

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

FILED

Jane Dee Hull
Secretary of State

CHAPTER 212

HOUSE BILL 2346

AN ACT

AMENDING TITLE 15, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-213.01; AMENDING SECTION 34-201, ARIZONA REVISED STATUTES; AMENDING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY SECTION 2 OF THIS ACT; PROVIDING FOR THE DELAYED REPEAL OF SECTION 15-213.01, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO GUARANTEED ENERGY COST SAVINGS CONTRACTS.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 15, chapter 2, article 1, Arizona Revised Statutes,
3 is amended by adding section 15-213.01, to read:

4 15-213.01. Procurement practices; guaranteed energy cost
5 savings contracts; definitions

6 A. NOTWITHSTANDING SECTION 15-213, SUBSECTION A, A SCHOOL DISTRICT MAY
7 CONTRACT FOR THE PROCUREMENT OF A GUARANTEED ENERGY COST SAVINGS CONTRACT
8 WITH A QUALIFIED PROVIDER THROUGH A COMPETITIVE SEALED PROPOSAL PROCESS AS
9 PROVIDED BY THE PROCUREMENT PRACTICES ADOPTED BY THE STATE BOARD OF
10 EDUCATION. TO THE EXTENT THE QUALIFIED PROVIDER SUBCONTRACTS WITH
11 CONTRACTORS WHO WILL BE INVOLVED IN ANY CONSTRUCTION ASSOCIATED WITH THE
12 GUARANTEED ENERGY COST SAVINGS CONTRACT, THE QUALIFIED PROVIDER MUST FOLLOW
13 THE PROVISIONS OF SECTION 41-2533 IN SELECTING THESE CONTRACTORS.

14 B. A SCHOOL DISTRICT MAY ENTER INTO A GUARANTEED ENERGY COST SAVINGS
15 CONTRACT WITH A QUALIFIED PROVIDER IF IT DETERMINES THAT THE AMOUNT IT WOULD
16 SPEND ON THE ENERGY COST SAVINGS MEASURES RECOMMENDED IN THE PROPOSAL WOULD
17 NOT EXCEED THE AMOUNT TO BE SAVED IN ENERGY AND OPERATIONAL COSTS WITHIN TEN
18 YEARS AFTER THE DATE INSTALLATION IS COMPLETE, IF THE RECOMMENDATIONS IN THE

1 PROPOSAL ARE FOLLOWED. IN EVALUATING THE PROPOSALS, THE SCHOOL DISTRICT
2 SHALL RETAIN AN INDEPENDENT REGISTERED PROFESSIONAL ENGINEER WITH EXPERIENCE
3 IN ENERGY EFFICIENCY TO REVIEW THE TOP THREE PROPOSALS IF THE GUARANTEED
4 ENERGY SAVINGS CONTRACT IS MORE THAN FIFTY THOUSAND DOLLARS. THE ENGINEER
5 SHALL REVIEW EACH OF THE PROPOSALS TO VERIFY THAT THE METHODOLOGY FOR
6 COMPUTING ENERGY SAVINGS AND THE COMPUTATIONS FOR BASELINE PERFORMANCE
7 CONFORM WITH GENERALLY ACCEPTED ENGINEERING PRINCIPLES AND ARE ACCURATE. IN
8 ADDITION, THE ENGINEER SHALL REVIEW THE PROPOSALS FOR THE REASONABLENESS OF
9 THE ENERGY SAVINGS DEVICES SUGGESTED IN EACH PROPOSAL, THE EXTENT OF THE
10 QUALIFIED PROVIDER'S GUARANTEE, COMPREHENSIVENESS, THE EXISTENCE OF
11 SUFFICIENT DOCUMENTATION OF ESTIMATED COSTS, AND SAVINGS PROJECTIONS. THE
12 QUALIFIED PROVIDER SHALL PAY FOR THE COST OF THIS EVALUATION AND SHALL
13 INCLUDE THE COST AS PART OF THE COST OF THE GUARANTEED ENERGY SAVINGS
14 CONTRACT. THE QUALIFIED PROVIDERS SHALL SUBMIT TO THE INDEPENDENT REGISTERED
15 PROFESSIONAL ENGINEER ALL ENERGY AUDIT INFORMATION ACQUIRED IN DEVELOPING ITS
16 PROPOSAL AND ANY OTHER RELEVANT DATA REQUESTED BY THE ENGINEER THAT MAY
17 ASSIST THE ENGINEER IN EVALUATING THE PROPOSALS. IF THE SCHOOL DISTRICT
18 RECEIVES FEWER THAN THREE PROPOSALS, IT SHALL SUBMIT ALL PROPOSALS RECEIVED
19 TO THE INDEPENDENT REGISTERED PROFESSIONAL ENGINEER FOR REVIEW.

