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Guaranteed Energy Savings Contracts

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Keeping with industry trends, Indiana has gradually adopted a “Green” outlook as a means of encouraging energy efficient construction and buildings. However, this policy can have a direct impact on the way certain jobs are procured. Specifically, Title 36 (Ind. Code §36-1-12.5) allows Local Government units, such as public schools, to directly enter into Guaranteed Energy Savings Contracts (“GESCs”) with qualified providers to implement energy conservation measures that reduce the energy costs of a public facility by a specified amount. Two of the primary advantages to the Owner of GESCs are: (1) the energy cost savings (over a period of up to ten years) are used to pay for the investment, so the Owner does not have to front a large capital investment; and (2) the Owner does not need to go through the specification and competitive bidding process to procure the work. The Owner need only publish notice of its intent to implement an eligible conservation measure and request proposals from qualified providers. The qualified provider serves essentially as a one-stop shop for the evaluation, design and implementation of that measure.

While this statute may appear to grant public owners the freedom to procure work independent of the competitive bidding process, Title 36 places a number of specific limitations on the use of GESCs, including: (1) what type of project qualifies as a “conservation measure” (e.g. it does not include the alteration of a water/wastewater system that *increases* the capacity of that system); (2) who can be a “qualified provider” (e.g. the provider must self-perform at least 20 percent of the work); and (3) express limits on the inclusion of work unrelated to the conservation measure under the GESC

(e.g. such work cannot exceed 15 percent of the total value of the GESG). Although Title 36 does not spell the end of competitive bidding as we know it, the utility contractor should be aware of GESGs, their potential use in the procurement of certain utility work, and, more importantly, the limits set by statute on their use.

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