

ENERGY SAVINGS PERFORMANCE CONTRACTING STATUTES

NEW YORK (as of June 16, 2010)

	Statute	Procurement Method	Competitive Bidding/ Selection Requirements	Term of Contract	Guarantee Requirement	Restrictions/ Miscellaneous
State	NY CLS Energy § 9-103.	RFP. NY CLS Energy § 9-103(6).	Exempt, unless otherwise required by agency policy. In lieu of competitive procurement, state agency may procure energy performance contract “in accordance with procurement or internal control policies, procedures, or guidelines that the agency, ... has adopted pursuant to applicable provisions of ... law.” NY CLS Energy § 9-103(6).	35 years; provided, however, that the term cannot exceed reasonably expected useful life of the energy facilities or equipment. NY CLS Energy §9-103(1).	None specified. But note that “energy performance contract” is defined as “an agreement for the provision of energy services ... in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility <u>in exchange for a portion of the energy savings</u> or revenues.” NY CLS Energy §9-102(4).	Contract contingent upon appropriation and availability of funds. NY CLS Energy § 9-103(2).
Counties	Same as above.	Same as above.	Exempt. NY CLS Energy § 9-103(7).	Same as above.	Same as above.	Same as above.
Municipalities	Same as above.	Same as above.	Exempt. NY CLS Energy § 9-103(7).	Same as above.	Same as above.	Same as above.
Townships/ Villages	Same as above.	Same as above.	Same as Municipalities.	Same as above.	Same as above.	Same as above.
School Districts	NY CLS Energy § 9-103. See also NY CLS Educ § 3602; 8 NYCRR § 155.20.	RFP	Exempt. “[I]n lieu of competitive bidding, the energy performance contract [must be] procured pursuant to a request for proposal (RFP) process in accordance with the school district’s ... procurement policies and procedures.” 8 NYCRR § 155.20(d)(7)(i).	18 years, OR the useful life of the equipment installed, whichever is less. 8 NYCRR § 155.20(d)(7)(ii). <i>See also</i> NY CLS Educ § 3602(6)(i)(5).	Contractor must guarantee “recovery of contract costs from energy savings realized by the school district during the term of the energy performance contract.” 8 NYCRR § 155.20(d)(7)(ii).	

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			<i>See generally</i> NY CLS Gen Mun § 104-b.			
State Universities	Unclear, but public universities are probably state “agencies” for purposes of NY CLS Energy § 9-103.	See state.	See state. State universities generally must utilize competitive bidding procedure and award to lowest responsible and reliable bidder. NY CLS Educ § 376(8)(b).	See state.	See state.	See state.