

**NEWBURGH ENLARGED CITY SCHOOL DISTRICT
ORANGE COUNTY, NEW YORK**

**REQUEST FOR PROPOSALS
TO REFINANCE AN LEASE PURCHASE AGREEMENT**

Overview

The Newburgh Enlarged City School District, Orange County, New York (the "District"), is seeking proposals (the "Proposal") from qualified respondents to be a third party lessor to a lease purchase agreement with the District (the "Lease"), the proceeds of which will be used to refinance an existing lease purchase agreement (the "Prior Lease Purchase Agreement"). The proceeds of the existing lease purchase agreement funded equipment and related work for the implementation of energy conservation measures pursuant to an energy performance contract between the District and Johnson Controls, Inc. (the "Performance Contract"). The Performance Contract with Johnson Controls, Inc. was executed in July 2016 with an amendment executed in January 2019. NYSED approval was received in February 2019. The District's building aid ratio is approximately 80.0%

The District seeks competitive proposals for a \$23,957,403 lease-purchase on the basis of a 12.5-year term with maturity on April 23, 2034.

Project Description

The Project contemplates implementation of various energy saving measures including installation of equipment and related work (the "Equipment"). Energy conservation measures were and are to be installed in the following District buildings:

Building	Total
Newburgh Free Academy	\$ 6,805,909
NFA - North Campus	\$ 1,304,158
Heritage Middle School	\$ 1,109,161
South Middle School	\$ 2,459,691
Meadow Hill School	\$ 1,745,407
Temple Hill Academy	\$ 1,879,747
Balmville Elementary School	\$ 496,495
Fostertown ETC Magnet School	\$ 991,669
GAMS Tech Magnet School	\$ 913,455
Gardnertown Magnet School	\$ 856,529
Horizons-on-the-Hudson School	\$ 720,782
New Windsor School	\$ 589,523
Vails Gate H T M School	\$ 724,919
Chestnut Street Administration	\$ 329,253
Public Library - BOE	\$ 4,606,988
West Street Elementary School	\$ 602,064
Total	\$ 26,135,748

The energy conservation measures and related work to be refinanced are set forth below.

Equipment Measures by Category	Project Cost
Lighting - Fixture Retrofit	\$ 3,895,912
Lighting - Exterior Lighting	318,328
Building Envelope Improvements - Weatherization	531,309
Energy Management System – Kit Hood EF & DCV Removed	3,870,202
Steam Traps - Replacements	437,238
Heating Distribution System - Pipe and Valve Insulation	90,199
Boiler/Burner – Replacements & Boiler/DHW Heater/Furnace Controllers	2,699,872
Window / Door - Replacements & Window Film	2,848,153
Pumping System - VFD on Hot Water Pumps & Motors Replacement	102,726
Computers - Power Management	106,953
Water Conservation	212,143
Vending Machine Controllers	10,530
Renewable Energy- Photovoltaic Electric Generation	2,498,824
Chiller Replacement & Pool Covers	661,951
Cogeneration	2,091,021
Plug Load Controllers	271,509
Unit Ventilator Refurbishments / Replacements	1,671,634
Compressor Controllers	110,366
Transformers - Replacements	73,340
M&V Cost	36,000
PM/Engineering/Project Development	<u>3,597,537</u>
Total:	<u>\$26,135,748</u>

Lease

Any proposed Lease shall define the purpose and objective of the financing and the rights and obligations of each party to the financing. Further, the Lease will specify the applicable interest rate, as well as standard contractual terms and conditions. The proposed form of the lease purchase agreement, and any related documents must be submitted with the proposal. Proposers must satisfy themselves that credit approval will be granted prior to submitting a proposal. All finance documents are subject to negotiation and modification by the District’s counsel. All agreements and contractual conditions are required to conform with the laws of the State of New York, including but not limited to New York General Municipal Law, Local Finance Law, Education Law, Energy Law and the regulations of the New York State Education Department, the Commissioner of Education and the Office of the New York State Comptroller. The District’s attorneys will review all documents, which are subject to review and approval by the District’s attorneys before consideration and/or approval by the Board of Education.

