R7-2-1001. Definitions

In Articles 10 and 11, unless the context otherwise requires:

1. “Acceptance period” means the period of time specified in the solicitation that a bid or proposal is irrevocable, except as specified in R7-2-1030.

2. “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.

3. “Advantageous to the school district” means in the best interest of the school district, but does not necessarily mean lowest bid/cost.

4. “Affiliate” means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It also may include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.

5. “Alternative project delivery methods for construction” means construction-manager-at-risk, design-build, and job-order-contracting construction services.

6. “Architect services,” “engineer services,” “land surveying services,” “geologist services” and “landscape architect services” mean those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.

7. “Award” means a determination by the school district that it is entering into a contract with one or more bidders or offerors.

8. “Bid” means a response to an invitation for bids and includes an offer to contract with the school district.

9. “Bidder” means a person submitting a bid in response to an invitation for bids.

10. “Brand name or equal specification” means a written description that uses one or more manufacturers’ names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the school district’s requirements, and that provides for the submission of equivalent products.

11. “Brand name specification” means a written description limited to one or more items by manufacturers’ names or catalog numbers.

12. “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

13. “Change order” means a written order that is approved by the governing board and that directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.

14. “Clergy” means a minister of a religion.

15. “Coefficient” means the contractor’s price adjustment to the unit price in a job order contract. Several coefficients may apply to the unit price book.

16. Construction:

a. 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 public real property.

b. Construction does not include:

i. The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

ii. The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.

17. “Construction-manager-at-risk” means a project delivery method in which:

a. There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the school district may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

b. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

c. Design and construction of the project may be either:

i. Sequential with the entire design complete before construction commences.

ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

18. “Construction services” means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

a. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

b. A combination of construction and, as elected by the school district, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this Section.

19. “Contract” means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services, construction or construction services, or the disposal of materials.

20. “Contract modification” means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

21. “Contractor” means any person who has a contract with a school district.

22. “Cooperative purchasing” means procurement conducted by, or on behalf of, more than one public procurement unit.

23. “Cost” means the aggregate cost of all materials and services, including labor performed by school district employees.

24. “Cost data” means information concerning the actual or estimated cost of labor, material, overhead and other cost elements that have been actually incurred or that are expected to be incurred by the offeror or contractor in performing the contract.

25. “Cost-plus-a-percentage-of-cost contract” means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the cost of the work.

26. “Data” means documented information, regardless of form or characteristic.

27. “Days” means calendar days and shall be computed pursuant to A.R.S. § 1-243.

28. “Defective data” means data that is inaccurate, incomplete or outdated.

29. “Dentist” means a person licensed pursuant to A.R.S. Title 32, Chapter 11.

30. “Descriptive literature” means information available in the ordinary course of business that shows the characteristics, construction or operation of an item offered in a bid or proposal.

31. “Design-bid-build” means a project delivery method in which:

a. There is a sequential award of two separate contracts.

b. The first contract is for design services.

c. The second contract is for construction.

d. Design and construction of the project are in sequential phases.

e. Finance services, maintenance services and operations services are not included.

32. “Design-build” means a project delivery method in which:

a. There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the school district may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

b. Design and construction of the project may be either:

i. Sequential with the entire design complete before construction commences.

ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

c. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

33. “Design professional” means an individual or firm that is registered by the state board of technical registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.

34. “Design professional service contract” means a written agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility or development or other improvement to land.

35. “Design professional services” means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or an employee or subconsultant of the design professional.

36. “Design requirements” means at a minimum:

a. The school district’s written description of the project or service to be procured, including:

i. The required features, functions, characteristics, qualities and properties.

ii. The anticipated schedule, including start, duration and completion.

iii. The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

b. May include:

i. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to A.R.S § 32-121.

ii. Additional design information or documents that the school district elects to include.

37. “Design services” means architect services, engineer services or landscape architect services.

38. “Designee” means the governing board member or school district employee who has been delegated procurement authority by the governing board as specified by board action.

39. “Detailed record” means minutes, that shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.

