

**REQUEST FOR PROPOSAL
GUARANTEED ENERGY SAVINGS CONTRACT**

**Daniel Boone Area School District
501 Chestnut Street
Birdsboro, PA 19508**

The Daniel Boone Area School District (the “District”) is issuing a Request For Proposals for a Guaranteed Energy Savings Contract. Separate sealed proposals will be received by the District until 11:00 a.m. prevailing local time, January 10,2025, Proposals shall be received at the Daniel Boone Area School District, 501 Chestnut Street, Birdsboro, PA 19508; Attn: Rob Hurley, Assistant to the Superintendent/Jay Withers, Director of Facilities. Proposals received after the proposal receipt deadline will not be accepted.

All proposals submitted are valid for acceptance by the District and may not be withdrawn for a period of one hundred twenty (120) days after the actual date of the opening thereof. Subsequent to the District’s receipt and review of the proposals, discussions may be conducted with responsible offerors who submitted proposals determined by the District to be reasonably susceptible of being selected for award for the purpose of obtaining best and final offers. The District reserves the right to select for contract negotiation, the responsible offeror whose proposal is determined to be the most advantageous to the District, taking into consideration, not only price, but all evaluation factors. Price is not the sole determinative factor. The Request For Proposals may be canceled or any or all proposals may be rejected, in whole or in part, when it is in the best interests of the District.

This project is subject to the Pennsylvania Prevailing Wage Law, approved August 15, 1961 (Act No. 442), as amended, and reference is made to the prevailing minimum wage rates applicable to this project which have been promulgated by the Secretary of Labor and Industry.

PART I. GENERAL INFORMATION

I-1.

PURPOSE.

The District is particularly interested in proposals that address comprehensive building envelope improvements, including roofing system upgrades (at the middle school) that contribute to energy savings and long-term operational efficiencies. Improvements with LED lighting are also of particular interest.

This Request For Proposal (“RFP”) contains the information and requirements for qualified Energy Service Companies (sometimes referred to as “ESCO”, “ESCOs” or “Contractor”) to prepare and submit to the Daniel Boone Area School District (“School District”) professional qualifications and a technical proposal for a guaranteed energy savings contract, in accordance with the Guaranteed Energy Savings Act, 62 Pa. C.S. §3751 et. seq. (the “Act”) as the same may be amended from time to time, for the following sites:

- Daniel Boone Area High School, 501 Chestnut Street, Birdsboro, PA 19508
- Daniel Boone Area Middle School, 1845 Weavertown Road, Douglassville, PA 19518
- Daniel Boone Area Intermediate Center, 200 Boone Drive, Douglassville, PA 19518
- Daniel Boone Area Primary Center, 576 Monocacy Creek Road, Birdsboro, PA 19508

This RFP, together with any amendments, contains the only instructions governing the proposals and material to be included therein; a description of the services to be provided; general evaluation criteria; and other proposal requirements.

I-2. ISSUING OFFICE.

This RFP is issued by the School District listed below. The Director of Facilities is the sole point of contact for this RFP.

Jay Withers
Daniel Boone Area School District
501 Chestnut Street
Birdsboro, PA 19508
Jason.whithers@dboone.org

I-3. PROJECT.

The School District is interested in contracting for a performance contracting effort for any or all of the above-referenced sites. The School District is interested in a full range of energy services and energy-related improvements (“energy conservation measures” or “ECMs”), financed through a guaranteed energy savings contract (the “Savings Contract”). The ECMs may include a program, facility alteration or technology upgrade designed to reduce energy, water, wastewater or other consumption or operating cost as more fully defined at Section 3752 of the Act. ECMs may also include the training of facility staff with respect to routine maintenance and operation of all improvements. ECMs must result in a guaranteed minimum energy and operational cost savings with the ESCO payments linked to actual documented energy and cost reductions. Any stipulated energy and/or operational cost savings that may be attributed to this project will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and verified by the ESCO and approved by the School District. Roofing system enhancements at the middle

school, such as improved insulation, reflective roofing materials, and upgrades to support renewable energy systems like solar panels, are also encouraged as part of the energy conservation measures.

In accordance with the Act, the School District may enter a savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measure recommended in the proposal would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed twenty (20) years from the date of final installation if the recommendations in the proposal were followed and the qualified provider provides a written guarantee that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the contract. If the savings contract requires payments over a period of time, the savings contract shall provide that, after the initial year of the savings contract, the savings in every subsequent year are guaranteed to the extent necessary to make payments under the contract during that year. The savings contract, in addition to the qualification and guarantee of energy savings, shall expressly state, quantify and validate the budgetary sources of all energy-related cost savings and operating costs utilized to satisfy the financial obligations and performance during the term of the contract.

Additional Project Background. The School District anticipates that the work to be done under the Saving Contract (defined in Section V-20 of this RFP as the “Savings Work”) may be performed contemporaneously with other renovation work.. The Savings Work and the General Work will be performed under separate and distinct contracts and will be considered, for all intents and purposes, to be separate and distinct projects. Nevertheless, the Savings Work and the General Work may affect the same School District facilities and may be conducted simultaneously. It is the intent of the School District and all contractors retained to perform the Savings Work and the General Work that all work be performed efficiently, effectively and in cooperation with all contractors. Wherever possible, the contractors shall take all reasonable steps necessary to ensure such coordination and performance. The terms of Section V-20 of this RFP will control the interactions between all contractors retained to perform the Savings Work and the General Work.

I-4. DESCRIPTION OF THE PROCUREMENT PROCESS.

It is anticipated that the process for the procurement of these energy services will proceed as follows:

- 1.) **SUBMISSION OF WRITTEN PROPOSALS.** ESCOs will be required to present their qualifications and technical approach to the School District as specified in this RFP. The School District will review and evaluate proposal submissions in accordance with the evaluation criterion specified in Part III of this RFP.
- 2.) **SELECTION OF ESCO.** The School District will select the best qualified ESCO to negotiate a final contract scope, specific financing arrangements and terms.
- 3.) **APPROVAL OF A PROJECT DEVELOPMENT AGREEMENT (“PDA”).** The School District will approve a PDA to authorize the investment grade audit and final contracting documents for the improvement of the identified district facilities.

4.) **APPROVE FINAL SAVINGS CONTRACT.** If the School District decides to proceed with the project, the School District shall attempt to negotiate a Savings Contract with the selected ESCO. The School District will approve a final Savings Contract for a guaranteed energy savings project. The School District will not be liable for the payment of any amounts to the selected ESCO (other than payments agreed to under the PDA) until a Savings Contract is properly executed by all parties thereto.

I-5. REJECTION OF PROPOSALS.

The School District reserves the right to reject at any time any and all proposals received, or any portions thereof, or to negotiate separately with any and all competing ESCOs. The School District reserves the right to waive any terms of this RFP if it is determined to be in the School District's best interest or for the School District's convenience.

I-6. INCURRING COSTS.

The School District is not liable for any cost or expenses incurred by ESCOs in the preparation of their written responses or for attendance at any conferences and meetings related to this RFP. Any cost or expense incurred by ESCOs in performing any analysis associated with this RFP shall be borne by the ESCO.

I-7. AMENDMENT TO THE RFP.

If it becomes necessary to revise any part of this RFP, an amendment will be issued to all proposers who received the basic RFP.

I-8. RESPONSE DATE AND TIME.

One (1) original and three (3) copies of ESCO proposals must be delivered to the location designated below, no later than January 10, 2025 (Friday, 11:00 AM) at 11:00 AM. Proposals delivered after that time will not be considered. Late or incomplete proposals will not be accepted.

