

CONTRACT CANCELLED BY MARICOPA COUNTY 08/19/2002

SERIAL 99011-RFP

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CONTRACT PERIOD THROUGH JULY 31, 2009

TO: All Departments
FROM: Department of Materials Management
SUBJECT: Contract for **ENERGY PERFORMANCE CONTRACTING SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by the Board of Supervisors on **JULY 26, 1999**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

SD/mm
Attach

Copy to: Clerk of the Board
Monica Mendoza, Materials Management
Steve Varscack, Facilities Management

ENERGY PERFORMANCE CONTRACTING SERVICE

1.0 INTENT:

The Facilities Management Department (FMD) of Maricopa County (hereafter referred to as *the County*) seeks specific proposals from interested Energy Services Companies (ESCOs) that are capable of providing comprehensive energy management as well as related capital improvement services for selected facilities owned or managed by the County.

The County seeks a broad range of services and capital improvements in order to reduce the consumption and related costs of energy use in their facilities. These services and capital improvements will be provided and financed through a performance-based contract under which the County:

- a. incurs no initial capital costs (with option for FMD to provide initial capital if desired),
- b. achieves significant long-term savings,
- c. achieves a guarantee for energy savings, water savings, and operations and maintenance (O&M) savings (O&M savings includes materials and labor savings and will only be applicable at the option of the County),
- d. obtains consistent levels of occupant comfort and building functionality, and
- e. captures ancillary benefits that may accrue as a direct result of such energy-related services and capital improvements, such as environmental protection, hazardous materials disposal, etc.

The County seeks to maximize energy savings and related improvements. Within the framework of available financing, ESCOs are encouraged to advocate the installation and implementation of improvements providing the greatest possible energy and other savings. Essential services and improvements sought are those that will reduce energy consumption in the County facilities, upgrade capital energy-related equipment, improve building operations and maintenance, save costs through fuel switching or improved demand management, and aid in meeting environmental management responsibilities.

The selected ESCO (or “qualified provider”), will be required to comply with Arizona Revised Statutes, section 15-213.01, as amended from time to time. This statute provides the groundwork for guaranteed energy savings contracts (or “performance contracts”) implemented in the public sector in the State of Arizona.

Three geographic site groups shall be evaluated, with possibly several smaller sites added after award:

- Downtown Complex, 2.02 million sq. ft., FY98 - Electric: \$2.2 million, Natural Gas: \$196,000
- Durango Complex, 1.08 million sq. ft., FY98 - Electric: \$1.6 million, Natural Gas: \$208,000
- Southeast Complex, 0.34 million sq. ft., FY98 - Electric: \$0.45 million, Natural Gas: \$50,000

Exhibit 2, Facility Data, contains all occupied County-owned buildings for the group sites listed above, providing facility information. It shall be the ESCOs responsibility to provide recommendations as to which building or groups of buildings are feasible for a cost effective energy savings program. The County reserves the right to request all or one of sites listed above for the ESCO to perform energy audits and/or engage in a performance contract.

Exhibit 3, Energy Use Data, contains historical energy use data and some hourly electrical load profiles. ESCOs may use this data in evaluating the savings potential for Exhibit 2 Facility Data.

NOTE TO PROPOSER’S:

WALK-THROUGH AUDIT – This audit is for the Downtown Facility only. All Proposers’ shall submit a cost walk-through audit report based on this facility as phase one of the RFP.

TECHNICAL AUDIT –This audit is for ALL three complexes; Downtown, Durango, and Southeast. All Proposers submitting cost quotes for this audit is to include all three sites.

A MANDATORY WALK-THROUGH AUDIT FOR THE DOWNTOWN COMPLEX SHALL BE CONDUCTED ON:

Tuesday, March 30, 1999

8:00 AM – 3:00 PM (may end earlier)

**Location: Facilities Management Building
401 W. Jefferson St.
Phoenix, AZ**

A sign-in sheet will be provided. ESCOs are to schedule no more than two (2) representatives attending any of the scheduled walk-through audits – no exceptions.

OPTIONAL WALK-THROUGH AUDITS (NOT MANDATORY):

Durango Complex

Wednesday, March 31, 1999

8:00 – 3:00 PM (may end earlier)

**Location: Flood Control Administration
LOBBY (entrance located on south side)
2801 W. Durango
Phoenix, AZ**

Southeast Facility

Thursday, April 1, 1999

8:00 – 3:00 PM (may end earlier)

**Location: S.E. Regional Public Facility
LOBBY (entrance located on south side)
222 E. Javelina
Mesa, AZ**

2.0 TECHNICAL SPECIFICATIONS:

2.1 REQUIRED SYSTEMS AND SERVICES CAPABILITIES:

An interested ESCO must have the demonstrated technical and managerial capability to address a broad range of building energy systems, provide a comprehensive set of energy services, and capture the value of any directly related ancillary benefits.

Energy systems include, but are not limited to: heating, ventilating and air conditioning (HVAC) equipment, energy management and control systems, lighting systems and controls domestic hot water systems, the building envelope and other energy using systems such as laundry, kitchen, and renewable energy systems.

Energy services include, but are not limited to: a technical energy audit; the design, acquisition, installation, modification and commissioning of new and/or existing energy systems. Additional services include continuing operations and maintenance for all improvements and/or training of the County's staff on routine maintenance and operation of systems. Monitoring and verification services including appropriate measurement and reporting of the performance and savings from improvements. Water savings will be considered important also.

Ancillary benefits may include, but not limited to: hazardous materials disposal or recycling, improved occupant comfort or building functionality, improved indoor air quality, and any unique benefits that may be provided by regular technology upgrades or advanced proprietary technology. These improvements may or may not be quantifiable in a financial sense.

The County reserves the right to refuse savings other than energy and water savings.

2.2 OVERVIEW:

2.2.1 Contract Term:

This contract shall not exceed 10 years in duration. The duration of the contract will be mutually determined between the ESCO and the County based on financial factors so that a zero or positive net cash flow is realized by the County.