40. “Discussions” means an exchange or series of exchanges between the school district and a person who has submitted an unpriced technical offer or a proposal, resulting in an opportunity for the person to revise the unpriced technical offer or proposal prior to final evaluation by the school district.

41. “District representative” means a district employee or the governing board acting within the limits of the district representative’s authority. There may be more than one appointed for different purposes and different procurements.

42. “Earth-moving, material-handling, road maintenance and construction equipment” means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel leader or track loader, having a published manufacturer’s minimum unit list price of $50,000 or more and a minimum expected life cycle of three years.

43. “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.

44. “Eligible procurement unit” means a public procurement unit, a nonprofit corporation, or an external procurement activity.

45. “Employee” means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.

46. “Energy baseline” means a calculation of the amount of energy used in an existing facility before the installation or implementation of the energy cost savings measures.

47. “Energy cost savings” means one or both of the following:

a. An estimated reduction in net fuel costs, energy costs, water costs, stormwater fees or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs.

b. An estimated revenue increase associated with additional facility use or the use of improved meters or other measuring devices due to improvements included in the guaranteed energy cost savings contract.

~~47.~~ 48. “Energy cost savings measure” means a training program or facility alteration designed to reduce energy consumption, which may include one or more of the measures authorized in A.R.S. § 15-213.01, and any related meters or other measuring devices.

~~48.~~ 49. “Energy production measure” means renewable and alternative energy projects or renewable energy power service agreements.

~~49.~~ 50. “Established catalog price” means the price included in a catalog, price list, schedule or other form that:

a. Is regularly maintained by a manufacturer, distributor or contractor.

b. Is either published or otherwise available for inspection by customers.

c. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

~~50.~~ 51. “Excess materials” means any materials which have a remaining useful life but which are no longer required by the using school district in possession of the materials.

~~51.~~ 52. “External procurement activity” means any buying organization not located in this state that would qualify as a public procurement unit.

~~52.~~ 53. “Fair market value” means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.

~~53.~~ 54. “Filed” means delivery to the district representative, school district or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.

~~54.~~ 55. “Finance services” means financing for a construction services project.

~~55.~~ 56. “General Services Administration contract” means contracts awarded by the United States government General Services Administration.

~~56.~~ 57. “Gift or benefit” means a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property that is not of nominal value such as a greeting card, t-shirt, mug or pen. Gift or benefit does not include either:

a. Food or beverage.

b. Expenses or sponsorships relating to a special event or function to which individuals involved in procurement and purchasing are invited.

~~57.~~ 58. “Governing board” has the meaning defined in A.R.S. § 15-101.

~~58.~~ 59. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.

~~59.~~ 60. “Guaranteed energy cost savings contract” means a contract for implementing one or more energy cost savings measures.

~~60.~~ 61. “Guaranteed energy price” means the agreed on price to be charged to the school district 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.

~~61.~~ 62. “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.

~~62.~~ 63. “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.

~~63.~~ 64. “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.

~~64.~~ 65. “Incremental award” means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.

~~65.~~ 66. “Interested party” means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

~~66.~~ 67. “Internet” means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

~~67.~~ 68. “Invitation for bids” means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-2-1024.

~~68.~~ 69. “In writing” has the same meaning as “written” or “writing” in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.

~~69.~~ 70. “Job-order-contracting” means a project delivery method in which:

a. The contract is a requirements contract for indefinite quantities of construction.

b. The construction to be performed is specified in job orders issued during the contract.

c. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

~~70.~~ 71. “Legal counsel” means a person licensed as an attorney by the Arizona Supreme Court.

~~71.~~ 72. “Life cycle” means the useful life of the earth-moving, material-handling, road maintenance and construction equipment to the original using school district.

~~72.~~ 73. “Local public procurement unit” means any political subdivision, any agency, board, department or other instrumentality of such political subdivision, and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under Articles 10 and 11.

~~73.~~ 74. “Maintenance services” means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

~~74.~~ 75. “Materials” means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.

~~75.~~ 76. “May” denotes the permissive.

~~76.~~ 77. “Minor” means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or offerors.

