

RESIDENTIAL UTILITY CONSUMER OFFICE

REQUEST FOR PROPOSAL

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE
COMPANY FOR AUTHORIZATION FOR THE PURCHASE OF GENERATING
ASSETS FROM SOUTHERN CALIFORNIA EDISON AND FOR AN
ACCOUNTING ORDER

Docket No. E-01345A-10-0474

BEFORE THE ARIZONA CORPORATION COMMISSION

PROPOSALS TO BE CONSIDERED MUST BE RECEIVED

ON OR BEFORE

5:00 P.M. (ARIZONA TIME), March 15, 2011

ISSUE DATE: January 31, 2011

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1. INTRODUCTION

You are invited to submit a proposal in accordance with the specifications and conditions contained in this Request for Proposal (RFP). Offerors must submit an original and three (3) copies of their proposals on or before 5:00 p.m. (Arizona time) on March 15, 2011.

2. BACKGROUND

2.1. DESCRIPTION OF RESIDENTIAL UTILITY CONSUMER OFFICE (“RUCO”)

RUCO was established in 1983, through the enactment of enabling legislation by the Thirty-Sixth Legislature of the State of Arizona, for the purpose of representing the interests of residential utility consumers in regulatory proceedings involving public service corporations before the Arizona Corporation Commission (“ACC” or “Commission”).

RUCO is empowered to:

- Research, study and analyze residential utility consumer concerns.
- Prepare and present briefs, arguments, proposed rates or orders, and intervene or appear on behalf of residential utility consumers before hearing officers and the ACC.
- Make and execute contracts for outside services.

2.2. DESCRIPTION OF THE COMPANY

Arizona Public Service Company (“APS” or “Company”) is a public service company principally engaged in the generation, transmission and distribution of electricity for sale in Arizona. APS is a subsidiary of Pinnacle West Capital Corporation (“PWCC”). APS provides electric service to approximately 970,000 customers in Arizona.

2.3. PREVIOUS COMMISSION PROCEEDINGS

On November 22, 2010, APS filed an application for Commission authorization for the purchase of generating assets from Southern California Edison and for an accounting Order. RUCO filed an application for intervention on January 21, 2011. The Commission has not issued a procedural order as of the date of this RFP setting for a procedural schedule for the case.

2.4. DESCRIPTION OF THE PENDING APPLICATION

As described in APS' Application:

Four Corners is located on the Navajo Nation in Fruitland, New Mexico, about 25 miles west of Farmington. The plant consists of five generating units. The first three units, wholly-owned by APS, went online in 1963-1964 - Units 4 and 5, which are co-owned by APS, Southern California Edison ("SCE"), and four other utilities, entered commercial operation in 1969-1970. Collectively, the five units generate 2,100 MW of baseload energy, enough electricity to power half a million homes.

For more than 40 years, Four Corners has been a reliable, high-performing generating resource, critical for economically meeting the region's energy needs. The plant serves customers in Arizona, California, New Mexico, and Texas. As a baseload resource, Four Corners generates energy night and day. Over the past decade, the plant has had an average annual capacity factor of 86%. Units 1-3, the smallest of the five units, have a combined output of 560 MW. Units 4 and 5 are much larger, each providing 770 MW of electricity. SCE owns 48% of Units 4 and 5 (a total entitlement of 739 MW) and APS owns 15% (231 MW). The other owners of Units 4 and 5 are Public Service Company of New Mexico (13%), Salt River Project ("SRP") (10%), El Paso Electric Company (7%) and Tucson Electric Power Company ("TEP") (7%). APS operates the plant on behalf of all participants.

Four Corners was the first mine-mouth generation station to take advantage of the large deposits of coal in the Four Corners region. The Navajo mine, located adjacent to the plant and owned and operated by BHP Billiton, provides all of the plant's fuel. Together, Four Corners and the Navajo mine provide jobs to roughly 1,000 people, more than 75% of who are Native American. The combined annual payroll is over \$100 million, a key contribution to the local economy. The Navajo Nation receives approximately \$65

million in tax and royalty payments annually as a result of plant operations, making up over one-third of the Nation's total annual general fund. Federal state, and local governments also benefit from nearly \$40 million in tax dollars that Four Corners and the Navajo mine pay each year. Plant operations support local vendors as well, contributing an estimated \$20 million annually for the services and goods those vendors provide.

