

Susan Angulo

To: Joe Mulholland; Mike Gazda; Doug Fant; Marcia K. Kennedy; Linda D
Subject: FW: Draft Request for Proposal for the Commission to engage a consultant to assist in the Hoover marketing process

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Arizona Power Authority

For your info. Susie

From: Robert S. Lynch [mailto:RSLynch@rslynchaty.com]

Sent: Tuesday, December 11, 2012 4:35 PM

To: Susan Angulo

Cc: Johnihudson1@aol.com; Joe Albo (joe.albo@azbar.org); Stephen M. Brophy (sbrophy@pagelandco.com); Dalton Cole (azpwcole@cox.net); Dick Walden (rsw@greenvalleypecan.com); Robert S. Lynch

Subject: Draft Request for Proposal for the Commission to engage a consultant to assist in the Hoover marketing process

Susan:

I have only had a brief time to look over the lengthy RFP that the staff has produced. I know you have a comment deadline for tomorrow so I am going to try to get you some comments out today before I have to leave town for the rest of the week.

One of the things that the Commission needs to consider in issuing this RFP is the semantics of what it is asking bidders to do. For instance, the word "establish" is used quite a bit and other verbs are used that one could read to mean that the consultant is actually tasked with making decisions rather than doing analysis and preparing proposals for the consideration of the Commission. I think that some careful editing could replace this kind of decisional language with consulting language to the benefit of all concerned.

The term "qualified entities" is used with capital letters as if to indicate that it is a term of art that is defined somewhere. In point of fact, the entities that qualify to apply for power under Title 30 are different and in a different order than the entities that qualify under Title 45. The outline does not reflect this duality. I believe the consultant will need a little more guidance on what it is expected to do and the sorting of entities that your statutory framework requires.

There are also some tasks that may not be exactly what a consultant should undertake. For instance, I do not believe it is in the role of a consultant to establish whether there is a shortage of Hoover power. I note that the opening discussion on page 2 declares that there is but then the outline asks a consultant to make that determination. That is obviously a determination for the Commission. Providing analysis to demonstrate that this shortage does exist would clearly be appropriate and, for that matter, easy.

I am also struck by the amount of work that is being asked of the consultant concerning analyzing federal requirements and marketing criteria. I note that, in the opening paragraph, the RFP declares that federal law is applicable to this process. It has been my understanding of the position of the Commission, at least since I started working with it in 1972, that the Commission took Hoover power in its sovereign capacity and that federal law did not apply to the allocation process the Commission used within Arizona. Is that legal position changing?

If we want the consultant to work expeditiously and provide a product in the near future that is helpful to the Commission, then you might consider eliminating tasks that involve the Indian communities issues, Western Area Power Administration tasks, and other tasks that really will not produce tools that the Commission can effectively use in this process. For instance, criteria used in federal allocation processes may or may not be relevant to the Arizona process. Statutory language in both Title 30 and Title 45 not only deal with what entities may apply but what standards must be applied in evaluating those entities. Those statutory standards are, to some extent, not mirrored in federal law applicable to the task Western is undertaking.

It would seem from looking at this with reference to what happened in the 1980's that the place where a consultant can be most helpful is in evaluating criteria that have been previously applied to an Arizona process, comparing that to criteria that are used in federal power allocations that may be applicable under Arizona law, and suggesting a set of criteria and a methodology for evaluating them that will give the Commission effective tools for completing its allocation process.

Along the way, a number of thorny legal issues will have to be addressed. As you know, we have already been discussing with Doug Fant what those are in an attempt to get our arms around the legal issues that have to be faced. I think it is contemplated that the consultant selected will retain independent legal counsel in a fashion so as to helpfully bring some perspective from the outside, if you will, to the issues being confronted.

In a perfect world with all the time necessary to contemplate the entire administrative processes that are going forward and will be initiated, the task list in the RFP might provide an interesting outside look at requirements and tools that those of us on the "inside" have evaluated for our own purposes and have our own opinions on. In the timeframe we actually have to complete these tasks, I think the Authority should err on the side of targeted assignments for the consultant that are most closely tied to producing suggestions for effective tools to be used in the allocation process.

I say that while noticing that the RFP seems to ask the bidders to tell the Commission how long this process is going to take rather than telling the bidders not only the start date for the contract but the completion date. I think it is too open-ended in terms of bidding not to give these folks some sense of urgency in this task and to ensure that each bidder has the appropriate personnel that can be committed to the task immediately in order to get completion within a timeframe relevant to the process that the Authority must complete. In other words, tell them what you want and tell them when they have to give it to you. If they can figure out how many hours that will take, they can tell you what it will cost.

I know this is not an easy undertaking but it is certainly a worthwhile one. Getting an outside look will benefit the process. But I think the outside look should be tailored and focused, have a finite timeline established by the Commission, and someone to do the work who knows what they are doing.

I wish you and the rest of the staff and the Commission well in trying to get to that point.

Bob

cc: Arizona Power Authority Commissioners
IEDA Presidents/Chairmen and Managers

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