

REQUEST FOR QUALIFICATIONS FOR ELECTRIC POWER

FOR

ABAG PUBLICLY OWNED POWER RESOURCES (ABAG POWER)

Distributed: December 7, 1998

Due: December 16, 1998

ABAG Publicly Owned Energy Resources (ABAG POWER) invites you to submit a Qualification Statement to provide power supply to an electric power pool of 59 local governmental agencies in Northern California commencing on January 1, 1999.

All firms desiring to provide electric power supply for ABAG POWER on an annual or shorter term basis must complete and submit five copies of the enclosed Electric Supply Qualifications Statement and one signed copy of the Enabling Agreement for Purchase and Sale of Electric Energy and/or Capacity. Firms who do not submit a proposal in response to the enclosed RFP are encouraged to submit the Qualification Statement and signed Enabling Agreement in order for ABAG POWER to solicit proposals from your firm for shorter term power purchases during 1999. Firms submitting a specific proposal in response to the RFP must also provide the documents specified in Section 4 entitled "Proposed Format" of the RFP.

The Qualification Statement and signed Enabling Agreement must be submitted in a separate sealed envelope marked "Electric Supply Qualifications Statement." Firms bidding as joint ventures or as a prime contractor with subcontractors must submit a Qualifications Statement for each member of the joint venture or each contractor. Subcontractors must indicate a willingness to subcontract with the prime contractor and may if they so chose, submit qualifications non-exclusively with multiple prime contractors.

DEADLINE

The deadline for submitting the Qualification Statement and signed Enabling Agreement is 5:00 p.m. (Pacific Prevailing Time), Wednesday December 16, 1998.

ADDRESS

Please submit the Qualification Statement and signed Enabling Agreement to:

David G. Finigan
ABAG POWER
101 – 8th Street
Oakland CA 94607-4756

The selection of "qualified firms" will be completed by December 30, 1998. For information regarding the Qualification Statement requirements, please contact David G. Finigan at (510) 464-7997.

ABAG POWER PURCHASING POOL
Electric Supply Qualification Statement

(1) Company Name: _____

(2) Principal Address _____

(3) Telephone: _____

(4) Fax: _____

(5) Business Organization -- Check One

Corporation, incorporated in State of _____

Other (partnership, etc.) Describe _____

(6) Are you: Registered to do business in California? Yes No

: A minority-owned business? Yes No

: A woman-owned business? Yes No

(7) S.E.C. Registration Number: _____

(8) Parent Company (if any) _____

(9) Affiliated Energy-related Companies: _____

(10) Has the organization been the subject of litigation for the failure to meet contracted obligations to deliver or supply electricity within the last 3 years? Yes No

(11) Has the organization filed for bankruptcy, or currently in default of business loans, or responsible for undisputed payments to suppliers or transporters which are over 60 days past due? Yes No

(12) Financial Strength:

What was the 1995 net excess capital of the organization (\$)

What is the rating of the organization's long-term unsecured debt?

(13) Contact Person and California Office:

Do you have a California or West Coast office? Yes No

If yes, Contact Person: _____
Title: _____
Office Location: _____
Telephone: _____
Fax: _____

(14) Electric Sales History and Supply:

What year did your company begin selling electricity to wholesale end users (i.e., municipal, investor-owned utilities, large industries)? _____

What were your total electric sales in 1997? (Indicate both dollar value and unit quantity: kWh, kW, MW, etc.)

	\$ (dollars)	(units)
California	_____	_____
Western States	_____	_____
US/Canada	_____	_____

What is your volume of electric generation owned or dedicated under firm long-term supply contracts?

California	_____
Western States	_____
US/Canada	_____

Please answer the following questions using a separate piece of paper for each question.

- (15) List THREE (3) electric sales references, if available. Include: (1) Company name and address; (2) contact person and phone number; and (3) dates of service.
- (16) If you supply power, describe your arrangements and terms to access the Power Grid.
- (17) Describe your plan for selling power to the California retail market.

Please include the following as appendices to your complete Qualifications Statement.

- (18) Your most recent Annual Report or Audited Financial Statement.
- (19) Biographies of corporate officers and other major decision makers.
- (20) Your standard promotional package.
- (21) Provide any additional information which will help in our qualification process.

All of the information provided on this statement and any backup documentation is true and accurate to the best of my knowledge.

