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BEFORE THE ARIZONA CORPORATION COMMISSION

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- 2 MIKE GLEASON
CHAIRMAN
- 3 WILLIAM A. MUNDELL
COMMISSIONER
- 4 JEFF HATCH-MILLER
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- 5 KRISTIN K. MAYES
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- 6 GARY PIERCE
COMMISSIONER

2007 DEC -7 A 9:52
AZ CORP COMMISSION
DOCKET CONTROL

7 IN THE MATTER OF SEMPRA ENERGY
8 SOLUTIONS APPLICATION FOR A
9 CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR COMPETITIVE RETAIL
ELECTRIC SERVICES.

Docket No. E-03964A-06-0168

Arizona Corporation Commission
DOCKETED

DEC -7 2007

11 **RUCO'S RESPONSE TO**
12 **MOTION TO STRIKE**

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13 The Residential Utility Consumer Office ("RUCO") hereby responds to Sempra Energy
14 Solutions, L.L.C.'s ("SES" or the "Company") Motion to Strike Testimony ("Motion"), filed on
15 December 3, 2007. In its Motion, SES asks the Arizona Corporation Commission
16 ("Commission") to issue an order striking the pre-filed testimony of three witnesses: Stephen
17 Ahearn (filed on behalf of RUCO) and Frank G. Graves and Peter Fox-Penner (both filed on
18 behalf of New West Energy Corporation ["NWE"]).

19 **INTRODUCTION**

20 SES has filed an application for a Certificate of Convenience and Necessity ("CC&N") to
21 provide competitive retail electric services. SES' Motion claims that the testimony of Messrs.
22 Ahearn, Graves and Fox-Penner is "far beyond" the scope of what is necessary to decide its
23 application to obtain a CC&N. SES's Motion identifies what it calls "three core issues" that
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1 need to be resolved in this proceeding. However, SES overlooks a fourth issue, the public
2 interest, which is also in play in this proceeding. It is the Company's failure to recognize this
3 important fourth issue that leads it to the erroneous conclusion that the testimony of the three
4 witnesses is beyond the scope of this proceeding.

5
6 **TESTIMONY REGARDING THE PUBLIC INTEREST IMPLICATIONS OF SES'
APPLICATION IS WITHIN THE SCOPE OF THE PROCEEDING**

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8 The Arizona Supreme Court has recognized that the public interest is always a factor in
9 the Commission's granting of a CC&N.¹ The testimony of all three witnesses (Ahearn, Graves,
10 Fox-Penner) at issue goes to the question of whether it is in the public interest to grant a
11 CC&N for competitive electric service. Thus, RUCO and NWE's testimony is clearly within the
12 scope of this proceeding.

13 Even if the public interest were not a necessary element of the Commission's analysis
14 of SES's CC&N application, other parties have raised the issue in their testimonies filed to
15 date, so RUCO and NWE should be permitted to respond to that testimony. Specifically, the
16 Commission's Utilities Division ("Staff") pre-filed the testimony of Bing Young identifying the
17 public interest as a factor to be addressed.² Intervenor Air Liquide Industrial U.S. LP's ("Air
18 Liquide") witness Kevin Higgins likewise recognizes that this proceeding includes an evaluation
19 of public interest factors.³ To deny RUCO the opportunity to respond to Staff and Air Liquide's
20 testimony on the public interest would infringe on its due process rights as a party to the
21 proceeding.

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¹ *James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983).

² See Direct Testimony of Bing E. Young (filed June 19, 2007) at 22-26.

³ See Direct Testimony of Kevin Higgins (filed July 3, 2007) at 8.

1 Further, Staff apparently intends to further address the public interest in its forthcoming
2 testimony. Staff recently issued a Request for Proposal (“RFP”) regarding this docket, seeking
3 a consultant to evaluate “public policy considerations of issuing a CC&N at this time.”⁴ Staff’s
4 RFP envisions its consultant will serve as an expert witness in this proceeding, and will
5 evaluate such issues as “the pros, cons and any unintended consequences of retail electric
6 competition in Arizona,” “the relationship between retail electric competition and the resource
7 planning efforts of incumbent electric utilities,” “whether issuance of a CC&N at this time would
8 be in the public interest,” and “whether there should be any limits on customer participation in
9 retail electric competition.”⁵ In addition, Staff’s recent Motion to Continue evidences its
10 expectation that this proceeding will broadly evaluate the merits of retail electric competition.
11 Staff’s Motion to Continue described this proceeding as “present[ing] complex and potentially
12 controversial issues related to retail electric competition” and indicated that “a case of this
13 importance requires an especially rigorous analysis.”⁶ Staff clearly does not see this
14 proceeding as being a cut-and-dried analysis of whether SES is a fit and proper entity to
15 receive a CC&N, but one that goes beyond that narrow issue to determine whether retail
16 electric competition itself is in the public interest. This is consistent with the Commission’s
17 obligation to evaluate the public interest when considering an application for a CC&N.