**Daniel Boone Area School District
ATTN: Rob Hurley/Jay Withers
501 Chestnut Street
Birdsboro, PA 19508**

I-9. PENNSYLVANIA RIGHT TO KNOW LAW.

The Pennsylvania Right to Know Law ("RTKL") provides for public access to documents considered "public records" under the law. Pursuant to the RTKL, any proposal submitted will become a "public record," subject to public review, once a contract is awarded. DBASD is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Contractor's submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Contractor should not label proposal submissions as confidential or proprietary or trade secret protected. Any Contractor who determines that it must divulge such information as part of its proposal must submit a signed written statement requesting exemption from disclosure and explaining why the material is exempt from public disclosure, and must

further provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets.

I-10. RESTRICTION OF CONTACT.

From the issue date of this RFP until a determination is made regarding the final selection of the Project ESCO, all contacts with the School District personnel concerning this RFP, must be made through the Issuing Office.

I-11. PROPOSALS.

To be considered, proposals must be a complete response to the RFP. Proposals are to be straightforward, concise presentations without extraneous material. An official authorized to bind the submitting ESCO must sign such ESCO's proposal. A proposal must remain valid for no less than one hundred twenty (120) calendar days after the date of opening of the proposals.

I-12. PAYMENT AND PERFORMANCE BOND.

The successful ESCO shall be required to provide payment and performance bonds in the amount of 100% of the total final Savings Contract amount in the form attached hereto as Exhibit 1. In addition, any ESCO under consideration must show that it is financially capable of ensuring the savings projected in its proposal. The sufficiency of such proof shall be determined by the School District in its and their sole and absolute discretion.

I-13. PRIME CONTRACTOR ACCOUNTABILITY.

The ESCO who is selected as the project contractor under this RFP will be considered the prime contractor. The ESCO will be required to assume full responsibility for delivery of all services for each facility under the final Savings Contract. Further, the selected ESCO will be the sole point of contact concerning all contractual matters for the duration of the Savings Contract term.

I-14. SITE VISITS.

The School District will arrange inspection tours of the buildings to be audited. Site visits for each of the buildings may be scheduled thru the Issuing Office on December 17th or 18th.

I-15. CONTRACTOR RESPONSIBILITY PROVISIONS.

1. Each ESCO must certify, for itself and all subcontractors, that as of the date of its execution of its proposal (the "Execution Date"), that neither the ESCO, nor any subcontractors or suppliers or vendors are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the ESCO cannot so certify, then it agrees to submit, along with its proposal, a written explanation of why such certification cannot be made.

2. Each ESCO must also certify, in writing, that as of the Execution Date, it has no delinquent federal or state tax liabilities or other obligations to any federal or state governmental body ("Governmental Obligations").

3. The ESCO's obligations pursuant to these provisions will commence on the Execution Date. The ESCO shall have an obligation to inform the School District, at any time and from time to time, prior to the proposal deadline: (i) if such ESCO becomes delinquent in its Governmental Obligations, or (ii) if such ESCO or any of its subcontractors or suppliers and vendors are

suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Moreover, the Contractor shall have an obligation to inform the School District, at any time and from time to time, during the term of the PDA or Savings Contract: (i) if such ESCO becomes delinquent in its Governmental Obligations, or (ii) if such ESCO or any of its subcontractors or suppliers and vendors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made by written notice to the School District within fifteen (15) days of the date of such delinquency, suspension or debarment.

4. The failure of the ESCO to notify the School District of any delinquency, suspension or debarment as described in Section I-15.3. of this RFP shall constitute an event of default under the PDA and Savings Contract.

5. A current list of suspended and debarred Commonwealth contractors may be obtained by either searching the Internet at (www.dos.state.pa.us.debarment.htm) or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
Fax No. (717) 787-9138

I-16. PREVENTION OF ENVIRONMENTAL POLLUTION.

Section 3301 of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S.A. § 3301, requires that all invitations for bids and requests for proposals for construction projects issued by any governmental agencies shall set forth any provision of federal and state statutes, rules, and regulations dealing with prevention of environmental pollution and the preservation of public natural resources that affect the project. A Notice of said provisions prepared by the Pennsylvania Department of Environmental Resources under Act 247 of 1972, 52 P.S. § 1612 (repealed) is available from Owner. Said Notice is hereby incorporated by reference. Contractor is hereby notified and agrees to comply with the terms of all statutes, rules and regulations enumerated in the Notice.

I-17. TAXES.

1. Responsibility of Contractor. The Contractor shall be responsible for and shall pay all applicable sales, use, excise or other taxes required by law on all materials, tools, apparatus, equipment, fixtures, services, incidentals and otherwise which may be purchased or used in connection with the project or portions thereof. A proposal, the PDA and Savings Contract shall be made in accordance with such laws and shall include all applicable taxes in the proposal, PDA and/or Savings Contract amounts.

Notwithstanding the foregoing, the School District is exempt (excluded) from sales and/or use tax in Pennsylvania on certain transactions. The Contractor and all subcontractors shall propose and shall purchase, as exempt (excluded) from Pennsylvania sales and/or use tax, all tangible personal property within the definition of “building machinery and equipment” as is

defined in the Pennsylvania Statutes at 72 P.S. § 7201. No charges to the School District shall be allowed for exempt items. It shall be the Contractor's responsibility to determine those items for which exemptions apply, and the Contractor shall obtain legal or other tax advice to determine how and to what extent tax exemptions apply.

2. Assignment of Refund Rights. The School District shall be entitled to claim refunds of sales and/or use tax paid on these and other purchases of tangible personal property required in connection with the project. The Contractor and all subcontractors hereby assign to the School District all rights to any such refund claim and to any resulting refund and hereby appoint the School District as their Attorney-in-Fact to execute and acknowledge in their respective names and to prosecute such refund claims before administrative agencies and courts in Pennsylvania having jurisdiction over such claims. The School District or its agent shall have the right to review the books and records of the Contractor and all subcontractors for the purpose of documenting and substantiating any such refund claim. The Contractor and all subcontractors shall cooperate fully with the School District in pursuing any such refund claim and shall make available to the School District any applicable documents.

3. Access to Accounting Records. The Contractor shall check all materials, equipment and labor entering into the project, and shall keep such full and detailed accounts as may be necessary for proper financial management under the project, and the system shall be satisfactory to the School District. The School District, its agents and representatives shall be afforded access to, including the right to photocopy, all of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the project, and the ESCO shall preserve all such records for a period of three (3) years, or for such longer period as may be required by law, after receipt of final payment for the project.

4. Contracts with Subcontractors. The Contractor agrees to include the "Access to Accounting Records" and "Assignment of Refund Rights" paragraphs, in full, in any contracts with subcontractors related to the project. The Contractor further agrees that it will not file a claim for refund for any sales and/or use tax which is the subject of the assignment in Subsection I-17.2. above. The Contractor shall obtain from all subcontractors similar agreements that such subcontractor will not file claims for refund for any sales and/or use tax which is the subject of the assignment in Subsection I-17.2. above.

I-18. E-VERIFY

The ESCO and its Subcontractors (as defined in the act) are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637). All Contractors are required to submit with their proposals the Verification Form required by the act for themselves acknowledging their responsibilities and compliance with the act. The ESCO's subcontractors are required to submit Verification Forms prior to commencing work on the project under a Savings Contract.

