

ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION

REQUEST FOR PROPOSAL

IN THE MATTER OF THE ARIZONA CORPORATION COMMISSION
EXAMINATION OF THE TECHNICAL, MANAGERIAL AND FINANCIAL
CONDITION OF JOHNSON UTILITIES AND ITS AFFILIATES, SUBSIDIARIES
AND HOLDING COMPANIES. (DOCKET NO.WS-02987A-17-0184)

PROPOSALS TO BE CONSIDERED MUST BE RECEIVED

ON OR BEFORE June 30, 2017

ISSUE DATE: JUNE 15, 2017

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 seven (7) hard copies of their proposals on or before 3:00 p.m., June 30, 2017. The successful candidate(s) will serve as consultants to the Arizona Corporation Commission Utilities Division Staff (“Staff”) in examination of the technical, managerial and financial condition of Johnson Utilities, LLC (“Johnson” or “Company”) and its affiliates, subsidiaries and holding companies, as directed by the Commission on June 13, 2017 .

Contractor services are requested for all aspects of this filing. However, proposals may be considered for all or portions of the work elements. Consequently, cost information should be provided for each work element and include estimated hours and total dollars.

2. BACKGROUND

The Commission has determined that there is value in performing an examination of the managerial, technical and financial condition of Johnson, and its regulated affiliates, subsidiaries and holding companies.

The Commission has asked Staff to report to the Commission on or before September 12, 2017, with recommendations that address, at a minimum, the following:

1. Whether Johnson should be directed to file for new rates/charges based upon the rate review?
2. Whether an interim manager should be appointed to manage the entirety of affairs for Johnson?
3. Does Johnson have the capability to serve new territory outside the boundaries defined in its Certificate of Convenience and Necessity?

2.1. DESCRIPTION OF THE COMPANY

Johnson is a Class A water and waste-water utility providing services to approximately 25,633 water customers and 38,895 wastewater customers in Pinal County Arizona.. Johnson has several affiliates, one of which is Southwest Environmental Utilities (“SEU”). Johnson files an annual affiliated interest report pursuant to Arizona Administrative Code (A.A.C.) R14- 805A, which lists other affiliates.

2.2. ADDITIONAL INFORMATION

It is expected that the Consultant would be an independent firm familiar with ratemaking concepts and regulatory auditing. Meetings with Commission Staff may be held at 1200 West Washington, Phoenix, Arizona, or telephonically. Johnson maintains its books and records in its principal offices at 968 E. Hunt Highway, San Tan Valley, Arizona 85143. When necessary, the Consultant(s) is expected to work on-site.

3. MAJOR WORK ELEMENTS

Proposals are sought for all or portions of the work elements identified in this RFP:

Financial Records:

1. Prepare a report which describes the financial information identified below and which provides recommendations regarding whether Johnson should file a rate case for new rates and charges; whether an interim manager should be appointed to manage the entirety of affairs for Johnson; and whether Johnson has the capability to serve new territory outside the boundaries defined in its Certificate of Convenience and Necessity.
2. Review Johnson's books and records in order to determine whether Johnson has the opportunity to earn the authorized rate of return. Determine the effect of customer growth since Johnson's last rate case, and determine the level of Johnson's revenues.
3. Review all filings and submittals made by Johnson and SEU for the period January 1, 2016 - June 30, 2017. These filings and submittals may be available on the Commission website, using the e-docket function. These filings and submittals would include but are not limited to:
 - a) Annual Reports by Johnson and SEU for the period January 1, 2016 - June 30, 2017;
 - b) All Johnson and SEU externally generated CPA audited statements, including income statements, balance sheets, statement of owners' equity for the period January 1, 2016 - June 30, 2017;
 - c) Central Arizona Groundwater Replenishment District cost recovery approval requests filings by Johnson and SEU; for the period January 1, 2016 - June 30, 2017;
 - d) Annual Affiliate Activity Reports by Johnson and SEU for the period January 1, 2016 - June 30, 2017;

4. Examine and Review:

- a) Affiliate transactions.
- b) How the parent company impacts the financial position of its affiliates, subsidiaries and holding companies.
- c) Internal audit practices.
- d) Cash management, financial accounting practices, budget management and control, tax accounting,

Engineering Analysis:

5. Evaluate and make recommendations regarding Johnson's water and wastewater service quality, maintenance and construction practices, and its distribution system reliability. Conduct a systems operation review of water supply, system design, and system planning.

3.1. CHANGES IN SCOPE

Although the major work elements are identified in Section 5, other related issues may arise which will need to be addressed. During the course of the case, the Contractor(s) should expect some issues to expand while others diminish. It is possible that the Director of the Utilities Division may determine that certain portions of the work would be better addressed by internal Staff. The consultant(s) would then need to adjust the work hours and bill accordingly. Staff 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 Contractor(s) will undertake all tasks required to conduct the examination and analysis as indicated in the Major Work Elements specified in section 5 above and make appropriate recommendations consistent with general accounting and ratemaking principles, A.A.C. R14-2-103, previous Commission orders and the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts.

3.1.1 GENERAL REQUIREMENTS APPLICABLE TO ALL WORK ELEMENTS

1. Attend meetings in person or via teleconference as requested by Staff.
2. Coordinate Work Product with Internal Staff and other Consultants to ensure that all recommendations are consistent among Staff witnesses.
3. Prepare and submit data requests necessary for the analysis.

4. Prepare a report with review and audit findings.
5. Assist the Commission's Legal Division with the preparation of any legal analysis of the report.
6. If requested, appear at and respond to Commissioners' questions at Open Meetings and/or Workshops.

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 of reports, testimony and/or work papers developed in Microsoft Excel or Word format.
2. Electronic copies of proposed data requests in Microsoft Word format.

