

ARIZONA CORPORATION COMMISSION

REQUEST FOR PROPOSAL

IN THE MATTER OF THE GENERIC DOCKET REGARDING
THE COMMISSION'S INQUIRY INTO RETAIL ELECTRIC
COMPETITION

DOCKET NO.: 00000W-13-0135

PROPOSALS TO BE CONSIDERED MUST BE RECEIVED

ON OR BEFORE

July 26, 2013

ISSUE DATE: June 28, 2013

1. INTRODUCTION

You are invited to submit a proposal in accordance with the specifications contained in this Request for Proposal (“RFP”). Offerors must submit an original and fifteen (15) hard copies of their proposals on or before 3:00 p.m., July 26, 2013.

This RFP requests bids from persons wishing to serve as consultants to the Arizona Corporation Commission (“Commission”) for the Generic Docket regarding retail electric competition.

The services of a consultant are requested to assist the Commission in exploring whether moving to retail electric competition is in the public interest of all of Arizona’s retail electric customers.

All documents related to the generic docket can be found on the Commission’s E-Docket website at www.azcc.gov. (To conduct a Docket Number Search use Docket No. 13-0135)

2. BACKGROUND

2.1 HISTORY OF RETAIL ELECTRIC COMPETITION IN ARIZONA

On December 26, 1996, the Commission issued Decision No. 59943, which adopted Arizona Administrative Code R14-2-1601 through -1616, the Retail Electric Competition Rules. Through a series of workshops, hearings, and decisions, the rules were revised in 1998, 1999, and 2000. On September 10, 2002, the Commission issued Decision No. 65154, commonly referred to as the “Track A” order, which halted the impending divestitures of Arizona Public Service Company and Tucson Electric Power Company and suspended a requirement in the rules that provided for the utilities to purchase all their power in the competitive market. Decision No. 65743, commonly referred to as the “Track B” order, dealt with competitive procurement issues. In 2004, the Arizona Court of Appeals issued a decision, commonly known as the “*Phelps Dodge*” decision, invalidating a number of provisions of the Retail Electric Competition Rules and all of the Certificates of Convenience and Necessity for competitive electric service providers that had been granted by the Commission. For more information, see the Staff Report for Generic Proceedings Concerning Electric Restructuring Issues, filed on August 12, 2010, in consolidated Docket Nos. E-00000A-02-0051 and E-00000A-01-0630. The report can be accessed on the Commission website at <http://images.edocket.azcc.gov/docketpdf/0000115657.pdf>.

2.2 GENERIC DOCKET

On May 9, 2013, the Commission voted to open a generic docket (Docket No. E00000W-10-0135) to consider whether the creation of a competitive retail electric market in Arizona would be in the public interest. The Commission invited stakeholders to file comments in the docket on the matter. The Executive Director sent a letter to stakeholders inviting comments and docketed that letter on May 23, 2013.

2.3 ADDITIONAL INFORMATION

Meetings will be held at 1200 West Washington, Phoenix, Arizona. When necessary, the Consultant(s) is expected to work on-site.

A Procedural Order in this matter has not been docketed, but the following tentative schedule is proposed.

- Initial Comments from Stakeholders due July 15, 2013.
- Responsive comments from Stakeholders due August 16, 2013.
- Open Meeting(s) to decide whether to move forward with the implementation of retail electric competition after September 2, 2013.

The Commission will review, analyze and consider the materials filed in the retail electric competition generic docket. Upon satisfactory review, the Commission will convene an Open Meeting to discuss and possibly decide whether or not to implement retail electric competition in Arizona for electric utilities that are subject to its jurisdiction.

While it is not scheduled at this time, the Commission may decide to send this matter to an evidentiary proceeding, conduct additional workshops or provide an additional time period to receive written comments.

3.0 STATEMENT OF WORK

Although the major work elements are identified below, other related issues may arise which will need to be addressed. During the course of the matter, the Consultant(s) should expect some issues to expand while others diminish. The Consultant(s) would then need to adjust the work hours and bill accordingly. The Commission requests that the Consultant(s) maintain a high degree of flexibility as the schedule and priority of work elements may change during the proceedings.