Lessor will be required to provide a form of standard lease purchase agreement and escrow agreement with proposal.

Lease Assignment

Assignment of the Lease and related documents by the successful proposer shall be subject to the prior, written consent of the District. The Lease must state that any assignment or transfer of the Lessor's interest shall not be effective until the District has received prior, written notice, signed by the Lessor, of the name, contact person, address, telephone number and tax identification number of the proposed assignee and the District has given its consent in writing. No assignment will be valid unless the Lessor has received the District’s prior, written consent.

Amount

The amount to be financed under the Lease is \$23,957,403. Lessor shall be responsible for all fees of Lessor including legal, issuance, origination, commitment and closing costs. The District shall not incur or absorb any fees of Lessor related to Lessor’s proposal, negotiations, closing or other activities related to this RFP or the proposed transaction. In the event that a transaction does not close because of the successful proposer’s failure to meet the

terms of this RFP, the successful proposer shall be responsible for any and all costs incurred by the District in connection with the failed transaction and its negotiation.

Specifications

Interest Rate The Lease Proposal must provide interest rate terms for a lease-purchase option to mature on April 23, 2034 and shall state the interest rates under any options for which the proposing firm will provide the District with financing under the Lease. The Proposal must also cite the index and margin used in establishing the interest rates cited.

Prepayment: The Proposal must state that District will have the right, at its option, to prepay the principal portion outstanding on the Lease, in whole or in part, at any time following 30 days written notice to the Lessor. The Proposal must disclose additional fees and terms, if any, that are required upon the execution of this prepayment right, in addition to interest payable. The Proposal must also disclose how such amounts are to be calculated in the event that the District exercises its right of partial or whole prepayment.

Lease Payments The District will make periodic payments to the Lessor under the Lease. The Lease shall separately state the principal and interest component of the periodic payments to be made thereunder. The total of these payments, which include both principal and interest components made by the District each year throughout the term of the Lease, shall result in substantially level or declining annual debt service (without taking into account projected State aid or annual energy savings). Debt service payments shall be detailed in an amortization schedule prepared by the proposer and provided to the District with its Proposal. For illustrative purposes, please assume a closing date of October 22, 2021 when developing an amortization schedule. Thereafter, debt service payments will be made semi-annually in arrears on each April 22nd and October 22nd with the first debt service payment to be due on April 22, 2022. Lessor shall provide a statement and thirty days notification prior to each payment due date.

The Proposal must state that the interest rate and other terms cited in the proposal will be good through October 22, 2021. The Lease shall not become effective until the delivery of funds.

Term The Lease-Purchase Agreement is scheduled to close on October 22, 2021 and mature on April 23, 2034.

Escrow The District maintains a segregated escrow account in which it has on deposit unspent proceeds of the Prior Lease Purchase Agreement for the purpose of fully funding the original lease and providing a mechanism for the application of such amounts to the purchase and payment of the financed equipment (the "Escrow Account") with Webster Bank, National Association (the "Escrow Agent"). In conjunction with the refinance contemplated herein, the Escrow Agent will maintain the Escrow Account and apply those unspent proceeds to the purchase of financed equipment and amend the existing Escrow and Account Control Agreement to reflect the new Lessor.

Unspent Prior Lease Purchase Agreement proceeds will be maintained in the Escrow Account to be utilized over the remaining course of project construction (the "Project Fund") projected through October 31, 2022. Investment and collateralization of the moneys in such fund will be solely at the direction of the District and must be in compliance with the New York State General Municipal Law Sections 10 and 11 as well as District investment policy. ***A copy of the District's Investment Policy is attached to this RFP.*** The Escrow Agent shall be an agent of the District. The Project Fund shall be free of any security interest of the Escrow Agent.

1. At the option of the District, the moneys in the Project Fund may be held uninvested in the Project Fund. If invested, the Escrow Agent shall invest amounts on deposit in the Project Fund solely at the written direction of an Authorized Officer of the District. All investments made shall be subject to the following conditions:
 - (a) Such obligations shall be payable or redeemable at the option of the owner within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided. Any obligation that provides for the adjustment of its interest rate on set dates shall be deemed to be payable or redeemable for purposes of this paragraph on the date on which the principal amount can be recovered through demand by the holder thereof.

