



REQUEST FOR PROPOSAL (RFP)
SOLICITATION # AG21-0035

State of Arizona
Office of the Attorney General
2005 N Central Ave
Phoenix, AZ 85004

NOTICE

The Arizona Office of the Attorney General (hereinafter the "AGO"), in accordance with the Arizona Procurement Code, is issuing the attached Request for Proposal (hereinafter "RFP") for Outside Counsel Services for the Arizona Power Authority

OUTSIDE COUNSEL FIRMS AWARDED CONTRACTS FOR CALENDAR YEAR 2018

This RFP is to supplement the previously awarded RFP # AG18-0019. Firms awarded contracts for AG18-0019, need not respond.

REQUIREMENTS

Any law firm is invited to respond to this RFP regardless of size. Your law firm must have one or more attorneys admitted to practice law in the State of Arizona. Sole practitioners are acceptable.

OVERVIEW OF SERVICES

The purpose of this RFP is to establish contracts with additional legal counsel for the Arizona Power Authority, on an "as needed, if needed" basis. It is understood that this contract, due to the complexity of legal matters, is not intended to be a mandatory contract. Certain matters may be contracted outside this contract based upon the specific need.

INSTRUCTIONS FOR RESPONSE

The instructions to respond are included in the attached RFP. Responses are expected to comply with these instructions and contain sufficient information to justify an award.

QUESTIONS REGARDING RFP

Questions should be directed to Jerry Connolly at 602-542-8030 or emailed to Jerry.Connolly@azag.gov or Cindy Palmer at 602-542-7986 or emailed to Cindy.Palmer@azag.gov.



REQUEST FOR PROPOSAL (RFP)

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2005 N Central Ave
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DESCRIPTION: SUPPLEMENTAL OUTSIDE COUNSEL SERVICES FOR ARIZONA POWER AUTHORITY

SOLICITATION DUE DATE/TIME: Proposals are due by July 7, 2021 at 3:00PM Local AZ Time

THIS RFP IS BEING ISSUED OUTSIDE ARIZONA PROCUREMENT PORTAL (APP). THE INSTRUCTIONS FOR RESPONDING TO THIS SOLICITATION ARE INCLUDED IN THIS RFP.

ELECTRONIC COPY OF RFP: An electronic copy of this Request for Proposal (RFP) with applicable Attachments, are available at <https://www.azag.gov/procurement> or you may request the RFP by sending a request to procurement@azag.gov; the solicitation number should be identified in the subject line and contact information for your firm provided with the e-mail. The Solicitation on file in the Arizona Office of the Attorney General, Procurement Office, shall have precedence over any differing documents. Changes to this Request for Proposal shall be without effect unless proposed in accordance with the Uniform and Special Instruction Sections of this Solicitation and specifically accepted by the Office of the Arizona Attorney General.

OFFER DELIVERY LOCATION: Proposals shall be mailed or delivered to the Office of the Arizona Attorney General. Proposals must be in a sealed envelope or container. Proposals should be marked Solicitation #AG21-0035. **No fax or electronic copies will be accepted.** All proposals must be received by the Solicitation due date and time specified. Any response received after the Solicitation due date and time specified will not be considered.

PHYSICAL MAILING and DELIVERY ADDRESS:
Arizona Attorney General
Procurement Section
Attention: Solicitation AG21-0035
2005 North Central Avenue
Phoenix, Arizona 85004

GENERAL: In accordance with ARS §41-2538 competitive sealed proposals for the services specified will be received by Office of the Arizona Attorney General, Procurement Section at the specified locations until the time and date cited above. Offers received by the correct time and date will be opened and the name of each Offeror will be publicly read. Offers must be in the actual possession of Office of the Arizona Attorney General, Procurement Section on or prior to the Solicitation Due Date and Time and at the Offer Delivery locations indicated above. Late offers shall not be considered. Hand Delivered or Mailed offers must be submitted in a sealed package with the Solicitation number and the Offeror's name and address clearly indicated on the package. Additional instructions for preparing a proposal are provided in the Special Instructions to Offerors to Offerors contained in this RFP.

QUESTIONS REGARDING RFP:

<p>Solicitation Contact Person: Jerry Connolly, Procurement Manager Phone: (602) 542-8030 E-mail: Jerry.Connolly@azag.gov</p>	<p>Solicitation Contact Person: Cindy Palmer, Procurement Officer Phone: (602) 542-7986 E-mail: Cindy.Palmer@azag.gov</p>
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Offerors are Strongly Encouraged to Carefully Read the Entire Request for Proposal



SCOPE OF WORK

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1. Scope of Work

1.1. Introduction/Background

The Arizona Power Authority (“Authority”) is a body, corporate and politic, without taxing power, established by the Arizona Legislature on May 27, 1944 by the Power Authority Act. Under the Power Authority Act, the Authority is directed to obtain electric power developed from the mainstream of the Colorado River and sell such power to certain qualified purchasers. The Power Authority Act provides that the Authority must be a self-supporting agency and prohibits the Authority from incurring any obligation which would be binding upon the State of Arizona.