The relative significance of certain issues may also change during the course of the case.

The Consultant(s) will undertake all tasks required to conduct the examination and analysis as indicated in the Scope of Work specified below and make appropriate recommendations based on that examination and analysis.

3.1 SCOPE OF WORK

The Consultant(s) shall perform the following scope of work:

- 1) Review, organize and analyze all filings made in this docket matter. The analysis shall address the eighteen (18) questions contained in the March 23, 2013 letter from the Executive Director to Stakeholders.
- 2) Include in the analysis, specific discussions that focus on the following:
 - a. Short and long term impact on residential rates
 - b. Impact on coal fired generation located in Arizona
 - c. Impact on grid reliability and reserve margins
- 3) Review all nine (9) pending electric competition CC&N applications – E-20466A-06-0488 (Applied Metering Technologies); E-20841A-12-0115 (Constellation NewEnergy); E-20844A-13-0126 (Direct Energy Services, LLC); E-20865A-12-0442 (EMEX, LLC); E-20852A-12-0269 (Energy Professionals, LLC); E-20868A-12-0486 (Incite Energy); E-20545A-07-0464 (Meter Smart); E-03869A-06-0470 (PDM Energy); and E-03964A-06-0168 (Sempra Energy/Noble Americas Energy Solution).
- 4) Analyze the impact of retail electric competition in other states.
- 5) Identify any issues that the stakeholders have not addressed in order for the Commission to make a fully informed decision on the issue of whether retail electric competition is in the public interest.
- 6) Identify any other issues the Consultant(s) believe would be helpful for the Commission in developing a complete record.

3.1.2 GENERAL REQUIREMENTS APPLICABLE TO ALL WORK ELEMENTS

- 1) Attend meetings in person or via teleconference as requested by the Commission or its designee.
- 2) Prepare briefing paper(s) as requested by the Commission or its designee.

3.2 WORK PRODUCTS

As evidence of completion of the major work elements, the Contractor(s) must provide the following work products:

1. Electronic copies (in Microsoft Excel or Word format) of all testimony, workpapers and material used by the Consultant(s) to develop conclusions and recommendations that have not already been placed into the docket by other parties.
2. Electronic copies (in Microsoft Word format) of all data requests.

3.3 ESTIMATED COMPLETION DATES

A draft of the Consultant(s)' preliminary analyses for all elements listed in 3.1 is due no later than September 1, 2013. Final analyses are due no later than five (5) business days prior to the Open Meeting(s) referenced in paragraph 2.3.

3.4 PROGRESS REPORTS

Throughout all phases of work, the Contractor(s) will be required to submit, on a monthly basis, one (1) paper copy and one (1) electronic copy of a work status report to the Commission or its designee. The report will be assessed, and the Contractor(s) will be notified of any significant problems. The report should contain the following information:

1. Comparison of actual or planned progress in carrying out all of the Contractor(s)' tasks during the previous month.
2. Identification of actual or potential problems in completing the work with an assessment of their probable impacts and any recommended solutions to the problem.
3. Description of work done to date including time and itemization of time spent on specific tasks.

No invoices will be accepted unless these required progress reports have been submitted.

4. CONTRACT MANAGEMENT

The Commission or its designee is responsible for the overall management of this project. Among other things, the Commission or its designee will be responsible for:

1. Overseeing the project operation as it relates to policy questions.

2. Determining any changes in emphasis or end product that may be desired.
3. Assessing the progress and problems of the project.
4. Reviewing status reports and approving Contractor's proposed plans for action.
5. Determining final compliance with terms of the contract.

5. INSTRUCTIONS FOR PREPARING PROPOSALS

5.1 GENERAL INSTRUCTIONS

Offerors should prepare a single proposal package containing two separate sections: a Technical Section and a Cost Section. An original and fifteen (15) copies of the proposal are to be mailed or delivered to:

Jodi Jerich
Commission Executive Director
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Joint ventures involving several firms will be considered, provided that a prime contractor, who shall be responsible for coordinating the work of subcontractors, is clearly identified. The prime contractor will be responsible for the timely completion of the work performed by subcontractors. The work tasks (and associated budget) to be provided by subcontractors must be clearly defined as part of the proposal.