~~77.~~ 78. “Multiple award” means award of multiple contracts for identical or similar materials or services to more than one bidder or offeror.

~~78.~~ 79. “Multistep sealed bidding” means a 2-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the school district and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

~~79.~~ 80. “Negotiation” means an exchange or series of exchanges between the school district and a person with a goal of establishing the terms, conditions and prices in a contract between the school district and the person, where such negotiation is authorized in Articles 10 and 11.

~~80.~~ 81. “Nonexpendable materials” means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.

~~81.~~ 82. “Nonprofit corporation” means any nonprofit corporation as designated by the Internal Revenue Service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636.

~~82.~~ 83. “Offeror” means a person submitting a proposal in response to a request for proposals.

~~83.~~ 84. “Operations services” means routine operation of existing facilities, structures, buildings or real property.

~~84.~~ 85. “Outright purchase” means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including all vendor charges and financing costs.

~~85.~~ 86. “Owner” means the school district.

~~86.~~ 87. “Paper” means newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

~~87.~~ 88. “Paper product” means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.

~~88.~~ 89. “Person” means any corporation, business, individual, union, committee, club, other organization or group of individuals.

~~89.~~ 90. “Physician” means a person licensed pursuant to A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.

~~90.~~ 91. “Post-consumer material” means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.

~~91.~~ 92. “Posted prices” means the sale price determined by the school district to be fair market value.

~~92.~~ 93. “Preconstruction services” means services and other activities during the design phase.

~~93.~~ 94. “Pricing data” means information concerning prices, including profit, for materials, services or construction substantially similar to those being procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices or current selling prices of the items being purchased.

~~94.~~ 95. “Prime contractor” means a general contractor, who contracts with a property owner and, in turn, employs a subcontractor, or subcontractors, to perform some or all of the work.

~~95.~~ 96. “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Procurement also includes all functions that pertain to the obtaining of any material, service, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

~~96.~~ 97. “Procurement file” means the official procurement records of the school district containing the following:

a. List of notified vendors.

b. Procurement disclosure statements.

c. Final solicitation.

d. Solicitation amendments.

e. Bids and offers.

f. Offer revisions and best and final offers.

g. Discussions.

h. Clarifications.

i. Final evaluation reports.

j. Additional information, as necessary.

~~97.~~ 98. “Proposal” means a response to a request for proposals and includes an offer to contract with the school district.

~~98.~~ 99. “Proprietary specification” means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.

~~99.~~ 100. “Public procurement unit” means either a local public procurement unit, the Arizona Department of Administration, any other state or an agency of the United States.

~~100.~~ 101. “Public service corporation” means all corporations other than municipal engaged in furnishing gas, electricity, or water and subject to regulation as a utility by the Arizona Corporation Commission.

~~101.~~ 102. “Purchase description” means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.

~~102.~~ 103. “Purchase requisition” means that document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by Articles 10 and 11.

~~103.~~ 104. “Qualified products list” means an approved list of materials or construction items described by model or catalog numbers that, prior to competitive solicitation, the governing board has determined will meet the applicable specification requirement.

~~104.~~ 105. “Qualified select bidders list” means a selection process for establishing a list of best-qualified prime contractors or construction material suppliers for a specific, single project. The selection process is based upon listed evaluation criteria and conducted through a request for qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.

~~105.~~ 106. “Reasonably susceptible of being awarded a contract” means those proposals that the school district determines are subject to award after the initial review of all original proposals.

~~106.~~ 107. “Recycled paper” means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.

~~107.~~ 108. “Regional award” means an award of portions of the total requirement by geographic region.

~~108.~~ 109. “Request for information” means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.

~~109.~~ 110. “Request for proposals” means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in R7-2-1042.

~~110.~~ 111. “Request for qualifications” means all documents, whether attached or incorporated by reference, which are used for soliciting statements of qualifications in accordance with procedures prescribed in R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117.

~~111.~~ 112. “Residual value” means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction equipment at the end of the life cycle of the equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.