The Authority supplies capacity and energy on a wholesale basis to certain power purchasers in the State of Arizona. The Authority’s primary source of power and energy is the Hoover Power Plant at Hoover Dam, located approximately 25 miles from Las Vegas, Nevada. Hoover power is produced by the Boulder Canyon Project hydro-power plant owned by the Bureau of Reclamation. Hoover Dam is the highest and third largest concrete dam in the United States of America. Hoover Dam was dedicated in 1935 and the first generator of the Hoover Power Plant was in full operation in October 1936. The Hoover Power Plant has been in continuous operation since that time. Power and energy from the Hoover Power Plant is transmitted to load centers in Arizona, California and Nevada. The Authority first contracted for Arizona’s share of Hoover power in 1952 and has continuously provided power and energy to its customers since that time.

The Authority is governed by a commission of five members appointed by the Governor and approved by the State Senate (the “Commission”). The term of office for each member is six years and the members select a chairman and vice-chairman from among its membership for two-year terms.


1.2. Purpose

On October 1, 2017, the Authority implemented new 50-year contracts for the sale of Hoover Dam power to selected retail and wholesale customers. Legal services described below are needed to cover pertinent water and electric power issues that may arise from time to time regarding these contracts to advise and support the Authority. The Authority may also require legal services to address emerging public power and water law issues, on both the state and federal level, including any potential effects of the Drought Contingency Plan.

1.3. General Specifications

The following provisions shall apply:

- 1.3.1.** Counsel shall provide timely responses and be accessible. Accessibility includes the ability to be generally available to attend meetings in person on short notice and the ability to be reached promptly by telephone, cell phone, or email.
- 1.3.2.** Attorneys must be available by phone, cell phone and e-mail.
- 1.3.3.** Counsel shall provide an estimated time of task completion and keep the requesting party apprised of any delays or special considerations.
- 1.3.4.** Legal counsel shall provide detailed itemized statements on a monthly basis.
- 1.3.5.** Legal counsel shall not have an actual or potential conflict of interest that would limit representation of the Authority, including with regards to three party interactions with California and Nevada in the Lower Basin of the Colorado River. Counsel shall report any perceived conflicts, including those involving the Upper Basin. The decision as to whether the conflict is remote or disqualifying will be

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the decision of the Authority and the AGO.

1.4. Hierarchy

- 1.4.1. Legal Counsel shall report to the Authority’s Executive Director, but work for and under the direction of the Authority’s Commissioners.
- 1.4.2. Legal Counsel shall coordinate with the Office of the Arizona Attorney General (“AGO”) and other counsel as needed.

1.5. Scope of Work Tasks

Counsel shall be responsible for the following tasks and shall perform these tasks in accordance with the Method of Approach prepared by the Counsel in responding to this Request for Proposal and as accepted by the AGO.

- 1.5.1. On an as needed basis, provide legal advice, support, review, consultation and representation to the Authority regarding specialized legal issues affecting the operation of the Authority, including:
 - 1.5.1.1. The Law of the Colorado River, as well as other relevant federal and state water laws;
 - 1.5.1.2. Hoover Power Allocation Act of 2011, including the post-2017 allocation process and agreements negotiated in connection thereto;
 - 1.5.1.3. Federal and state public power laws;
 - 1.5.1.4. Any potential effects of the Drought Contingency Plan or related activities.
- 1.5.2. Upon request, monitor federal regulatory activities that may impact the Authority, advise accordingly, and provide legal representation when needed to protect or advance the interests of the Authority.
 - 1.5.2.1. Federal regulatory activities includes proposed and/or enacted legislation; activities of relevant Congressional and Senate Committees including the House Energy & Commerce Committee, House Natural Resources Committees, Senate Energy & Natural Resources Committee; and rule-making or policy initiatives of agencies such as the U.S. Department of Energy (especially Western Area Power Administration), U.S. Department of Interior (especially Bureau of Reclamation) and the Federal Energy Regulatory Commission.
- 1.5.3. Upon request, monitor and advise the Authority concerning proposed and/or enacted legislation and administrative rules in the areas of water, energy or utility law in Arizona or relevant adjacent states.
- 1.5.4. Represent the Authority before federal agencies and in federal court, and handle any matters incidental to such representation.

1.6. Reporting

Counsel shall prepare and submit monthly reports to the Authority summarizing activities from the previous month and detailing the hours, rates, and costs incurred. Counsel shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one tenth of one hour and shall promptly provide these records to the Authority on request. Where expenses are disbursed or are incurred by Counsel which also benefit other clients of Counsel in other, similar litigation, only the portion of such expenses fairly and properly allocable to Plaintiff(s) in the Litigation shall be claimed as reasonable



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expenses of prosecuting the Litigation. The report shall also include activities planned for the upcoming month and budgetary costs associated with these activities. The report shall be due by the seventh day of each month. Reports shall be prepared in a format and of a quality approved by the Authority.



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2. Special Terms and Conditions

2.1. Contract

This Contract is issued for the Authority through Arizona Attorney General's Office in accordance with A.R.S. § 41-2538.

2.2. Parties

The parties to this Agreement are the Authority through the AGO and the firm as named in the Executed Offer and Acceptance form.