Signature: _____ **Title:** _____
Print Name: _____ **Date:** _____

**ENABLING AGREEMENT FOR PURCHASE AND SALE OF
ELECTRIC ENERGY AND/OR CAPACITY**

**Between
ABAG POWER
And**

This Agreement made and entered in this _____ day of _____, 199__ (the "Effective Date") by and between _____, a _____ organized and existing under the laws of the State of _____, herein referred to as "Counterparty," and the ABAG Publicly Owned Energy Resources, a Joint Powers Agency created by local public agencies ("Members") and organized and existing under the laws of the State of California herein referred to as "ABAG POWER."

WITNESSETH:

WHEREAS, ABAG POWER and the Counterparty (collectively, the "Parties") deem it desirable that this Agreement be made for the purchase and sale of electric energy and/or capacity ("Transactions"); and

WHEREAS, such transactions may be beneficial to all Parties; and

WHEREAS, the Parties do not intend that this Agreement be construed as requiring the purchase and/or sale of any electric energy or capacity but to facilitate individual transactions that may be agreed to in the future by providing the general terms and conditions that shall govern such Transactions; and

WHEREAS, the Parties intend that, in addition to the terms and conditions set forth in this Agreement, Transactions entered into by the Parties pursuant to this Agreement shall also be governed by and are entered into subject to (1) applicable rules of the California Public Utilities Commission ("CPUC"), (2) California Independent System Operator's ("ISO's") Tariffs and Protocols, (3) Counterparty's market-based tariff filed with the Federal Energy Regulatory Commission ("FERC") rules, and (4) applicable FERC rules.

NOW, THEREFORE, in consideration of the foregoing and of the mutual benefits to be obtained from the covenants herein, the Parties hereto do hereby agree as follows:

**ARTICLE 1
TERM OF AGREEMENT**

1.1 Term. The term of this Agreement and all obligations under this Agreement shall continue in effect until terminated in accordance with its terms.

1.2 Termination for Convenience. Provided that there is no Confirmation (as defined in this Agreement) then in effect between the parties, either party may terminate this Agreement by submitting written notice to the other not less than one (1) day prior to the effective date of termination.

1.3 Termination for Cause. If, through any cause, either party fails to fulfill in timely and proper manner its obligations under this Agreement or a Confirmation, or violates any of the

covenants, terms or conditions of this Agreement or a Confirmation, the other party has the right to:

- (a) terminate this Agreement and all Confirmations if the breaching party breached the Agreement, or
- (b) terminate the Confirmation(s) breached by the breaching party if the breaching party did not breach this Agreement.

In either case, the other party will give written notice to the breaching party of such termination and specifying the effective date thereof. The notice of termination shall be given at least five (5) days before its effective date.

ARTICLE 2 TRANSFER OF ENERGY AND/OR CAPACITY

2.1 Purchase and Sale. The Parties may orally agree from time to time to a specific transaction ("Transaction") for the furnishing of capacity, energy and/or ancillary services ("Product"). Transactions shall be confirmed in writing with a Confirmation signed by both Parties. Each Transaction shall be governed by the terms and conditions set forth in this Agreement. If Counterparty has a FERC approved Rate Schedule, then all sales by Counterparty are made pursuant to Counterparty's market-based rate tariff, Rate Schedule FERC No. _____ approved _____, 199___. The specific terms of a Transaction shall be set forth in a Confirmation, substantially in the form of Exhibit "A," attached hereto and incorporated into this Agreement. Each Transaction, the documentation of such Transaction, and the Confirmation, shall constitute an integral part of this Agreement and shall be read and construed as one with this Agreement. More than one Confirmation may be in effect hereunder at any one time, but each Confirmation shall operate under these General Terms and Conditions independently of any other Confirmation.

If Counterparty or ABAG POWER wishes to take exception to, or clarify, the terms of a proposed Confirmation, Parties hereby agree to promptly submit to specific, written exceptions or clarifications to such terms. If Counterparty allows commencement and/or availability of delivery of energy and/or ancillary services before requested exceptions and/or clarifications have been resolved, Counterparty shall be deemed to have accepted the terms of the Confirmation in full. Confirmations may be transmitted by facsimile or email.

2.2 Recording. The Parties agree that (i) each may electronically record all telephone conversations between them relating to any Transaction, (ii) each waives any further notice of such monitoring or recording, and agrees to notify their respective officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees, and (iii) the recording of any conversation regarding a Transaction under this Agreement or any dealer interpretation, whether written or oral, of a Transaction based on such recording shall not be treated as "sufficient evidence" of a contract between the Parties unless all of the material terms of such Transaction are expressly stated including but not limited to (i) the identity of the Parties, (ii) the Contract Price, (iii) the Contract Quantity, (iv) the Period of Delivery, (v) the Delivery Point(s), and (vi) the transaction is confirmed in writing by both parties.