Earlier this year, SCE, for reasons unique to California utilities, stated that it would no longer make "life extending" capital investments in the plant and would divest or otherwise terminate its 48% ownership share (739 MW) of Units 4 and 5 (the largest of the plant's five units) by 2016. If no one picks up SCE's share, the co-owners of Units 4 and 5 may elect to close those units, rather than assume the risk of a multimillion dollar expenditure for which there may be no subsequent recovery. After analyzing several alternatives, APS came up with what it believes to be the best alternative to closing the plant--retire Units 1, 2, and 3 (560 MW of less efficient generation that is wholly-owned by APS) and acquire SCE's share of Units 4 and 5. APS believes that this approach makes sense for the following reasons:

1) It saves APS customers money, providing them a nearly \$500 million net present value benefit. APS estimates that the cost of purchasing SCE's share of and installing the EPA-proposed environmental upgrades on Units 4 and 5 is half of what it would cost APS to replace its Four Corners output with natural gas generation and build the transmission needed to bring that power to customers.

2) APS believes it will have a lower customer bill impact than that of every likely alternative.

3) APS believes it significantly reduces Four Corners' regional carbon dioxide ("CO2") and other pollutant emissions by retiring three less efficient coal units and installing environmental upgrades on more efficient ones.

4) APS believes it saves hundreds of jobs and millions of dollars of revenue that are critical to the Navajo Nation and the local economy.

5) APS believes it preserves the diversity of APS' current generation portfolio while tempering the Company's exposure to volatile natural gas prices.

6) APS claims it maintains APS' mix of reliable baseload energy. By providing a marginal 179 MW baseload capacity increase, it hedges the Company's energy mix against the possibility that output from other coal units also at risk could be retired and helps further defer the need for future baseload resources.

APS also seeks a deferral order to address the timing mismatch between costs and benefits that will occur between when the transaction closes and when associated costs are recovered in rates. The application requests an accounting order that will: (1) allow the Company to defer for future recovery depreciation and amortization costs, operations and maintenance costs, property taxes, final coal mine reclamation, and carrying charges associated with APS acquiring SCE's share of Units 4 and 5; and (2) provide assurance that APS will be allowed to fully recover its investment in and carrying costs of Units 1-3, and any additional costs (most notably, decommissioning and mine reclamation) incurred in connection with the closure of those units.

Finally, APS asks that the Commission rule on this matter expeditiously.

2.5. ADDITIONAL INFORMATION

The Company maintains its books and records at its principal executive offices at 400 North Fifth Street, Phoenix, Arizona 85004. The Company's mailing address is P.O. Box 53999, Phoenix, Arizona 85072-3999.

Examination of dockets will occur at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Certain recent dockets, including the application in this docket, may be reviewable on the Commission's website: edocket.azcc.gov. Meetings with RUCO staff will occur at 1110 West Washington, Suite 220, Phoenix, Arizona 85007.

As of the date of this RFP, there is no Procedural schedule. Contractor's ("Contractor") will be advised as soon as those dates become known:

- RUCO Direct Testimony TBD
- Company Rebuttal Testimony TBD
- RUCO Surrebuttal Testimony TBD
- Company Rejoinder Testimony TBD
- Pre-Hearing Conference TBD
- Hearing Begins TBD

3. SCOPE OF WORK

The Contractor(s) will conduct an in-depth analysis of the proposal, associated costs and prudence of APS' request for authorization to purchase the generating assets from SCE and close plants 1, 2 and 3. The analysis is to include recommendations from both an engineering and cost perspective. The analysis should be geared towards a determination whether APS' Application is in the ratepayer's best interests. The Contractor should also be prepared to analyze other possible options if APS does not acquire SCE's interests in Units 4 & 5 and the estimated costs of such options. The analysis should also include a recommendation regarding APS' request for a deferral order. The Contractor should be aware that the scope of the project and procedural schedules are subject to change and that the Contractor will be required to maintain a reasonable amount of flexibility and accommodate any changes

3.1. MAJOR WORK ELEMENTS

The major work elements will include, but not be limited to, the following:

1. Read and review and identify issues in the Application and schedules submitted by Company. Visit site plant if necessary.
2. Read and review and identify issues in the testimony and schedules submitted by Company and any other parties in this docket, as well as any updated schedules and testimony.
3. Prepare and submit all data requests necessary and prepare responses to data requests served on RUCO.
4. Prepare expert testimony, surrebuttal testimony, and, if required by Procedural Order, supplemental testimony.
5. Appear and testify at the evidentiary hearing(s) for this docket.
6. Provide technical support in the preparation and presentation of RUCO's position in public hearings.