20 C. THE SCHOOL DISTRICT SHALL USE OBJECTIVE CRITERIA IN SELECTING THE
21 QUALIFIED PROVIDER INCLUDING THE COST OF THE CONTRACT, THE ENERGY AND
22 OPERATIONAL COST SAVINGS, THE NET PROJECTED ENERGY SAVINGS, THE QUALITY OF
23 THE TECHNICAL APPROACH, THE QUALITY OF THE PROJECT MANAGEMENT PLAN, THE
24 FINANCIAL SOLVENCY OF THE QUALIFIED PROVIDER AND THE EXPERIENCE OF THE
25 QUALIFIED PROVIDER WITH PROJECTS OF SIMILAR SIZE AND SCOPE. THE SCHOOL
26 DISTRICT SHALL SET FORTH EACH CRITERION WITH ITS RESPECTIVE NUMERICAL
27 WEIGHTING IN THE REQUEST FOR PROPOSAL.

28 D. IN SELECTING A CONTRACTOR TO PERFORM ANY CONSTRUCTION WORK RELATED
29 TO PERFORMING THE GUARANTEED ENERGY COST SAVINGS CONTRACT, THE QUALIFIED
30 PROVIDER MAY DEVELOP AND USE A PREQUALIFICATION PROCESS FOR CONTRACTORS
31 WISHING TO BID ON THIS WORK. THESE PREQUALIFICATIONS MAY REQUIRE THE
32 CONTRACTOR TO DEMONSTRATE THAT THE CONTRACTOR IS ADEQUATELY BONDED TO PERFORM
33 THE WORK AND THAT THE CONTRACTOR HAS NOT FAILED TO PERFORM ON A PRIOR JOB.
34 THE QUALIFIED PROVIDER MAY USE PERFORMANCE SPECIFICATIONS IN SOLICITING BIDS
35 FROM CONTRACTORS.

36 E. AN IN-DEPTH FEASIBILITY STUDY SHALL BE PERFORMED BY THE SELECTED
37 QUALIFIED PROVIDER IN ORDER TO ESTABLISH THE EXACT SCOPE OF THE GUARANTEED
38 ENERGY COST SAVINGS CONTRACT, THE FIXED COST SAVINGS GUARANTEE AMOUNT AND THE
39 METHODOLOGY FOR VERIFYING ACTUAL SAVINGS. THIS REPORT SHALL BE REVIEWED AND
40 APPROVED BY THE INDEPENDENT REGISTERED PROFESSIONAL ENGINEER AND SCHOOL
41 DISTRICT PRIOR TO THE ACTUAL INSTALLATION OF ANY EQUIPMENT.

42 F. THE GUARANTEED ENERGY SAVINGS CONTRACT SHALL REQUIRE THAT AN
43 INDEPENDENT PROFESSIONAL ENGINEER PERFORM AN ENERGY AUDIT OF THE FACILITY OR
44 FACILITIES ONE YEAR AFTER THE ENERGY COST SAVINGS MEASURES ARE INSTALLED AND

1 EVERY YEAR THEREAFTER FOR THE LENGTH OF THE CONTRACT. THE QUALIFIED PROVIDER
2 SHALL PAY THE COST OF THE AUDIT. IN DETERMINING WHETHER THE PROJECTED ENERGY
3 SAVINGS CALCULATIONS HAVE BEEN MET, THE ENERGY OR OPERATIONAL COST SAVINGS
4 SHALL BE COMPUTED BY COMPARING THE ENERGY BASELINE BEFORE INSTALLATION OF THE
5 ENERGY COST SAVINGS MEASURES WITH THE ENERGY CONSUMED AND OPERATIONAL COSTS
6 AVOIDED AFTER INSTALLATION OF THE ENERGY COST SAVINGS MEASURES. THE
7 QUALIFIED PROVIDER AND THE SCHOOL DISTRICT MAY AGREE TO MAKE MODIFICATIONS
8 TO THE ENERGY BASELINE ONLY FOR ANY OF THE FOLLOWING:

9 1. CHANGES IN UTILITY RATES.
10 2. CHANGES IN THE NUMBER OF DAYS IN THE UTILITY BILLING CYCLE.
11 3. CHANGES IN THE SQUARE FOOTAGE OF THE FACILITY.
12 4. CHANGES IN THE OPERATIONAL SCHEDULE OF THE FACILITY.
13 5. CHANGES IN FACILITY TEMPERATURE.
14 6. SIGNIFICANT CHANGES IN THE WEATHER.
15 7. SIGNIFICANT CHANGES IN THE AMOUNT OF EQUIPMENT OR LIGHTING UTILIZED
16 IN THE FACILITY.

17 G. THE INFORMATION TO DEVELOP THE ENERGY BASELINE SHALL BE DERIVED
18 FROM ACTUAL ENERGY MEASUREMENTS OR SHALL BE CALCULATED FROM ENERGY
19 MEASUREMENTS AT THE FACILITY WHERE ENERGY COST SAVINGS MEASURES ARE TO BE
20 INSTALLED. THE MEASUREMENTS SHALL BE TAKEN IN THE YEAR PRECEDING THE
21 INSTALLATION OF ENERGY COST SAVINGS MEASURES.

22 H. WHEN SUBMITTING A PROPOSAL, THE QUALIFIED PROVIDER SHALL INCLUDE
23 INFORMATION ON THE PROJECTED ENERGY SAVINGS ASSOCIATED WITH EACH PROPOSED
24 ENERGY COST SAVINGS MEASURE.

25 I. A SCHOOL DISTRICT, OR TWO OR MORE SCHOOL DISTRICTS, MAY ENTER INTO
26 AN INSTALLMENT PAYMENT CONTRACT OR LEASE-PURCHASE AGREEMENT WITH A QUALIFIED
27 PROVIDER FOR THE PURCHASE AND INSTALLATION OF ENERGY COST SAVINGS MEASURES.
28 THE GUARANTEED ENERGY COST SAVINGS CONTRACT MAY PROVIDE FOR PAYMENTS OVER A
29 PERIOD OF NOT MORE THAN TEN YEARS. THE CONTRACT SHALL PROVIDE THAT ALL
30 PAYMENTS, EXCEPT OBLIGATIONS ON TERMINATION OF THE CONTRACT BEFORE ITS
31 EXPIRATION, SHALL BE MADE OVER TIME.

32 J. THE GUARANTEED ENERGY COST SAVINGS CONTRACT SHALL INCLUDE A WRITTEN
33 GUARANTEE OF THE QUALIFIED PROVIDER THAT EITHER THE ENERGY OR OPERATIONAL
34 COSTS SAVINGS, OR BOTH, WILL MEET OR EXCEED THE COSTS OF THE ENERGY COST
35 SAVINGS MEASURES WITHIN TEN YEARS. THE QUALIFIED PROVIDER SHALL REIMBURSE
36 THE SCHOOL DISTRICT FOR ANY SHORTFALL OF GUARANTEED ENERGY COST SAVINGS ON
37 AN ANNUAL BASIS.

38 K. THE SCHOOL DISTRICT MAY OBTAIN ANY REQUIRED FINANCING AS PART OF
39 THE ORIGINAL COMPETITIVE SEALED PROPOSAL PROCESS.

40 L. A QUALIFIED PROVIDER THAT IS AWARDED THE CONTRACT SHALL GIVE A
41 SUFFICIENT BOND TO THE SCHOOL DISTRICT FOR ITS FAITHFUL PERFORMANCE OF THE
42 EQUIPMENT INSTALLMENT.