2.3 No Dedication of System or Resources. Nothing in this Agreement shall be deemed to be a dedication of all or a portion of a Party's system or any resource to the other Party or an agreement by one Party to enter into a Transaction with the other Party.

2.4 Delivery and Losses. Title to the Product shall transfer from Counterparty to ABAG POWER at the Delivery Point(s) unless otherwise agreed in writing. Counterparty shall have title to, and be deemed to be in exclusive control and possession of and shall be fully responsible for, the Product prior to its delivery to the Delivery Point. ABAG POWER shall take and have title to, and be deemed to be in exclusive control and possession of and shall be fully responsible for, the Product upon its delivery to the Delivery Point and thereafter. Unless otherwise agreed in the applicable Confirmation, the Parties shall each be responsible for arranging for transmission service and for any transmission losses and loss charges relating to the transmission of Product, in the case of Counterparty, to the Delivery Point(s), and in the case of ABAG POWER, from the Delivery Point(s).

ARTICLE 3 FORCE MAJEURE AND NONPERFORMANCE

3.1 Force Majeure Defined. Except as modified below, the term "Force Majeure" shall mean an event, not anticipated as of the effective date of the applicable Transaction, that is not within the reasonable control of the Party claiming suspension, and which, by the exercise of due diligence, the Party claiming suspension is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not limited to, acts of God, fire, civil disturbance, labor dispute, labor or material shortage, failure of transmission or distribution facilities, sabotage, action or restraint by court order or public or governmental authority (so long as the Party claiming suspension has not applied for, or assisted in the application for, and has opposed where and to the extent reasonable, such governmental action).

3.2 Obligation To Remove Disability. No Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure shall give prompt written notice of such fact, but in no event more than fifteen (15) calendar days after the occurrence of the event claimed to constitute the Force Majeure, to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

3.3 Nonperformance Excused. The Parties' nonperformance shall be excused as provided in each Confirmation entered into under this Agreement.

3.4 Damages and Remedies for Nonperformance

3.4.1 *Counterparty's Nonperformance.* If Counterparty fails to deliver energy, and/or make available capacity, at the Delivery Point(s) as required, unless excused as described in the confirmation or through ABAG POWER's failure to schedule, Counterparty shall pay ABAG POWER, on the date payment would otherwise be due to Counterparty, an amount for each megawatt hour of such deficiency equal to the difference between the Replacement Price and the contract price, if the Replacement Price is greater than the contract price.

The term “Replacement Price” shall mean the commercially reasonable price (plus any additional transmission, ancillary services, or other ISO allocated charges incurred by ABAG POWER) at which ABAG POWER purchases substitute energy of like quality to replace energy not delivered by Counterparty. Substitute Energy includes any purchased, or Imbalance Energy (as defined by the ISO tariffs) acquired in order to replace contracted amount of energy not delivered.

3.4.2 *ABAG POWER’s Non-performance.* Unless excused by Section 3.3 above or Counterparty’s nonperformance, if ABAG POWER fails to schedule (i) any minimum requirement of energy, as required to be received pursuant to a Transaction, ABAG POWER shall pay Counterparty, on the date payment would otherwise be due, an amount for each megawatt hour of such deficiency equal to the Contract Price for the Transaction.

ARTICLE 4 OPERATION

4.1 Ancillary Services. ABAG POWER shall be responsible for obtaining or providing all Ancillary Services considered necessary by ISO for the ABAG POWER load, and shall have completed all necessary arrangements and filings as required to initiate such services pursuant to applicable ISO Operating Guides. To the extent that the Counterparty performs scheduling services, or other Ancillary Services, to facilitate Transactions for the ABAG POWER load, ABAG POWER shall pay for such services as stipulated in the applicable Confirmation. Any additional costs to ABAG POWER resulting from ABAG POWER’s failure to arrange for all necessary Ancillary Services shall be the responsibility of ABAG POWER, and shall not be charged to Counterparty.

4.2 Transmission Service. ABAG POWER shall, through interconnection agreements and as otherwise authorized by applicable ISO Rules Operating Guides, make all necessary arrangements for Transmission Service, including any and all necessary technical arrangements for such service, and shall obtain confirmations from the ISO.