I-19. PREVAILING WAGES

With regard to work under the Savings Contract, ESCO will pay no less than the wage rates as determined by the Pennsylvania Secretary of Labor and Industry and shall comply with the conditions of the Pennsylvania Prevailing Wage Act, as amended, and the regulations issued

pursuant thereto, to assure the full and proper payment of said rates. Payroll certifications will be required with all invoices including labor, and as otherwise requested from the School District from time to time.

I-20. PROVISION FOR THE USE OF STEEL AND STEEL PRODUCTS MADE IN THE U.S.

In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the Contract, only those produced in the United States as defined therein shall be used or supplied in the performance of the Contract or any subcontracts thereunder.

In accordance with Act 161 of 1982, cast iron products shall also be included and produced in the United States. Act 141 of 1984 further defines “steel products” to include machinery and equipment. The act also provides clarifications and penalties.

I-21. PROHIBITION AGAINST THE USE OF CERTAIN STEEL AND ALUMINUM PRODUCTS

In accordance with the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. § 773.101 et seq.), ESCO cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase of use of those countries’ products, as listed below, is not permitted.

BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheets.

SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.

SOUTH KOREA: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.

ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

Penalties for violations of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years. Note: This provision in no way relieves the contractor of its responsibility to comply with those provisions of this RFP that prohibit the use of foreign-made steel and cast iron products.

I-22. GENERAL PROVISIONS.

- A. The contents of the RFP and ESCO's final technical proposal shall become part of the final Savings Contract.
- B. The School District reserves the right of final approval over the scope of work and all end-use conditions. Only prior reviewed and approved equipment and modifications will be permitted by the School District.
- C. The ESCO must carry the level of insurance required by the School District for both the construction and operations phases.
- D. All drawings, reports and materials prepared by the ESCO under the PDA or otherwise in performance of the Savings Contract shall become the property of the School District and shall be delivered to them immediately upon request. If the School District does not make a specific request for such drawings, reports and materials, the Contractor shall deliver such items to the School District within thirty (30) days after the project is completed and accepted by the School District.
- E. The repayment obligation and term of the financing for this project must be arranged to coincide with the acceptance by the School District that the project is fully installed and operating.
- F. ESCOs will be required to guarantee energy and cost savings on an annual basis. Annual reconciliation of the achieved savings will be required.
- G. No equipment shall be installed that will require the hiring of additional personnel by the School District unless contract negotiations produce an explicit exemption from this rule for a specific installation.
- H. ESCO must provide two (2) complete sets of reproducible "as built" and record drawings of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals to be submitted within 30 days of the completed installation.
- I. The ESCO must secure all necessary licenses and permits and comply with all federal and state laws with respect to this project. All work completed under the PDA and Savings Contract must be in compliance with all building codes and appropriate accreditation, certification and licensing standards.
- J. The submission of a proposal authorizes the School District, its agents and representatives to make inquiries concerning the Contractor and its principals, officers and directors to any persons or firms the School District deems appropriate.

PART II. PROPOSED SCHEDULE

Issue RFP

December 11,, 2024

Site Visits (By appointment only)	December 17&18,
Site visits may include evaluations of existing roofing systems to identify opportunities for energy efficiency improvements or structural upgrades to accommodate additional energy conservation measures.	
Receipt of Proposals AM)	January 10, 2025 (Friday, 11:00
Evaluation and Ranking of Proposals	January 17, 2025
Selection of ESCO for Negotiation of PDA	January 24, 2025

PART III. EVALUATION CRITERIA

Evaluation of Proposals: Proposals will be evaluated based on the completeness of the information provided. Failure to provide any of the requested information may result in disqualification. The criteria listed below will be used in descending order in the evaluation of the written proposals.

Financial

- Financial soundness and stability of the ESCO
- Demonstrate ability to arrange project financing and funding
- Total financial benefit to the School District
- Project Development Agreement scope and cost
- Final Savings Contract Price

Technical Approach

- Quality of Utility Bill Analysis and Baseline Data
- Quality of Field Survey Data
- Quality of Energy Savings Analysis
- Quality of approach to Energy Conservation Measures
- Quality of proposed training for facility staff
- Quality of ongoing support available to the School District

Experience

- Qualifications and experience of ESCO's personnel with implementing guaranteed energy savings contracts.
- Quality of references for ESCO
- Reliability of equipment and performance on past projects.

Project Management and Project Team

- Clear assignment of responsibility for various project tasks to specific individuals.
- Ability to effectively manage project construction and complete the project on schedule.
- Quality of monitoring, maintenance, and measurement and verification services on past projects.
- Clarity of organization and level of detail in written proposal.
- Quality of communication skills of the ESCO's representatives at the oral interview.

PART IV. INFORMATION REQUIRED FROM PROPOSERS

PROPOSAL FORMAT AND CONTENTS

Section 1 - Executive Summary

Please provide a summary and overviews of the scope of services and approach that your firm plans to provide should you be selected as the ESCO for this project.

Section 2 - ESCO Background and Qualifications

Section 2.1 - ESCO Qualifications Form

All questions must be addressed by the ESCO in order for this form to be properly completed. Failure to answer any question, or comply with any directive contained in this form may be used by the School District as grounds to find the ESCO ineligible.

1. Firm Name _____
Business Address _____
City _____ **State** _____
County _____ **Zip Code** _____

2. Names and Titles of Two Contact People

1) _____ Phone (_____) _____
2) _____ Phone (_____) _____

3. Submittal is for:

Parent Company (List any Division or Branch Offices to be involved in this project)
 Division (attach separate list if more than one is to be included)
 Subsidiary
 Branch Office: (include all Pennsylvania locations with number of energy service professionals located at each site.
Name of Entity: _____
Address: _____

4. Date Prepared: _____

5. Type of Firm:

Corporation Partnership Sole Ownership Joint Venture

6. Federal Employer Identification Number _____

7. Year Firm was Established _____

8. Name and Address of Parent Company, if applicable

9. Former Firm Name(s), if applicable _____

10. Five Year Summary of Contract Values for Guaranteed Energy Savings Contracts Projects where your firm was the prime contractor with a first party written savings guarantee to the customer:

2023: \$ _____

2022: \$ _____

2021: \$ _____

2020: \$ _____

2019: \$ _____

11. CORPORATE BACKGROUND/HISTORICAL DATA

- a. How many years has your firm been in business under its present business name?
- b. Please identify all states in which your firm is legally qualified to do business.
- c. Indicate all other names by which your organization has been known and the length of time known by each name.
- d. How many years has your firm developed, installed and guaranteed energy conservation projects?
- e. Certify that your company does not owe the Commonwealth any taxes.
- f. Certify that your company is not currently under suspension or debarment by the Commonwealth, or the federal government.
- g. Give the name and address of the primary individual responsible for contract negotiation.
- h. Indicate your firm's current annual gross revenues.
- i. Indicate whether your firm is currently qualified by the Commonwealth of Pennsylvania's Department General Services to implement guaranteed energy savings contracts with state agencies and provide documentation to this fact.
- j. Indicate whether your firm is accredited by the National Association of Energy Service Companies (NAESCO) and provide documentation to this fact.
- k. For non-publicly traded ESCO's responding to this RFP, please list any indictments or convictions related to the firm or any individuals who have or have had an ownership stake in the firm for the last five years. This listing shall cover the last 5 years from the date of the issuance of this RFP. If any State (not limited to PA) or Federal indictments or convictions exist, please include copies of the indictments or convictions at the end of this section under a separate tab titled

Indictments & Convictions. Publicly traded ESCO's must ensure that this information is available in the audited financial statements provided with this RFP.

1. If applicable, describe at least one instance where your company had to pay a client due to missing a savings guarantee. Describe the circumstances and outcome of that situation.

