

CONSTRUCTION**SAVINGS, SOLAR, AND SHADE**

Taking Advantage of Arizona's Public School District Energy Contract Statutes

by *Scott Holcomb*

Arizona has abundant sun and heat. What it does not have in abundance is funding for school districts to construct any facilities or to pay ever-increasing utility bills.

Many districts are struggling to find the financial resources to maintain their schools. Upgrading or updating physical plants or systems are rarely even considered. However, over the past few years, the Arizona legislature has passed several statutes that provide districts with a new and unique approach to upgrade HVAC, lighting and other energy-using systems, and to generate solar power to further reduce energy costs, without the need for significant capital funds or bonds.

The statutes permit districts to procure a guaranteed "energy cost savings contract" (A.R.S. § 15-213.01) and to procure a guaranteed "energy production contract" (A.R.S. § 15-213.03). While the provisions of each of these statutes differ, they both create the same basic structure involving three parties: a contractor, a financier/private equity lender, and the school district. The private equity lender will be working closely with the contractor, because it is the contractor's ability to bring the financing to the project that makes these transactions attractive to districts. The role of each party is discussed below.

The Contractor

From the contractor's perspective, both the energy savings and the energy production contracts (usually solar) are, in essence, design-build guaranteed maximum price ("GMP") contracts. For example under A.R.S. § 15-213.01(E), the contractor providing the energy cost savings measures must submit a "study" to the district for the purpose of establishing "the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings." That "study" is developed as and becomes, in essence, the submitted design and GMP proposal. The "proposal" for the installation of the "guaranteed energy production" measures serves the same role under A.R.S. § 15-213.03(D). Although the school district pays over time based upon the energy savings obtained or the energy produced/purchased, with properly structured financing, the contractor can get paid by the private equity lender as the construction is completed as in other construction contracts.

Private Equity Lender

Private financing is usually the key to making these projects possible. A district is not required to obtain financing for these energy projects,

but they are expressly authorized to do so – either separately or as part of the proposal by the contractor. *See*, A.R.S. § 15-213.01(I) and A.R.S. § 15-213.03(F).

A private equity lender usually can take advantage of tax and other incentives (which a district cannot) to reduce the cost to the district and increase the profits. The structure of the guaranteed cost savings and payment for the energy produced also creates a guaranteed and stable income stream which makes the private financing possible.

Public School Districts

The district pays for the energy measures out of reduced operating expenses – utility payments – over a period of many years (up to 25). The schools also get upgraded and updated systems and better environments for learning. Then there is the shade - from the solar panels structures that are being used for Arizona schools. That is a major collateral benefit, the value of which to students, teachers and parents cannot be overstated.

Viewed in this light, these projects look much like the public-private partnership projects that have been so successful in Canada, and more recently in the United States, in times of government fiscal austerity. That is now how many government projects get done, and even fast-tracked, when they otherwise would never be completed at all. However, to be successful and profitable for all involved, these transactions must be carefully planned and structured. *See e.g.*, Alert from the Arizona Attorney General's office: http://www.azauditor.gov/Reports/School_Districts/Statewide/Alerts/SolarAlert.pdf.

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