4.3 Relative Responsibilities. ABAG POWER assumes all responsibility for receipt and delivery of Product on the applicable system from the Delivery Point unless otherwise stipulated in the applicable Confirmation. Counterparty assumes all responsibility for delivery of Product on the applicable system to the Delivery Point unless otherwise stipulated in the applicable Confirmation. Parties assume no responsibility with respect to the construction, installation, maintenance or operation of the systems of or by third parties, in whole or in part.

ARTICLE 5 SCHEDULES

5.1 Changes In Schedules. As a general practice, ABAG POWER shall schedule energy deliveries on an hourly basis with the Counterparty by 7:00 a.m., Pacific Prevailing Time or sooner as market conditions dictate, on the last business day prior to the day delivery of Product is to occur; thereafter, the actual energy schedule may be altered as agreed in the Confirmation, provided such changes are consistent with applicable ISO Tariffs Protocols and current acceptable scheduling practices.

5.2 Scheduled Deliveries and Inadvertent Transfer of Electric Energy. Since the Parties are not directly interconnected, all billings shall be based on scheduled deliveries.

ARTICLE 6 OPERATING GUIDELINES

6.1 Reliability Guidelines. Each Party agrees to adhere, or to cause third parties with which it contracts to carry out a Transaction to adhere, to prevailing good utility practices in the region bounded by the Western States Coordinating Council, and specifically to adhere to the applicable ISO operating policies, criteria, requirements, and/or guides.

ARTICLE 7 BILLING AND PAYMENT

7.1 Presentation and Payment. Each of the Parties shall submit to the other, as promptly as possible after the first business day of each month, a statement for the Transaction(s) and the respective amounts due under the terms of this Agreement and the applicable Confirmation for the preceding calendar month. All invoices shall be due and payable via wire transfer, unless otherwise mutually agreed, within twenty (20) days of the date of the bill and shall be considered paid if delivered by the due date (as determined by the date of the bill). If the due date for payment falls on a Saturday, Sunday, or a federal holiday, payment shall be due on the next business day. Any amount due and unpaid after the due date shall be termed delinquent and there shall be added interest for each day delinquent at a rate of one and a half percent (1.5%) per month calculated daily on the outstanding balance.

Payments by wire transfer to:

Beneficiary:
Bank:
ABA:
Account No.:

Payments by wire transfer to ABAG POWER:

Beneficiary: ABAG POWER
Bank:
ABA:
Account No.:

7.2 Disputed Bill. In case any portion of any bill is in *bona fide* dispute, the undisputed amount shall be payable when due. Upon determination of the correct amount, the remainder, if any, shall be paid promptly with interest accrued in accordance with Section 7.1 above. Counterparty's Authorized Representative shall be provided written notice of the disputed amount and the basis for the dispute. Counterparty shall reimburse any amount determined to have been incorrectly billed, with interest calculated in accordance with Section 7.1 above, within ten (10) days after such determination. The provisions of this Section shall survive expiration of this Agreement until satisfied.

7.3 Defaults and Remedies. If payment is not received on or before the due date, the Party failing to make such payment, except for disputed amounts withheld pursuant to 7.2, shall be in default, and shall have two (2) business days from receipt of written notice of the default to cure the default. If the defaulting Party fails to cure a default within the prescribed period, the nondefaulting Party may suspend all outstanding Transactions with the defaulting party without liability for such suspension until such time as said delinquencies are paid; provided, however, such termination shall not relieve ABAG POWER of its obligation to fully compensate Counterparty for all energy delivered, capacity made available, and/or Ancillary Services provided by Counterparty, nor shall such suspension be considered to be the non-defaulting party's exclusive remedy for the defaulting party's non-performance.

7.4 Books and Records. Each Party shall, in accordance with generally accepted accounting principles, keep complete and accurate records and memoranda of its actions taken hereunder and shall maintain such records, memoranda, and data as may be necessary to determine or justify with reasonable accuracy any item relevant to this Agreement, the Confirmations, and any specific Transaction. With respect to cost information and billing records, each Party shall maintain such records, memoranda, and data for a period of not less than three (3) years subsequent to consummation of each Transaction. Each Party shall have the right, on reasonable notice and during customary business hours, to examine all such records, memoranda and data insofar as may be necessary for the purpose of ascertaining the accuracy of any statements of costs relevant to the pricing of a Transaction. No adjustments shall be requested after the lapse of twelve (12) months from rendition of the final invoice of the calendar year. This section shall survive termination of this Agreement for a period of one (1) year from the date of termination for the purpose of such payment and objections.