43 M. WHEN SELECTING SUBCONTRACTORS TO PERFORM CONSTRUCTION WORK, THE
44 QUALIFIED PROVIDER IS REQUIRED TO MAKE PUBLIC INFORMATION IN THE

1 SUBCONTRACTOR'S BIDS ONLY IF THE QUALIFIED PROVIDER IS AWARDED THE GUARANTEED
2 ENERGY SAVINGS CONTRACT BY THE SCHOOL DISTRICT.

3 N. THIS SECTION DOES NOT APPLY TO THE CONSTRUCTION OF NEW BUILDINGS.

4 O. FOR PURPOSES OF THIS SECTION:

5 1. "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING,
6 IMPROVING OR DEMOLISHING ANY SCHOOL DISTRICT STRUCTURE OR BUILDING, OR OTHER
7 PUBLIC IMPROVEMENTS OF ANY KIND TO ANY SCHOOL DISTRICT REAL PROPERTY.
8 CONSTRUCTION DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR
9 ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS OR REAL PROPERTY.

10 2. "ENERGY BASELINE" MEANS A CALCULATION OF THE AMOUNT OF ENERGY USED
11 IN AN EXISTING FACILITY IF THE ENERGY COST SAVINGS MEASURES HAD NOT BEEN
12 INSTALLED.

13 3. "ENERGY COST SAVINGS MEASURE" MEANS A TRAINING PROGRAM OR FACILITY
14 ALTERATION DESIGNED TO REDUCE ENERGY CONSUMPTION OR OPERATING COSTS AND MAY
15 INCLUDE ONE OR MORE OF THE FOLLOWING:

16 (a) INSULATING THE BUILDING STRUCTURE OR SYSTEMS IN THE BUILDING.

17 (b) STORM WINDOWS OR DOORS, CAULKING OR WEATHER STRIPPING,
18 MULTI-GLAZED WINDOWS OR DOOR SYSTEMS, ADDITIONAL GLAZING, REDUCTIONS IN GLASS
19 AREA, OR OTHER WINDOW AND DOOR SYSTEM MODIFICATIONS THAT REDUCE ENERGY
20 CONSUMPTION.

21 (c) AUTOMATED OR COMPUTERIZED ENERGY CONTROL SYSTEMS.

22 (d) HEATING, VENTILATING OR AIR CONDITIONING SYSTEM MODIFICATIONS OR
23 REPLACEMENTS.

24 (e) REPLACING OR MODIFYING LIGHTING FIXTURES TO INCREASE THE ENERGY
25 EFFICIENCY OF THE LIGHTING SYSTEM WITHOUT INCREASING THE OVERALL ILLUMINATION
26 OF A FACILITY UNLESS AN INCREASE IN ILLUMINATION IS NECESSARY TO CONFORM TO
27 THE APPLICABLE STATE OR LOCAL BUILDING CODE FOR THE LIGHTING SYSTEM AFTER THE
28 PROPOSED MODIFICATIONS ARE MADE.

29 (f) INDOOR AIR QUALITY IMPROVEMENTS TO INCREASE AIR QUALITY THAT
30 CONFORMS TO THE APPLICABLE STATE OR LOCAL BUILDING CODE REQUIREMENTS.

31 (g) ENERGY RECOVERY SYSTEMS.

32 (h) INSTALLING NEW OR RETROFITTING AN EXISTING DAY LIGHTING SYSTEM.

33 (i) ANY LIFE SAFETY MEASURES THAT PROVIDE LONG-TERM OPERATING COST
34 REDUCTIONS AND THAT COMPLY WITH STATE AND LOCAL CODES.

35 (j) BUILDING OPERATION PROGRAMS THAT REDUCE THE OPERATING COSTS.

36 4. "GUARANTEED ENERGY COST SAVINGS CONTRACT" MEANS A CONTRACT FOR
37 IMPLEMENTING ONE OR MORE ENERGY COST SAVINGS MEASURES.