2.2.2 Guarantee:

Improvements and services must result in a guaranteed minimum annual savings option, as well as guaranteed minimum levels of occupant comfort and operations and maintenance and/or any ancillary services. The combined savings achieved by the installed projects must be sufficient to cover all project costs including debt service and ESCO fees, maintenance, monitoring and other services, for the duration of the contract term. At a minimum, the savings guarantee should be structured to correspond to the annual financing costs associated with the project. Payments must be linked to actual measured post-retrofit improvements as compared to building performance before the installation of any energy systems and service improvements. The guaranteed savings must be achieved each year. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the County, and will not be allocated to shortfalls in other years.

In compliance with Arizona Revised Statutes, section 15-213.01(F), as amended from time to time, an independent professional engineer shall perform an energy audit of the facilities one year after the energy cost savings measures are implemented, and every year thereafter for the length of the contract. The selected ESCO (or “qualified provider”) shall pay the cost of these audits. The audits will determine if the projected energy savings have been met.

Savings will be guaranteed through the use of a Line of Credit, Certified Check, Certificate of Deposit, or Irrevocable Letter of Credit. Draws against these instruments will be made in any year the County does not achieve the savings the ESCO guaranteed.

2.2.3 Financial Review:

Detailed financial projections of project benefits are dependent upon the scope of technical retrofits finally selected and installed. It is premature to place a major emphasis on projected financial benefits prior to the completion of a detailed engineering study and negotiation of the project structure.

The County reserves the right to compare the ESCOs financial costs to its own obtainable funding. The ESCO will be notified as to what financial approach is in the best interest of the County.

2.2.4 O&M savings:

Any O&M cost savings related to the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the County. ESCOs should be prepared to develop projects based solely on energy and water savings.

2.2.5 Technical Energy Audit:

The technical audit must include estimates of savings for each measure. Also, the cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services.

The audit must be completed in four (4) months after award of contract. An anticipated technical audit contract is shown in Exhibit 4.

2.3 PROCUREMENT PROCESS:

The evaluation and selection of an ESCO, and the negotiation and procurement of services will proceed as follows:

2.3.1 Site Visits: Prior to the submission of proposals and following a pre-proposal meeting, the County may arrange a walk-through inspection tour of all or a portion of the relevant facilities as listed in §1.0 INTENT. Representatives will be available to answer questions about the operation of the facilities. It is expected that this site visit, along with exhibit 2 and 3, will provide the necessary information required to prepare a “Walk-through audit” report. This report must, at a minimum, supply summarized estimates of total installation costs and expected total annual savings, and at least minimal information about proposed energy conservation measures. It may be necessary for the ESCO to make assumptions where data is lacking, and to state these assumptions clearly in the report.

Submission of Written Proposals: ESCOs that wish to participate must submit responses as directed in the *ESCO Response* (See §2.4). All submissions become the property of the County and will NOT be returned to the ESCO. All costs associated with submission preparation will be borne by the submitting ESCO.

2.3.2 Proposal Review and Selection of Finalists: The County will establish a RFP Evaluation Committee to review and evaluate the written responses to this RFP in accordance with the evaluation criteria identified in this RFP. The County reserves the right to reject any or all submissions and to waive informalities and minor irregularities in submissions received and to accept any submissions if deemed in the best interest of the County to do so. **In accordance with Arizona Revised Statutes, section 15-213.01(B), as amended from time to time, an independent registered professional engineer with experience in energy efficiency shall review the top three proposals. The selected ESCO (or “qualified provider”) shall pay for the cost of this evaluation and include it in the cost of the performance contract (or “guaranteed energy savings contract”). The County is contemplating using a qualified independent registered professional engineer employed by a sister municipality, which may make the cost of the evaluation zero to the selected ESCO. However, this may change, and if so, the selected ESCO will be required to pay this cost. The County will use its best efforts to keep this cost reasonable.**

2.3.3 Preliminary Contract Negotiations: Based upon responses to this RFP, **the top three proposals will be selected and evaluated**, a top-ranked ESCO will be selected, a technical audit contract negotiated (See Exhibit 4), and a technical audit will commence. Following completion of the technical audit, negotiations for an energy savings performance contract will begin (See Exhibit 5). The top-ranked ESCO will be required to disclose a description of the intended pricing methodology. Cost categories can be specified by the ESCO. The County will honor the confidentiality of all information that is marked “confidential” by the ESCO. The County has the right to reject the top-ranked ESCO if costs are not determined reasonable. In that event, the County has the right to begin negotiations with the second-ranked ESCO.

2.3.4 Development of Technical Energy Audit (Exhibit 4): The County intends to negotiate a contract for the technical audits as soon as a top-ranked ESCO is selected. If an acceptable technical energy audit ~~contract and project development agreement~~ cannot be reached within 30 days from the date of ESCO selection, negotiations with the next-ranked ESCO may be initiated.

2.3.5 Development of Energy Savings Performance Contract: Following successful completion of the technical energy audit, the County intends to negotiate a performance contract to implement the projects. The County has the option to decline any or all performance contract agreements (Exhibit 5).

2.4 ESCO RESPONSE:

This section provides information about the required response from the ESCO. Section 5.32 FORMAT AND CONTENT and Section 5.29 INSTRUCTIONS FOR PREPARING AND SUBMITTING PROPOSALS also address this issue. This section provides details about submitting the proposal, including what must be sent, the number of copies and the time and date of the deadline. The next two sections: ESCO PROFILE (§2.5) and ESCO QUALIFICATIONS AND APPROACH TO PROJECT (§2.6) provide forms that must be completed and submitted by the ESCO as part of the ESCO response. The ESCO proposer may duplicate these forms electronically, or duplicate them via other means. All ESCO submittals MUST follow these guidelines:

- a. All submittals must be loose-leaf or coil bound;
 - b. Each section to be ID tabbed with the corresponding paragraph section number of this contract (i.e., §2.6.1, etc.);
 - c. Each section MUST be filled, no “see original”;
 - d. There must be a cover sheet with an index;
 - e. *DO NOT PUT A COPY OF THIS BID PACKAGE 99011-RFP IN THE SUBMITTAL PACKET.*
- See Section 5.29 for information on where to send the proposals and how many copies to submit.

2.4.1 Proposal Submittal Information -- General Information:

Refer to “Procurement Process” (§2.3) in the body of the RFP for more detailed information on proposals. Failure to complete any question in whole or in part, or any deliberate attempt by the ESCO to mislead the County, may be used as grounds to find the proposing ESCO ineligible. All submissions become the property of the County and will not be returned to the ESCO. All costs associated with submission preparation will be borne by the submitting ESCO.