Section 2.2 - Corporate Overview

Provide a comprehensive corporate overview describing the services provided by your firm. Please highlight any specific data that uniquely qualifies you as it relates to this project.

- a. Provide a copy of your firm's most recent annual report. Provide a Balance Sheet and Cash Flow statement not more than fifteen (15) months old.
- b. Please provide the name, address, and the telephone number of the firm that prepared the Financial Statements.
- c. Please enclose banking references including financial institution, address, contact person, telephone number, and specific information on your firm's credit that may be used to fund construction for large-scale projects.
- d. Enclose bonding references including company name, address, contact person, telephone number and information on your firm's maximum bonding capability.

Section 2.3 - References

Guaranteed Energy Savings Project History and Client References

Include at least ten (10) projects in Pennsylvania currently under contract with your firm where your firm holds the savings guarantee. For each of these projects, provide the following data:

- Customer name and address
- Number of buildings
- Summary of improvements
- Project value
- Customer contact name and phone number
- Contract terms (length of guarantee)
- Guaranteed savings – Actual achieved versus guarantee

The School District's right to contact the ESCO's references is assumed.

Section 3 - Technical Proposal

Section 3.1 - Utility Bill Analysis & Baseline Data

For Electric Utilities provide the following

- Analysis 12 months of electric bills including both kw & kwh usage and cost for each facility.

- Determine the distribution of total energy usage for lighting, HVAC Fans, plug loads and, cooling,
- Graph 12 data of total kwh usage and cost for all 12 months

For Fossil Fuels (where applicable) provide the following

- Analysis 12 months of fossil fuel bills including units of energy and cost for each facility.
- Determine heating usage and domestic hot water usage
- Graph 12 data of total energy usage and cost for all 12 months
- Determine the distribution of total facility energy usage for electric and fossil fuel usage.

Provide any observations resulting from the utility analysis

Provide a summary comparison of each facilities energy usage

Section 3.2 - Facility Improvement Measures
 Proposed facility improvement measures should include upgrades to building systems that result in measurable energy savings. These measures may include roofing system enhancements such as improved insulation, installation of cool roof technologies, or structural upgrades to support renewable energy systems like solar photovoltaic panels.

- Provide a list of preliminary facility improvement measures that are being proposed as part of a guaranteed energy savings program. These facility improvement measures will form the basis of your company’s business case analysis in Section 5 of this proposal.

Section 3.3 - Additional information

- Provide any additional technical information as desired about the ESCO’s approach to the project.

Section 4 - Project Implementation

Section 4.1 – Describe your company’s implementation plan and approach

Section 4.2 – Project Team

Briefly describe the relevant experience, qualifications and educational background for each individual team member **assigned** to this project including the information listed below. Do not include resumes of individuals that do not have a role in this specific project Include an organizational chart and Management Structure for this project and a description of each person’s role and responsibilities.

Name of Project Team Member:

Current Job Title:

Job responsibilities:

Number of years with ESCO:

Primary Office Location:

Employment History

Company Name:

Primary job responsibilities:

Educational Background:

List all academic degrees, certifications, professional affiliations, relevant publications and technical training.

List all energy performance contracting projects this individual has been involved with during past 5 years.

Describe the specific role and responsibilities this individual had for each listed project.

Describe any other relevant technical experience.

Indicate the total years of relevant energy related experience for this individual.

Section 4.3 -- Describe the training and support services included for this project and/or are available as an option to this project.

Section 5 - Financial Information

1. Provide an overview and description of the financial mechanism proposed. Identify any financing partners that may be included.

2. Provide a Business Case Analysis

Provide a 20 year preliminary business case for the identified ECMs detailed in Section 3.2 above, including estimated costs, energy and operational savings, rebates or grants, financing costs, M&V costs, and any anticipated ongoing service cost required to maintain a guaranteed savings program. Any claim or estimate of operational savings must be verified with the Issuing Office before being included in this financial analysis.

Note: The costs and savings provided in the Business Case Analysis must be within engineering accuracy for a preliminary survey. This is defined as 80% accuracy for cost and 80% accuracy for savings. The ESCO must be prepared to guarantee the projected energy savings using the United States Department of Energy Federal Energy Management Program Option C methodology. If the final PDA or Savings Contract does not agree with these conditions this will serve as grounds for the School District to disqualify the ESCO.

3. Provide the Project Development Agreement: This document should detail the scope of work to be developed via an Investment Grade Audit, the timeline for development, the price and payment terms of the agreement, as well as any special terms or provisions required by the ESCO.

PART V. SIGNIFICANT PROVISIONS OF PROPOSED PDA AND SAVINGS CONTRACT

Contractor acknowledges that the School District intends to include the terms described in this Part V in the PDA (as applicable) and the Savings Contract, and Contractor agrees to such terms.

However, the School District reserves the right to include additional terms in the PDA and Savings Contract, or to refrain from including any or all of the terms listed below.

V-1. PATENT AND PATENT RIGHTS.

The Contractor shall indemnify, defend and save the School District harmless from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, by reason of any alleged or actual infringement upon copyright, trademark and patent rights in material, process, machine, equipment or appliance used or supplied by the Contractor in the work or under the PDA or Savings Contract.

V-2. RIGHT-OF-WAY.

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

V-3. LABOR LAWS AND ORDINANCES.

The Contractor shall obey and abide by all the laws of the Commonwealth of Pennsylvania and the federal government relating to the employment of labor and public work; including without limitation, the payment of prevailing wages, as applicable.

The Contractor agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of the PDA or Savings Contract, 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, ancestry, handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of the PDA or Savings Contract 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 PDA or Savings Contract.

V-5. REBATES.

The Contractor shall be responsible for application for rebates, and the School District will receive all the benefits from such rebates, if any are available.

V-6. ASSIGNMENT OR SUBLETTING OF CONTRACT.

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. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the School District.

The Contractor shall not assign, transfer, convey, or otherwise dispose of the PDA or Savings Contract, or any part hereof, or its right, title or interest in the same or any part thereof, without

the prior 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 the PDA or Savings Contract, without the prior written consent of the School District.

V-7. INSURANCE.

A. WORKER'S COMPENSATION INSURANCE.

The Contractor shall procure and maintain during the life of the PDA and Savings Contract Worker's Compensation Insurance in accordance with the Worker's Compensation Act of the Commonwealth of Pennsylvania, adequately protecting all labor employed by the Contractor during the life of the PDA and Savings Contract and shall provide evidence to the School District that such insurance is in force. All Certificates of Insurance shall be forwarded to the School District.

B. COMPREHENSIVE GENERAL LIABILITY INSURANCE.

The Contractor shall procure and maintain in effect during the life of the PDA and Savings Contract, Comprehensive General Liability Insurance in an amount not less than five million dollars (\$5,000,000.00) each occurrence and five million dollars (\$5,000,000.00) aggregate for Bodily Injury Liability and five million dollars (\$5,000,000.00) each occurrence for Property Damage Liability. In addition, Comprehensive General Liability Insurance shall include coverage for Personal Injury Liability (including employment related suits), Independent Contractors Liability, Blanket Contractual Liability, and Products and completed Operations Liability.

C. COMPREHENSIVE NO-FAULT AUTOMOBILE LIABILITY INSURANCE.

The Contractor shall procure and maintain in effect during the life of the PDA and Savings Contract, Comprehensive No-Fault Automobile Liability Insurance with residual limits of two million dollars (\$2,000,000.00) 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.

