: \$ _____

Peypayment: The District will have the optional right to prepay any or all of the principal portion outstanding on any date under the Lease/Purchase upon payment of the then applicable termination value, which will be calculated as 100% of the outstanding principal balance and provided that the District gives a 30 day notice to the Lessor (as determined by the selected maturity schedule). **Please feel free to provide any other redemption provisions the District should consider.**

ATTACH AMORTIZATION SCHEDULE

Proposal must identify any costs associated with this proposal and cap these costs. The following costs must be itemized and will be taken into account to determine the all-inclusive cost of borrowing:

**First Payment
July 15, 2020**

Other Expenses: \$ _____

The undersigned Proposer certifies this proposal is firm for **45 days** from the date of submittal. It is the intent of the District to formally award the bid to the selected winner by _____.

Signed: _____

Title: _____

Date: _____