~~112.~~ 113. “Responsible bidder or offeror” means a person who at the time of contract award has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

~~113.~~ 114. “Responsive bidder or offeror” means a person who submits a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

~~114.~~ 115. “Reverse auction” means a procurement method in which bidders are invited to bid on supplying specified materials over the Internet in a real-time competitive bidding event.

~~115.~~ 116. “School district” has the meaning defined in A.R.S. § 15-101, whose authority is exercised by the governing board or its designee.

~~116.~~ 117. “Services” means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance. Services does not include employment agreements or collective bargaining agreements.

~~117.~~ 118. “Shall” denotes the imperative.

~~118.~~ 119. “Solicitation” means an invitation for bids, an invitation to submit technical offers, a request for proposals, a request for qualification, or any other invitation or request by which the school district invites a person to participate in a procurement.

~~119.~~ 120. “Specification” means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

~~120.~~ 121. “Specified professional services” means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect and any combination of those services.

~~121.~~ 122. “Standard commercial material” means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.

~~122.~~ 123. “Statement of qualifications” means a response to a request for qualifications issued pursuant to R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117, or unsolicited qualifications submitted pursuant to R7-2-1062 or R7-2-1122, and does not include an offer to contract with the school district.

~~123.~~ 124. “Subcontractor” means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a school district.

~~124.~~ 125. “Subconsultant” means any person, firm, partnership, corporation, association or other organization or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.

~~125.~~ 126. “Surplus materials” means any materials that no longer have any use to the school district or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life.

~~126.~~ 127. “Suspension” means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.

~~127.~~ 128. “Technical offer” means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications and its terms and conditions.

~~128.~~ 129. “Total life cycle cost” means total school district costs and financing costs throughout the life cycle of the earth-moving, material-handling, road maintenance and construction equipment being purchased less residual value.

~~129.~~ 130. “Total school district costs” means costs to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including repair costs, present value of monies, vendor charges, and all other identifiable school district costs that may be incurred.

~~130.~~ 131. “Unit price” means the price published in the unit price book for a specific construction or construction related task. Each unit price is comprised of labor, equipment, or material costs to accomplish a specific task, and shall be defined in the contract.

~~131.~~ 132. “Unit price book” means a comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.

~~132.~~ 133. “Vendor charges” means the costs of all vendor support, materials, transportation, and all other identifiable costs associated with the vendor’s proposal or bid.

~~133.~~ 134. “Vendor support” means services provided by the vendor for items such as consulting, education and training.

~~134.~~ 135. “Wastepaper” means recyclable paper and paperboard, including high-grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

R7-2-1069. Guaranteed Energy Cost Savings Contracts

**A.** A school district may procure a guaranteed energy cost savings contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.

1. The request for proposal evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the cost of the contract, the energy cost savings, the net projected energy savings, 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.

2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.

3. At the qualified provider’s expense, the proposal shall include an independent third-party validation of cost savings calculations associated with each proposed energy cost savings measure by a licensed, registered professional engineer, with credentials from the national association of energy engineers, who has demonstrated experience in energy analysis. The school district shall approve the selection of the independent third party.

4. A school district may enter into a guaranteed energy cost savings contract with a qualified provider if the school district determines that the energy savings project will pay for itself within the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, if the recommendations in the proposal are followed. Notwithstanding this subsection, a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection. The school district shall retain the cost savings achieved by a guaranteed energy cost savings contract, and these cost savings may be used to pay for the contract and project implementation.

5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, 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 energy cost savings.

**B.** In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may:

1. Develop and use a prequalification process for contractors.

2. 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.

**C.** ~~At the selected qualified provider’s expense,~~ A study shall be performed by the selected qualified provider in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. The selected qualified provider will provide the school district with a final study report which validates that the fixed cost savings guarantee amount will meet or exceed the cost savings calculations contained within the original proposal. The study report shall be reviewed and approved by the school district before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study report to the division of school facilities ~~board~~ within the department of administration and the governor’s office ~~of energy policy~~.

**D.** The information to develop the energy baseline shall be derived from historical energy costs or actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The baseline shall be established before the installation or implementation of energy cost savings measures.