38 5. "INDEPENDENT REGISTERED PROFESSIONAL ENGINEER" MEANS AN ENGINEER
39 WHO HAS EXPERIENCE IN ENERGY EFFICIENCY, WHO IS REGISTERED PURSUANT TO TITLE
40 32, CHAPTER 1 AND WHO HAS NOT BEEN EMPLOYED IN THE FIVE YEARS PRECEDING THE
41 AWARD OF THE CONTRACT BY ANY OF THE QUALIFIED PROVIDERS SUBMITTING A PROPOSAL
42 FOR A GUARANTEED ENERGY COST SAVINGS CONTRACT.

1 6. "OPERATIONAL SAVINGS" MEANS REDUCTIONS IN ACTUAL BUDGET LINE ITEMS
2 CURRENTLY BEING EXPENDED OR ALREADY COMMITTED FOR OPERATIONS, MAINTENANCE,
3 REPAIR AND REPLACEMENT OF ENERGY COST SAVINGS MEASURES.

4 7. "QUALIFIED PROVIDER" MEANS A PERSON OR A BUSINESS EXPERIENCED IN
5 DESIGNING, IMPLEMENTING AND INSTALLING ENERGY COST SAVINGS MEASURES.

6 Sec. 2. Section 34-201, Arizona Revised Statutes, is amended to read:

7 34-201. Notice of intention to receive bids and enter contract;
8 procedure; doing work without advertising for bids;
9 county compliance; guaranteed energy savings contract
10 exception

11 A. Except as provided in subsections B through F, and K AND L of this
12 section, every agent shall, upon acceptance and approval of the working
13 drawings and specifications, publish a notice to contractors of intention to
14 receive bids and contract for the proposed work, and stating:

15 1. The nature of the work required, the type, purpose and location of
16 the proposed building, and where the plans, specifications and full
17 information as to the proposed work may be obtained.

18 2. That contractors desiring to submit proposals may obtain copies of
19 full or partial sets of plans and specifications for estimate on request or
20 by appointment. The return of such plans and specifications shall be
21 guaranteed by a deposit of a designated amount which shall be refunded on
22 return of the plans and specifications in good order.

23 3. That every proposal shall be accompanied by a certified check,
24 cashier's check or surety bond for ten per cent of the amount of the bid
25 included in the proposal as a guarantee that the contractor will enter into
26 a contract to perform the proposal in accordance with the plans and
27 specifications. Notwithstanding the provisions of any other statute, the
28 surety bond shall be executed solely by a surety company or companies
29 holding a certificate of authority to transact surety business in this state
30 issued by the director of the department of insurance pursuant to title 20,
31 chapter 2, article 1. The surety bond shall not be executed by an
32 individual surety or sureties, even if the requirements of section 7-101 are
33 satisfied. The certified check, cashier's check or surety bond shall be
34 returned to the contractors whose proposals are not accepted, and to the
35 successful contractor upon the execution of a satisfactory bond and contract
36 as provided in this article. The conditions and provisions of the surety bid
37 bond regarding the surety's obligations shall follow the following form:

38 Now, therefore, if the obligee accepts the proposal of the
39 principal and the principal enters into a contract with the
40 obligee in accordance with the terms of the proposal and gives
41 the bonds and certificates of insurance as specified in the
42 standard specifications with good and sufficient surety for the
43 faithful performance of the contract and for the prompt payment
44 of labor and materials furnished in the prosecution of the

1 contract, or in the event of the failure of the principal to
2 enter into the contract and give the bonds and certificates of
3 insurance, if the principal pays to the obligee the difference
4 not to exceed the penalty of the bond between the amount
5 specified in the proposal and such larger amount for which the
6 obligee may in good faith contract with another party to perform
7 the work covered by the proposal then this obligation is void.
8 Otherwise it remains in full force and effect provided, however,
9 that this bond is executed pursuant to the provisions of section
10 34-201, Arizona Revised Statutes, and all liabilities on this
11 bond shall be determined in accordance with the provisions of
12 the section to the extent as if it were copied at length herein.

13 4. That the right is reserved to reject any or all proposals or to
14 withhold the award for any reason the agent determines.

15 B. If the agent believes that any construction, building addition or
16 alteration contemplated at a public institution can be advantageously done
17 by the inmates thereof and regularly employed help, the agent may cause the
18 work to be done without advertising for bids.