2.3. Contract Type

Firm fixed hourly rate.

2.4. Term of Contract

The term of the contract shall commence upon award and shall remain in effect for a period of three years thereafter unless terminated, canceled or extended as otherwise provided herein.

2.5. Contract Extension

By contract amendment, any resultant contract may be extended for supplemental period of up to a maximum of 24 months. If the Authority through the AGO exercises such rights, all terms, conditions and provisions of the original contract shall remain in effect and apply during the renewal period, with the possible exception of price.

2.6. Fiscal Funding

This contract may be cancelled without any further obligation by the State of Arizona or the Authority if monies are not appropriated or otherwise made available to support the continuation of this contract in a subsequent fiscal year. If this contract is cancelled under this condition Counsel may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under the contract or which are otherwise not recoverable.

2.7. Changes

The Authority through the AGO reserves the right to add or delete related services and materials and make other changes within the general scope of work as may be deemed necessary to best serve the interests of the State. Changes to the Contract shall be documented by formal written amendment(s).

2.8. Recitals

This Agreement is made with reference to the following facts:

- 2.8.1. The Authority desires to contract for the provision of legal services by counsel not in its employ.
- 2.8.2. Independent Contractor - Counsel represents that it is fully experienced and properly qualified to perform the Services in the State where Services are to be performed, and is equipped, organized and financed to perform such Services. Counsel shall act as an independent contractor and not as an agent of Arizona, in performing the Services and duties of this Agreement.
- 2.8.3. Subcontracts - Counsel shall not subcontract any part of the Services or any of its obligations under



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this Agreement, unless prior written approval has been obtained from the Authority through the AGO.

- 2.8.4.** Cooperation - Counsel shall, to the best of its abilities, cooperate with Arizona to enable the successful completion of the Services according to the terms of this Agreement including, but not limited to, commitment of additional resources, material and personnel, if requested by the Arizona Power Authority designated representative to assure that the Services are properly performed and completed in accordance with the provisions of this Agreement.
- 2.8.5.** The State of Arizona's [Uniform Instructions to Offerors](#) (Rev 9-2014) and [Uniform Terms and Conditions](#) (V9 - Rev 7-1-2013) are incorporated into this Contract. Offerors are encouraged to obtain these documents. Offerors may obtain copies by visiting the Arizona State Procurement Office website at: <https://spointra.az.gov/resources/standard-forms-and-documents> or by calling the Office of the Arizona Attorney General, Procurement at (602) 542.8030.
- 2.8.6.** Advertising and Promotion – The name of Arizona shall not be used in any advertising or other promotional context by Counsel without prior written consent of the Office of the Attorney General designated representative.
- 2.8.7.** Estimated Usage - Any Contract resulting from this Solicitation shall be used on an as needed, if needed basis. The State makes no guarantee as to the amount of work that may be performed under any resulting Contract.
- 2.8.8.** Ownership of Material - All materials, documents, deliverables and/or other products of the Contract (including but not limited to e.g., work plans, reports, etc.) shall be the sole, absolute and exclusive property of the State of Arizona and the Authority, free from any claim or retention of right on the part of the Counsel, its agents, Co-Counsel, subcontractors, officers or employees.
- 2.8.9.** Counsel understands and agrees that certain legal matters may be contracted outside this contract based upon the specific need.

2.9. Pricing

All hourly rates shall be on an all-inclusive basis and shall contain the labor rate, labor benefits, payroll burden, insurance, workman's compensation, all taxes, profit, overhead, general and administrative expenses and all other related charges. A price reduction adjustment may be offered at any time during the term of the Contract and shall become effective upon notice.

- 2.9.1.** A fixed fee may be used as an alternative to hourly rates for a specific case or matter. Hourly rate of persons assigned to the matter/case will be used as the basis of any fixed fee.
- 2.9.2.** Prompt Payment Discount – If payment is issued in full within 21 days of invoice, the State of Arizona shall apply a 5% discount on fees. The 21 days shall begin upon receipt of a correct and undisputed invoice.

2.10. Billings and Invoices

Payments for legal services performed under this agreement are the responsibility of the Authority. All billings shall be submitted monthly to the Authority with copies of all billings submitted to the AGO, upon request. Billings for any fiscal year shall be submitted within 15 days of the end of the fiscal year, which begins July 1 and ends June 30. All billings shall comply with the APA's Reimbursement Policy No. APA-2020-001. Each billing shall be in sufficient detail to clearly indicate:



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- 2.10.1. The project or matter involved.
- 2.10.2. The attorney or other personnel whose time is involved on each charge.
- 2.10.3. The number of hours billed to the nearest 1/10 of an hour.
- 2.10.4. The date and activity which generated the time billed.
- 2.10.5. The hourly rate for the attorney or other personnel (a current master charge list is satisfactory).
- 2.10.6. A list of expenses: including receipts for air travel and lodging, deposition transcripts, service of process and expert fees. Expenses under \$500.00 are to be paid by Counsel's firm and submitted with their billing. The State of Arizona will attempt to resolve billing problems but expects COUNSEL to assist in resolving billing problems without additional cost to the State.
- 2.10.7. Counsel may charge an Hourly Rate and/or mileage reimbursement only when Counsel must travel over a 50 mile radius from their normal place of business. This reimbursement would begin from the time the Counsel leaves their normal business location.
- 2.10.8. Invoices, with receipts attached, shall be accompanied by itemization of disbursements and costs (long distance calls, photocopying, transcripts, expert witnesses, court costs, et cetera) and travel and living expenses shall be itemized separately to indicate travel, lodging, business meetings, meals, taxis, and other expenses (specifically detailed).
- 2.10.9. Counsel will only bill for the actual time spent performing a task, not for a unit charge (e.g., no automatic billing of one-third of an hour for a phone call that may have taken only five minutes) and that all charges will be specified and not grouped or clustered into one billing charge.