The cover sheet for the proposal should indicate clearly the consulting firm's name, primary contact telephone number and address¹; the coinciding RFP name, i.e., "In the Matter of the Commission's Inquiry into Retail Electric Competition, Docket No. E-00000W-13-0135". To be considered for the award, all proposals must be received no later than 3:00 p.m., July 26, 2013.

¹ The listed telephone number and address location will be considered the primary means of contact for any and all members of the Prime Contractor's team for billing purposes. Any costs associated with the use of multiple office locations on the part of the Prime Contractor and the Prime Contractor's team (including sub-contractors) in conducting this project shall be assumed by (i.e. the sole responsibility) Prime Contractor, these costs include but are not limited to the actual costs of using 1) facsimiles, 2) electronic or parcel mailings, or 3) telephonic equipment (such as long distance calling or conference calling lines) as forms of communications among the Prime Contractor's team members and /or offices.

Proposals should be prepared simply and economically, providing a straightforward, concise description of Contractor's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Proposals will be opened publicly on July 26, 2013, at 3:00 p.m. at the Arizona Corporation Commission Offices, 1200 West Washington (Room 202), Phoenix, Arizona 85007. Previously submitted offers may not be withdrawn after that time.

After contract award, the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. Additionally, work performed under contract will become a matter of public record unless determined confidential.

Contractors are required to retain all records relating to this contract for five years after the contract's completion.

5.2 TECHNICAL SECTION FORMAT

The Technical Section should be submitted as a separate part of the total response to this RFP. The proposal format should be the same as the format below and all information requested must be presented.

PART I. Business Organization. State the full name and address of your organization and, if applicable, the branch office or other subordinate element that will perform or assist in performing the work. For any subcontractors included in your proposal, indicate whether they operate as an individual, partnership or corporation; if as a corporation, include the state in which they are incorporated. State whether they are licensed to operate in the state of Arizona.

PART II. Project Summary. Present your understanding of the project requirements, its goals and objectives, and a summary of the problems which must be addressed and solved to successfully fulfill the requirements. Include a brief narrative description of your proposed effort and of the products that will be delivered.

PART III. Work Plan. Describe your plan for accomplishing the work. Indicate the number of person-hours you have allocated to each task. Include a time-related display showing each task, event and decision point in your plan.

PART IV. Management Summary. Provide an overview, explanation and chart showing project leadership and supervision, reporting responsibilities, and Contractor (and Subcontractor, if appropriate) team interfaces. Identify individuals by name and title. Indicate the procedures you will use for scheduling

and controlling the work to be performed. Indicate the person, or persons, responsible for each phase of the work, and indicate the person with ultimate responsibility for completion of the project.

PART V. Prior Experience. Provide a brief description of recent assignments that would qualify your firm to undertake the proposed work. Include the project title and completion date related to each assignment. Also include the names of each assignment's project manager and other key participants. Provide a specific reference including name, title, and organization, address and telephone number for each assignment given.

PART VI. Personnel. Include the number of executive and professional personnel by skill and qualification. Show where these personnel will be stationed during the time they are engaged in the work. Show the inclusive periods, total number of hours, and percent of time that each individual will devote to this project. Identify each individual by name and title. Provide resumes of all executive or professional personnel. Indicate by name and title who prepared the proposal and how the individual will participate in the project. Specify personnel who will testify in the hearing and identify their previous experience in providing testimony.

PART VII. Relationships with Arizona Utilities and Competitive Electric Service Providers. List all Arizona public utilities or public utility affiliates, independent power producers or their affiliates, and competitive electric service providers or their affiliates for which your firm or any members of your professional staff proposed for the project, has worked in a professional capacity during the past three years. For each firm listed, briefly describe the nature of the professional relationship and the impact of this relationship upon your firm's ability to serve the Commission in an independent capacity. Describe any other legal, professional, or financial relationships between Arizona public utilities, competitive electric service providers, independent power producers, and any key members.