18 SES’ Motion suggests that the legislature has spoken on the issue of whether retail
19 electric competition is in the public interest, and the Commission therefore “lacks the power” to
20 repeal retail choice.⁷ But the Commission is not constrained from considering in this
21 proceeding whether retail electric competition is in the public interest. It is true that A.R.S. §
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23 ⁴ See Staff’s November 13, 2007 Request for Proposal, attached as Exhibit A, at 2.

⁵ *Id.*

24 ⁶ See Staff’s Motion to Continue, filed November 19, 2007, at 1.

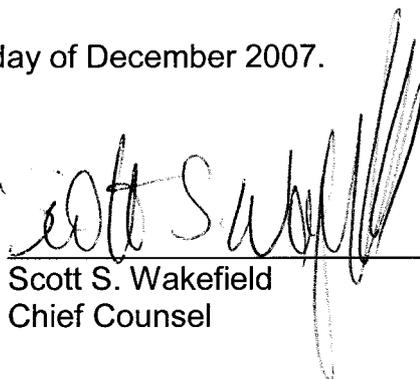
⁷ See Motion at 9.

1 40-202 states that "it is the public policy of this state that a competitive market shall exist in the
2 sale of electric generation service." However, as this Commission well knows, it is the
3 Commission, not the Legislature, that has the authority to set utility rates and establish the
4 appropriate market structures for utilities.⁸ Further, that power rests exclusively with the
5 Commission,⁹ and thus the Commission is not bound to adopt a competitive framework merely
6 because the legislature has attempted to encroach into the Commission's exclusive domain.
7 Thus, the Commission is not precluded from addressing whether retail competition for electric
8 service is in the public interest.

9
10 **CONCLUSION**

11 SES's Motion is based on the erroneous assumption that the question of the public
12 interest is beyond the scope of this case. But the Commission has both the authority and the
13 obligation to consider the public interest in this CC&N application proceeding. The pre-filed
14 testimonies of Messrs. Ahearn, Graves and Fox-Penner all address aspects of the public
15 interest implications of granting SES the CC&N it seeks. They are, therefore, within the scope
16 of this proceeding, and they should not be stricken.

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18 RESPECTFULLY SUBMITTED this 7th day of December 2007.

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21 
22 Scott S. Wakefield
Chief Counsel

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24 ⁸ *Ariz. Constitution*, Art. XV, Sec. 3; *State v. Tucson Gas*, 15 Ariz. 294, 307, 138 P.781, 786 (1914); *Phelps Dodge v. AEPSCO*, 207 Ariz. 95, 109 ¶ 44, 83 P.3d 573, 587 (App. 2004)
⁹ *Tucson Gas*, 15 Ariz. at 307, 138 P. at 786.

1 AN ORIGINAL AND THIRTEEN COPIES
of the foregoing filed this 7th day
2 of December 2007 with:

3 Docket Control
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Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/
6 mailed this 7th day of December 2007 to:

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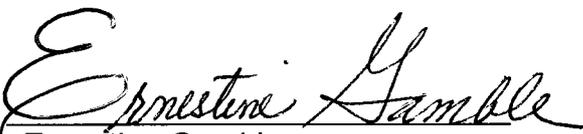
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11

By 
Ernestine Gamble

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EXHIBIT A

ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION

REQUEST FOR PROPOSAL

IN THE MATTER OF THE APPLICATION OF SEMPRA ENERGY SOLUTIONS
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR
COMPETITIVE RETAIL ELECTRIC SERVICES

Docket No. E-03964A-06-0168

PROPOSALS TO BE CONSIDERED MUST BE RECEIVED

ON OR BEFORE

November 13, 2007

ISSUE DATE: November 2, 2007

1. INTRODUCTION

You are invited to submit a proposal in accordance with the specifications contained in this Request for Proposal ("RFP"). Proposals must address all work elements in Section 3 of the RFP. The bid should not exceed \$40,000. Offerors must submit an original and seven (7) hard copies of their proposals on or before 3:00 p.m., November 13, 2007.

The successful candidate will serve as a Consultant to the Arizona Corporation Commission Utilities Division Staff ("Staff") in the Sempra Energy Solutions ("Sempra") Application for Approval of a Certificate of Convenience and Necessity ("CC&N") for Competitive Retail Electric Services.

2. BACKGROUND

2.1 DESCRIPTION OF THE COMPANY

Sempra is a California limited liability company that is seeking certification as an Electric Service Provider to supply electric generation service to customers in the service territories of Arizona Public Service, the Salt River Project, and Tucson Electric Power.