2.11. Spending Limit

- 2.11.1. Travel expenses for Counsel shall be in accordance with the Arizona Department of Administration Travel Policy (ADOA Travel Policy currently allows travel expense where travel exceeds 50 miles) and shall be limited to:
 - 2.11.1.1. \$.445 per mile for the use of the private conveyances of Counsel;
 - 2.11.1.2. Coach air fare with airline ticket receipts attached to billings; and
 - 2.11.1.3. The actual costs of lodging and meals in accordance with Arizona Department of Administration Travel Policy. The policy may be viewed at <http://www.gao.state.az.us>.
- 2.11.2. Only in unusual cases can travel by more than one attorney be permitted.
- 2.11.3. Expenses will be reimbursed at the firm's cost, except for certain disbursements that will not be paid unless agreed to in advance by the State. Unless authorized in advance by the State, in writing, the following charges are not acceptable:
 - 2.11.3.1. Secretarial or word processing services (normal, temporary, or overtime);
 - 2.11.3.2. Incoming facsimiles at more than 5 cents per page. Charges for outgoing local facsimiles and out of area facsimiles shall not be billed at more than actual cost.
 - 2.11.3.3. Photocopy expenses at more than 10 cents per page;
 - 2.11.3.4. Any other staff service charges, such as meals, filing, proofreading, regardless of when incurred;



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2.11.3.5. Computer time;

2.11.3.6. Charges for legal research programs such as Westlaw, Lexis Nexis, etc.

2.11.4. Photocopy costs in excess of \$2,000 for a single job should be authorized in advance and in writing by the State.

2.11.5. Expenses should not include local telephone expenses or office supplies.

2.11.6. The State does not pay charges for time spent in preparing bills.

2.11.7. In addition to the per diem limits outlined above it is expected that expenses for lodging, meals, and transportation shall be at reasonable rates and that counsel will exercise prudence in incurring such expenses.

2.11.8. The State will not reimburse the costs of first-class travel and expects that travel arrangements will take advantage of any cost-effective discounts or special rates.

2.12. Compensation

Payment as specified above for performance of the Services shall be total compensation paid to Counsel for performance of all of Counsel's obligations under this Agreement.

2.13. Advance Payment Prohibited

No payment in advance or in anticipation of services or supplies under this contract shall be made by the Authority, the AGO or the State of Arizona.

2.14. Contract Termination

The parties to this agreement agree the Authority through the AGO may cancel this agreement under the following conditions:

2.14.1. Termination without Cause

The Authority through the AGO may terminate this agreement without cause and without penalty upon at least thirty (30) days written notice to Counsel. Upon receipt of notice of termination, Counsel, unless the notice requires otherwise, shall discontinue performance of the Services on the date and to the extent specified in the notice, except those Services necessary to preserve and protect the work product of the Services already performed, and otherwise minimize costs to the State. Payment for Services already completed or in the process of completion shall be adjusted between Counsel and the Authority, in a fair and reasonable manner, but such payment shall exclude any allowance for unperformed Services or anticipated profits thereon. Such payment for Services already completed or in the process of completion shall be the total compensation due to Counsel for Termination without Cause by either party.

2.14.2. Termination with Cause

The Authority through the AGO may terminate this agreement for cause if Counsel breaches any material terms or conditions of this agreement or fails to perform or fulfill any material obligation under this agreement or negligently pursues the litigation so as to cause harm to the State. Counsel shall be provided written notice of termination. If Counsel is terminated for cause, Counsel shall not be entitled to compensation or reimbursement of any kind under this agreement.



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2.15. Counsel Responsibilities

2.15.1. Counsel

A “team arrangement” or “multiple firm arrangement” may be proposed, but must be proposed as a Counsel/Co-Counsel relationship. A firm must be designated as Counsel. Counsel shall be responsible for all contractual obligations and the management of all “Co-Counsels”. Counsel shall also be responsible for and agrees to be liable for any acts or omissions of Co-Counsel in the carrying out of its duties on behalf of the State. The Authority nor the AGO will not become part of any negotiations between Counsel and Co-Counsel or accept any invoices from Co-Counsel. Any agreement between Counsel and Co-Counsel shall include provisions indicating that the Authority, the AGO and the State of Arizona are not third-party beneficiaries of such agreement and that Co-Counsel is not a third-party beneficiary of this agreement. A Proposal that reflects a teaming arrangement designating more than one entity as a cosigner of the proposal will not be accepted.