- 7 Prepare questions for cross-examination and rebuttal.
- 8 Analyze the Proposed Opinion and Order issued by the Administrative Law Judge and evaluate it for possible exceptions, rehearing and appeal.
- 9 If requested, provide technical support in the preparation of other RUCO members' testimony and RUCO's brief.
- 10 Assist RUCO and its attorneys in writing exceptions to the Proposed Order, if necessary.

3.2. WORK PRODUCTS

The Contractor shall provide the following work products:

1. Discovery data requests to submit to other parties as necessary.
2. Three (3) copies of written direct testimony in draft form and fifty (50) copies of written testimony in its final form.
3. Three (3) copies of written surrebuttal testimony in draft form and fifty (50) copies of written testimony in its final form.
4. One copy of a brief, written summary of Contractor's pre-filed testimony.
5. One copy of questions for cross examination and rebuttal, if desired by RUCO.
6. Responses to data requests submitted to RUCO.
7. Oral briefings, if desired by RUCO staff. Participation in telephonic settlement conferences, if applicable.
8. Oral testimony and technical support at the hearings.
9. One complete set of workpapers, indexed in an orderly form, supporting the development of all calculations by Contractor and summarizing the procedures used in analyzing and evaluating all data. Workpapers shall also include computer disks, printouts, and any other media by which data and narratives were obtained and retained.

3.3. WORK STATUS REPORTS

Throughout all phases of work, the Contractor will be required to submit to the Director, on a monthly basis, one copy of a work status report. The report shall contain the following information:

1. Comparison of planned and actual progress in carrying out all of the Contract tasks during the previous month.
2. Identification of actual or foreseeable problems in completing the work, with an assessment of probable impacts and any recommended solutions to the problems.
3. Timeline showing completion dates for remaining tasks.

3.4. ESTIMATED COMPLETION DATES

Procedural deadlines for this proceeding have yet to be established by the Commission as described in section 2.5 above.

Preliminary drafts of written testimony must be submitted to RUCO at least two weeks prior to due dates for delivery of testimony in its final form. It is anticipated that the written summary of direct testimony and written surrebuttal testimony will be due approximately three days prior to RUCO's scheduled appearance in the hearing, with a draft copy due to RUCO at least one week prior to the specified due date.

The expected due dates for delivery of testimony may change depending on dates established in any forthcoming Procedural Order(s). Duration of the contract will run until these proceedings before the Commission have been completed.

It is expected that RUCO will award a contract(s) on March 17, 2011.

4. CONTRACT MANAGEMENT

The Director of RUCO, 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 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 shall prepare a *single* proposal containing a Technical and a Cost Section. An original and three (3) copies of proposals are to be mailed or delivered to:

Jodi Jerich, Director
Residential Utility Consumer Office
1110 W. Washington, Suite 220
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 provide 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, address, and the coinciding RFP name.

To be considered for award, all proposals must be received no later than 5:00 p.m. (Arizona time), March 15, 2011.

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Contractor's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. If RUCO has recently been provided pertinent information regarding offeror's firm, such as resumes and work history, reference to those documents in lieu of their inclusion will suffice.

Proposals will be opened publicly on March 16, 2011 at RUCO's offices, 1110 W. Washington, Suite 220, Phoenix, Arizona 85007. Previously submitted offers may not be withdrawn after that time.

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

Offerors may designate as proprietary certain portions of the proposals by so identifying those portions in writing at the time of submitting the proposal.

Proposals which do not meet all the requirements specified in the RFP shall be deemed non-responsive.