2.2 RELEVANT ARIZONA CORPORATION COMMISSION PROCEEDINGS AND DECISIONS

In the 1990s, the Commission adopted rules to introduce retail electric competition in Arizona. Those rules are contained in A.A.C. R14-2-1601 through -1607. The Commission granted about 20 CC&Ns to entities to provide competitive electric service. A CC&N was granted to Sempra's predecessor in interest, Sempra Energy Trading, on June 4, 1999 (Decision No. 61742). On August 23, 2002, the CC&N was transferred to Sempra Energy Solutions (Decision No. 65123). On September 10, 2002, the Commission issued Decision No. 65154, also known as the "Track A" Decision. This Decision, among other things, prevented generation asset divestiture. On March 14, 2003, the Commission issued Decision No. 65743, the "Track B" Decision, which described the procedures utilities should use in the procurement of power from the market. On January 27, 2004, the State of Arizona Court of Appeals issued its Decision in *Phelps Dodge Corp. v. Arizona Electric Power Co-op, Inc.*, 207 Ariz. 95, 83 P.3d 573 (App.2004), ("Phelps Dodge Decision"). That Decision invalidated portions of the electric competition rules, including Rule 1603 which addresses the processing of CC&Ns. As a result of the Phelps Dodge Decision, the CC&Ns that had been approved under 1603 were essentially voided. No further action related to these rules has been taken.

On March 16, 2006, Sempra filed a new application for a CC&N to provide competitive retail electric service. On June 19, 2007, Staff filed its direct testimony. On July 3, 2007,

intervenors Air Liquide and the Residential Utility Consumer Office filed their direct testimony. On July 5, 2007, Sempra filed an Amended Application. On July 5, 2007, a Procedural Order was issued that provided for direct testimony to be filed on or before August 31, 2007 by intervenors not previously filing direct testimony. Rebuttal testimony was scheduled to be filed by all parties on or before September 26, 2007. A hearing was scheduled to begin on October 2, 2007. On September 6, 2007, Staff filed a motion for a continuance of approximately 90 days for the hearing in this matter and for all remaining procedural dates to be appropriately adjusted. The Administrative Law Judge has not yet issued a procedural order in response to Staff's motion, but testimony could be expected to be filed on or about December 7, 2007. All of the above listed documents are available at: <http://edocket.azcc.gov/>.

2.3 ADDITIONAL INFORMATION

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

3.0 STATEMENT OF WORK

The Consultant will serve as an expert witness in proceedings regarding Sempra Energy Solutions' Application for Approval of a Certificate of Convenience and Necessity for Competitive Retail Electric Services. The Consultant will deal with public policy considerations of issuing a CC&N at this time, while in-house Staff will provide analysis of Sempra's technical, managerial, and financial qualifications to provide service. Although the major work elements are identified below, other related issues may arise which will need to be addressed. During the course of the case, the Consultant(s) should expect some issues to expand while others diminish. The relative significance of certain issues may also change during the course of the case.

3.1 MAJOR WORK ELEMENTS

1. Evaluate the pros, cons, and any unintended consequences of retail electric competition in Arizona in light of evaluating a CC&N application at this time.
2. Evaluate the relationship between retail electric competition and the resource planning efforts of incumbent electric utilities.
3. Develop recommendations on whether issuance of a CC&N at this time would be in the public interest. Consider whether it is necessary to have a complete set of rules in place before allowing competitors to provide retail service.
4. Develop recommendations on whether there should be any limits on customer participation in retail electric competition.

5. Coordinate testimony with Staff and any other Consultants to ensure that all recommendations are consistent among Staff witnesses.
6. Attend meetings in person or via teleconference as requested by Staff.
7. Prepare and submit data requests necessary for analysis and prepare responses to data requests served on Staff.
8. Read and analyze all testimony, schedules and data responses submitted by Sempra and all other parties to the docket.
9. Prepare expert testimony as required and scheduled by the procedural order(s).
10. Rebut the assertions of Sempra and interveners with which the Staff disagrees.
11. Appear and testify at evidentiary hearings regarding this matter.
12. Assist the Commission's Legal Division with the preparation of cross examination questions.
13. Assist the Commission's Legal Division with the preparation of the legal brief.
14. Review the Proposed Opinion and Order issued by the Hearing Division in this case and evaluate issues for potential exceptions or rehearing.
15. If requested, appear at and respond to Commissioners' questions at Open Meeting.