**E.** One or more school districts may enter into a financing agreement with a qualified provider or a financial institution, trustee or paying agent for the purchase and installation or implementation of energy cost savings measures. Any required financing may be obtained as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution that is procured separately in accordance with Articles 10 and 11.

**F.** The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).

**G.** The selected qualified provider shall make public the information in the subcontractor’s bids.

**H.** The guaranteed energy cost savings contract shall include the following:

1. A requirement that, in determining whether the projected energy savings calculations have been met, the energy savings shall be computed by comparing the energy baseline before installation or implementation of the energy cost savings measures with the energy consumed after installation or implementation of the energy cost savings measures. The qualified provider and the school district may agree to make modifications to the energy baseline only for any of the following:

a. Changes in utility rates.

b. Changes in the number of days in the utility billing cycle.

c. Changes in the square footage of the facility.

d. Changes in the operational schedule of the facility.

e. Changes in facility temperature.

f. Significant changes in the weather.

g. Significant changes in the amount of equipment or lighting ~~utilized~~ used in the facility.

h. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.

2. A payment schedule, with payments over a period of not more than the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, except a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection.

3. A requirement that all payments, except obligations on termination of the contract before its expiration, be made pursuant to the terms of the financing agreement.

4. A written guarantee from the qualified provider that the energy savings will meet or exceed the costs of the energy cost savings measures over the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, except a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection. The school district shall ensure that the contractor:

a. For the term of the guaranteed energy cost savings contract, prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.

b. Reimburses the school district for any shortfall of guaranteed energy cost savings on an annual basis.

c. Uses the international performance and measurement and verification protocol standards or the federal energy management program standards to validate the savings guarantee.

**I.** A school district may ~~utilize~~ use a simplified energy performance contract for projects that are less than $500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this Section except for subsections (D), (H)(1)(a) through (h) and (H)(4)(a) through (c).

**J.** This Section does not apply to the construction of new buildings.

**K.** For all projects under this Section, the school district shall report to the division of school facilitieswithin the department of administration and the governor’s office ~~of energy policy~~:

1. The name of the project.

2. The name of the qualified provider.

3. The total cost of the project.

4. The expected energy cost savings and relevant escalators.

5. The ~~agreed on~~ agreed-on baseline in the measurement and verification agreement in both kilowatt hours and dollars.

R7-2-1070. Guaranteed Energy Production Contracts

**A.** A school district may procure a guaranteed energy production contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.

1. The request for proposals evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for 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.

2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.

3. The school district may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution procured separately in accordance with Articles 10 and 11.

4. 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 ~~board~~ within the department of administration and the governor’s office ~~of energy policy~~.

5. A qualified provider is a person 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.

**B.** In selecting a contractor to perform any construction work related to performing the guaranteed energy production contract, the qualified provider may:

1. Develop and use a prequalification process for contractors.

2. 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.

**C.** 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 school district shall ensure that the contractor:

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

2. Reimburses 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.

**D.** The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).

**E.** The selected qualified provider shall make public information in the subcontractor’s bids.

**F.** For all projects under this Section, the school district shall report to the governor’s office ~~of energy policy~~ and the division of school facilities ~~board~~ 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.

**G.** For all projects under this Section, the school district shall annually report the actual energy production and guaranteed energy price to the division of school facilities ~~board~~ within the department of administration no later than October 15.

R7-2-1141. Resolution of Bid Protests

**A.** Informal resolution of bid protests. Nothing in Articles 10 and 11 are intended to eliminate the informal resolution of problems by school district personnel.

**B.** Formal resolution of bid protests. The governing board pursuant to R7-2- 1007 shall designate a district representative, as defined in ~~R7-2-1001(39)~~ R7-2-1001, to resolve bid protests. All solicitations issued by the school district shall include the name of the district representative and shall indicate that any bid protest shall be filed with the district representative. Appeal from the decision of the district representative may be made to the hearing officer pursuant to R7-2-1147 and R7-2-1181.