- (b) Such obligations, shall be registered or inscribed in the name of the District and shall be purchased through, delivered to and held in the custody of the Escrow Agent. Such obligations shall be purchased, sold or presented for redemption or payment by such Escrow Agent in obligations only in accordance with prior written authorization from an Authorized Officer. All such transactions shall be confirmed in writing to the District by the Escrow Agent.
2. All investments described above shall be made and ownership recorded in accordance with all applicable requirements of Section 10 and Section 11 of the General Municipal Law.
 3. The Escrow Agent will expressly acknowledge that the Lessee is not authorized to invest in mutual funds registered with the Securities Act of 1933, as amended and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, including no-load money market mutual funds limited to investments in obligations of or guaranteed by the United States of America or in obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or any similar mutual fund or other money market or liquid deposit investment vehicles.
 4. Monies and investments in the Escrow Fund shall not be subject to levy, attachment or lien by or for the benefit of the Escrow Agent, or any creditor thereof.

Excess Proceeds In the event that there are excess proceeds available in the Project Fund at the end of the construction period, proceeds shall be transferred by the Escrow Agent to the Lessor and applied to the next succeeding lease payment and each lease payment thereafter until fully utilized. Such use of funds will not constitute lease prepayment and will not be subject to any administrative fees or charges.

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

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

Annual Appropriation The annual lease payments are subject to appropriation each year by the Board of Education of the District.

Non-Funding/Executory Clause Pursuant to the General Municipal Law §109-b, and the Energy Law §9-103, the Lease-Purchase Agreement shall contain an executory clause which shall state that should payments not be appropriated by the District in any fiscal year; the District will not be obligated to pay the amounts due beyond the end of the last funded fiscal year and no liability on account thereof shall be incurred by the District beyond the amount of such monies. The financing contract is not a general obligation of the District. Neither the faith and credit nor the taxing powers of the District are pledged to the payment of any amount due or to become due under the financing contract. In the case of a failure to appropriate, the sole security under the Lease shall be the Equipment. In the event that no funds or insufficient funds are appropriated by the District to pay the Lease, the Equipment may be acquired and sold by or on behalf of the Lessor, provided that any excess proceeds from such a sale, after deduction for and payment of fees, expenses and any taxes levied on the sale, shall be paid to the District. Prior to the sale or seizure of such equipment, the District shall be provided adequate written notice, no less than ninety (90) days, to cure any default. Should such a sale or seizure take place there shall be no disruption to the District's operation to the extent possible.

Financing Documents Upon submission of the proposal and following notification of the award, the prospective Lessor must provide the District with a draft of its proposed financing documents, which will incorporate proposed terms and amend sample documents provided with submission. Proposed financing documents and notification of credit approval for the transaction will be due no later than **September 29, 2021**. All financing documents are subject to modification by District general and bond counsel. Closing is subject to successful negotiation and

approval of all documents by counsel to the District. The District reserves the right to rescind any award due to failure of successful negotiation of the parties to agree to the terms and conditions thereof and to recover its costs in connection therewith. Closing is subject to final approval by the District Board of Education by resolution. The prospective Lessor is advised that the President of the Board of Education is the sole authorized representative of the District for the purpose of signing financing documents.

Lease Termination Upon termination of a Lease through exercise of Lessee's option to prepay or through payment by Lessee of all Rental Payments and other amounts due with respect to such particular Equipment, Lessor's security interest in such Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in such Equipment.

Tax Status The Lease shall qualify as a tax-exempt lease purchase financing, that is, the interest component of the Lease will be exempt from Federal, New York State and, where applicable, New York City taxation. The Lease-Purchase Agreement will **not** be designated as "bank qualified" pursuant to Section 265(b)(3) of the Internal Revenue Code. The District will not defend or hold the Lessor harmless from any adverse changes in the tax status of the transaction, after tax yield or cash flows resulting from changes in the Federal or State tax codes or regulations.