19 C. Any building, structure, addition or alteration may be constructed
20 either with or without the use of the agent's regularly employed personnel
21 without advertising for bids provided that the total cost of the work,
22 excluding materials and equipment previously acquired by bid, does not
23 exceed:

24 1. In fiscal year 1994-1995, fourteen thousand dollars.

25 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
26 amount provided in paragraph 1 of this subsection adjusted by the annual
27 percentage change in the GDP price deflator as defined in section 41-563,
28 subsection E.

29 D. Notwithstanding the provisions of subsection C of this section, any
30 street, road, bridge, water or sewer work, other than a water or sewer
31 treatment plant or building, may be constructed either with or without the
32 use of the agent's regularly employed personnel without advertising for bids
33 provided that the total cost of the work does not exceed:

34 1. In fiscal year 1994-1995, one hundred fifty thousand dollars.

35 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
36 amount provided in paragraph 1 of this subsection adjusted by the annual
37 percentage change in the GDP price deflator as defined in section 41-563,
38 subsection E.

39 E. Notwithstanding the provisions of this section, an agent may
40 construct, reconstruct, install or repair a natural gas or electric utility
41 and distribution system, owned or operated by such agent, with regularly
42 employed personnel of the agent without advertising for bids, unless
43 otherwise prohibited by charter or ordinance.

1 F. A contribution by an agent for the financing of public
2 infrastructure made pursuant to a development agreement is exempt from the
3 provisions of this section if such contribution for any single development
4 does not exceed:

5 1. In fiscal year 1994-1995, one hundred thousand dollars.

6 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
7 amount provided in paragraph 1 of this subsection adjusted by the annual
8 percentage change in the GDP price deflator as defined in section 41-563,
9 subsection E.

10 G. In addition to other state or local requirements relating to the
11 publication of bids, each agent shall provide at least one set of all plans
12 and specifications to any construction news reporting service ~~who~~ THAT files
13 an annual request with the agent. For the purposes of this subsection,
14 "construction news reporting service" means a service that researches,
15 gathers and disseminates news and reports either in print or electronically,
16 on at least a weekly basis for building projects, construction bids, the
17 purchasing of materials, supplies or services and other construction bidding
18 or planned activity to the allied construction industry. The allied
19 construction industry includes both general and specialty contractors,
20 builders, material and service suppliers, architects and engineers, owners,
21 developers and government agencies.

22 H. Any construction by a county under this section shall comply with
23 the uniform accounting system prescribed for counties by the auditor general
24 under section 41-1279.21. Any construction by a city or town under this
25 section shall comply with generally accepted accounting principles.

26 I. Any construction, building addition or alteration project which is
27 financed by monies of this state or its political subdivisions shall not use
28 endangered tropical hardwood unless an exemption is granted by the director
29 of the department of administration. The director shall only grant an
30 exemption if the use of endangered tropical hardwood is deemed necessary for
31 historical restoration or to repair existing facilities and the use of any
32 substitute material is not practical. Any lease-purchase agreement entered
33 into by this state or its political subdivisions for construction shall
34 specify that no endangered tropical hardwood may be used in the construction
35 unless an exemption is granted by the director. As used in this subsection,
36 "endangered tropical hardwood" includes ebony, lauan, mahogany or teak
37 hardwood.

38 J. All bonds given by a contractor and surety pursuant to the
39 provisions of this article, regardless of their actual form, will be deemed
40 by law to be the form required and set forth in this article and no other.

41 K. Any building, structure, addition or alteration may be constructed
42 without complying with this article if the construction, including
43 construction of buildings or structures on public or private property, is
44 required as a condition of development of private property and is authorized

1 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
2 building does not include police, fire, school, library, or other public
3 buildings.

4 L. NOTWITHSTANDING SECTION 34-221, ANY AGENT MAY ENTER INTO A
5 GUARANTEED ENERGY COST SAVINGS CONTRACT WITH A QUALIFIED PROVIDER, AS THOSE
6 TERMS ARE DEFINED IN SECTION 15-213.01, FOR THE PURCHASE OF ENERGY COST
7 SAVINGS MEASURES WITHOUT COMPLYING WITH THIS ARTICLE AND MAY PROCURE A
8 GUARANTEED ENERGY COST SAVINGS CONTRACT THROUGH THE COMPETITIVE SEALED
9 PROPOSAL PROCESS PRESCRIBED IN TITLE 41, CHAPTER 23, ARTICLE 3 OR ANY SIMILAR
10 COMPETITIVE PROPOSAL PROCESS ADOPTED BY THE AGENT AS LONG AS THE AGENT
11 FOLLOWS ANY ADDITIONAL REQUIREMENTS SET FORTH IN SECTION 15-213.01.