PART VIII. Authorized Negotiators. Include the name, address and telephone numbers of person(s) in your organization authorized to negotiate the proposed contract.

5.3 COST SECTION FORMAT

The Cost Section should be submitted as a separate part of the total response to this RFP. The format should be the same as below and all information requested must be present.

The information requested in this section is required to support the reasonableness of your quotation. Your established method of costing should be described.

1. Labor Costs – Itemize so as to show the following for each category of personnel with a different rate per hour:
 - a. Category: e.g., Project Manager, Senior Analyst, etc.;
 - b. Project work station location;
 - c. Estimated hours;
 - d. Rate per hour; and
 - e. Total cost for each category and for all direct labor proposed.
2. Cost of Supplies – Itemize these costs.
3. Other Direct Costs – Itemize these costs.
4. Transportation and Subsistence Costs – Show travel cost and per diem separately.
5. Total Price Bid Project – By separate explanation, segregate the labor costs between direct labor costs, indirect or overhead costs, and fixed fee or profit.

6. PROPOSAL EVALUATION CRITERIA

The contract will be awarded to the offeror whose proposal is determined to be most advantageous to the state based on the factors set forth in this Request for Proposal. The successful offeror will be chosen based on several factors and not on cost alone. In addition, the Commission reserves the right to award less than the entire work project described in Section 3 to any one contractor and to direct the retention of a subcontractor or subcontractors approved by the Commission. Offerors who submit a proposal may be required to make an oral presentation of their proposals. These presentations may be conducted with responsible offerors who submit proposals that are reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the requirements of this RFP. In the course of these presentations, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The Commission also reserves the right to conduct a Best and Final Offer process.

The following is a list of the factors in descending order of relative importance that specifically will be considered in evaluating the proposals received.

6.1 EVALUATION FACTORS

- 6.1.1 Demonstrated Understanding of the Project.** A determination will be made of the bidder's clear understanding of the project. Specifically, points will be accrued

for the bidder's demonstrated understanding of the public utility regulatory issues on a national scope; understanding of the treatment of issues under the state of Arizona's regulatory law; reference to case-specific issues as identified by bidder and understanding of the impact of these issues upon the consumers of Arizona.

- 6.1.2 Technical Credibility.** An evaluation will be made of the soundness of the proposal as it relates to the technical details of the project in order to attain the requirements described in the RFP, including a proposed work plan and management plan. Attention will be given to the distribution of person-hours by task for each contractor team member; the percentage of each team member's time devoted to this project; the chart highlighting relevant deadlines by task; and the clear identification of proposed witnesses and individuals assigned to participate in the open meetings.
- 6.1.3 Qualifications of the Firm.** The proposal will be reviewed with careful attention to the bidder's prior work experience in the areas described in Section 3.
- 6.1.4 Qualifications of Contractor Team.** The proposal will also be reviewed with regard to the commitment of specific personnel to the project and their experience in the areas included in the Statement of Work as described in Section 3 of the RFP.
- 6.1.5 Costs.** An evaluation of the reasonableness of the proposed cost in light of the project scope will be made.

6.2 TERMS AND CONDITIONS OF THE AWARD

The Contract referred to in this, and in subsequent sections, is the contract or agreement between the State and the successful bidder. The Commission contemplates that a fixed price reimbursement type contract will be awarded. Reimbursement will be made for authorized travel and subsistence expenses only upon submission and approval of receipts and required back-up information as indicated in this RFP and in the procedures set forth by the Business Office of the Commission.²

² The listed telephone number and address on the cover sheet, as described in General Instruction, Section 5.1, will be considered the primary means of contact for any and all members of the Prime Contractor's team for billing purposes. Any costs associated with the use of multiple office locations on the part of the Prime Contractor and the Prime Contractor's team (including sub-contractors) in conducting this project shall be assumed by (i.e. the sole responsibility) Prime Contractor, these costs include but are not limited to the actual costs of using 1) facsimiles, 2) electronic or parcel mailings, or 3) telephonic equipment (such as long distance calling or conference calling lines) as forms of communications among the Prime Contractor's team members and /or offices.