ARTICLE 8 INDEMNIFICATION

8.1 Mutual Indemnifications. The ABAG POWER expressly agrees, to the extent permitted by law, to indemnify and save harmless and defend the Counterparty against all claims, demands, costs, or expenses for loss, damage, or injury to persons or property, in any manner directly or indirectly connected with or growing out of the generation, transmission or use of electric power and energy sold pursuant to this Agreement and any Confirmation, which occur on ABAG POWER's side of the Delivery Point(s), unless such claim or demand arises out of or results from the sole negligence or willful misconduct of the Counterparty, its agents, servants, contractors, or employees. To the extent allowed by law, the Counterparty expressly agrees to indemnify and save harmless and defend ABAG POWER against all claims, demands, costs or expenses for loss, damage, or injury to persons or property, in any manner directly or indirectly connected with or growing out of the generation, transmission, or use of electric power and energy sold pursuant to this Agreement, which occur on the Counterparty's side of the Delivery Point(s), unless such claim or demand arises out of or results from the sole negligence or willful misconduct of ABAG POWER, its agents, servants or employees. Provided, however, this Agreement does not in any way create a contractual or third party beneficiary relationship of one Party with a customer of another Party; and does not create a duty thereto.

8.2 Survivability of Claims. The obligations of the Parties under this Article 8, whether or not then accrued or known, shall survive termination of this Agreement with respect to any act, occurrence, or omission occurring prior to termination of this Agreement.

- 8.3 Limitation on Consequential Damages. Except as provided for in Section 3.4 neither Party shall be liable to the other for any indirect, consequential, or punitive damage or injury under any theory of liability.

ARTICLE 9 DISPUTE RESOLUTION

9.1 Arbitration Proceedings. Any dispute arising out of this Agreement or a Confirmation entered into pursuant thereto, shall be resolved informally through good faith negotiations diligently undertaken by the Parties or by mediation in accordance with the following procedure:

- 9.1.1 *Initiation Response:* Promptly upon the occurrence of the dispute, the aggrieved party will notify the other party in writing (the "Claimant's Statement"), setting forth in sufficient detail the basis for the dispute, the aggrieved party's position and its proposal for resolution of the dispute. Within ten (10) days following receipt of the Claimant's Statement, the other party will respond in writing (the "Responsive Statement") setting forth in sufficient detail the respondent's position and its proposal for resolution of the dispute.
- 9.1.2 *Good Faith Negotiation:* Within ten (10) business days after the aggrieved party's receipt of the Responsive Statement, the parties will meet and attempt in good faith to expeditiously negotiate a resolution to the dispute. In attendance for each party at that opening session and throughout the dispute resolution procedure described in this Section will be a representative or representatives of each party who is authorized to act for the party and resolve the dispute without resort to higher authority.
- 9.1.3 *Mediation:* If the parties cannot reach a mutually acceptable solution within thirty (30) days after discussions begin, either party may refer the matter to mediation in accordance with the rules of the American Arbitration Association for appointment of a qualified mediator who has no interest in the outcome of the dispute and who is qualified in the mediation of commercial disputes.
- 9.1.4 *Arbitration:* If the dispute cannot be resolved within sixty (60) days following commencement of mediation, either Party may elect in good faith to submit the dispute to binding arbitration by three (3) arbitrators who have not previously been employed by either Party, who are skilled and experienced in the resolution of commercial disputes and who do not have a direct or indirect interest in either Party or the subject matter of the arbitration. Each Party shall designate an arbitrator and the two (2) thus chosen shall select the third. If the two (2) appointed arbitrators are unable to agree upon a third within thirty (30) days after their appointment, the third arbitrator shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with ABAG POWER's home office, or in any other mutually agreed upon location. The rules of the AAA shall apply to the extent not inconsistent with the rules specified herein. The arbitration shall be conducted according to the following: (a) not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement, (b) the hearing shall be conducted on a confidential basis without continuance or adjournment, (c) the arbitrators shall be limited to selecting only one of the two proposals submitted by the Parties, (d) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own

expenses and those of its counsel and representatives, and (e) evidence concerning the financial position or organizational makeup of the Parties, any offer made or the details of any negotiating prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible.

9.2 Binding Nature of Arbitration. Each Party understands that this Agreement contains an agreement to arbitrate with respect to any dispute arising under this Agreement or a Confirmation entered into pursuant thereto. After signing this Agreement, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration provision. Instead, each Party agrees to submit any such dispute to an impartial arbitrator. Any monetary award of the arbitrator may be enforced by the Party in whose favor such monetary award is made in any court of competent jurisdiction.