Inquiries may be directed to:

Residential Utility Consumer Office
1110 W. Washington, Suite 220
Phoenix, Arizona 85007
Telephone: (602) 364-4835

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; otherwise, the proposal may be deemed non-responsive.

PART ONE 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 TWO 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 THREE 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, even and decision point in your plan.

PART FOUR 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 FIVE Prior Experience

Provide a brief description of recent assignments which 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, organization, address, and telephone number for each assignment given. Offerors may be required to submit copies of relevant testimony upon request by RUCO. Offerors must have appropriate education and experience in engineering, which includes a degree in engineering, and demonstrate the competency to evaluate coal fired power plants. If assignment requires an Offeror to be registered or certified in Arizona, Offeror should demonstrate the same, and that such license and registration in Arizona or in any other state is in good standing and that the Offeror has no disciplinary action of any kind pending or in the past. If Offeror has been disciplined, please provide details, including disposition.

PART SIX 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 the 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 oral testimony.

PART SEVEN Relationships with Arizona Utilities

List all public utilities or public utility subsidiaries 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 RUCO in an independent capacity. Describe any other legal, professional, or financial relationships between Arizona public utilities and any key members of the firm.

PART EIGHT Authorized Negotiators

Include the name, address, and telephone numbers of persons in your organization authorized to negotiate the proposed contract.

5.3.COST SECTION FORMAT

The Cost Section should be submitted as a separate part within the total response to this RFP. The format should be the same as that 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. Position: 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 position and for all direct labor proposed.
2. Cost of Supplies - Itemize.
 3. Other Direct Costs - Itemize.
 4. Transportation and Subsistence Costs - Show travel cost and per diem separately.
 5. Total Price Bid for 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. In addition, RUCO 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 RUCO. The following is a list of factors *in descending order of relative importance* that will be considered in evaluating the proposals received:

1. DEMONSTRATED UNDERSTANDING OF THE PROJECT

A determination will be made of the Offeror's clear understanding of the project. Specifically, attention will be given to the Offeror's demonstrated understanding of public utility regulatory issues on a national scope, understanding of the treatment of issues under the State of Arizona's regulatory law, and identification of case-specific issues and understanding of such issues upon the residential consumers of Arizona.

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.

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.

4. QUALIFICATIONS OF ON-SITE 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 Scope of Work as described in Section 3 of this RFP. Bidders are encouraged to submit illustrative abstracts or samples of individual's previous work in relevant areas.

5. COSTS

An evaluation of the reasonableness of the proposed cost in light of the project scope will be made.

7. TERMS AND CONDITIONS OF SOLICITATION OF AWARD

7.1. EXPLANATION TO OFFERORS

RUCO is not liable for any cost associated with the preparation of offerors' proposals or any other costs incurred by any offeror prior to the issuance of any agreement or contract.

The contents of the proposal of the successful Offeror(s) shall become contractual obligations if the proposal is accepted. Failure of the successful Offeror(s) to accept these obligations in a contract, agreement, purchase order, or similar acquisition instrument, may result in cancellation of the award.

News releases pertaining to this project shall not be made without prior written approval of RUCO.

In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all offerors previously contacted by RUCO.

All responses, inquiries or correspondence relating to or in reference to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Offeror and/or Contractor shall, when received by RUCO, become the property of the State of Arizona.

7.2. VALIDITY OF PROPOSALS

All proposals may be modified or withdrawn by written or telegraphic notice received by RUCO any time prior to 5:00 p.m., (Arizona time) **March 15, 2011** may be withdrawn in person by an offeror or his designated representative, providing his identity is made known and a receipt for the withdrawn offer is signed prior to the due date.

8. TERMS AND CONDITIONS OF THE AWARD

8.1. CONTRACT TYPE

The Contract referred to in this and subsequent sections is the contract or agreement between RUCO and the successful Offeror. RUCO 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 supporting information as indicated in this RFP.

8.2. PAYMENT

Payments will be made upon submission of an approved original invoice, detailing charges for the previous month. The invoice (statement) shall include a record of the time expended, services performed, and expenses incurred in sufficient detail so as to justify claims for payment. Each invoice shall clearly show:

- (1) The Contractor's name and address;
- (2) Amount of the bill;
- (3) The RUCO contract billing number and date;

- (4) The hours and rates per individual designating dates, time and hours worked, and distinguishing charged hours from non-charged hours; and
- (5) 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 back-up information with one (1) copy of appropriate, legible receipts for each reimbursement. All invoices will be reviewed and must be approved by RUCO prior to payment.