Payments will be made upon submission of an approved original invoice and two (2) legible copies. Each invoice will clearly show: the Contractor's name and address; amount of the bill; the Commission contract billing number and date; the hours and rates per individual designating dates, time and hours worked, and distinguishing charged hours from non-charged hours; and the percentage of work completed. Invoices which carry requests for reimbursement of travel and subsistence must be exact and must be accompanied by all required backup information with one (1) copy of appropriate legible receipts for each reimbursement. All invoices will be reviewed and must be approved by the State prior to payment.

Payments for invoices covering work on contract deliverables may be withheld pending delivery and acceptance of such deliverable items. The Commission reserves the right to withhold a percentage not greater than 15 percent of each payment until all the work defined in the contract is completed to the satisfaction of the Commission. No invoices will be accepted unless the required detailed progress reports have been submitted.

6.3 REGULATIONS FOR THE REIMBURSEMENT OF EXPENSES

In order for reimbursement to occur, regulations must be adhered to, in detail, as described in this RFP and as set forth by the Business Office of the Commission.

6.3.1 General Regulations. All receipts must be legible and accurate to the penny in order for reimbursement to occur. If an invoice is returned for a correction, all copies must be revised and resubmitted. Invoices must be submitted on a timely basis. The Commission should not receive requests for reimbursement several months after the expenses were accrued.

6.3.2 Prohibitions. Bankcard receipts, travel agency receipts and/or invoices are not acceptable. No reimbursement shall be made for lodging or meals within the county of the state agent's headquarters, or within thirty (30) miles of the state agent's residence. No reimbursement requests for person-hour charges and expenses should be submitted simultaneously as each should be invoiced separately.

6.3.3 Expense Reimbursement. Expenses should be recorded daily as they occur, with identification numbers assigned to each expense charge and corresponding receipt. All receipts must be dated. Receipts should be attached in order of appearance on the Commission standardized expense reporting form and assigned reference numbers to each receipt for easy identification. Please include adding machine tapes along with expense invoices to clarify totals charged.

6.3.4 Transportation Expense, Airfare. The State will only reimburse for coach passenger fare. If you are forced to travel First Class in order to meet a deadline, you must include an explanation in order to receive payment. The actual airplane ticket (or a copy) must be attached. The Commission will not accept travel agency invoices or credit card receipts as proof for payment. Travel times must be clearly indicated.

Mileage. Indicate origin, destination, any intermediate destination including corresponding mileage, as well as the purpose of the trip, and record the mileage in the appropriate space provided. This is the only expense for which reimbursement can occur without a receipt. Always record travel times. Mileage charge must be at precisely the current rate per mile, which will be designated in the contract; and will be based upon the most direct road routes available, from the departure point to the point of destination.

Names of all employees traveling in the automobile must be clearly stated.

Taxi Fare and Limousine Service. Indicate origin and destination of trip and attach receipt from taxicab driver.

Parking. Record in the appropriate blank on the standardized expenses report form and attach receipt.

Car Rental. You must include a legible receipt and explain the necessity for this expense.

Miscellaneous. Legible receipts must be submitted for any miscellaneous travel expenses such as tolls, bus rides, etc.

6.3.5 Meals and Lodging. You will need to identify individuals included in each receipt in the appropriate blank on the Commission standardized expense reporting form and record dollar amounts for each daily meal charged. Include meals eaten at your place of lodging in this section, even though the amount appears as part of the hotel receipt. Legible receipts must be included for any meal, and do remember that the State of Arizona's reimbursement cannot include charges for entertainment or alcoholic beverages. As previously stated, the Commission cannot reimburse for expenses documented only by a credit card receipt.