ARTICLE 10 CONFIDENTIALITY

10.1 Confidential Information. ABAG POWER and Counterparty acknowledge that from time to time they will, as a result of conversations, discussions, and negotiations among their agents, officers, directors, employees, affiliates, consultants or contractors (collectively, the "Representatives"), receive or have access to certain data, reports, interpretations, forecasts, financial statements, agreements, legal opinions, and other materials belonging to ABAG POWER or Counterparty which are either confidential, proprietary, or otherwise not generally available to the public regarding possible transactions for the purchase and/or sale of bulk wholesale power ("Possible Transactions"). Such confidential, proprietary or information not otherwise generally available to the public, or which, at the time of its disclosure is not already in the possession of the receiving Party, and which has been identified in writing as confidential is referred to herein as the "Confidential Information." Notwithstanding the foregoing, Counterparty shall have the right to represent to third parties that it is authorized to buy or sell power which it has sold to or purchased from ABAG POWER or which it is brokering on behalf of ABAG POWER, and the same shall not constitute Confidential Information. Nothing contained in this Section 10.1 shall be interpreted as an obligation on the part of either Party to disclose Confidential Information to the other Party.

10.2 Confidentiality Agreement. As a condition to furnishing the Confidential Information to each other, ABAG POWER and Counterparty agree as follow:

10.2.1 Neither ABAG POWER, Counterparty, nor their respective Representatives will disclose to any third party the Confidential Information furnished to it pursuant to this Agreement without the prior written consent of the Party that furnished the Confidential Information, provided that the Party receiving Confidential Information from the other Party may disclose such information (i) as is or may become generally available to the public or available through another source that the Party receiving the Confidential Information does not know, in the exercise of reasonable diligence, is prohibited from making disclosure, (ii) which is known to the receiving Party prior to being furnished pursuant to this Agreement, (iii) in order to comply with any applicable law, order, regulation, or ruling (including any securities disclosure laws or any procedural rule or regulation of any regulatory authority), or (iv) that is independently developed by the receiving Party without reliance on or reference to Confidential Information received from the other Party. The Parties shall cause their respective Representatives to protect the confidentiality of Confidential Information.

10.2.2 Each Party will use its best efforts not to use any of the Confidential Information for any purpose other than to evaluate participating in any of the Possible Transactions.

10.2.3 The Confidential Information, except for that portion of the Confidential Information that may be found in analyses, compilations, studies, or other documents prepared by or for the Party receiving Confidential Information, will be returned to the Party that furnished such Confidential Information immediately upon such Party's written request. That portion of the Confidential Information that may be found in analyses, compilations, studies, or other documents prepared by or for the Party receiving Confidential Information as well as Confidential Information not so requested or returned will be held by the receiving Party and kept subject to the terms of this Agreement, or destroyed.

10.2.4 The ABAG POWER and Counterparty agree that any action for damages for violation of Article 10 may be wholly inadequate, and that the non-breaching party shall be entitled to specific performance and injunctive relief, without posting bond therefor, as additional remedies for such breach. In no event, however, shall either party be liable for special, indirect, consequential or punitive damages arising out of any breach of Article 10.

10.2.5 The ABAG POWER and Counterparty understand and agree that nothing in this Agreement or the prior or subsequent communications of the Parties shall be deemed to create any obligation or liability for either Party to go forward with any of the Possible Transactions unless and until the Parties so agree in writing. This Agreement does not create any obligation for either Party to deal exclusively with the other Party nor does it prevent either Party or its affiliates from competing with each other so long as such Party does not use the Confidential Information provided to it pursuant to this Agreement for a period not to exceed one year.

10.2.6 The obligation of confidentiality set forth herein shall extend for a period of one (1) year following the date on which any Confidential Information has been obtained by a Party, unless, at the time of disclosure, the Parties agree otherwise. The provisions of this Article 10 shall survive termination of this Agreement and any Confirmation entered into pursuant thereto.

ARTICLE 11 MISCELLANEOUS

11.1 Waivers. Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

11.2 Independent Contractor. Counterparty renders its services under this Agreement as an independent contractor. None of the Counterparty's agents, employees or subcontractors shall be agents or employees of ABAG POWER or the Members.