12 Sec. 3. Section 34-201, Arizona Revised Statutes, as amended by
13 section 2 of this act, is amended to read:

14 34-201. Notice of intention to receive bids and enter contract;
15 procedure; doing work without advertising for bids;
16 county compliance

17 A. Except as provided in subsections B through F, ~~AND K and L~~ of this
18 section, every agent shall, upon acceptance and approval of the working
19 drawings and specifications, publish a notice to contractors of intention to
20 receive bids and contract for the proposed work, and stating:

21 1. The nature of the work required, the type, purpose and location of
22 the proposed building, and where the plans, specifications and full
23 information as to the proposed work may be obtained.

24 2. That contractors desiring to submit proposals may obtain copies of
25 full or partial sets of plans and specifications for estimate on request or
26 by appointment. The return of such plans and specifications shall be
27 guaranteed by a deposit of a designated amount which shall be refunded on
28 return of the plans and specifications in good order.

29 3. That every proposal shall be accompanied by a certified check,
30 cashier's check or surety bond for ten per cent of the amount of the bid
31 included in the proposal as a guarantee that the contractor will enter into
32 a contract to perform the proposal in accordance with the plans and
33 specifications. Notwithstanding the provisions of any other statute, the
34 surety bond shall be executed solely by a surety company or companies
35 holding a certificate of authority to transact surety business in this state
36 issued by the director of the department of insurance pursuant to title 20,
37 chapter 2, article 1. The surety bond shall not be executed by an
38 individual surety or sureties, even if the requirements of section 7-101 are
39 satisfied. The certified check, cashier's check or surety bond shall be
40 returned to the contractors whose proposals are not accepted, and to the
41 successful contractor upon the execution of a satisfactory bond and contract
42 as provided in this article. The conditions and provisions of the surety bid
43 bond regarding the surety's obligations shall follow the following form:

1 Now, therefore, if the obligee accepts the proposal of the
2 principal and the principal enters into a contract with the
3 obligee in accordance with the terms of the proposal and gives
4 the bonds and certificates of insurance as specified in the
5 standard specifications with good and sufficient surety for the
6 faithful performance of the contract and for the prompt payment
7 of labor and materials furnished in the prosecution of the
8 contract, or in the event of the failure of the principal to
9 enter into the contract and give the bonds and certificates of
10 insurance, if the principal pays to the obligee the difference
11 not to exceed the penalty of the bond between the amount
12 specified in the proposal and such larger amount for which the
13 obligee may in good faith contract with another party to perform
14 the work covered by the proposal then this obligation is void.
15 Otherwise it remains in full force and effect provided, however,
16 that this bond is executed pursuant to the provisions of section
17 34-201, Arizona Revised Statutes, and all liabilities on this
18 bond shall be determined in accordance with the provisions of
19 the section to the extent as if it were copied at length herein.

20 4. That the right is reserved to reject any or all proposals or to
21 withhold the award for any reason the agent determines.

22 B. If the agent believes that any construction, building addition or
23 alteration contemplated at a public institution can be advantageously done
24 by the inmates thereof and regularly employed help, the agent may cause the
25 work to be done without advertising for bids.

26 C. Any building, structure, addition or alteration may be constructed
27 either with or without the use of the agent's regularly employed personnel
28 without advertising for bids provided that the total cost of the work,
29 excluding materials and equipment previously acquired by bid, does not
30 exceed:

31 1. In fiscal year 1994-1995, fourteen thousand dollars.

32 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
33 amount provided in paragraph 1 of this subsection adjusted by the annual
34 percentage change in the GDP price deflator as defined in section 41-563,
35 subsection E.