2.15.2. Key Personnel

It is essential that the Counsel provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. Counsel must assign specific individuals to key positions. Counsel agrees and understands that 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 and/or described in the Counsel’s proposal. Therefore, Counsel agrees that no substitution of such specified individual(s) and/or personnel qualifications shall be made without the prior written approval of the Authority through the AGO. Counsel further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the Authority approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The Authority agrees that an approval of a substitution will not be unreasonably withheld. Counsel shall bear all transitional expenses incurred for any costs associated with removing or replacing Key Personnel who are performing work under this Contract. Counsel agrees to reveal its staffing levels by function, including resumes, upon request by the Authority or the AGO at any time during the performance of this Contract.

2.15.3. Lead Counsel

Counsel shall name an individual as the Lead Counsel for the outside counsel team. This individual shall be considered a Key Personnel as defined in this contract. The Counsel shall provide the Lead Counsel’s complete address, e-mail address and telephone and Fax numbers. The Lead Counsel shall be the company representative to whom all correspondence, official notices, and requests related to the project shall be addressed. If a firm joins together with another firm or firms, the firms shall name only one Lead Counsel.

2.15.4. Other Key Personnel

Counsel shall provide the name of any other individual who will perform duties to directly support the person offered as the Lead Counsel. The role and crucial duties this individual will perform shall be identified.

2.15.5. Removal of Counsel's Employees

The Authority may require the Counsel to remove from an assignment employees who endanger persons, property or whose continued employment under this Contract is inconsistent with the interests of the AGO.

2.15.6. Availability of Counsel

Counsel shall be available immediately upon receipt of the Notice to Proceed and remain available to the



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Authority throughout the period of performance as stated in the Contract.

2.15.7. Submission of Electronic Deliverables

At the request of the Authority, the Counsel shall submit electronic deliverables. All electronic deliverables shall be in format compatible with AGO software. It is expected deliverables shall be in the MS Office 2010 or newer suite of products (e.g. docx, xlsx, and pptx) and Adobe Acrobat Pro X (e.g. pdf) software or newer, other formats may be considered. Electronic Deliverables shall be treated with confidentiality and provided through encrypted e-mail, encrypted hard drive, or encrypted flash drive.

2.16. Oversight and Draft Document Review

2.16.1. Oversight

The retention of Counsel is intended to aid the AGO in representing the Authority and the State of Arizona. If litigation is recommended, the AGO will be actively involved in all stages of the matter and in deciding all major issues, including whether to file suit, when to file suit, who to file suit against, approval of the asserted claim or claims and whether and on what basis to settle or proceed to trial. Counsel shall acknowledge and defer to the Attorney General for direction and decisions. Counsel and the AGO will consult with the Authority, as the client, in accordance with the ethical rules.

2.16.2. Review of Services

The Attorney General reserves the right to review all and every part of the Services during performance or after completion as the Attorney General may see fit. If the Services or any part thereof have not been performed in accordance with this Agreement to the satisfaction of the Attorney General, the Attorney General may order that no further services be performed and may reject and refuse to pay for any improperly performed services and shall fully comply with all the requirements set forth in A.R.S. § 41-4803(C) and elsewhere.

2.16.3. Draft Document Review

Prior review of all documents is required to assure the Authority's and AGO's approval of the information, content and completeness. Documents for prior review shall include all pleadings, petitions, findings and any other document produced in the pursuit of this matter. All draft deliverables and other materials developed by the Counsel as part of this project shall be reviewed and approved in writing by the AGO prior to finalizing the material. Counsel shall promptly provide, in final form, the designated assistant attorney general with copies of all pleadings, discovery requests and responses, and relevant correspondence related to the Litigation.

2.16.4. Depositions

Notices of depositions shall not be issued by Counsel without prior written authorization from the Attorney General, in consultation with the Authority. Notices of depositions of State of Arizona employees filed by any party must be submitted to the Attorney General immediately upon Counsel's receipt to make necessary arrangements for their testimony. Summaries of all depositions will be supplied by the assigned Counsel on conclusion of the deposition. Ordinarily only one attorney should attend depositions, although, upon AGO prior approval, Counsel may have more than one attorney attend a deposition. The AGO may request the presence of a State of Arizona employee at one or more depositions.

2.16.5. Testimony

Should Counsel be required to testify at any judicial, legislative or administrative hearing concerning matters



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in any way related to the Services performed under this Agreement, Counsel shall immediately supply to the AGO in writing all information likely to be disclosed at said hearing as well as Counsel's position thereon. Should Counsel be required by a third party to testify at any judicial, legislative or administrative hearing not specified in this Agreement but concerning the subject matter of this Agreement, Counsel shall immediately notify the Authority and the AGO to enable State of Arizona representatives to attend and participate.

