

Facilities Planning

Newsletter 76 – June 2006

[Building Condition Survey](#) Announcement:

We will be closing down the online submission system at COB, Friday, June 30, 2006. Please have your surveys entered by that date. If you have any questions, send Curt Miller an e-mail at HMILLER2@MAIL.NYSED.GOV.

Electrically Operated Partition Maintenance:

It has recently come to our attention that some school districts may not be properly maintaining the safety system for their electrically operated folding partitions and roll-down curtains. From a student safety and school liability standpoint it is incumbent upon the school district to properly maintain these safety systems.

The Commissioner's Regulation 155.25, Safety requirements for Electrically Operated Partitions, reads in part:

- (d) Safety requirements and operation guidelines for electrically operated partitions. The board of education, trustees, principal or other person in charge of every public or private school or educational institution within the State shall ensure that:
- (4) Safety features shall not be tampered with, overridden or by-passed. All equipment must be maintained in accordance with the manufacturer's instructions, including the manufacturer's recommended service interval, and records of such maintenance shall be permanently retained at the district or private school.

The Legislature requires these systems. It is imperative the school districts have installed and are maintaining them in the manner required.

Energy Performance Contract (EPC) Request for Proposal (RFP) Requirements:

It has been brought to our attention that there is some confusion as to what is required for the procurement of an Energy Performance Contract (EPC). A Request for Proposals (RFP) process is required to be followed for the procurement of an Energy Performance Contract, unless the EPC is competitively bid. A Request for Qualifications (RFQ), by itself, is not an acceptable means to procure an EPC. A RFP includes scope, cost, and savings information as part of the selection process. The RFQ, because it does not include scope, cost and savings information as part of the selection process is not acceptable.

Energy Law Article 9 requires that in lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance contractor by issuing and advertising a written request for proposal in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state finance law, the executive law, the general municipal law, or the public authorities law, as the case may be.

Commissioner's Regulations, as they apply to EPCs, Subpart 155.20, require certification that in lieu of competitive bidding, the energy performance contract was procured pursuant to a request for proposal (RFP) process in accordance with the school district's or BOCES' procurement policies and procedures adopted pursuant to applicable provisions of General Municipal Law, section 104-b.

General Municipal Law Section 104-b (1) requires that contracts be procured in a manner so as to assure the prudent and economical use of public money to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances. General Municipal Law Section 104-b (2.e.) requires justification and documentation of any contract awarded to other than the lowest responsible dollar offeror, setting forth the reasons such an award furthers the purpose of this section. The entire text of General Municipal Law Section 104-b can be found under the Laws of New York at the New York State Legislature website.

(<http://public.leginfo.state.ny.us/fmload.cgi?MENU-53004256> )

Unless the EPC is competitively bid, school districts must utilize a RFP process. The process utilized must be implemented such that interested ESCOs provide an EPC proposal including associated cost(s) as part of the submission to the School District. We cannot approve any EPC project that does not include the required certification statement, regarding the RFP process.

School Districts should work with their legal counsel to verify RFP issued for EPC projects comply with Energy Law, Commissioner Regulations, and General Municipal Law.

An Index of our Newsletters is available on our web site at

<https://www.p12.nysed.gov/facplan/NewsLetters.htm>.

If you would like to have this Newsletter sent directly to you by e-mail, please send your e-mail address to Joe Levy at jlevy@mail.nysed.gov.

Please continue to send in your comments and requests. If you have a subject you would like addressed, feedback on the material you read, input or general comments we are happy to hear from you.