Submit The Following:

- a. Letter of Transmittal (Exhibit 1)
- b. Table of Contents
- c. Short introduction and summary – This section shall contain an outline of the general approach utilized in your proposal.
- d. Proposal – Responses to sections 2.5 (ESCO Profile), 2.6 (ESCO Qualifications and Approach to Project), and 2.7 (Walk-through Audit Report).
- e. Other data
- f. Pricing (Attachment A)
- g. Proposal Exceptions
- h. Agreement (Attachment B)
- i. References (Attachment C)
- j. Y-2K (Attachment D)
- k. Cover Sheet to accompany each copy of the submittal, as given below.

To: Maricopa the County Materials Management,
 Attention: Steve Dahle, Senior Procurement Officer
 RE: Response to RFP BS 99011-RFP– Energy Performance Contracting Services

Date: _____
 Firm Name: _____
 Address: _____
 Contact Person: _____

Name: _____
Title: _____
Phone: _____
Fax: _____
e-mail Address (if applicable): _____

2.5 ESCO PROFILE

ESCO must address all questions. If not applicable, enter "N/A".

2.5.1 General Firm Information

Firm Name: _____
Mailing Address: _____
Physical Address: _____

Names, Titles and Phone Numbers of two principal contact persons:

- | | | | |
|----|-------|-------|-------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| | Name | Title | Phone |

Submittal is for:
____ Parent Company
____ Subsidiary
____ Division
____ Branch Office

List any Division or Branch Offices that will participate materially in the development of the proposal, in its evaluation process, and/or in the conduct of any services provided.

Name of Office: _____
Address: _____

Name and Address of Parent Company (if applicable)

Name: _____
Address: _____

Former Name(s) of Firm (if applicable)

Name: _____
Address: _____

2.5.2 Date Prepared: _____

2.5.3 Type of Firm

- Corporation
- Partnership
- Sole Proprietorship
- Joint Venture

2.5.4 Federal Identification Number: _____

2.5.5 Year Firm Established: _____

2.5.6 Three-year summary of contract values for energy related services:

199____: \$ _____ (to date)

199____: \$ _____

199____: \$ _____

Estimate of total value for all energy-related contracts that are currently in force:

\$ _____ (total value) as of _____(date).

2.5.7 Corporate Background:

a. Years Under Present Name. How many years has your firm been in business under its present business name? _____ Years

b. Former Names. Indicate all other names by which your organization has been known and the length of time known by each name.

Name: _____ Years: _____

Name: _____ Years: _____

c. Years in Energy Business. How many years has your firm been providing energy-efficiency related business? _____ years. How many years your firm has offered performance contracting services? _____ years.

d. Number of Contracts. Indicate the number of energy savings performance contracts actually implemented by your firm. (NOTE: If this response is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division.)

e. State Qualification. Identify all states in which your firm is legally qualified to do business.

f. Lawsuit Involvement. Has your firm been involved in a construction related lawsuit (other than labor or personnel litigation) during the past five (5) years? _____ Yes _____ No. If yes, please explain in detail the nature of the claim, circumstances, amount in dispute, date suit was filed, and the outcome of the case.

Note: If your company is currently under suspension or debarment, your proposal may not be accepted or considered.

g. Construction Arbitration Involvement. Has your firm been involved in any construction arbitration demands during the past five (5) years? _____ Yes _____ No. If yes, identify the nature of the claim, amount in dispute, parties, and ultimate resolution of the proceeding.

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- h. National Labor Relations Board or Similar Involvement. Has your firm been involved in any lawsuits, administrative proceedings or hearings initiated by the National Labor Relations Board or a similar state or federal agency during the past five (5) years regarding your firm's safety practices? _____ Yes _____ No. If yes, identify the nature of the claim and the ultimate resolution of the proceeding.
- i. OSHA-Type Proceedings. Has your firm been involved in any lawsuits, administrative proceedings or hearings initiated by the Occupational Safety and Health Administration or a similar state or federal agency during the past five (5) years regarding the safety of one of your firm's projects? _____ Yes _____ No. If yes, identify the nature of the claim and the ultimate resolution of the proceeding.
- j. Bankruptcy Involvement. Has your firm, or any of its parents or subsidiaries, ever had a bankruptcy petition filed in its name, voluntarily or involuntarily? _____ Yes _____ No. If yes, explain in detail the circumstances, date the protection order was filed and the resolution of the case (or current status, if still ongoing).

2.5.8 Financial Information:

- a. Financial Statement. Attach your firm's most recent financial statement or annual report for each of the last three years.

2.6 ESCO QUALIFICATIONS AND APPROACH TO PROJECT:

2.6.1 Personnel Information. Provide the following information as it relates to your approach to the proposed project.

- a. Full-Time Personnel. Indicate the number of full-time personnel employed by your firm and the percent available to work on this project. ESCO principals must have a minimum of five (5) years of increasingly responsible experience in energy consulting. An equivalent combination of job related experience may be substituted on a year for year basis.

Qualifications of management staff must have a minimum of five (5) years energy management experience.

- b. Qualifications and Experience. Identify who will have the primary responsibility for each task and phase of the project including technical analysis, engineering design, construction management, construction, training and post-contract monitoring. For each of the individuals listed, indicate the following: name, title, intended role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities (if relevant to role), list of projects individual was associated with during the last three (3) years including type of project and project cost. Resumes containing all of the required information may be submitted.
- c. Contract Negotiations Personnel and Legal Counsel. Give the name and address of the person who will have primary responsibility for contract negotiations. Also identify your firm's legal counsel for this project.
- d. SubESCOs. Describe the nature of work generally conducted by subESCOs and discuss your flexibility in hiring subESCOs recommended by the County or in selecting local subESCOs in the County's geographic area. If you intend to work with specific subESCOs state their name, location, company background, and extent and area of involvement.

2.6.2 General Qualifications:

2.6.2.1 Project History. Briefly describe *up to three* energy performance contracts or related projects which *your* firm has managed within the last three (3) years. If possible, include projects with facilities similar to the County's.

NOTE: If this response is submitted by a branch office or division of a parent company, please provide project histories for those that have been managed directly by the specific branch or division. Projects that have been managed by individuals who will be specifically assigned to this project should also be included and identified.