In order to establish the "issue price" of the Lease for Federal income tax purposes, the Lessor shall be required to deliver to the District at Closing a certificate, in form and substance satisfactory to Bond Counsel, indicating that the Lessor is entering into the Lease and purchasing its interest therein for its own account, that it has no present intention to sell, reoffer, assign or otherwise dispose of the Lease (or any portion thereof or any interest therein), and that it has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Lease.

Credit Rating Moody's Investors Service, Inc. upgraded the District's outstanding general obligation debt rating to "Aa3" from "A1" on June 6, 2019 and affirmed the "Aa3" rating on March 31, 2021. The District will not seek a rating for the Lease.

Binding Authority Each Proposal must be signed by an individual who is legally authorized to contractually bind the proposing firm.

Purchase Price and Certificate The Lessor must submit to the District a certificate (the "Issue Price Certificate"), satisfactory to Bond Counsel, prior to the delivery of the Agreement, assuming the Lessor does not reoffer the Agreement to the general public, which states that the Lessor has purchased the Agreement for its own account and not with a view to distribution or resale and not in the capacity of an underwriter or a related party to an underwriter, and the price or prices at which such purchase was made, in such form and including such additional information as the District and Bond Counsel shall reasonably require.

Financial Information Links to select credit and project information may be found as follows:

- Link to Energy Performance Contract and Amendment between the District and Johnson Controls, Inc. dated July 2016 and January 2019, respectively: <http://www.capmark.org/RFPs.html>
- Link to Official Statement issued in conjunction with the District's \$13,985,000 School District Serial Bonds-2021: <https://emma.msrb.org/P21538884.pdf>
- Link to 2021-2022 Budget Information: <https://www.newburghschools.org/page.php?page=32>
- Link to FYE 6/30/20 Audit: <https://emma.msrb.org/P21508814.pdf>
- Link to FYE 6/30/19 Audit: <https://emma.msrb.org/ES1441214.pdf>
- Link to FYE 6/30/18 Audit: <https://emma.msrb.org/ER1311318.pdf>

Evaluation Process

During the evaluation process, the District reserves the right, where it may serve the District's best interest, to request additional information or clarifications from proposers, or to allow corrections of error or omissions.

Amendments to RFP

Any verbal information obtained from or statements made by the representative of the District or its designee at the time of examination of the documents or site shall not be construed as, in any way, amending RFP documents or binding upon the District. Only such corrections or addenda that are issued in writing to all proposers shall become a part of the RFP. Any addendum issued during RFP process shall be included in the RFP response and become a part of any subsequent contract agreement.

Legal Requirements

The Lease is required to conform to the laws of the State of New York, including, but not limited to, General Municipal Law, Local Finance Law, Education Law, Energy Law and regulations promulgated by the Commissioner of Education and the Office of the State Comptroller.

Submission Requirements

In addition to submitting a completed **Proposal Response Form** as attached hereto, each proposing firm must include:

1. Examples of its prior experience with three (3) similar size lease financings for school districts in New York State;
2. Three references from jurisdictions that your firm has provided lease financing to in the past year in New York State; and
3. Any other information that would support the use of your financial institution by the District.

Proposals are due by **11:00 a.m. on Friday, September, 17, 2021** by e-mail to:

Ms. Lisamarie Spindler

Assistant Superintendent, Finance
Newburgh Enlarged City School District
Tel: 845-563-3417
lspindler@necsd.net

Ms. Janet Morley

Vice President
Capital Markets Advisors
Tel: 516-570-0340
jmorley@capmark.org

Questions regarding this RFP may be directed to Janet Morley.