Payments for invoices covering work on contract deliverables may be withheld pending delivery and acceptance of such deliverable items.

RUCO WILL NOT PROCESS PAYMENTS SUBMITTED BY CONTRACTOR UNLESS CONTRACTOR HAS SUBMITTED, ALONG WITH THE DETAILED STATEMENT OF CHARGES, THE MONTHLY WORK STATUS REPORT REQUIRED PURSUANT TO SECTION 3.3. OF RFP.

IF SATISFACTORY PROGRESS IS BEING MADE, THE CONTRACTOR WILL RECEIVE PAYMENT EACH MONTH BASED UPON THE AMOUNT OF WORK COMPLETED DURING THE PREVIOUS MONTH. EXCEPT AS MAY BE PROVIDED BY WRITTEN WAIVER OF THIS PROVISION BY THE DIRECTOR, RUCO WILL RETAIN TEN PERCENT (10%) OF THE AMOUNT BILLED, ACCORDING TO EACH MONTHLY STATEMENT, UNTIL ALL THE WORK DEFINED IN THE CONTRACT IS COMPLETED TO THE SATISFACTION OF RUCO.

8.3. REGULATIONS FOR THE REIMBURSEMENT OF EXPENSES

In order for reimbursement to occur, regulations must be adhered to, in detail, as described in this RFP. Invoices must be submitted on a timely basis.

- i. Travel, meals and lodging. Travel expense reimbursement will be based upon coach airfare, and reasonable per diem expense reimbursement up to a maximum of the state-approved allowances (\$195.00 per day per person January 1 – March 31; \$163.00 per day per person April 1 – May 31; \$128.00 per day per person June 1 – August 31; \$157.00 per day per person September 1- December 31) will be made for food and lodging. Receipts documenting airfare,

lodging, car rentals and significant miscellaneous expenses must be provided to RUCO.

- ii. Telephone Charges. Reimbursement will be made for telephone calls supported by statements indicating the number called and the purpose of the call unless the number implicitly indicates such a purpose (i.e. it is RUCO's, the Commission's, or another Contractor's number).

8.4. GENERAL CONDITIONS

- i. 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. Contractor shall not permit any lien, or claim, to be filed, or prosecuted, against the State on account of any labor or material furnished.
 - 1. Compliance with Applicable Laws. The materials and services supplied under this Agreement shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain applicable licenses and permit requirements. In particular, Contractor, by entering this Agreement, warrants that it is in compliance with all federal immigration laws and regulations, and that all Subcontractors to the Agreement have executed similar warranties. The breach of any such warranty shall be deemed a material breach of the Agreement, subject to monetary penalties and other penalties up to and including termination of the Agreement. RUCO shall retain the legal right to inspect the papers of any employee of the Contractor who works on the Agreement to ensure that the Contractor is in compliance with its warranties.
- ii. Payment of Claims. If the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or 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 RUCO, or the 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/its obligation with respect to any unpaid claims.

- iii. Incorporation of Documents. The entire contract ("Contract") between Contractor and RUCO shall consist of (1) this Agreement for Professional Services ("Agreement"), (2) the RFP (Exhibit A), (3) the _(date)_ Proposal submitted by Contractor (Exhibit B), (4) the list of State of Arizona Uniform Terms and Conditions (Exhibit C), and (5) all Procedural Orders and briefing schedules that have been, or will be, issued by the Commission in this docket.

- iv. Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by RUCO and as they may be amended from time to time, the following shall prevail in the order set forth below:
 - 1. Procedural Orders.
 - 2. Agreement.
 - 3. Uniform Terms and Conditions (attached hereto as Exhibit A)
 - 4. Proposal submitted by Contractor
 - 5. RFP

RUCO reserves the right to clarify any contractual relationship in writing -- with the concurrence of the Contractor -- and such written clarification shall govern in case of conflict with the applicable requirements stated in the Agreement or Exhibits.