11.3 Solicitation of Contract. Counterparty warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for Counterparty, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other

than bona fide employees working solely for Counterparty, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, ABAG POWER shall have the right to terminate this Agreement without liability or, at its discretion, the right to deduct from Counterparty's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

11.4 Equal Employment Opportunity.

11.4.1. In connection with the performance of services provided for under this Agreement, it is agreed that Counterparty shall not, on the grounds of race, religious creed, color, national origin, age, ancestry, physical disability, medical condition, marital status or sex discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

11.4.2 Counterparty shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

11.4.3 In the event of Counterparty's non-compliance with the nondiscrimination clause of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part and Counterparty may be declared ineligible for further ABAG POWER contracts.

11.5 Title VI of The Civil Rights Act Of 1964. Counterparty agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations issued thereunder.

11.6 Debarment. Counterparty certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

11.7 Prohibited Interest. No member, officer or employee of ABAG or ABAG POWER, during his/her tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

11.8 Interest of the Counterparty.

11.8.1 Counterparty covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Counterparty further covenants that in the performance of this Agreement no person having any such interest shall be employed.

11.8.2 Counterparty further certifies that it has made a complete disclosure to ABAG POWER of all facts bearing upon any possible interest, direct or indirect, which it

believes any member, officer, agent or employee of ABAG presently has, or will have in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by ABAG POWER.

11.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto. Neither this Agreement nor any Confirmation, nor any right or obligation hereunder, shall be assigned to a third person by a Party without the written consent of the other Party, which consent shall not be reasonably withheld or delayed. Notwithstanding the foregoing, either Party may, without the need for further consent, (a) transfer or assign this Agreement and any Confirmation as security for loans or advances secured by a mortgage on all or substantially all of the assets of such Party or (b) transfer or assign this Agreement and any Confirmation to any person succeeding to all or substantially all of the assets of such Party, whether by merger or otherwise, so long as such person shall, as a part of such succession, have assumed all of the obligations of the transferor under this Agreement; or to (c) to an affiliate or wholly-owned subsidiary. Any assignment made without the required consent shall be void and of no effect against the non-consenting Party.

11.10 Notices. All notices, demands, requests, reports, approvals, or other communications which may be or are required to be given, served, or sent pursuant to this Agreement shall be in writing and shall be mailed by first-class, registered, or certified or express mail, return receipt requested, postage prepaid, or by comparable delivery service, or transmitted by facsimile with the original transmitted by first class mail, addressed, in the case of Counterparty to:

Counterparty

Attention:
Telephone:
Facsimile:

and, in the case of ABAG POWER, including invoices to:

ABAG POWER
P.O. Box 2050
Oakland, CA 94604
Attention: Power Pool Manager
Telephone: (510) 464-7908
Facsimile: (510) 464-7989

Facsimile copies of invoices should be sent to:

Al Parsons
Northern California Power Agency
Telephone: (916) 781-3636
Facsimile: (916) 781-4239

or to such other person as may be designated by Counterparty or ABAG POWER. The designation of the person to be notified or the address of such person may be changed by Counterparty or ABAG POWER at any time, or from time to time, by similar notice. The confirmation of the terms of a specific Transaction shall be as specified in the applicable Confirmation.

Any communications regarding operational emergencies or other operational problems may be made orally or in any other manner reasonable under the circumstances and should be directed to the persons specified below, or to such other person or address as may have been designated in a written notice given to the other persons by or on behalf of the person entitled to receive notice. In the event the person entitled to receive notice cannot be found, notice may be given to any other responsible person, in the case of Counterparty to:

Counterparty

Attention:

Phone:

Facsimile:

and, in the case of ABAG POWER, to:

ABAG POWER
Power Pool Manager
P.O. Box 2050
Oakland, CA 94604
Phone: (510) 464-7908
Facsimile: (510) 464-7989

11.11 GOVERNING LAW. THE VALIDITY, INTERPRETATION, AND PERFORMANCE OF THIS AGREEMENT AND EACH OF ITS PROVISIONS SHALL BE GOVERNED BY THE APPLICABLE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE LAWS OF CALIFORNIA REQUIRING THE APPLICATION OF THE LAWS OF ANOTHER STATE. VENUE FOR ANY ACTION ARISING UNDER THIS AGREEMENT, INCLUDING ANY COUNTERCLAIMS AND CROSS CLAIMS ASSERTED IN SUCH ACTION, SHALL BE IN THE STATE OR FEDERAL COURTS IN ALAMEDA COUNTY, CALIFORNIA.

11.12 Taxes. For the purposes of Transactions occurring under this Agreement, "*Taxes*" means all ad valorem, property, occupation, utility, gross receipts, sales, use, excise and other taxes, governmental charges, emission allowance costs, licenses, permits and assessments, other than taxes based on net income or net worth.