Basis of Award

The District reserves the right, in its sole discretion, to reject any and all proposals, or any part thereof, received in response to this Request for Proposals, to re-solicit for new proposals, to waive formalities, to request additional information from any proposer, and to award and negotiate the terms of the contract with any proposer. The District intends to select the firm whose proposal is most advantageous to the District and meets the District's needs for this lease-purchase agreement, and not necessarily the firm with the lowest cost proposal. In determining which proposal is most advantageous and in the District's best interests, the District will evaluate, among other things, the overall financing cost (inclusive of any interest and fees) to the District, optional redemption provisions, responsiveness of each proposal to the terms of this RFP and applicable law, the terms and conditions of the proposed agreement, experience and reputation of the bidder in the State of New York. The District will not have any liability to any proposer for any costs or expenses incurred in connection with your response to the request for proposals.

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

Following receipt of the completed proposals, tentative notification will be made to the prospective Lessor whose response best meets the District's needs and otherwise appears to meet the basis for award. It is expected that a formal award will be made by the Board of Education at its October 12, 2021 meeting, subject to and contingent upon final review of the Lease Purchase Agreement and all financing documents by the District's legal counsels. Note that the prospective Lessor must provide the District with a draft of its proposed financing documents, together with notification of credit approval in order for District officials to accept and grant final approval.

Tax Opinion

The successful proposer will be furnished without cost with the opinion as to tax exemption of the law firm of Harris Beach PLLC (“Bond Counsel”). The opinion of Bond Counsel shall contain statements to the effect that, in the opinion of said law firm, under existing statutes and court decision and assuming continuing compliance with certain tax certifications described in the Tax Certificate of the District, (i) the portion of the rental payment designated as and constituting interest paid by District and received by successful proposer during the term of the lease is excluded from successful proposer’s gross income for federal income tax purposes under Section 103 of the Code; and (ii) such interest component is not treated as a preference item in calculating the alternative minimum tax imposed on individuals under the Code. The Tax Certificate of the District, which will be delivered concurrently with the delivery of the lease will contain provisions and procedures relating to compliance with applicable requirements of the Code.

Opinion of School Attorney

At closing, the District shall furnish a validity opinion of Shaw, Perelson, May & Lambert, LLP (“School Attorney”), dated the closing date, including a statement to the effect that there is no controversy or litigation of any nature pending or threatened to restrain or enjoin the execution or delivery of the installment financing agreement.

Summary of Estimated Dates

RFP sent to providers:	September 10, 2021
Proposal and Response Form Due:	September 17, 2021 (by 11:00 a.m.)
Selected Lessor Tentatively Approved:	September 17, 2021 *
Credit Approval Completed:	September 22, 2021
Draft Documents Delivered:	September 29, 2021
District Board Meeting Date:	October 12, 2021 Lease approved
Closing of Lease:	October 22, 2021

*Subject to satisfactory documentation and formal award by Trustees of the Board of Education on October 12 , 2021.

The District reserves the right to modify these dates.

Thank you for your interest in Newburgh City Schools.

END OF RFP

PROPOSAL RESPONSE FORM

September 17, 2021

Ladies and Gentlemen:

In response to Newburgh Enlarged City School District’s (the “District”) Request for Proposals (“RFP”), the undersigned, an authorized representative of _____ commits said firm to enter into a Lease-Purchase Agreement to provide the required refinancing of the project cost including equipment provided to the District by Johnson Controls, Inc. under an Energy Performance Contract. We understand that this Lease-Purchase Agreement is subject to the approval of the District’s Board of Education. The submission of this Response Form indicates that we have read the District’s RFP and are fully informed as to the extent and character of this request and we can satisfactorily comply with all specifications of the RFP.

We understand the District will repay our lease in periodic installments, including interest and all financing costs. We understand the lease-purchase shall be funded following the approval of the District’s Board of Education.

Our proposal, the terms of which are good through and including October 23, 2021, is as follows:

The principal amount of the lease will be: \$23,957,403

Lease Maturity will be: April 23, 2034

The interest rate on this loan will be: _____%

The index used to establish this interest rate is: _____

The margin added to the index to establish this interest rate is: _____

Prepayment Terms: _____

Lease payments will be payable on: _____

Other required fees, if any (please explain): \$ _____

Proposing Firm: _____

Contact: _____

Address: _____

Tel.: _____

E-mail: _____

Bidder Attachments: Sample Lease and Escrow Documents