D. PROFESSIONAL LIABILITY INSURANCE.

The Contractor shall procure and maintain in effect during the life of the PDA and Savings Contract, professional liability insurance coverage with minimum limits of \$1,000,000 per claim. Contractor will arrange for design and professional engineering services to be performed by Contractor's qualified professional engineers or a qualified engineering firm selected by Contractor. Contractor will provide a copy of the contract entered into between Contractor and such professional engineers to the School District for the School District's approval, which approval shall not be unreasonably withheld or delayed. Any such contract shall provide that the professional engineer is required to maintain professional liability insurance and shall require that professional engineer to affirm that the professional engineer is licensed to perform professional engineering services within the Commonwealth of Pennsylvania. Said contract shall also provide

that said professional engineer owes a professional duty to the School District as well as Contractor.

E. The Contractor shall provide the School District with Certificates of Insurance evidencing the required coverage. All insurance required under Sections B, C and D above, shall name the Owner as additional insured. All insurance policies prescribed under Sections V-7 purchased by Contractor and the Certificates of Insurance issued pursuant thereto, shall contain a provision that the coverage provided under the policies, as well as the policies, will not be canceled or materially changed unless the insurance companies provide the School District with thirty (30) days' written notice of the intent to cancel a policy, or cancel or materially change the coverage provided under the policy. All insurance policies shall be with companies licensed and authorized to do business in the Commonwealth of Pennsylvania, with a rating of A or A+ by Best.

F. With respect to any of the insurance policies provided by the Contractor which are 'claims made' policies, in the event, at any time any such policies are cancelled or not renewed, the Contractor shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of the PDA and Savings Contract and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior 'claims made' policy(ies). With respect to all 'claims made' policies which are renewed, the Contractor shall provide coverage retroactive to the date of commencement of work under the PDA and Savings Contract. All said substitute or renewed 'claims made' policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project.

V-8. INDEMNIFICATION.

The Contractor agrees to indemnify, defend and hold the School District harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of, connected with or resulting from the negligence or misconduct of the Contractor, and any and all subcontractors and sub-subcontractors, and their respective employees, agents and representatives in connection with its activities within the scope of the PDA or Savings Contract, insofar as any such loss or claim is not covered by available insurance proceeds. The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of the PDA or Savings Contract with respect to any claims based on facts or conditions which occurred prior to termination.

V-9. PERFORMANCE AND PAYMENT BONDS.

The Contractor shall provide to the School District, at the Contractor's sole cost and expense, the following bonds, as security for the Contractor's faithful performance of the Savings Contract:

1. Initial Installation. A Performance Bond and Labor and Material Payment Bond, in the full sum of the Savings Contract, covering initial installation, construction and start-up, and continuing for a two (2) year period.

2. Monitoring, Maintenance and Repair. A Maintenance Bond may be required at the School District's discretion in the amount of fifteen percent (15%) of the total sum of the Savings Contract, and a Labor and Material Payment Bond covering any subcontractors or suppliers that provide monitoring, maintenance and/or repair services or materials during the balance of the Savings Contract term.

3. Guaranty of Energy Savings. An annual bond may be required at the School District's discretion, renewed each year, covering the then outstanding balance of the guaranteed energy savings amount.

The Attorney-in-Fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of its Power of Attorney, authorizing said Attorney-in-Fact to act on behalf of the surety. The Power of Attorney must be dated the same date as the bond and both the bond and Power of Attorney shall have affixed the raised corporate seal of the surety. The bond form must be executed by a surety licensed and authorized to conduct business within the Commonwealth of Pennsylvania and named in the current list of companies holding Certificates of Authority as acceptable sureties on federal bonds and/or as acceptable reinsuring companies as published in Circular 570 (as amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, and the amount of the bond shall not exceed the underwriting risk of such surety set forth in said circular or revision thereof.

V-10. GOVERNING LAW, JURISDICTION AND VENUE.

The PDA and Savings Contract shall be construed and interpreted and the rights of the parties hereto shall be determined in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions to the contrary. Except as otherwise expressly provided in the PDA or Savings Contract, jurisdiction and venue for any dispute, controversy or claim arising out of or relating to the PDA or Savings Contract shall lie solely in the Court of Common Pleas of Berks County, Commonwealth of Pennsylvania. The parties hereto agree to and consent to the exclusive jurisdiction of said court in any such action or proceeding and waive any objection to venue. The parties waive any right to a jury trial and agree to a trial before a judge sitting without a jury. The School District reserves all rights and privileges applicable to it pursuant to the doctrine of *nullum tempus occurrit regi*. ESCO expressly waives any right to penalties, interest and attorney's fees pursuant to the prompt payment provisions of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S. §§ 3931 et seq.

V-11. COMPLIANCE WITH LAWS AND STANDARD PRACTICES.

The Contractor shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws; rules, and regulations, including applicable licensing requirements, according to sound engineering and safety practices, and in compliance with any and all reasonable rules of the School District regarding the project site(s). The Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations under the PDA and Savings Contract.

V-12. PERSONNEL CLEARANCES

BACKGROUND CHECKS. The following clearance documents are required for Contractor (including all subcontractors) working in or on the grounds of a school facility. The successful Contractor shall be responsible for the completion and submittal of all necessary forms for Child Abuse Clearance and Criminal Record Checks. All clearances must have been completed within one (1) year of the date submitted to the School District.

- (i) PA State E-Patch – apply at the following link: <https://epatch.state.pa.us/>
- (ii) Act 34 Criminal History Clearance
- (iii) FBI Federal Criminal History Clearance – this requires the employee to be fingerprinted. www.Identogo.com
- (iv) New PDE Certification Form - PDE-6004
- (v) Act 151 PA Child Abuse History Clearance Form at the following link: <https://www.compass.state.pa.us/cwis/public/home>.

V-13. KEY PERSONNEL.

Key personnel assigned to this project by the Contractor shall not be removed from this project without the prior written consent of the School District. Such consent may not be unreasonably withheld.

V-14. WAIVER OF DAMAGES.

Contractor waives claims against the School District for consequential damages arising out of or relating to the contract, including, but not limited to, damages incurred by the proposer for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the work.

V-15. NON-COLLUSION AFFIDAVIT.

The Non-Collusion Affidavit shown in Exhibit 2 below shall be completed and submitted with the proposal.

- (i) This Non-Collusion Affidavit is material to any contract pursuant to a proposal. According to the Pennsylvania Anti-bid-Rigging Act, 62 Pa. C.S.A § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals, such as the Proposal submitted by the ESCO.
- (ii) This Non-Collusion Affidavit must be executed by a member officer or employee of the ESCO who is authorized to legally bind the ESCO. In addition, a separate Non-Collusion Affidavit must be executed by a member, officer, or employee authorized to bind each Sub-contractor listed in the Proposal.

- (iii) Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the Non-Collusion Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the ESCO with responsibilities for the preparation, approval, or submission of the Proposal.
- (iv) If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
- (v) The term “complementary proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process and includes the knowing submission of a proposal higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.
- (vi) Failure to file a Non-Collusion Affidavit in compliance with these instructions may result in disqualification of the Proposal.

V-16. FEDERAL CONTRACT REQUIREMENTS.

In the event that federal grant monies are used by the School District to fund this Project, and/or to the extent required for the School District’s receipt of any applicable federal tax credits, federal Grant Guidance found at 2 CFR Part 200 shall apply to this Project, and the federal contracting provisions set forth in Exhibit 3 shall apply.

V-17. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR.