Include the following information on each project:

- a. Project Identification. Name the project owner, state the type of project (generic building type such as hospital, school, etc.), provide the location (city, state).
- b. Project Dates. Project Actual Construction Start and End Dates
- c. Project Size. Number of buildings and total square footage.
- d. Project Dollar Amount. Provide the total contract amount and the total project capital expenditure amount.
- e. Source of Funds. State the source of funds used for the project and your firm's role, if any, in securing those funds.
- f. Contract Terms. State the type of Contract (shared-savings, lease purchase, guaranteed savings), the duration of the contract term, and the financing arrangement.
- g. Technical Design Personnel. Include name(s) of primary technical design personnel.
- h. Project Schedule. Indicate if the project was completed on schedule. If not, please explain.
- i. List of Improvements. Summarize the retrofits and operational improvements related to energy, water and O&M cost savings.
- j. Projected Annual Savings. State the projected annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.). (See sample form below.)
- k. Guaranteed Savings. State the amount of the guarantee (see sample form below). Also describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.
- l. Actual Annual Savings. State the actual annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.). Also describe if savings were measured or stipulated. (See sample form below.)
- m. Summarize savings results in a format similar to that shown below. Submit actual annual savings for all years that are available.

Project Name: _____

Projected Annual	Guaranteed Annual	Actual Annual Savings
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	Savings	Savings	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>	<i>Year 5</i>
Dollars [\$]							
kWh							
kW							
Therms							
Gallons							
Etc.							

- n. Comments. Comment on any special features, services, conditions, etc.
- o. References. Provide the names and telephone numbers of the owner(s') representatives that can supply references. Note that these references may be applied towards the five references requested in attachment C. Please indicate all references in attachment C.

2.6.3 General Approach:

- a. Project Summary. Include a brief description of your firm's approach to management and the specific benefits your firm can offer the County. Indicate any unique qualities and capabilities your firm possesses that would be relevant to this project.
- b. Training Provisions. Describe your firm's capabilities in providing technical training for the County's facility personnel and experience on past projects. Describe any involvement in developing training manuals for facility staff.
- c. Engineering Design. Describe your firm's approach to the technical design of this project.
- d. Monitoring and Verification. Describe the methodology proposed for ongoing monitoring and savings verification of the project, including the frequency of such efforts. Note if an industry standard such as the International Performance Measurement and Verification Protocol or ASHRAE standards are used and describe your preferred method.
- e. Operation and Maintenance Savings. Describe your firm's approach to estimating operations and maintenance savings and how these estimates would be supported.
- f. Baseline Calculation Methodology. Describe in detail the methodology your firm normally uses to compute the baseline of energy use.
- g. Adjustment to Baseline Methodology. Describe the method(s) used to adjust the energy, water and O&M baseline due to such factors as:
 - i. changes in utility rates;
 - ii. days in billing cycle;
 - iii. facility size;
 - iv. facility operational schedule;
 - v. facility indoor temperature;
 - vi. and facility energy systems.

Describe other factors that would necessitate adjustment, such as future energy efficiency or procurement projects initiated by the County independent of an energy savings performance contract.

- h. Future Energy Prices. Describe your approach to projecting future energy prices. The County will be aggressively pursuing the procurement of energy via new deregulation opportunities, if cost effective. How will your firm compensate for potential price volatility? How will your firm account for deviations in projected energy costs, especially lower costs?
- i. Savings Calculations. List all procedures and methodologies, including special metering or software simulation, your firm will use to calculate energy, water and O&M savings. Include any major assumptions. Except where savings calculations are straightforward, the County would prefer savings estimates that result from hourly building energy simulation software programs, preferably programs or techniques that will account for energy conservation measure (ECM) interaction and apply hourly savings to time-of-use electricity rates. Will your firm be using such an approach? If not, how will you account for ECM interaction effects and time-of-use rates?

Will your firm be using life-cycle costing techniques with regard to economic analysis? If so, cite any standards you adhere to such as the National Institute of Standards and Technology (NIST) Handbook 135 or other such standards.

- j. ESCO Fee Calculation. Describe your methods for calculating your firm's fees. Describe the specific services for which your firm will be paid over the contract term. Describe the method by which your firm will be paid for those services and how often payment will be made.
- k. Maintenance Contract Flexibility. Describe the types of services you would include in a maintenance contract. Comment on whether the County's maintenance staff can perform some of these duties if desired, and describe any impact on the guarantee. (These duties could include programming and maintaining the control system, installing lighting retrofits, maintaining HVAC equipment, etc.). Describe the required length of the maintenance contract and the relationship with the guarantee in the event that the County chooses to terminate the maintenance contract prior to the end of the performance contract.
- l. Cost Savings Guarantee Calculations. Describe your firm's procedures and schedule for measuring financial performance of projects. Describe how the guarantee provisions work in the event that project results vary from projections. Also describe how excess savings will be documented for the County's benefit.
- m. Billing and Invoices. Describe your standard billing procedures.
- n. Provision of Financing. Briefly describe the types of financing arrangements provided by your firm for past performance contracting projects. Include a brief description of the source of funds and the potential dollar amounts currently available to your firm to finance these types of projects. Indicate what representative interest rates may be available, financing terms and other variable economic factors associated with each method. Please comment on how you would work with the County to utilize tax-exempt financing or other methods to keep financing costs at a minimum.
- o. Environmental Liability. State your firm's position with respect to the acceptance of liability for any hazardous materials encountered during the course of the project. If the firm is willing to accept any level of environmental liability, please describe. Will your firm assume the cost and responsibility for the disposal of lighting products including PCB ballasts and mercury containing lamps?
- p. Provision of Warranties. State the nature and term of all warranties that will apply to the project.
- q. Early Termination. Will your firm allow early termination of a performance contract? If so, what would be the provisions of an "early buy-out?"

