

REQUEST FOR PROPOSALS
ENERGY PERFORMANCE CONTRACT MUNICIPAL LEASE

\$24,800,000

WILLIAM FLOYD UNION FREE SCHOOL DISTRICT
SUFFOLK COUNTY, NEW YORK

Proposals Due By: 4:00 pm on May 8, 2020

Submit Proposals To: David Beggins
Assistant Superintendent for Business
William Floyd Union Free School District
c/o Noah Nadelson, Chief Executive Officer
c/o Tom Cartwright, Vice President
Munistat Services, Inc.
12 Roosevelt Avenue
Port Jefferson Station, New York 11776
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E-mail: nnadelson@munistat.com
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Estimated Lease Date: June 15, 2020

PROJECT DESCRIPTION

William Floyd Union Free School District (the “District”) has entered into an Energy Performance Contract (the “Contract”) with Ecosystem Energy Services USA, Inc (“Vendor”) dated on or about October 4, 2017 (copies attached), and amended on December 11, 2018 and March 25, 2020, whereby the Vendor will install and upgrade certain equipment, including interior lighting upgrades, exterior lighting upgrades, pump optimization, high efficiency boiler replacement, ventilation and controls upgrades, heater upgrades, new combined heat and power units and computer energy management systems for the various school buildings within the District. The total aggregate price of the foregoing, including architectural/engineering fees, is \$24,800,000. The installed equipment will be amortized over a fifteen (15) year period. The District does expect to receive NYS Education Department (“SED”) Building Aid.

To finance the cost of the Equipment, the District is seeking proposals from third parties interested in acting as Lessor to a Municipal Lease/Purchase Agreement (the “Agreement”) for a term of fifteen (15) years as authorized and defined under Article 9 of the New York State Energy Law, Regulations of the Commissioner of Education Section 109-b of 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 Agreement 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 School District will NOT designate the Agreement 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 the interest rate and other terms cited in the lease proposal will be good through the closing date. The Agreement shall not become effective until delivery of the funds. Following notification of award, the prospective Lessor (hereinafter referred to as “Proposer” or “Lessor”) must provide the District with a draft of its proposed financing documents for the transaction, together with notification of its credit approval immediately. The form of the Agreement, escrow agreement and related documents must be submitted with the proposal. All documents are subject to review and modification by District counsel. Closing is subject to successful negotiation of all documents by counsel to the District. The District reserves the right to rescind any award due to failure of the parties to agree to the terms and conditions thereof and to recover its costs in connection therewith.

FINANCIAL TERMS

Lessee: William Floyd Union Free School District of Mastic-Moriches-Shirley, a school district and political subdivision 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.

Amount: \$24,800,000

Term: Fifteen (15) years, including a 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, 2020 and be substantially completed by September, 2021.

Payments and Rate: Semi-annual principal and interest payments pursuant to the terms of the Agreement. The payments will commence on June 1, 2021 and will continue through and include June 1, 2036 (interest only for the first year). 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. Please submit an amortization schedule.

The Agreement shall 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 term of the Agreement, shall result in substantially level or declining annual debt service. Each payment shall be detailed in an amortization schedule prepared by the Proposer. The proposed Agreement shall define the purpose and objective of the financing. Each lease-purchase agreement must specify the applicable interest rate as well as the standard contractual terms and conditions. The form of Agreement, escrow agreement and related documents must be submitted with the proposal. Proposers must satisfy themselves that the credit approval will be granted prior to submitting a proposal. All finance documents are subject to review and modification by District counsel. All agreements and contractual conditions are required to conform with the laws of the State of New York including but not limited to the General Municipal Law, Local Finance Law, Education Law, New York Energy 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 legal counsel will review and approve all documents before Board of Education's consideration and action. Lessor shall provide a statement and thirty days' notification prior to each payment due date.

Prepayment: The District will have the optional right to prepay, without incurring any penalties and/or additional expenses, cost, or fees, any or all of the principal portion outstanding on any payment date under the Agreement 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) of its intent to prepay.

It is the District's present intent, which is always subject to change, to make additional principal payments on the payment dates with a goal of reducing the final amortization to no more than 5 years. Please provide financing options/commentary on your willingness to accommodate the District and ability to allow for such prepayments.

Escrow: Upon closing, lease proceeds must be collateralized and deposited into an interest-bearing escrow account established under the Agreement 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 escrow account. 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 formal investment policy. The District is not authorized to invest in mutual funds or similar liquid investment vehicles. All monies held in the escrow funds are monies of the District and shall not be subject to levy, attachment, or lien of the escrow agent or Lessor. All interest earnings on the funds deposited into the escrow account 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 Fund solely at the written direction of an authorized office 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 the Agreement, shall be payable or redeemable in any event, at the option of the District, within eighteen (18) months 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 and District Policy and/or Regulation.
3. The escrow agent expressly acknowledges 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 any 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: Proposer to detail any commitment fees on lease transaction summary form. 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.