- v. Contract Changes.
 - 1. Amendment. This Agreement may be modified only by a written document signed by the Director of RUCO and the Contractor's representative authorized to sign contracts on behalf of the Contractor.

 - 2. Substitution of Personnel. The Contractor agrees and understands that RUCO's assent to this Agreement is predicated in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified by the Contractor. Therefore, the Contractor agrees that no substitution of such specified individuals and/or personnel qualifications shall be made without the prior written approval of the Director of RUCO, or his designee. It is understood by RUCO and Contractor that all testimony in this proceeding required to be submitted by Contractor on behalf of RUCO will be prepared by or under the direction and control of, and presented by, _(name of individual)_.

- vi. Termination for Convenience. This Agreement may be terminated at any time by the Director of RUCO, or his designee, for any reasons whatsoever, with or without cause, and without penalty, recourse, or

further obligation, upon written notice. In the event of termination by RUCO, Contractor shall, in accordance with the law and terms and conditions of this Agreement, be paid the agreed compensation for requested services rendered, and reimbursed for authorized expenses actually incurred in rendering such services as of the date of the termination, upon delivery to RUCO of the following materials: (1) a complete set of all materials, information, and data required or prepared by Contractor as of the date of termination, and (2) a completed final statement.

vii. Termination for Default. This Agreement is critical to RUCO and RUCO reserves the right to cancel the whole, or any part, of the Agreement due to failure of the Contractor to carry out any term, promise, or condition of the Agreement. RUCO shall issue a written notice of default effective at once to the Contractor for acting or failing to act in any of the following:

1. Contractor fails to perform adequately the services required in the Contract.
2. Contractor fails to furnish the required product within the time stipulated in the Contract.
3. Contractor fails to furnish the required product within the time stipulated in the Contract.
4. Contractor fails to make timely progress in the performance of the requirements of the Contract and/or gives RUCO a positive indication that Contractor will not, or cannot, perform to the requirements of the Agreement.

Upon issuing such notice, RUCO may resort to any single or combination of the following remedies: 1. Cancel the Contract. 2. Reserve all rights or claims to damages for breach of contract. 3. Reserve the right to procure substitute services from other sources, for which RUCO may recover from Contractor excess costs by deduction from any unpaid balance to Contractor or by other means as provided by law.

viii. Conflict of Interest. Contractor avows that no officer, director, member or employee of Contractor has an interest that would conflict in any manner or degree with performance of services Contractor is required to perform under this Agreement. Contractor further promises and avows that during the period this Agreement is in effect it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of services required to be performed under this Agreement, and further promises and avows that in the performance of this Agreement no person having any such interest shall be employed or otherwise

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

- ix. Availability of Funds. Each payment obligation of RUCO which is created hereby is conditioned upon the availability of funds which are appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuation of service, the contract for any service may be terminated by RUCO at the end of the period for which funds are available. RUCO shall notify Contractor at the earliest possible time that service will or may be affected by a shortage of funds. No penalty shall accrue to RUCO in the event this provision is exercised, and RUCO 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 RUCO to terminate this Agreement in order to acquire similar service from another Contractor.
- x. Contract Claims. All contract claims or controversies arising under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder. The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the sole relief sought is monetary damages of \$50,000.00 or less, exclusive of interest and costs.

9. FILING OF A PROTEST

Any interested party may protest the award of a Contract pursuant to this 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.

Protests based upon alleged improprieties in the solicitation that are apparent before the closing date for receipt of proposals shall be filed before the closing date for receipt of proposals. Other protests shall be filed within ten days after the protestor knows or should have known the basis of the protest, whichever is earlier.

UNIFORM TERMS AND CONDITIONS

Version 7.1

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the

Americans with Disabilities Act.

- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
 - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
 - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
 - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - 4.5.1. Accept a decrease in price offered by the contractor;
 - 4.5.2. Cancel the Contract; or
 - 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work

or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. **Risk and Liability**

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
 - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its' own negligence.
 - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials,

they shall be:

- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2. Fit for the intended purposes for which the materials are used;
 - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Year 2000.
- 7.5.1. Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - 7.5.2. Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.
- 7.6. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.7. Survival of Rights and Obligations after Contract Expiration or Termination.

7.7.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On

delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. **Contract Termination**

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.