If you accrue lodging expenses in any cities other than Phoenix, Arizona or neighboring communities, explain the purpose of the trip to that city. Attach a copy of the actual hotel bill to the invoice. The Commission will not reimburse for hotel accommodations documented by a credit card receipt.

6.3.6 Telephone Charges. The simplest method of documenting telephone charges is to attach a copy of your monthly bill from the telephone company and highlight those calls for which you wish to be reimbursed. Identify parties called for all telephone numbers other than the State of Arizona exchange (602). Include in this reporting procedure, telephone calls which originated from your place of lodging, even though the amount appears as part of the hotel receipt.

6.3.7 General Expenses, Shipping. Itemize and attach appropriate receipts.

Duplicating. Indicate number of pages and rate per page (e.g., 1,000 copies @ 10 cents/page = \$100) on expense reporting form. Charge must not exceed 10 cents per copy. Identify the substance in the appropriate blank of the standardized expense reporting form (testimony, draft testimony, other, etc.)

Materials and Supplies. If the materials and supplies originate from your own stock and no receipt is available, you must state this on the Commission form and identify those materials and supplies for which you wish to be reimbursed. If a receipt is available, it should be attached to the invoice.

Computer Time. Attach all invoices from external computer firms, or if the computer belongs to your firm, include whatever back-up information you may have to document the use of the computer and indicate the reason for its use.

6.4 GENERAL CONDITIONS

6.4.1 Cancellation of Contract. If, through any cause, the Contractor shall fail to fulfill, in a timely manner, his/her obligations under this Contract, the Commission shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereon. In the event of termination, all properties, finished or unfinished documents, data, studies, and reports purchased or prepared by the Contractor under this Contract shall, at the option of the Commission, become the property of the Commission and the Contractor shall be entitled to compensation for any unreimbursed expenses necessarily incurred in satisfactory performance of the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the Commission by virtue of any breach of the Contract by the Contractor, and the Commission may withhold any reimbursement to the Contractor for the purpose of the set off, until such time as the exact amount of damages due the Commission from the Contractor is agreed upon or otherwise determined.

6.4.2 Changes. The Commission may, from time-to-time, require changes in the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by the Commission and the Contractor, must be incorporated in written amendments to this Contract.

6.4.3 Conflict of Interest. No officer, employee, or member of the Contractor's governing body, and no other public official of the governing body of the locality, or localities in which the project is situated or being carried out, who exercises any functions or responsibilities in the review and approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects the Contractor's personal interest, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof. Contractor agrees that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that, in the performance of this Contract, Contractor shall not employ any person having any such interest.

The Commission reserves the right to establish the specific conflict of interest requirements which will govern any contract resulting from this RFP.

6.4.4 Copyright Prohibited. No reports, maps, any other documents or materials produced in whole (or in part) under, or as a result of, this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

6.4.5 Contractor Conditions. Contractor shall make prompt payment, as due, to all persons supplying to said Contractor labor or material for the performance of the work provided for in this agreement. Contractor shall pay all contributions, or amounts, due the Industrial Accident Fund from such Contractor and/or Subcontractor incurred in the performance of the Contract. Contract shall not permit any lien, or claim, to be filed or prosecuted against the State on account of any labor or material furnished. The Contractor is required to hold and maintain all licenses and permits required for the operation of the business conducted by the Contractor as applicable to the contract.

6.4.6 Payment of Claims. If the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor services furnished to the contractor or a subcontractor by any person in connection with this agreement as such claim becomes due, the proper officer(s) representing the Commission, or State of Arizona, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due, or to become due, the Contractor by reason of agreement.

The payment of a claim in the manner authorized in this section does not relieve the Contractor or his/her surety from his/her or its obligation with respect to unpaid claims.

6.4.7 Contract Terms. When a contract is awarded, the RFP will be incorporated into the contract, and the contract will include the following provisions. First the laws

of the State of Arizona shall govern the construction and interpretation of this Agreement.

Second, all parties are hereby put on notice that this Agreement is subject to cancellation.