3.2 WORK PRODUCTS

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

1. Electronic copies of testimonies sent to Staff two weeks or earlier (based on Internal Staff's needs) before any filing date determined by a Procedural Order.
2. Oral testimony and technical support at the hearing if necessary.
3. One (1) complete set of workpapers, indexed in an orderly form, supporting the development of all calculations by the Consultant(s) and summarizing the procedures and accounting and ratemaking principles applied to form conclusions and recommendations. Workpapers will include computer disks, printouts and any other medium by which data and narratives are obtained and retained.

3.3 ESTIMATED COMPLETION DATES

The Administrative Law Judge has not yet issued a procedural order in response to Staff's request for a continuance in this matter, but testimony could be expected to be filed on or about December 7, 2007. The Consultant should be flexible to adjust to filing, hearing, and other dates as they may be established.

3.4 PROGRESS REPORTS

Throughout all phases of work, the Consultant(s) will be required to submit, on a monthly 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 Consultant(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 Consultant(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.

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 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 Consultant'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:

Ernest G. Johnson
Director of Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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

The cover sheet for the proposal should indicate clearly the consulting firm's name, telephone number, and address¹ along with the coinciding RFP name. To be considered for the award, all proposals must be received no later than 3:00 p.m. November 13, 2007.

Proposals should be prepared simply and economically, providing a straightforward, concise description of Consultant's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Proposals will be opened publicly on November 13, 2007 at 3:00 p.m. at the Arizona Corporation Commission Offices, 1200 West Washington St. (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.

¹ The listed telephone number and address location will be considered the primary means of contact for any and all members of the Prime Consultant's team for billing purposes. Any costs associated with the use of multiple office locations on the part of the Prime Consultant and the Prime Consultant's team (including sub-Consultants) in conducting this project shall be assumed by (i.e. the sole responsibility) Prime Consultant, 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 Consultant's team members and/or offices.

Consultants 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 sub-Consultants 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 Consultant (and Sub-Consultant, 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 3 to any one Consultant and to direct the retention of a sub-Consultant or sub-Consultants 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 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 Consultant 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 3.
- 6.1.4 Qualifications of On-Site Consultant 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 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 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.

Payments will be made upon submission of an approved original invoice and two (2) legible copies. Each invoice will clearly show: the Consultant'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 charges 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 Consultant's headquarters, or within fifty (50) miles of the Consultant'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 and assigned reference numbers to each receipt 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 on the 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 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 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. Consultant shall pay all costs associated with interpersonal communications such as phone calls, mail, and/or shipping between one Consultant office and another. Commission shall pay only costs associated with direct communication and shipping between Consultant 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 (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 Consultant 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 Consultant 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 Consultant under this Contract shall, at the option of the Commission, become the property of the Commission and the Consultant shall be entitled to compensation for any unreimbursed expenses necessarily incurred in satisfactory performance of the Contract. Notwithstanding the above, the Consultant shall not be relieved of liability to the Commission by virtue of any breach of the Contract by the Consultant, and the Commission may withhold any reimbursement to the Consultant for the purpose of the set off, until such time as the exact amount of damages due the Commission from the Consultant is agreed upon or otherwise determined.

6.4.2 Changes. The Commission may, from time-to-time, require changes in the services of the Consultant to be performed hereunder. Such changes, including any increase or

decrease in the amount of the Consultant's compensation which are mutually agreed upon by the Commission and the Consultant, must be incorporated in written amendments to this Contract.

- 6.4.3** Conflict of Interest. No officer, employee, or member of the Consultant'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 Consultant's personal interest, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

Consultant 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 Consultant further covenants that, in the performance of this Contract, Consultant 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 Consultant.

- 6.4.5** Consultant Conditions. Consultant 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. Consultant shall pay all contributions, or amounts, due the Industrial Accident Fund from such Consultant and/or Sub-Consultant 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 Consultant is required to hold and maintain all licenses and permits required for the operation of the business conducted by the Consultant as applicable to the contract.

- 6.4.6** Payment of Claims. If the Consultant fails, neglects, or refuses to make prompt payment of any claim for labor services furnished to the Consultant or a sub-Consultant 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 Consultant by reason of agreement.

The payment of a claim in the manner authorized in this section does not relieve the Consultant 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, Consultant and Commission recognize that, in actual economic practice, overcharges resulting from anti-trust violations are, in fact, borne by the Purchaser. Therefore, Consultant 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 Consultant 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 for failure of any machine, material or service listed on any schedule herein under in order to acquire similar equipment or service from another Consultant.

Fifth, the Commission explicitly reserves the right to terminate the contract resulting from this RFP upon five (5) days notice to the Consultant in the event a determination is made that the inquiry 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 and insurance. Consultant 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 indemnitees 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.

Consultant, performing as an independent Consultant hereunder, shall be fully responsible for all tax obligations, Workers' 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.

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.