36 D. Notwithstanding the provisions of subsection C of this section, any
37 street, road, bridge, water or sewer work, other than a water or sewer
38 treatment plant or building, may be constructed either with or without the
39 use of the agent's regularly employed personnel without advertising for bids
40 provided that the total cost of the work does not exceed:

41 1. In fiscal year 1994-1995, one hundred fifty thousand dollars.

42 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
43 amount provided in paragraph 1 of this subsection adjusted by the annual

1 percentage change in the GDP price deflator as defined in section 41-563,
2 subsection E.

3 E. Notwithstanding the provisions of this section, an agent may
4 construct, reconstruct, install or repair a natural gas or electric utility
5 and distribution system, owned or operated by such agent, with regularly
6 employed personnel of the agent without advertising for bids, unless
7 otherwise prohibited by charter or ordinance.

8 F. A contribution by an agent for the financing of public
9 infrastructure made pursuant to a development agreement is exempt from the
10 provisions of this section if such contribution for any single development
11 does not exceed:

12 1. In fiscal year 1994-1995, one hundred thousand dollars.

13 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
14 amount provided in paragraph 1 of this subsection adjusted by the annual
15 percentage change in the GDP price deflator as defined in section 41-563,
16 subsection E.

17 G. In addition to other state or local requirements relating to the
18 publication of bids, each agent shall provide at least one set of all plans
19 and specifications to any construction news reporting service that files an
20 annual request with the agent. For the purposes of this subsection,
21 "construction news reporting service" means a service that researches,
22 gathers and disseminates news and reports either in print or electronically,
23 on at least a weekly basis for building projects, construction bids, the
24 purchasing of materials, supplies or services and other construction bidding
25 or planned activity to the allied construction industry. The allied
26 construction industry includes both general and specialty contractors,
27 builders, material and service suppliers, architects and engineers, owners,
28 developers and government agencies.

29 H. Any construction by a county under this section shall comply with
30 the uniform accounting system prescribed for counties by the auditor general
31 under section 41-1279.21. Any construction by a city or town under this
32 section shall comply with generally accepted accounting principles.

33 I. Any construction, building addition or alteration project which is
34 financed by monies of this state or its political subdivisions shall not use
35 endangered tropical hardwood unless an exemption is granted by the director
36 of the department of administration. The director shall only grant an
37 exemption if the use of endangered tropical hardwood is deemed necessary for
38 historical restoration or to repair existing facilities and the use of any
39 substitute material is not practical. Any lease-purchase agreement entered
40 into by this state or its political subdivisions for construction shall
41 specify that no endangered tropical hardwood may be used in the construction
42 unless an exemption is granted by the director. As used in this subsection,
43 "endangered tropical hardwood" includes ebony, lauan, mahogany or teak
44 hardwood.

1 J. All bonds given by a contractor and surety pursuant to the
2 provisions of this article, regardless of their actual form, will be deemed
3 by law to be the form required and set forth in this article and no other.

4 K. Any building, structure, addition or alteration may be constructed
5 without complying with this article if the construction, including
6 construction of buildings or structures on public or private property, is
7 required as a condition of development of private property and is authorized
8 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
9 building does not include police, fire, school, library, or other public
10 buildings.

11 ~~L. Notwithstanding section 34-221, any agent may enter into a~~
12 ~~guaranteed energy cost savings contract with a qualified provider, as those~~
13 ~~terms are defined in section 15-213.01, for the purchase of energy cost~~
14 ~~savings measures without complying with this article and may procure a~~
15 ~~guaranteed energy cost savings contract through the competitive sealed~~
16 ~~proposal process prescribed in title 41, chapter 23, article 3 or any similar~~
17 ~~competitive proposal process adopted by the agent as long as the agent~~
18 ~~follows any additional requirements set forth in section 15-213.01.~~

19 Sec. 4. Delayed repeal

20 Section 15-213.01, Arizona Revised Statutes, as added by this act, is
21 repealed from and after July 31, 1999.

22 Sec. 5. Delayed effective date

23 Section 34-201, Arizona Revised Statutes, as amended by section 3 of
24 this act, is effective from and after July 31, 1999.

APPROVED BY THE GOVERNOR APRIL 18, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 1996