3.3 ESTIMATED COMPLETION DATES

Preliminary conclusions and recommendations resulting from the Work Elements in Section 4 are estimated to be completed by August 04, 2017.

Final conclusions and recommendations resulting from the Work Elements are estimated to be completed by August 25, 2017. The schedule for any remaining work elements has not been finalized.

Preliminary drafts of all written work products must be submitted to Staff at least two (2) weeks prior to the due date for delivery of all work products in its final form.

The expected due dates for delivery of work products may change depending on dates established in any Commission-established meeting dates. Duration of the contract will run until this proceeding before the Commission has been completed.

3.4 PROGRESS REPORTS

Throughout all phases of work, the Contractor(s) will be required to submit, on a biweekly basis, two (2) copies of a work status report to the Director of the Utilities Division, or the Director's designee, who will assess the report and notify the contractor(s) 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 two weeks.

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.

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

4. CONTRACT MANAGEMENT

The Director of the Utilities Division, or the Director's designee, is responsible for the overall management of this project. Among other things, the Director, or the Director's designee, will be responsible for:

1. Overseeing the project operation as it relates to the 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 seven (7) copies of the proposal are to be mailed or delivered to:

Director's Office
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
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 sub-Contractors, is clearly identified. The prime Contractor will be responsible for the timely completion of the work performed by sub-Contractors. The work tasks (and associated budget) to be provided by sub-Contractors 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 "IN THE MATTER OF THE ARIZONA CORPORATION COMMISSION DOCKET NO. WS-02987A-17-0184 EXAMINATION OF THE TECHNICAL, MANAGERIAL AND FINANCIAL CONDITION OF JOHNSON UTILITIES AND ITS AFFILIATES, SUBSIDIARIES AND HOLDING COMPANIES (DOCKET NO. WS-02987-17-0184)"

To be considered for the award, all proposals must be received no later than 3:00 p.m., June 30, 2017.

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 June 30, 2017 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.

Within 10 days after a contract is awarded all proposals are open to public inspection unless determined to be confidential. See Rule R2-7-C317. If you are asserting that your proposal contains confidential information, you must comply with the State's procurement rules concerning claims of confidentiality. Generally, information in the proposal, including costing information, is not considered confidential under the procurement rules. If you are asserting that any part of your proposal and costing information is confidential and not open to public inspection even after the contract is awarded, you must comply with Rule R2-7-103. Rule R2-7-103 requires that you designate the specific confidential trade secrets and/or confidential proprietary information that you claim are confidential and submit a statement in support of your assertion. Your claim of confidential trade secrets and/or confidential proprietary information is then reviewed and considered under the process set out in Rule R2-7-103. A complete set of Arizona's procurement rules can be viewed on the Secretary of State's web site.

Contractors are required to retain all records relating to this contract for five (5) years after the contract's completion.

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-Contractor) 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.

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 sub-Contractors 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 Sub-Contractor, 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. List all Arizona public utilities or public utility 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 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 may be used and 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 5 to any one Contractor and to direct the retention of a sub-Contractor or sub-Contractor approved by the Commission. Offerors who submit a proposal may be required to make an oral presentation of their proposals to the Commission Staff. 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 Staff also reserves the right to conduct a Best and Final Offer process.

The following is a list of the factors 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 hearing.
- 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 5.
- 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 described in the Statement of Work as described in Section 5.
- 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

Payments will be made upon submission of an approved original invoice. 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.

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-Contractor) 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.

6.3.2 Prohibitions. Credit card invoices without receipts, travel agency receipts and/or invoices are not acceptable. No reimbursement shall be made for lodging or meals within the county of the Contractor's headquarters, or within fifty (50) miles of the Contractor'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 assigned reference numbers for easy identification.

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 Shuttle Service. Indicate origin and destination of trip and attach receipt from driver.

Parking. Record in the appropriate blank 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 and record the dollar amount 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. Legible receipts are required.

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 exchanges (602, 480, 623, 520 and 928). 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. Contractor shall pay all costs associated with interpersonal communications such as phone calls, mail, and/or shipping between one Contractor office and another. Commission shall pay only all costs associated with direct communication and shipping between Contractor and Commission.

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 (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.

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 supplier(s) of 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 Sub-Contractor 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 sub- Contractor 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 Director of Utilities or the Director's designee.

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

6.4.8 Indemnification Clause. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred

to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

Insurance Requirements. 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 arising 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 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.

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

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, 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
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$ 1,000,000

- a. The policy shall be endorsed as required by this written agreement, to include *the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials, agents, and employees 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 endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

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

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

- a. Policy shall be endorsed, as required by this written agreement, to include *the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.*
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability

Each Accident	\$ 1,000,000
Disease – Each Employee	\$ 1,000,000
Disease – Policy Limit	\$ 1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, 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 each contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 2,000,000
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, 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 negligent acts 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, as required by written agreement, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the State of Arizona, within two (2) business days of receipt, notice if a policy is suspended, voided, or cancelled for any reason. Such a notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to **Arizona Corporation Commission, c/o Kim Battista, Administration Division Director, 1400 W. Washington Street, Phoenix, AZ 85007, Fax (602) 542-4111.**

D. ACCEPTABILITY OF INSURERS: Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have 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 (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All certificates and endorsements as required by this written agreement, 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. 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 Yvonne Watkins, Administrative Services Officer, 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 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 be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the contractor that its subcontractors have the required coverage.
- G. APPROVAL AND MODIFICATIONS:** The contracting agency, in consultation with State Risk reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by the administrative action.
- H. EXCEPTIONS:** In the event the Contractor(s) or subcontractor(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 subcontractor(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.

END OF SOLICITATION