- r. Sample Performance Contract Agreement. Briefly explain how your Performance Contract Agreements for specific facility improvements work. Attach a sample of a contract offered by your firm. Indicate where in your proposal this attachment is located.
- s. Sample Technical Audit. Briefly describe your approach to auditing a facility. Submit a sample technical audit (or “investment grade audit”) conducted by your firm for a similar project (if possible) conducted within the last three years. This audit must include detailed energy and economic calculations. Indicate if the same people who developed the sample technical audit will be developing the County’s technical audit. Indicate where in your proposal this attachment is located.
- t. Metering/Sub-metering. The County desires to improve the metering and sub-metering of energy consumption in its facilities. This would allow more precise tracking of energy usage for future in-house allocation, energy management, and electric/natural gas deregulation concerns. State if your firm is willing to consider this improvement as part of a performance contract project and briefly describe proposed techniques, experience, and capabilities.
- u. Supply-side Capabilities. Regarding impending deregulation of electricity in Arizona, does your firm offer any services related to, or maintain the capabilities to provide electrical energy? Describe if this capability could be incorporated into an energy efficiency program to further reduce the County’s expense. Address the same questions with regard to transportation natural gas.

2.7 WALK-THROUGH AUDIT REPORT:

The walk-through audit report shall be limited to 50 pages or less. It is not intended to resemble an investment grade or technical audit in degree of detail or complexity. It is intended to summarize potential energy conservation opportunities and estimated costs and savings.

While the walk-through audit report requests energy saving and cost estimates, the magnitude of these numbers will not be given great weight in the evaluation process unless they are unusually extreme. The evaluation committee will not necessarily be seeking the greatest savings or lowest cost, only the greatest benefit to the County. ESCOs will be allowed to make assumptions regarding equipment type, occupancy, etc., if the information is not provided in the facility data or during the site visit - *provided the assumptions are clearly stated in the report*.

- a. Technology. Based on your preliminary assessment of the information gathered during your site-visit or provided in this RFP, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of this project. Address energy, water, and O&M opportunities. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe your approach to achieve standardization of equipment in the facilities.
- b. Operations and Maintenance. Describe any major changes in operations or maintenance of the County’s facilities that your firm foresees. Briefly describe the maintenance responsibilities of your firm and the County. Describe how your firm would provide appropriate training to County staff in operations and maintenance of installed improvements.
- c. Standards of Comfort. Describe standards of comfort and functionality that will be used for light levels, space temperatures, ventilation rates, etc. in the facilities. Also describe how those standards will be maintained throughout the contract term.
- d. Construction Management. Describe how your firm would work with FMD building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building’s operation and use. Describe your flexibility and/or any limitations regarding possible County activities such as: The County’s management of additional energy projects, the County’s monitoring of installation and performance of ESCO projects, the County’s integration of other identified capital needs with ESCO projects which may or may not contain energy and water saving opportunities.

- e. Project Financing. Describe your firm's preferred approach to providing or arranging financing for the proposed project. Describe the mechanics of the financing arrangement, including projected interest rate, financing terms with formulas used to determine periodic payments, equipment ownership, responsibilities/liabilities of each party, security interest required and any special terms and conditions that may be associated with the financing of this project.
- f. Costs and Savings. Summarize estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs or debt service, and estimates of the amounts by which energy or operating costs will be reduced. Provide some preliminary cash flow analyses with assumptions such as interest rate clearly specified.

2.8 ANTICIPATED PERFORMANCE:

The minimum conditions the County will accept from the selected ESCO are described below. This section defines the scope of services related to the technical requirements that will be included in any final performance contract. Also see exhibit 5 for an example of an anticipated energy savings contract. It also defines the key contractual provisions. A performance contract will not be negotiated until successful completion of a technical, ~~or investment grade~~ audit (**also referred to as the “in-depth feasibility study” by A.R.S. section 15-213.01(E).**)

The Scope of Services must be included in any performance contract the County enters into, and must include the following items at a minimum:

- a. Technical Audit. **In accordance with Arizona Revised Statutes, section 15-213.01(E), the ESCOs proposed contract terms must include the performance and presentation of results from a detailed technical audit (or “in-depth feasibility study”) of acceptable quality to the County. This technical audit will establish the exact scope of the performance contract (or “guaranteed energy cost savings contract”) with regard to guaranteed savings and verification methodology.** The minimum annual energy, water and O&M cost savings and financing period will be negotiated **after completion and acceptance of the technical audit.** If the County decides not to enter into a **performance** contract after the **technical** audit has been accepted, the County agrees to pay the cost of the audit as ~~negotiated~~ **quoted in the proposal and the ESCO agrees to pay the cost of the independent registered professional engineer’s proposal review.** The technical audit must include estimates of savings for each measure. Also, the cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services. (See exhibit 4, Anticipated Technical Audit Contract.)
- b. Standards of Comfort. Specific standards of comfort, safety and functionality will not be degraded from the existing condition and/or shall meet minimum established industry standards. The ESCO will be responsible for maintaining the levels of comfort for each building as specified in the RFP or in any final agreement. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.
- c. Professional Engineer Involvement. A registered professional engineer must, at a minimum, review and approve design work done under this contract.
- d. Guaranteed Savings. The County requires a minimum annual guaranteed level of combined savings and improved performance approach to the project. If the project does not generate the guaranteed level of savings in any given year, the ESCO will be responsible for reimbursing The County the amount of the shortfall necessary to pay for annual project financing and all related contract obligations. Excess savings will not be used to reimburse the ESCO for any payments made due to shortfalls in other years.
- e. Construction Management. The ESCO will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. No equipment or other improvements will be installed that would require the County to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities shall be proposed in detail in the contract.

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- f. Equipment Standardization. All equipment installed that is comparable to similar equipment at other campus buildings shall be of the same manufacturer for standardization of equipment, unless excepted by the County.
- g. Maintenance Manuals. At least three (3) maintenance manuals for each site will be provided for all equipment replacements and/or upgrades at each location. Manuals are subject to approval of the County.
- h. As-Built Drawings. Where applicable, ESCO must provide mylar, reproducible "as built" and record drawings (or such electronic equivalents as may be agreed to with the County) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completion of installation.
- i. Follow-up Monitoring and Maintenance Services. Following the installation and implementation of improvements the ESCO will be responsible for maintaining and monitoring the measures to ensure optimal performance throughout the contract period.
- j. The County Activities. The County reserves the right to make energy improvements to the work sites and to monitor the performance of the installations independently of the ESCO. Additionally, the County may wish to integrate other identified capital needs with ESCO projects, which may or may not contain energy saving opportunities.