Other: All proceeds are to be disbursed through an escrow fund. The escrow account 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 and disbursed to the Vendor upon presentation of evidence that the installation of certain portions of the Equipment has been completed and accepted by the District. Interest on the escrow balance shall accrue for the benefit of the District. Lessor shall be responsible for all fees of Lessor's legal, issuance and closing costs. Funds held in the escrow account must comply with the provisions of sections 10 and 11 of the General Municipal Law.

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 installment purchase 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 obligations 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."

Lease payments shall be subject to appropriation each year by the School District's Board of Education. In the case of a failure to appropriate, the sole security under the Lease shall be the Equipment. In the event that no funds or insufficient funds are appropriated by the District to pay the Lease, the 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 such equipment, the District shall be provided adequate written notice, 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 Agreement and related documents by successful proposer and/or the escrow agreement by the escrow agent shall be subject to the prior written consent of the District. Assignment of the escrow agreement 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. The Agreement 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 no certificates of participation will be executed and/or delivered.

Tax Opinion: The successful proposer will be furnished without cost with the opinion as to tax exemption of the law firm of Hawkins Delafield & Wood LLP ("Bond Counsel"). The 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 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 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 Bond, Schoeneck & King LLP ("School Attorney"), without undertaking to verify the same by independent investigation.

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

Amendments to RFP: The District reserves the right to amend this RFP for any reason and/or based upon questions and issues received in writing during the proposal process. 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 such corrections or addenda that are issued during RFP process shall be included in the RFP response and become a part of any subsequent contract agreement.

During the evaluation process, the District reserves the right, where it may serve the District's best interest, 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 discretion, to reject any and all proposals and to re-advertise for new proposals, or any part thereof, received in response to this Request for Proposals, 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 firm whose proposal is most advantageous to the District and best meets the District's needs for this lease, and not necessarily the firm with the lowest cost proposal. In determining which proposal is

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 District, the adequacy of each proposal, and the qualifications of the Proposer. The District will not have any liability to any Proposer for any costs or expenses incurred in connection with your 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, 2017 through and including fiscal year ending June 30, 2019 audited financial statements, as well as the Statement of Annual and Operating Information for the fiscal year ending June 30, 2019, can be found on the Munistat website: www.munistat.com. Additional Disclosure is available upon request.

Additional information may be obtained upon request from the office of the Assistant Superintendent of Business, David Beggins, William Floyd Union Free School District, 240 Mastic Beach Road, Mastic Beach, New York 11951, telephone number (631) 874-1684, or from the office of Munistat Services, Inc. Noah Nadelson, Chief Executive Officer, 12 Roosevelt Avenue, Port Jefferson Station, New York 11776, telephone number (631) 331-8888.

All contracts submitted as a result of this Request for Proposals are subject to the review and approval of the District's legal counsel.

REQUEST FOR ENERGY PERFORMANCE CONTRACT
MUNICIPAL LEASE FINANCING
IN THE AMOUNT OF \$24,800,000
FOR
WILLIAM FLOYD UNION FREE SCHOOL DISTRICT
SUFFOLK COUNTY, NEW YORK

PROPOSALS DUE BY: 4:00pm on May 8, 2020

**PROPOSAL FORM
ENERGY PERFORMANCE CONTRACT
FOR
WILLIAM FLOYD UNION FREE CENTRAL SCHOOL DISTRICT**

To: David Begins
Assistant Superintendent for Business
William Floyd Union Free School District
c/o Noah Nadelson, Chief Executive Officer
c/o Tom Cartwright, Vice President
Munistat Services, Inc.
12 Roosevelt Avenue
Port Jefferson Station, New York 11776
Phone (631) 331-8888
E-mail: nnadelson@munistat.com
E-mail: tcartwright@munistat.com

Type of Equipment: Energy Management Equipment

Transaction Size: \$24,800,000

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

Lease Term: Please provide amortization schedule for 15 years with interest due December 1, 2020, June 1, 2020 and semiannually thereafter.

Principal payments will commence on June 1, 2022, semiannually thereafter with a final maturity of June 1, 2036.

All-In Interest Rate: _____ %

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.

It is the District's present intent, which is always subject to change, to make additional principal payments on the payment dates with a goal of reducing the final amortization to no more than 5 years. Please provide financing options/commentary on your willingness to accommodate the District and ability to allow for such prepayments.

ATTACH AMORTIZATION SCHEDULE

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

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: _____