2.16.6. Privileged Communications

All confidential communications between the Authority, AGO, any State of Arizona officer, employee or agent ("Arizona") and Counsel, whether oral or written, and all documentation, whether prepared by Counsel or supplied by Arizona, shall be considered privileged communications and shall not, except as required by law, be communicated by Counsel to any public agency, insurance company, rating organization, contractor, vendor, counsel, or any other third party or entity whether or not connected in any manner with Arizona or Counsel, without the prior written consent of the Authority and the AGO. If such communications are approved, or if such communications are required to be disclosed by law, Counsel shall immediately provide the Authority and AGO with two (2) copies of each written communication and/or two (2) copies of summaries of each oral communication. If such communication is required by law, Counsel shall immediately provide the Authority and AGO written notice as to the time, place, and manner of such disclosure as well as a written summary of any information likely to be disclosed by such disclosure, and Counsel's position thereon.

2.17. Records

Pursuant to A.R.S. §§35-214, 35-215, and 41-4803, Counsel shall retain and shall contractually require each Subcontractor to retain books, records, documents and other evidence pertaining to the acquisition and performance of the Contract, hereinafter collectively called the "records," to the extent and in such detail as will properly reflect all net expenses, disbursements, charges, credits, receipts, invoices, and costs, direct or indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which payment is made under the Contract. Counsel shall agree to make available at the office of the Counsel at all reasonable times during the period, as set forth below, any of the records for inspection, audit or reproduction by any authorized representative of the State or Authority. In coordination with the Authority, Counsel shall preserve and make available the records for a period of five years from the date of final payment under the Contract and for such period, if any, as is required by applicable statute. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

2.18. Professional Responsibility

2.18.1. General

Counsel shall use Best Efforts to perform and complete the Services in accordance with the provisions of this Agreement. Best Efforts shall be considered those efforts which a skilled, competent, experienced and prudent legal professional would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill, care, competence, and prudence customarily imposed on a legal professional performing similar work.

2.18.2. Conflict of Interest/Litigation against the State of Arizona

2.18.2.1. Conflicts

Counsel shall advise the Authority and AGO of any perceived conflict. Arizona recognizes the difficulties



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in determining conflicts for law firms involved in representing more than one client. It does not wish to unduly hamper Counsel's activity because of a remote conflict and will work with a firm in attempting to resolve conflicts. It is expected that a firm will advise the Authority and AGO of any perceived conflict and that the decision as to whether the conflict is remote or disqualifying will be the decision of the Authority and AGO. Counsel may, upon referral of a claim or lawsuit, decline to defend. Counsel may also withdraw from representation of the State of Arizona when it would be ethically improper to continue to do so and upon the Court granting a motion permitting withdrawal. In the event Counsel must either withdraw from a case or declines to defend, AGO shall be immediately notified in writing or by telephone if time is of the essence.

2.18.2.2. Litigation against the State of Arizona

Counsel is retained only for the purposes and to the extent set forth in this Agreement. Counsel shall be free to dispose of such portion of their entire time, energy and skill not required to be devoted to the State of Arizona in such manner as they see fit and to such persons, firms or corporations as they deem advisable, but shall not engage in private litigation against the State of Arizona at the same time counsel accepts appointments representing the State of Arizona pursuant to this Agreement unless such litigation does not present an ethical conflict of interest, and a written waiver is first obtained from the AGO. Counsel shall disclose to the State of Arizona, in the proposal, all litigation, claims and matters in which counsel represents parties adverse to the State of Arizona. If Counsel is selected to contract with the State of Arizona pursuant to the Agreement, Counsel shall have a continuing duty to disclose such information.

2.18.2.3. Disclosure of Litigation against the State of Arizona

Pursuant to this Agreement, counsel shall have a continuing duty to disclose any and all litigation against the State of Arizona regardless of the State Entity who the Counsel was adverse to.

2.18.2.4. Complaints

Counsel will promptly notify the AGO if a business or bar complaint is filed against Counsel on any matter, if a motion for sanctions is filed against Counsel, or if sanctions are awarded against Counsel in cases assigned pursuant to this Agreement. Any sanctions ordered by the court as a result of attorney or paralegal malfeasance shall be borne by the attorney.

2.18.2.5. Liability

In the event that Counsel breaches its obligations under this Agreement, Counsel shall take the necessary actions to correct and cure its breach of this Agreement. If Counsel, upon notification of said breach does not promptly take steps to correct the breach, the Authority through the AGO, without waiving any other rights or remedies it may have at law or otherwise, may do so. Counsel shall reimburse the Authority, the AGO and the State for all expenses and costs incurred in performing such corrective action.

2.18.2.6. Laws and Regulations

Counsel and its employees shall at all times comply with all applicable federal, state and local laws, ordinances, statutes, rules and regulations. Counsel shall hold the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees harmless from loss, cost or damage by reason of any actual or alleged violation thereof arising out of Counsel's employees or Counsel's contractors failure to so comply.



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2.19. Indemnification

To the fullest extent permitted by law, Counsel shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or resulting from the negligent, intentional or willful acts, errors, omissions, mistakes or malfeasance caused by Counsel relating to work or services in the performance of this Contract, including any person or entity directly employed by them, their agents or representatives, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Counsel may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of the State of Arizona.

2.20. Insurance Requirements

2.20.1. General Requirements

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

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

2.21. Minimum Scope and Limits of Insurance

Counsel shall provide coverage with limits of liability not less than those stated below.