2.9 CONTRACTUAL PROVISIONS:

Key elements that must be provided for in any performance contract that the County enters into will, at a minimum, include the following:

- a. Proposal Submissions. The contents of the ESCOs submissions in response to this solicitation will become part of any final agreement between the County and the ESCO.
- b. Meeting Project Schedule. The ESCO must provide a final schedule of project milestones including equipment-servicing and preventive maintenance provisions that will become part of any final contract. The ESCO is responsible for meeting schedule deadlines. In the event any milestone or service provision is not met as scheduled without prior approval from the County, the County reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

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- c. County Inspection. The County must have the right to inspect, test and approve the work conducted in the facilities during construction and operation. ~~The County shall have the right and access to the account books, records, and other compilations of data that pertain to the performance of the provisions and requirements of this agreement. Records shall be kept on a generally recognized accounting basis, and calculations will be kept on file in legible form and retained for three years after close out.~~ The County retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of the ESCO and/or its subESCOs.
- d. Final Approval of The County. The County retains final approval over the scope of work and all end-use conditions. The County may delay the initiation of savings payments until approved. **This shall be part of the negotiations of Exhibit V, Anticipated Energy Savings Contract.**
- e. Property of Drawings, Reports and Materials. All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of the County and will be delivered to the County as needed or upon completion of construction.
- f. Compliance. All work completed under a contract must be in compliance with all applicable federal, state and local laws, rules and regulations such as building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices and in compliance with all the County regulations relative to the premises. The ESCO and its subESCOs will be responsible for obtaining any and all required governmental permits, consents and authorizations and for payment of any and all state and city required taxes and fees which result from this contract.
- g. Handling of Hazardous Materials. All work completed under a contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable County rules relative to the premises. In the event the ESCO encounters any such materials, the ESCO shall immediately notify the project manager and stop work pending further direction from the project manager. ~~The State County~~ may, in its sole discretion, suspend work on the project pending removal of such materials or terminate this Agreement.
- h. Methodology to Adjust for Changes. The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties. The ESCOs proposed method for adjusting the energy use baseline should be identified in the RFP response and listed in a schedule to the contract.
- i. SubESCO Approval. The County retains the right to approve any ESCO selected subESCO prior to its commencement of work on this project. Names and qualifications must be submitted at least two weeks in advance.
- j. ESCO Insurance. Prior to the commencement of work, the ESCO must provide evidence of insurance for both the construction and operations phases of the project.
- k. Guaranteed Cost Savings. Improvements and services must result in guaranteed minimum annual energy, water and O&M savings option, as well as guaranteed minimum levels of occupant comfort and operations and maintenance and/or any ancillary services. A guarantee is required to equal the calculated savings attributable to all energy saving measures for each year during the contract period. The combined savings achieved by the installed projects must be sufficient to cover all project costs including debt service and ESCO fees maintenance, monitoring and other services, for the duration of the contract term. Payments must be linked to actual measured post-retrofit improvements as compared to building performance before the installation of any energy systems and service improvements. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the County, and will not be allocated to shortfalls in other years. (See 2.2.2 Guarantee)

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- l. Applicability of O&M savings. Any O&M cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the County.
- m. Annual Reconciliation. Annual savings will be verified at a specified time each year in order to determine if the ESCOs guarantee needs to be exercised.
- n. Contract Term. This contract shall not exceed 10 years in duration.
- o. Pre-Payment Non-Penalty. The contract must permit the County to prepay the ESCO, in part or in whole, without penalty.
- p. Contract Re-negotiation. The County reserves the right to renegotiate the awarded contract if warranted, due to changes in the regulatory or utility climates or in the County's use of energy and/or the desire to add sites not included in the initial contract.
- q. Post-Contract Preventive Maintenance Schedule. Upon completion of the contract, the ESCO shall provide to the County a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following contract close-out.
- r. Assignment Approval. The County will have the right of approval for assignment of the performance contract to a different ESCO.

3.0 SPECIAL TERMS AND CONDITIONS:

3.1 ESCO Requirements:

- 3.1.1 All service work performed by ESCO shall be to a professional standard, performed in a neat and workmanship manner, meeting all required municipal building codes, and susceptible to County staff inspection and approval. Documentation, through an audit and feedback system of contract administration shall be used in this contract by the County departments.
- 3.1.2 Permits required by local municipal authorities shall be obtained by the ESCO for all work. Cost shall be paid by the ESCO and invoiced to the County without mark-up. Copies of all fee statements must be attached to the ESCO's invoice.
- 3.1.3 The ESCO shall perform the work in a way to minimize disruption to the normal operation of building tenants. Upon completion of work the ESCO is responsible for cleaning and removing from the job site all debris, materials, and equipment associated with the work performed.
- 3.1.4 The ESCO shall make necessary installation/repairs to install energy efficient equipment in such a manner that does not damage County property. In the event damage occurs to Maricopa County property, or any adjacent property by reason of any repairs or installations performed under this Contract, the ESCO shall replace or repair the same at no cost to the County. If damage caused by the ESCO has to be repaired or replaced by the County, the cost of such work shall be deducted from the monies due the ESCO.
- 3.1.5 A Maricopa County Sheriff's Office background check or a County Attorney's background checks will be a requirement for all employees of ESCOs staff providing services to the County. This requirement is essential due to the need to access areas within the County such as detention facilities, court buildings, and many other restricted areas. The cost for this requirement shall be incurred by the County.

3.1.6 TECHNICAL TRAINING TO COUNTY STAFF:

The ESCO shall be required to provide technical expertise training for newly installed equipment. The training requested may be for operations and maintenance of energy efficient installed equipment. The training will be held at a County facility, or if deemed necessary, the ESCOs facility. Training aids (i.e., service manuals, mock-up equipment; etc.) shall be provided by the ESCO. Maintenance and repair manuals for the equipment shall be provided by the ESCO. The ESCO shall be given advance notice to prepare, research, and schedule staff in order to provide an adequate training presentation.

3.1.7 EMPLOYEES OF THE ESCO:

No one except authorized employees of the ESCO is allowed on the premises of Maricopa County Buildings. ESCOs employees are NOT to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized employee of the ESCO.

3.1.8 INVOICING:

All invoicing shall be addressed to:

Facilities Management Department
401 W. Jefferson Street
Phoenix, AZ 85003

All invoicing MUST contain the following:

Purchase order number;
Terms as bid;
Contract serial number;
Job site name and address;
Description of work performed;
Labor charges as bid;
Grand total of invoice.

