START\_STATUTE15-213.03.  Procurement practices; guaranteed energy production contracts; definitions

A.  Notwithstanding section 15‑213, subsection A, a school district may procure a guaranteed energy production contract with a qualified provider through a competitive sealed proposal process as provided by the procurement practices adopted by the state board of education.

B.  The school district shall use objective criteria in selecting the qualified provider, including the guaranteed energy price, the guaranteed energy production, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.  The school district shall set forth each criterion with its respective numerical weighting in the request for proposal.

C.  In selecting a contractor to perform any construction work related to performing the guaranteed energy production contract, the qualified provider may develop and use a prequalification process for contractors.  These prequalifications may require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.

D.  When submitting a proposal for the installation of equipment, the qualified provider shall include information containing the guaranteed energy production associated with each proposed energy production measure. The school district shall review and approve this guarantee before the actual installation of any equipment.  The qualified provider shall transmit a copy of the approved guarantee to the division of school facilities within the department of administration and to the governor's office.

E.  A guaranteed energy production contract shall include a guaranteed energy price, and a written guaranteed energy production as measured on an annual basis over the expected life of the energy production measures implemented or within twenty‑five years, whichever is shorter. The qualified provider shall:

1.  Prepare a measurement and verification report on an annual basis in addition to an annual reconciliation of any guaranteed energy production shortfall.

2.  Reimburse the school district for any guaranteed energy production shortfall on an annual basis by multiplying any energy production shortfall by either the difference between the guaranteed energy price and the effective utility rate, or an alternative method as mutually agreed on by the school district and the qualified provider.

F.  The school district may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider or a third-party financing institution.

G.  A qualified provider that is awarded the contract shall give a sufficient bond to the school district for its faithful performance of the equipment installment.

H.  The qualified provider is required to make public information in the subcontractor's bids only if the school district awards the qualified provider the guaranteed energy production contract.

I.  For all projects carried out under this section, the district shall report to the governor's office and the division of school facilities within the department of administration:

1.  The name of the project.

2.  The name of the qualified provider.

3.  The total cost of the project.

4.  The expected guaranteed energy production and guaranteed energy price, including relevant escalators, if applicable, over the term of the guaranteed energy production contract.

J.  For all projects carried out under this section, the district shall report to the division of school facilities within the department of administration, by October 15 each year, the actual energy production and guaranteed energy price.

K.  For the purposes of this section:

1.  "Actual energy production" means the actual amount of energy that flows from the energy production measure on an annual basis as measured by a meter in kilowatt hours alternating current.

2.  "Construction" means the process of building, altering, repairing, improving or demolishing any school district structure or building, or other public improvements of any kind to any school district real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

3.  "Effective utility rate" means the average price per kilowatt hour that a school district paid to its utility provider for electricity service to the facility that is the subject of the guaranteed energy production contract over the previous twelve months.

4.  "Energy production measure" means renewable and alternative energy projects or renewable energy power service agreements.

5.  "Guaranteed energy price" means the agreed on price to be charged to the school for each kilowatt hour alternating current of actual energy production as such may change on an annual basis as set forth in the guaranteed energy production contract.

6.  "Guaranteed energy production" means the amount of energy, measured in kilowatt hours alternating current, that the qualified provider guarantees for each year of the guaranteed energy production contract.

7.  "Guaranteed energy production contract" means a contract for implementing one or more energy production measures between one or more qualified providers and a school district.

8.  "Guaranteed energy production shortfall" means the amount, if any, that the actual energy production is less than the guaranteed energy production in any given year.

9.  "Qualified provider" means a person or a business that is experienced in designing, implementing or installing energy cost savings measures, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for guaranteed energy production, financial solvency and experience for projects of similar size and scope.END\_STATUTE