2.21.1. Commercial General Liability (CGL) – Occurrence Form

- Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.
- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$1,000,000

The policy shall be endorsed, as required by this written agreement, to include the Arizona Attorney General’s Office and the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,



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officials, agents, and employees for losses arising from work performed by or on behalf of the Counsel.

2.21.2. Business Automobile Liability

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

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

The Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

The Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Counsel.

2.21.3. Worker's Compensation and Employers' Liability

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

The Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

2.21.4. Professional Liability (Errors and Omissions Liability)

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

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

2.21.5. Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of



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Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

2.21.6. Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Office of the Arizona Attorney General, Procurement Section, 2005 North Central Avenue, Phoenix, AZ 85004 or procurement@azag.gov. The notice shall be mailed, emailed, hand delivered.

2.21.7. Acceptability of Insurers

Counsel's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or Insurers who can demonstrate an equivalency or greater to this requirement. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

2.21.8. Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Office of the Arizona Attorney General, Procurement Section, 2005 North Central Avenue, Phoenix, AZ 85004. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

2.21.9. Subcontractors

Counsel's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

2.21.10. Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative



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action.

2.21.11. Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

2.22. Section Headings and Definitions

Section headings in this Agreement are for convenience only, and are not to be construed to define, limit, expand, interpret, or amplify the provisions of this Agreement. When initially capitalized in this Agreement or amendments hereto, the following words or phrases shall have the meanings specified:

2.22.1. Agreement

This document, including all referenced material that forms a contract between Arizona and proposing person or firm named on the Offer and Acceptance page of Attachment I.

2.22.2. Best Efforts

Those efforts which a skilled, competent, experienced and prudent legal professional would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill, care, competence, and prudence customarily imposed on a legal professional performing similar work.

2.22.3. Counsel or Contractor

The Firm or individual whose name appears on page 1 of this agreement.

2.22.4. Documentation

Correspondence, evaluations, depositions, interrogatories, reports, pleadings, memoranda, briefs, information and any other similar documents or material prepared or used in connection with Services.



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3. Solicitation Inquiries

3.1. Issuing Office Solicitation Contact Person

The AGO Procurement Office Solicitation Contact Person identified on the cover page of this RFP shall be the sole point of contact for purposes of the preparation and submittal of proposals to this Solicitation.

3.2. Solicitation Clarifications

All inquiries, questions or clarification requests regarding this Solicitation should be submitted no later than seven (7) days before the Solicitation due date. The Offeror should direct such inquiries, questions or requests to the attention of the Solicitation Contact Person via e-mail (preferred) or mail. All Solicitation Inquiries will be handled in accordance with the Uniform Instructions to Offerors. If any inquiries, questions or clarifications result in a change to the Solicitation, a written Solicitation Amendment will be issued prior to the Solicitation due date.

3.3. Solicitation Amendments

The Offeror should acknowledge receipt of a Solicitation Amendment by signing and attaching a copy of the Solicitation Amendment to their proposal.

3.4. Solicitation Submission Guidelines

3.4.1. Solicitation Response

An Offeror responding to this solicitation may do so by delivering or mailing your proposal to:

Office of the Arizona Attorney General
2005 North Central Avenue
Phoenix, AZ 85004
Attention: Jerry Connolly
Solicitation #AG21-0035

If you have questions please contact Jerry Connolly at 602-542-8030 or jerry.connolly@azag.gov.

3.4.2. Late Proposals

All proposals must be received by the Solicitation due date and time specified. Any response received after the Solicitation due date and time specified will not be considered. Proposals are to be delivered to the Issuing Office, as indicated on the front page of this solicitation, and clearly designated as a Proposal for this specific Solicitation. Proposals delivered to any other location will not be considered "received" until they arrive at the location specified on the cover page. AGO will not waive delay in delivery resulting from need to transport a proposal from another location, or error or delay on the part of the carrier.

3.4.3. Mailing of Proposals

Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Issuing Office. Proposals arriving after the due date and time will not be considered.

3.5. Familiarization with Scope of Work

The Offeror should carefully review the requirements of the Solicitation and familiarize itself with the Scope of Work, laws, regulations and other factors so to satisfy itself as to the expense and difficulties of the work to be



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performed. The signing of the Offer and Contract Award form will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than provided by the Contract, for lack of such familiarization.

3.6. Components of a Complete Proposal

3.6.1. Offer Submittal:

Offerors delivering or mailing proposals should submit their Offer as One (1) original unbound set; three (3) bound copies. The original copy of the proposal should be clearly labeled "ORIGINAL". The material should contain a table of contents, be in the sequence suggested in Attachment I, and be related to the Request for Proposal. The State will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP.

3.6.2. Conformance to the RFP

The Offeror should use the provided forms and formats or forms and formats substantially similar. Failure to include the requested information, providing incomplete information or adding irrelevant information may result in lower evaluation scores and may have a negative impact on the evaluation of the Offeror's proposal.

3.7. Proposal Format

The following information should be submitted with each proposal and in this order. This format provides a layout for the proposal and pricing sections. Failure to include all of the requested information may result in a proposal being rejected.