Invoicing that does not have all the required information as listed above, will be sent back for corrections, delaying payment to the ESCO.

3.2 ACCEPTANCE:

Upon successful completion of the performance period, the system shall be deemed accepted and the warranty period begins. All documentation shall be completed prior to final acceptance.

3.3 TECHNICAL AND DESCRIPTIVE LITERATURE:

Proposer(s) must include complete manufacturer's technical and descriptive literature regarding the material they propose to provide. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.

4.0 CONTRACT TERMS & CONDITIONS:

4.1 LANGUAGE FOR REQUIREMENTS CONTRACTS:

Contractors signify their understanding and agreement by signing this document, that the Contract resulting from this proposal will be a requirements contract. However, this Contract does not guarantee that any purchases will be made. It only indicates that if purchases are made for the services contained in this Contract, that they will be purchased from the Contractor awarded that item. Orders will only be placed when a need is identified by a Using Agency or Department and proper authorization and documentation have been approved.

4.2 CONTRACT LENGTH:

This Request for Proposals is for awarding a contract not to exceed a ten (10) year period.

4.3 OPTION TO EXTEND:

The County may, at their option and with the approval of the Contractor, extend the period of this agreement up to a maximum of five (5), one (1) year options. The Contractor shall be notified in writing by the Materials Management Department of the County's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period.

4.4 ESCALATION:

Any requests for price adjustments must be submitted thirty (30) days prior to the Contract renewal date. Justification for the requested adjustment in cost of labor and/or materials must be accompanied by appropriate documentation. Escalation shall not exceed the increase in the U.S. Department of Labor (Bureau of Labor Statistics) Consumer Price Index for Urban Consumers. Increases shall be approved in writing by the Materials Management Department prior to any adjusted invoicing submitted for payment.

4.5 UNCONDITIONAL TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.6 DEFAULT:

The County may suspend, terminate, or modify this contract immediately upon written notice to the Contractor in the event of a nonperformance of stated objectives or other material breach of contractual obligations; or upon the happening of any event which would jeopardize the ability of the Contractor to perform any of its contractual obligations. Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.7 TERMINATION BY THE COUNTY:

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Agreement. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of, a substantial violation of any provision of this Agreement, then the County may terminate this Agreement. Prior to termination of this Agreement, the County shall give the Contractor fifteen (15) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.

4.8 APPROPRIATION CONTINGENCY:

The Contractor recognized that any agreement entered into shall commence upon the day first provided and continued in full force and effect until termination in accordance with its provisions. The Contractor and the County herein recognized that the continuation of any contract after the close of any given fiscal year of the County which fiscal years end on June 30 of each year, shall be subject to the approval of the budget of the County providing for or covering such contract item as an expenditure therein. The County does not represent that said budget item will be actually adopted, said determination being the determination of the County Board of Supervisors at the time of the adoption of the budget.

4.9 ORGANIZATION - EMPLOYMENT DISCLAIMER:

The Contract is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the Contract.

The parties agree that no persons supplied by the Contractor(s) in the performance of obligations under the agreement are considered to be County employees, and that no rights of County civil service, retirement or personnel rules accrue to such persons. The Contractor(s) shall have total responsibility for all salaries, wages, bonuses, retirement withholdings, workmen's compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the County harmless with respect thereto.

4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the contract.

4.11 INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the County, its Agents, Representatives, Officers, Directors, Officials and Employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its Employees, Agents, or any tier of Subcontractors in the performance of this Contract. Contractor's duty to defend hold harmless and indemnify the County, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work to services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor 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.

4.12 INSURANCE REQUIREMENTS:

General Clauses. The Contractor, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed, with a current A.M. Best, Inc. Rating of B++6, or approved unlicensed by the State of Arizona Department of Insurance.

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Additional Insured. The insurance coverage, except Workers' Compensation and Professional Liability, required by this Contract, shall name the County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract.

Primary Coverage. The Contractor's insurance shall be primary insurance as respects the County, and any insurance or self insurance maintained by the County shall not contribute to it.

Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policies to protect the County.

Waiver. The policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the County, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's work or service.

Deductible/Retention. The policies may provide coverage which contain deductibles or self insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to the County under such policies. The Contractor shall be solely responsible for the deductible and/or self insured retention.

Copies of Policies. The County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the above policies and/or endorsements. The County shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the County's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

Commercial General Liability. Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract which Coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc. Additional Insured, Form B, CG 20101185.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision, which would serve to limit third party action over claims.

Automobile Liability. Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

Workers' Compensation. The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of the Contractor.

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Professional Liability. The Contractor retained by the County to provide the work or service required by this Contract will maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Contractor or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

4.13 CERTIFICATES OF INSURANCE:

Prior to commencing work or services under this Contract, Contractor shall furnish the County with Certificates of Insurance, or formal endorsements as required by the contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or services and as evidenced by annual Certificates of Insurance.

4.14 CANCELLATION AND EXPIRATION NOTICE:

Insurance evidenced by this Certificate shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the County. If a policy does expire during the life of the Contract, a renewal Certificate must be sent to the County fifteen (15) days prior to the expiration date.

All Certificates of Insurance required by this Contract shall be identified with a Bid Serial Number and Title. A \$25.00 administrative fee shall be assessed for all Certificates received without the appropriate Bid Serial Number and Title.

4.15 REQUIREMENT OF CONTRACT BONDS:

Concurrently with the submittal of the Contract, the Contractor shall furnish the Contracting Agency the following bonds, which shall become binding upon the award of the Contract to the Contractor.

- A. A Performance Bond in an amount equal to the full Contract amount conditioned upon the faithful performance of the Contract in accordance with plans, specifications and conditions thereof. Such bond shall be solely for the protection of the Contracting Agency awarding the Contract.
- B. A Payment Bond in an amount equal to the full Contract amount solely for the protection of claimants supplying labor or materials to the Contractor or his Subcontractors in the prosecution of the work provided for in such contract.

Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court.

Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance. The bonds shall not be executed by an individual surety or sureties. The bonds shall be made payable and acceptable to the Contracting Agency. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official. In addition, said company or companies shall be rated "Best-A" or better as required by the Contracting Agency, as currently listed in the most recent Best Key Rating Guide, published by the A.M. Best Company.