The Contractor represents and warrants as follows:

1. The Contractor is familiar with all documents appended to the PDA and Savings Contract and with all applicable laws and regulations.
2. The Contractor is duly organized, validly existing, presently in good standing and having all necessary powers to enter into the PDA and Savings Contract and to do business in the Commonwealth of Pennsylvania.
3. There is no pending or threatened labor dispute, strike, or work stoppage affecting Contractor's business.
4. There is no suit, action, arbitration or legal, administrative, or other proceeding pending, or to the best knowledge of the Contractor, threatened against the Contractor that would affect or impair the performance by Contractor of the PDA or Savings Contract.

5. The Contractor will obtain all registrations, licenses, certificates of inspection reports, or other clearances required to be obtained of any governmental or organizational agency, in order to enable it to fully perform the terms of the PDA and Savings Contract.

6. The Contractor has the right, power, legal capacity, and authority to enter into and perform all its obligations under the PDA and Savings Contract and no approval or consent of any person other than the Contractor is necessary to effect the execution and performance of the PDA and Savings Contract by the Contractor.

7. There are no other circumstances, which would adversely affect the Contractor's ability to execute the PDA and Savings Contract and fully perform its obligations hereunder.

8. The information in all documents, lists, policies, and other writings furnished, or to be furnished, to owner by, or on behalf of, the Contractor is true and accurate, and does not fail to include any statement of a material fact, the omission of which would be misleading.

9. None of the representations or warranties made by the Contractor, or made in any certificate or memorandum furnished to owner by, or on behalf of, the Contractor, contains or will contain any untrue statement of a material fact, or omit any material fact, the omission of which would be misleading.

10. The Contractor shall, at the Contractor's expense, provide the School District with such evidence of the accuracy of any and all representations and warranties herein contained as the School District may require. The Contractor shall, at Contractor's sole cost and expense, provide the School District with such other evidence of Contractor's compliance with the terms of the PDA and Savings Contract as the School District may require.

V-18. CONTRACTOR DEFAULT.

In the event the Contractor defaults under the Savings Contract at any time during the term of the Savings Contract, the School District may require Contractor to return all equipment and mechanical systems to their original state at no cost to the School District.

V-19. DISPOSAL.

Contractor will dispose of all PCB contaminated ballasts, at the Contractor's sole cost and expense. The Contractor shall indemnify, defend and hold harmless School District from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of, connected with or resulting from the removal, transport and/or disposal of any fluorescent lamps and PCB contaminated ballasts.

V-20. MULTIPLE DISTRICT CONTRACTS.

1. Background. In addition to the work contemplated by the Savings Contract (the "Savings Work"), the School District may from time to time perform maintenance, alterations, renovations and additions to its facilities (the "General Work") and the School District anticipates

undertaking renovation work at the same time as the Savings Work. The Savings Work and the General Work will be performed under separate and distinct contracts and will be considered, for all intents and purposes, to be separate and distinct projects. Nevertheless, the Savings Work and the General Work will likely affect the same School District facilities and may be conducted simultaneously. It is the intent of the School District and all contractors retained to perform the Savings Work and the General Work, that all work be performed efficiently, effectively and in cooperation with all contractors. Wherever possible, the contractors shall take all reasonable steps necessary to ensure such coordination and performance. The terms of this Section V-17 will control the interactions between all contractors retained to perform the Savings Work and the General Work.

2. The School District's Right to Perform Work. The School District reserves the right to perform construction or operations related to the Savings Work or General Work with the School District's own personnel. The School District also reserves the right to award separate contracts in connection with the Savings Work or General Work and any and all other construction or operations which may from time to time be conducted on the project site(s). To the extent that the Savings Work is performed at the same time as the General Work, or other separate work, the Contractor is aware that schedule adjustments will be required to coordinate the work of its Savings Contract with the work of the other contractors.

3. Coordination. Neither the School District nor its employees, agents or representatives shall be responsible for the coordination of the Savings Work with the General Work, or other separate work. The Contractor shall be responsible for the coordination of its Savings Work with the work of the other contractors.

4. Cooperation. The Contractor shall afford the School District, and any other contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Savings Work with any other work.

5. Duty to Report Defects in the Work. If a portion of the Savings Work depends upon proper execution of construction or operations by the School District, or another contractor, the Contractor shall, prior to proceeding with that portion of the Savings Work, promptly report to the School District discrepancies or defects in the School District's, or other contractor's work that would render it unsuitable or impractical for proper execution of the Savings Work. The Contractor's failure to report such unsuitability or impracticability shall constitute an acknowledgement that the School District's, or other contractor's completed or partially completed construction is fit and proper for the purposes of the Savings Work.

6. Delays. Costs and expenses caused by delays or improperly-timed activities or defective construction shall be borne by the parties responsible therefore. Notwithstanding the foregoing, the School District, its employees, agents and representatives shall not be liable to any contractor, subcontractor or sub-subcontractor for claims or damages whatsoever, caused by or arising out of delays in the Savings Work, General Work, or other separate work. The sole remedy against the School District for delays shall be the allowance to a successful claimant of additional time for completion of such claimant's work.

7. Repair and Reconstruction. The Contractor shall promptly remedy any damage caused by the Contractor to property of the School District, the General Work, or other separate work. The Contractor shall indemnify and hold the School District harmless from any claims or damages brought by another contractor arising out of actions or omissions of the Contractor, its subcontractors or suppliers in performing the Savings Work.

8. Dispute Resolution between Contractors. In the event the Contractor, either itself or by its subcontractor or suppliers or their respective agents, servants, or employees, causes damage or injury to the property or work of another contractor, or their respective suppliers or subcontractors, or fails to perform the Savings Work (including, the work of its subcontractors or suppliers) with due diligence, thereby delaying the work of another contractor, or their respective subcontractors or suppliers, causing such other contractor, or their respective subcontractors or suppliers to suffer additional expense or damage, the parties involved in such dispute shall settle by agreement or arbitrate said claim, dispute or disputes as prescribed in Subsection V-17.9. The School District will not be a party to disputes or actions between the contractors, subcontractors or suppliers concerning such additional expense or damage. It is agreed by all parties that disputes or actions between contractors, subcontractors or suppliers concerning the additional expense or damage will not delay completion of the Savings Work, the General Work, or other separate work, which shall be continued by the parties. The intent of this clause is to benefit the contractors and to serve as an indication of the mutual intent of the School District and the Contractor that the contractors be given the status of third party beneficiaries solely with respect to this Section V-17. The Contractor agrees that this Section V-17 provides a benefit to the Contractor. The Contractor further acknowledges that this Section V-17 specifically excludes claims against the School District. In the event the aggrieved contractor asserts any claim or brings any action against the School District, its employees, agents or representatives for damage alleged to have been caused by the Contractor, the School District shall notify the Contractor who shall defend such proceedings at the Contractor's sole expense, and if any judgment or award against the School District, its employees, agents or representatives arises therefrom, the Contractor shall pay or satisfy such judgment or award and shall reimburse the School District, its employees, agents and representatives, as applicable, for all attorneys' fees and court costs incurred.

9. Arbitration. Any and all disputes and actions between the contractors shall be referred to the American Arbitration Association ("AAA") for resolution. Said dispute or action shall be determined pursuant to the Construction Industry Arbitration Rules of the AAA then in effect. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The School District shall not be a party to any arbitration.

10. Notice of Arbitration. Notice of the demand for arbitration shall be filed in writing with the affected contractor(s) and with the Regional Office of the AAA. A copy of the demand shall be filed with the School District. The demand for arbitration shall be made within a sixty (60) days after the claim, dispute or other matter in question has arisen.