3.7.1. Offer and Contract Award Form

Offeror should complete the top half of the Offer and Acceptance Form (see Offeror Response Form at Attachment I) and should include the signature of a person authorized to bind the Offeror.

Offeror shall complete Attachment II, Designation of Confidential, Trade Secret, and Proprietary Information.

Offeror shall complete Attachment III, Participation in Boycott Israel.

3.7.2. Solicitation Amendments

Offeror should acknowledge receipt of Solicitations Amendments by including signed copies of all Solicitation Amendments.

3.7.3. Exceptions to the RFP

An Offeror who takes exception to any portion of the Solicitation must do so pursuant to the Uniform Instructions to Offeror and must include the exceptions in a separate section in the proposal titled "Exceptions". Exceptions to the terms and conditions should provide sufficient justification to detail the reason the exception is advantageous to the State of Arizona.

3.7.4. Confidential Information

If an Offeror believes that information in its Offer should remain confidential, the Offeror shall designate a special section labeled "Confidential Information" and include any information the Offeror indicates as confidential along with a statement detailing the reasons that the information should not be disclosed. Such request for confidentiality shall be handled in accordance with the Uniform Instructions to Offeror.



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3.7.5. Suspension or Debarment Status

An Offeror who has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or local government shall include a letter with its proposal setting forth the disclosures and explanations required by the Uniform Instructions to Offerors.

3.7.6. Insurance

The Offeror should provide a Certificate of Insurance or a letter from the Offeror's Insurance Provider demonstrating the Offeror is able to provide insurance in accordance with the Special Terms and Conditions Section of this RFP.

3.7.7. General Firm Information

Provide requested general information requested in Attachment I.

3.7.8. Conflict of Interest/Adverse Cases/Malpractice

Provide the information requested in Attachment I.

3.7.9. Executive Summary of Firm's Qualification

The Offeror should provide an executive summary of the firm's unique qualifications for this case.

3.7.10. Similar Cases

The Offeror should provide a brief description of at least 3 cases, similar to a project of this nature that the firm has worked on.

3.7.11. References

Provide requested reference information

3.7.12. Key Personnel Information/Resumes

The Offeror should provide resumes of the Key Personnel who would work on this case.

3.7.13. Response to Scope of Work Tasks

The Offeror should provide a brief description of its proposed approach to these services and answers to the questions identified in the Offeror Response Form in Attachment I.

3.7.14. Cost Data

Provide hourly rates as requested in Attachment I.

3.8. Proposal Opening

Proposals shall be opened after the Solicitation Due Date and Time cited on the cover page of the Solicitation. The name of each Offeror shall be publicly read and recorded in the presence of at least one witness. Prices shall not be read.

3.9. Offer and Acceptance Period

In order to allow for an adequate evaluation, AGO requires an Offer in response to this Solicitation to be valid and irrevocable for 120 days after the opening due date.



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3.10. Evaluation Criteria

Awards shall be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation criteria are listed in relative order of importance.

- 3.10.1.** Experience and expertise of the firm and of key personnel;
- 3.10.2.** Response to Scope of Work Tasks;
- 3.10.3.** Capacity of the firm;
- 3.10.4.** Cost.

3.11. Discussions

After the initial receipt and evaluation of proposals, the AGO may conduct discussions with Offerors whose proposals are deemed to be reasonably susceptible to award. Notwithstanding this section, proposals should be submitted initially complete and on most favorable terms. In the event discussions are conducted, the AGO shall issue a written request for Best and Final Offers.

3.12. Best and Final Offer

The request for Best and Final Offer shall inform Offerors that if they do not submit a Best and Final Offer or a notice of withdrawal, their immediate previous Offer will be considered as their Best and Final Offer. The Offeror's "immediate previous Offer" will consist of the Offeror's original proposal submission and any documents submitted by the Offeror during discussions.

3.13. Definitions of Key Words Used in the RFP

3.13.1. AGO, Attorney General's Office, Office of the Attorney General

Office of the Attorney General, Attorney General's Office or AGO shall all refer to the Arizona Office of the Attorney General.

3.13.2. Arizona Power Authority

Arizona Power Authority, Authority, APA or Agency shall all refer to the Arizona Power Authority.

3.13.3. Co-Counsel

Co-Counsel shall refer to a firm or firms that separately contract with Counsel to provide services related to this agreement.

3.13.4. Counsel, Contractor

Counselor or Contractor shall refer to the firm or firms awarded a contract by the AGO through this Request for Proposal (RFP) process.

3.13.5. Deliverable

Deliverable shall refer to any report or other work product produced by the Counsel for the Office of the Attorney General.

3.13.6. Documents

Documents shall include all correspondence, evaluations, depositions, interrogatories, reports, pleadings,



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memoranda, briefs, information and any other similar documents or material prepared or used in connection with Services in the pursuit of this matter.

3.13.7. May

May indicates something that is not mandatory but permissible.

3.13.8. Shall, Must

Shall or must indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.

3.13.9. Should, Will

Should or will indicates something that is recommended but not mandatory.

3.13.10. Subcontractor

Subcontractor means a person or firm that separately contracts with Counsel to provide materials or services required for the performance of this contract.