Third, Contractor and Commission recognize that, in actual economic practice, overcharges resulting from anti-trust violations are, in fact, borne by the Purchaser. Therefore, Contractor hereby assigns to Commission any and all claims for such overcharges.

Fourth, each payment obligation of the Commission created hereby is conditioned upon the availability of State or Federal funds which are appropriated, or allocated, for the payment of such obligation. If funds are not allocated and available for the continuance of the function performed by any equipment, material or service, the contract period for any machine, material or service directly, or indirectly, involved in the performance of that function, may be terminated by the Commission at the end of the period for which the funds are available. The Commission shall notify the Contractor at the earliest possible time which machine, material or service will, or may be, affected by a shortage of funds. No penalty shall accrue to the Commission in the event this provision is exercised, and the Commission shall not be obligated or liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit the Commission to terminate this Agreement of any machine, material or service listed on any schedule herein under in order to acquire similar equipment or service from another Contractor.

Fifth, the Commission explicitly reserves the right to terminate the contract resulting from this RFP upon five (5) days notice to the Contractor in the event a determination is made that the investigation contemplated in this proceeding is no longer necessary.

Sixth, no right or interest in the contract may be assigned without the written permission of the Commission or its designee.

Finally, the parties agree to resolve disputes arising out of this Agreement pursuant to Arizona law.

6.4.8 Federal Immigration Laws & Foreign operations. In accordance with A.R.S. § 41-4401, the Consultant warrants compliance with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214(A) related to the immigration status of its employees. These warranties shall remain in effect through the term of the contract. A breach of these warranties shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract. The Consultant shall

obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Commission upon request. The Consultant and its subcontractors shall verify the employment eligibility of employees hired after December 31, 2007, through the E-Verify Program operated by the Department of Homeland Security. The Consultant and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract.

In accordance with A.R.S. § 35-397, the Consultant must certify that it does not have scrutinized business operations in Iran or in Sudan.

6.4.9 Indemnification and insurance. Contractor agrees to defend, indemnify and save harmless the Arizona Corporation Commission and its divisions and all officers, agents and employees thereof (hereinafter "indemnities"), each severally and separately, against all liabilities, demands, claims, damages, losses, costs and expense of whatsoever kind or nature including, without limitation, any and all direct and indirect costs of defense made against, incurred or suffered by any such indemnities as a direct or indirect consequence of injury, sickness or disease including death to persons, injury to or destruction of property including without limitation the loss of use of property or any other cause of action whatsoever arising out of, or resulting from, or which would have not occurred or existed but for this Contract.

Contractor, performing as an independent Contractor hereunder, shall be fully responsible for all tax obligations, Workmen's Compensation insurance, and all other applicable insurance coverage, for itself and its employees, and the Commission shall have no responsibility or liability for any such taxes or insurance coverage.

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate
\$2,000,000
- Products – Completed Operations Aggregate
\$1,000,000
- Personal and Advertising Injury
\$1,000,000
- Blanket Contractual Liability – Written and Oral
\$1,000,000
- Fire Legal Liability
\$50,000
- Each Occurrence
\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.***
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.***

3. Worker's Compensation and Employers' Liability

Workers' Compensation
Statutory
Employers' Liability
Each Accident
\$ 500,000
Disease – Each Employee
\$ 500,000
Disease – Policy Limit
\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor / Independent Contractor) form.

4. Professional Liability (Errors and Omissions Liability)

Each Claim
\$1,000,000
Annual Aggregate
\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees; wherever additional insured status is required, such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(State of Arizona Department Representative's Name & Address)** and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(Arizona Corporation Commission, c/o Kim Battista, Administration Division, 1200 W. Washington Street, Phoenix, AZ 85007)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.5 FILING OF A PROTEST

Any interested party may protest the award of a contract pursuant to the RFP. The protest shall include the following information:

1. The name, address, and telephone number of the protestor;
2. The signature of the protestor or its representative;
3. A detailed statement of the legal and factual grounds for the protest including copies of relevant documents; and
4. The form of relief requested.