EXHIBIT 1
Payment and Performance Bonds

PERFORMANCE BOND
(Guaranteed Energy Savings Contract)

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal (the “Principal”), and _____, a company organized and existing under the laws of the _____, having its principal office at _____, and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the “Surety”), are held and firmly bound, jointly and severally, unto the DANIEL BOONE AREA SCHOOL DISTRICT, as Obligee (the “Obligee” or the “District”), as hereinafter set forth in the full and just sum of _____ Dollars (\$_____), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. If more than one surety is named above, said sureties shall be jointly and severally liable to Obligee.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to the Obligee a certain proposal, dated _____ (the “Proposal”), in response to the Obligee’s Request for Proposals dated _____ (the “RFP”), to perform the design and installation of Energy Efficiency Related Facilities Improvements pursuant to the Guaranteed Energy Savings Act, 62 Pa.C.S.A. §§ 3751 et seq. to various District facilities, and the parties will enter into a Contract (the “Agreement”) which Agreement incorporates the Proposal, RFP, specifications and other related documents, constituting the contract documents (collectively, the “Contract Documents”), and the Contract Documents are incorporated into this Bond by reference and made a part thereof and hereof and this bond does NOT guarantee annual energy savings per Section 3.8.1 of the RFP for the Daniel Boone Area School District (“Obligee”), dated _____, 2024.

WHEREAS, the Obligee is a “Contracting Body” under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the “Public Works Contractors’ Bond Law of 1967” (the “Act”); and

WHEREAS, Section 3(a) of the Act, requires that the Principal shall furnish this Bond to the Obligee; and

WHEREAS, it also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if (a) the Principal well, truly and faithfully shall comply with and shall perform the Agreement in accordance with the Contract Documents, at the time and in the manner provided in the Agreement and in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Agreement by the Principal or growing out of the

performance of the Agreement by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligee and all of its officers, agents and employees from any and all costs and damages which the Obligee and all of its officers, agents and employees may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees may incur by reason of any such default or failure of the Principal, including, but not limited to, additional legal and professional fees resulting from such default or failure of the Principal, delay damages resulting from such default or failure of the Principal and liquidated damages in accordance with the Contract Documents; and (b) if the Principal shall remedy, without cost to the Obligee, all defects which may develop during the period of two (2) years from the date of final completion by the Principal and acceptance of the Obligee of the work to be performed under the Agreement in accordance with the Contract Documents, which defects, in the sole judgment of the Obligee or its legal successors in interest, shall be caused by or shall result from defective or inferior materials or workmanship, then this Bond shall be void; otherwise, this Bond shall be and shall remain in force and effect and all claims, demands, costs, expenses and damages including, but not limited to, additional legal and professional fees resulting from the default or failure of Principal, delay damages resulting from such default or failure of the Principal, and liquidated damages in accordance with the Contract Documents, shall be payable by Principal and Surety; provided, however, that the obligations of the Surety hereunder shall not exceed the amount of this Bond.

This Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Agreement in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Agreement, and/or any giving by the Obligee of any extensions of time for the performance of the Agreement in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Agreement, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Agreement, shall not release, in any matter whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligation under this bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal and the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time

for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

Any proceeding, legal or equitable, under this Bond shall be instituted in either the Court of Common Pleas of Montgomery County, Pennsylvania and in any such proceeding Owner may join both Contractor and Surety as parties, and Contractor and Surety hereby consent to such joinder, jurisdiction and venue. This Bond shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety, intending to be legally bound, cause this Bond to be signed, sealed and delivered this day of _____, 2024 and is effective as of the date of the Agreement.

Attest: _____
Name:
Title

*By: _____
Name:
Title:

(CORPORATE SEAL)

* Attach appropriate proof, with raised corporate seal, dated as of the same date as the Bond, evidencing authority to execute on behalf of the corporation.

(Corporate Surety)

[NAME OF CORPORATION]

Attest: _____
Name:
Title

**By: _____
Name:
Title:

(CORPORATE SEAL)

** Attach an appropriate power of attorney, with raised corporate seal, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-fact to act on behalf of the corporation.

PAYMENT BOND
(Guaranteed Energy Savings Contract)

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal (the “Principal”), and _____, a corporation organized and existing under laws of the State of _____, with a principal office at _____ and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the “Surety”), are held and firmly bound, jointly and severally, unto the DANIEL BOONE AREA SCHOOL DISTRICT as Obligee (the “Obligee” or the “District”), as hereinafter set forth, in the full and just sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. If more than one surety is named above, said sureties shall be jointly and severally liable to Obligee.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to the Obligee a certain proposal, dated _____ (the “Proposal”), in response to the Obligee’s Request for Proposals dated _____ (the “RFP”), to perform the design and installation of Energy Efficiency Related Facilities Improvements to various District facilities pursuant to the Guaranteed Energy Savings Act, 62 Pa.C.S.A. §§ 3751 et seq., and the parties will enter into a Contract (the “Agreement”) which Agreement incorporates the Proposal, RFP, specifications and other related documents, constituting the contract documents (collectively, the “Contract Documents”), and the Contract Documents are incorporated into this Bond by reference and made a part thereof and hereof; and

WHEREAS, the Obligee, is a “Contracting Body” under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known as and cited as the “Public Works Contractors' Bond Law of 1967” (the “Act”); and

WHEREAS, Section 3(a) of the Act requires that the Principal shall furnish this Bond to the Obligee; and

WHEREAS, it also is a condition of the Contract that this Bond shall be furnished by the Principal to the Obligee.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the work under the Contract shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the work in accordance with the Contract, including any amendment, extension or addition to the Contract, for material furnished or labor performed, then this Bond shall be void; otherwise, this Bond shall be and shall remain in force and effect.

This Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the work covered by the Contract, including any amendment, extension or addition to the Contract. The term "claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials" when used herein and as required by the Act, shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the work covered by the Contract. As required by the Act, the provisions of this Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public work or public improvement contemplated by the Contract.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the work in accordance with the Contract, including any amendment, extension or addition to the Contract, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material; and may prosecute such action to final judgment and may have execution upon the judgment; provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished; and (b) no action upon this Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the claimant; and (c) every action upon this Bond shall be instituted either in the appropriate court of the County where the Contract is to be performed or of such other County as Pennsylvania statutes shall provide, or in the United States District Court for the district in which the project, to which the Contract relates, is situated, and not elsewhere.

This Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract, and/or any alterations, changes and/or additions to the work to be performed under the Contract, and/or any giving by the Obligee of any extensions of time for the performance of the Contract, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of

any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

Provided, that it is expressly agreed that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Contract as so amended. The term "Amendment," wherever used in this Bond and whether referencing to this Bond or the Contract, shall include any alteration, addition, extension or modification of any character whatsoever.

Provided, further, that no final settlement between the Obligee and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor & Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from said Principal or any foreign corporation, subcontractors thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety, intending to be legally bound, cause this Bond to be signed, sealed and delivered this _____ day of _____, 2024, and effective as of the date of the Contract.

Attest: _____
Name:
Title

*By: _____
Name:
Title

(CORPORATE SEAL)

* Attach appropriate proof, with raised corporate seal, dated as of the same date as the Bond, evidencing authority to execute on behalf of the corporation.

(Corporate Surety)

[NAME OF CORPORATION]

Attest: _____
Name:
Title

**By: _____
Name:
Title:

(CORPORATE SEAL)

** Attach an appropriate power of attorney, with raised corporate seal, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-fact to act on behalf of the corporation.

I state that _____ understands and acknowledges that the above representations are material and important, and will be relied on by the DANIEL BOONE AREA SCHOOL DISTRICT in awarding the contract(s) for which this Proposal is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the DANIEL BOONE AREA SCHOOL DISTRICT of the true facts relating to the submission of proposals for this contract.