4.16 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this Contract.

4.17 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete services to this Contract. Should a service requirement be deleted, payment to the Contractor will be reduced proportionally, to the amount of service reduced in accordance with the bid price. Should additional services be required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.18 ASSIGNMENT OR SUBCONTRACTING:

Neither this Agreement, nor any portion thereof, may be assigned by Contractor without the written consent of the County first having been obtained. Any attempt by the Contractor to assign or subcontract any performance of this Contract without the written consent of the County shall be null and void and shall constitute a breach of this Contract.

The Subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates. The Subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the Subcontractor's invoice must accompany the Prime Contractor's invoice.

4.19 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.20 CONFORMATION WITH THE LAW:

This service shall be accomplished in conformity with the laws, ordinances, rules, regulations and zoning restrictions of the United States of America, the State of Arizona, County of Maricopa, City of Phoenix, City of Mesa, and any other relevant municipalities.

4.21 CONTRACT COMPLIANCE MONITORING:

The Materials Management Department and Using agency(s) shall monitor the Contractors compliance with, and performance under, the terms and conditions of the Contract. The Contractor shall make available for inspection and/or copying by the County all records and accounts relating to the work performed or the services provided in this Contract.

4.22 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of any and all said materials.

4.23 ADEQUACY OF RECORDS:

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided to eligible clients the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.24 **AUDIT DISALLOWANCES:**

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

4.25 **P.O. CANCELLATION LANGUAGE:**

The Department of Materials Management reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc. Contractors agree to accept verbal notification of cancellation from the Department of Materials Management with written notification to follow. By submitting a proposal in response to this solicitation, the Contractor specifically acknowledges to be bound by this cancellation policy.

4.26 **RIGHTS IN DATA:**

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.27 **SECURITY AND PRIVACY:**

The Contractor agrees that none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. The County shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

The Contractor shall incorporate the foregoing provisions of this paragraph in all of its authorized Subcontracts.

4.28 **SEVERABILITY:**

Any provision of this Contract which is determined to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

4.29 **VALIDITY:**

The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Contract.

4.30 **CONTRACTOR RESPONSIBILITY:**

The Contractor will be responsible for any damages whatsoever to County property as applicable when such property is the responsibility or in the custody of the Contractor, his Employees or Subcontractors.

Contractor agrees that all Subcontractors performing work under this Contract shall comply with its provisions and it is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees of the Contractor, and not employees of Maricopa County.

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Contractor acknowledges and agrees that it is liable and responsible for any act or omission by the Contractor, its employees, agents, officers, representatives, and subcontractors occurring in the course of Contractor's performance of this Contract, whether such act or omission occurs on County property or elsewhere. Contractor shall be liable for any loss or damage arising out of or related to Contractor's performance of this contract, Contractor shall bear the above stated liability, even in absence of its own negligence, unless County actions caused the loss or damage (i.e., if regulation, but damage occurs, Contractor is responsible for such damages.) Contractor shall bear the above stated liability, consequential, incidental, direct, and indirect damages, and shall be liable for all costs, including attorney's fees, incurred by the County to enforce this provision.

4.31 FAILURE TO PROVIDE SERVICES:

Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.32 DELIVERY:

It shall be the Contractor's responsibility to meet the County's delivery requirements, as called for in the Technical Specifications. Maricopa County reserves the right to obtain material on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

4.33 PRICE REDUCTIONS:

By submitting a bid or proposal in response to this solicitation, Contractors agree to guarantee that Maricopa County is receiving the lowest price offered by your company to other customers for similar services at comparable volumes in a similar geographic area. If at any time during the contract period your company offers a lower price to another customer, notification not be made of price reductions, upon discovery Maricopa County shall reserve the right to take any or all of the following actions:

4.33.1 Cancel the Contract, if it is currently in effect.

4.33.2 Determine the amount, which the County was overcharged, and submit a request for payment from the Contractor for that amount.

4.33.3 Take the necessary steps to collect any performance surety provided on the applicable contract.

4.34 CHANGES:

The County may require changes in the scope of the services to be performed by the Contractor hereunder. All such changes, which are mutually agreed upon by and between all the parties, shall be incorporated in written amendments to this Contract. All such amendments shall state any increase or decrease in the amount of the compensation due to the Contractor for the change in scope.

4.35 EMPLOYEE RESPONSIBILITY:

No responsibility will attach to a county employee for the premature opening of a proposal not properly addressed and identified in accordance with the proposal documents.

SEMPRA ENERGY SOLUTIONS, 101 ASH STREET HQ09, SAN DIEGO, CA 92101
~~CES/WAY INTERNATIONAL INC, 3100 BRISTOL ST STE 100, COSTA MESA, CA, 92626~~

PRICING
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Technical audits cost quotes are requested in the format shown below. Note that the County may choose to add several smaller facilities, therefore a quote for additional buildings will also be requested on a per-square-foot basis. See Exhibit 4 for guidance regarding anticipated technical audit requirements.

Technical Audit Cost Quote:

	[Cost/ft ²]	[Total Cost \$]	[Square feet]
Downtown Complex	<u>0.0891</u> [\$/ft ²]	<u>185,567</u> [\$]	(2,082,678 sq. f)
Durango Complex	<u>0.0985</u> [\$/ft ²]	<u>77,122</u> [\$]	(782,964 sq. ft)
Southeast Complex	<u>0.1063</u> [\$/ft ²]	<u>36,651</u> [\$]	(344,787 sq. ft)
Additional	<u>0.125</u> [\$/ft ²]	<u>21,878</u> [\$]	(175,026 sq. ft)
Total		321,218 [\$]	

The County may request technical audit services for other buildings. These facilities would typically include small family health clinics, libraries, probationary facilities, small animal facilities, branch offices, etc. Most of these facilities would be less than 5,000 ft².

Additional Facility Technical Audit Cost Quote: 0.125 [\$/ft²]

Terms: Net 30 DAYS
 Federal tax I.D. Number: ~~74-2040062~~ **95-4686779**
 Vendor Number: ~~742040062~~ **954686779**
 Telephone Number: ~~(714) 850-3431~~ **619/696-3141**
 Fax Number: ~~(714) 850-3431~~ **619/696-3104**

Contact Person **Michael Rivera**

Contract Period: To cover the period ending July 31, 2009.