(Name)

(Company Position)

SWORN TO AND SUBSCRIBED

BEFORE ME THIS _____ DAY

OF _____, 2024.

Notary Public

My Commission Expires

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this Request for Proposals. According to Section 4507 of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S. § 4507, governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.

2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Proposer who makes the final decision on prices and the amount quoted in the Proposal.

3. Bid rigging and other efforts to restrain competition, and the making of false SWORN statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all of persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the Proposal.

4. In case of a Proposal submitted by a joint venture, each party to the venture must be identified in the Proposal, and an Affidavit must be submitted separately on behalf of each party.

5. The term “Complementary Bid” as used in the Affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.

6. Failure to file an Affidavit in compliance with these instructions may result in disqualification of the Proposal.

7. A bidder’s statement that it has been convicted or found liable for any act prohibited by Federal or State Law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three (3) years does not prohibit a government agency from accepting a bid from or awarding a contract to that bidder, but it may be grounds for administrative suspension or debarment in the discretion of the government agency under the rules and regulations of that agency or, in the case of a government agency with no administrative suspension or debarment regulations or procedures, may be grounds for consideration on the question of whether the agency should decline to award a contract to that person on the basis of lack of responsibility.

EXHIBIT 3

Federal Contracting Provisions

1.1 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all purchases or contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such provision applies to any purchase or contract that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 and the awarded vendor(s) agrees that it shall comply with such provision.

1.2 RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the District’s federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor agrees to comply with the above requirements when applicable.

1.3 SMALL AND MINORITY BUSINESS, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Vendor shall comply with the requirements of 2 C.F.R. § 200.321, addressing contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms. To that end, Vendor shall (i) place qualified small and minority businesses and women’s business enterprises on solicitation lists; (ii) assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (iii) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (iv) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; (v) use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (vi) require that, if subcontracts are to be let, to take the affirmative steps listed in subsections (i) through (v) of this paragraph.

1.4 BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment (31 USC 1352). Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. As applicable, all bidders and awarded vendor(s) agree to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

1.5 CLEAN AIR ACT

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). When required, Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

1.6 CONTRACT WORK HOURS AND SAFETY STANDARDS

Where applicable, for all contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

1.7 DAVIS BACON ACT

When required by federal program legislation, Vendor agrees that, for all prime construction contracts/purchases in excess of \$2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Vendor is required to pay wages to laborers and

mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Vendor shall pay wages not less than once a week. Current prevailing wage determinations issued by the Department of Labor are available at <https://beta.sam.gov/>. Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Vendor is conditioned upon Vendor's acceptance of the wage determination. Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

1.8 DOMESTIC PREFERENCES

As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Produced in the United States' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. This requirement also applies to subawards, including all contracts and purchase orders for work or products under a federal award.

1.9 GEOGRAPHICAL PREFERENCES PROHIBITED

Notwithstanding the domestic preferences for procurement discussed above, the District must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

1.10 NEVER CONTRACT WITH THE ENEMY

For federal grants and cooperative agreements, as defined by 2 CFR 200.1, that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities, the District must exercise due diligence to ensure that none of the funds, including supplies and services, received under the grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities. This due diligence must

be completed through 2 CFR 180.300 prior to issuing a subaward or contract. The District must terminate or void in whole or in part any subaward or contract with a person or entity listed in the System for Award management (SAM) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the federal awarding agency provides written approval to continue the subaward or contract.

1.11 SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Contractor default are included in the Bidding and Contract Documents and General Terms and Conditions. Any Contract award will be subject to such Bidding and Contract Documents and General Terms and Conditions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Contractor violation and breach of contract terms.

1.12 DEBARMENT AND SUSPENSION

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), in accordance with the Office of Management and Budget, more commonly known as “OMB,” guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor further agrees to immediately notify the District with pending purchases if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

1.13 BUILD AMERICA, BUY AMERICA ACT

Where applicable, Vendor agrees that unless a domestic preference requirement is waived by the United States Department of Education or other applicable agency, for infrastructure projects or activities funded by federal grants or funds: (i) all iron and steel used in the infrastructure project or activity which is subject to the contract are produced in the United States; (ii) all manufactured products used in the infrastructure project or activity which is subject to the contract are produced in the United States; and (iii) all construction materials used in the infrastructure project or activity are manufactured in the United States. Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52. Upon request, Vendor shall provide, and shall cause its suppliers, manufacturers, and subcontractors to provide a certificate(s), on a form reasonably acceptable to the District and the

applicable agency, certifying compliance with the sourcing requirements of the Build America, Buy America Act, Pub. L. No. 117-58, for the applicable infrastructure project or activity.

1.14 DISTRICT TERMINATION FOR CAUSE AND FOR CONVENIENCE

Under 2 CFR Part 200, and specifically § 200.327 and Appendix II, contracts for more than \$10,000 must address Termination for Cause or for Convenience by the District, including the manner by which it will be effected and the basis for settlement. In addition to other terms stated in the Contract, the District reserves the right by written notice to terminate the Contract effective on a future date specified in the notice, with or without cause. Cause means violation or breach of any Contract terms. If the Contract is terminated without cause, the District shall pay the Vendor for any product, services, or other item Vendor is required to deliver and which has been satisfactorily delivered prior to termination. If the District has paid the Vendor for goods or services not yet provided as of the date of termination, the Vendor shall immediately refund such payment(s). This term shall apply without regard to the Contract amount.

1.15 PROCUREMENT OF RECOVERED MATERIALS

Under 2 CFR Part 200, and specifically § 200.323, contracts involving purchases for more than \$10,000 (or if the value of the quantity acquired by District during the preceding fiscal year exceeded \$10,000), must require Vendor compliance with § 6002 of the Solid Waste Disposal Act, which includes procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable. If the District has determined that these requirements are applicable, the Vendor shall agree to follow the requirements.

1.16 BONDING REQUIREMENTS

Under 2 CFR Part 200, and specifically § 200.326, for construction contracts or subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000), minimum requirements for bonding are as follows:

- a) A bid guarantee for 10% of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute contract documents required within the time specified.
- b) A performance bond for 100% of the contract price. A performance bond secures contractor's fulfillment of all requirements under the contract.
- c) A payment bond for 100% of the contract price. A payment bond assures payment of all persons supplying labor and material under the contract.

1.17 PROFIT AS A SEPARATE ELEMENT OF PRICE

For purchases using federal funds in excess of \$250,000, the District is required to negotiate profit as a separate element of the price for each contract in which there is no price competition and, in

all cases, where cost analysis is performed. See, 2 CFR 200.324(b). When required by the District, Vendor agrees to provide information and negotiate with the District regarding profit as a separate element of the price for particular services. However, Vendor agrees that the total price, including profit, charged by Vendor to the District shall not exceed the awarded pricing.

1.18 EQUIVALENT PRODUCTS/DESCRIPTION OF TECHNICAL REQUIREMENTS

Comparable (Alternate) Products: Where the District's specification states a named product followed by "or equal," an alternate or comparable product may be bid; however, the burden is on the bidder to provide evidence that a proposed alternate meets or exceeds the District's specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. The District reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.

Substitutions for Cause: Vendor may only propose substitutions pursuant to a purchase order submitted by District in the event of unavailability of product, regulatory changes, or unavailability of required warranty terms. Vendor must notify the District of all substitutions for cause with full documentation at least thirty (30) working days in advance of the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The District must approve all substitutions. The District reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.