11.12.1 Allocation of, and Indemnity for Taxes. The Contract Price paid hereunder includes full reimbursement for and Counterparty is liable for and shall pay or cause to be paid, or reimburse ABAG POWER if ABAG POWER shall have paid, all Taxes applicable to the power sold hereunder prior to the Delivery Point(s) ("Counterparty's Taxes"). Counterparty will indemnify, defend and hold harmless from any liability against all Counterparty's Taxes. If ABAG POWER is required to remit any of

Counterparty's Taxes, the amount thereof shall be deducted from any sums becoming due to Counterparty hereunder. The Contract Price does not include reimbursement for and the ABAG POWER is liable for and shall pay, cause to be paid or reimburse Counterparty if Counterparty shall have paid, all Taxes applicable to the power sold hereunder at and after the Delivery Point(s), including, but not limited to utility users' tax imposed by local jurisdictions ("ABAG POWER's Taxes") regardless of how such tax is measured (before or after the Delivery Point). ABAG POWER shall indemnify, defend and hold Counterparty harmless from any liability against all ABAG POWER's Taxes.

11.12.2 *Cooperation.* Both parties shall use reasonable efforts to administer this Master Agreement and implement the provisions in accordance with their intent to minimize Taxes.

11.12.3 *Changes in Taxation.* In the event that new taxes, interpretations of taxes, or application of taxes arise during the term of this Agreement, the Contract Price shall be adjusted accordingly, and taxes shall be allocated to both Parties as designated in Section 11.12.1. The Parties will use best efforts to continue the Transaction under this Agreement subject to the price adjustment for taxes.

11.13 Counterparty's Representations and Warranties EXCEPT TO THE EXTENT EXPRESSLY STATED IN THIS AGREEMENT OR IN A CONFIRMATION ENTERED INTO UNDER THIS AGREEMENT, COUNTERPARTY MAKES NO REPRESENTATION OR WARRANTY IN RESPECT TO THE ENERGY OR CAPACITY SOLD TO ABAG POWER, INCLUDING, BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.14 No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating in any third party a contractual right or benefit.

11.15 Priority of Documents. If the terms of a Confirmation conflict with the terms of this Agreement for Purchase and Sale of Electric Energy and/or Capacity, the terms of the Confirmation shall prevail.

11.16 Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the Parties.

11.17 Computation of Time. In computing any period of time prescribed or allowed by this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall be excluded but the last day of such period shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period shall run until the end of the next business day which is not a Saturday, Sunday, or federal holiday.

11.18 Section Headings Not to Affect Meaning. The descriptive headings of the Articles and paragraphs of this Master Agreement have been inserted for convenience only and shall not modify or restrict any of the terms and provisions thereof.

11.19 Laws and Regulations. Counterparty shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to, ABAG which relate to or in any manner affect Counterparty's performance under this Agreement.

11.20 Entire Agreement. This Agreement, is entered into and subject to the Counterparty's including each Confirmation issued under it, is entire as to all of the performances to be rendered under it. Except for the agreement signed on March 25, 1998 by Parties, this Agreement supersedes any and all other contracts either oral or in writing between the Parties with respect to the subject matter hereof and contains all of the covenants and contracts between the parties with respect to such matter. Each Party to this Agreement acknowledges that no representations, inducements, promises or contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Agreement shall be valid or binding.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers, and copies delivered to each Party, as of the day and year first above stated.

Counterparty

By: _____

Name: _____

Title: _____

ABAG POWER

By: _____

Name: _____

Title: _____

EXHIBIT A
CONFIRMATION
NEGOTIATED SALE OF ELECTRIC ENERGY AND/OR CAPACITY

Transaction No. _____

DATE: _____

Attn.: _____

This letter shall confirm the agreement reached on _____, 199_ between _____ (Counterparty) and ABAG POWER regarding the sale/purchase of capacity and/or energy under the terms and conditions as follows:

ABAG POWER to purchase and receive; Counterparty to sell and deliver

PRODUCT:

CONTRACT QUANTITY:

DELIVERY POINT(S):

CONTRACT PRICE:

PERIOD OF DELIVERY:

DELIVERY PROFILE: HE _____ -HE _____

COUNTERPARTY RESPONSIBLE CONTACT:

OTHER:

This Confirmation Letter is being provided pursuant to and in accordance with the Agreement for Purchase and Sale of Electric Energy dated _____, 199__ ("Agreement") between Counterparty and ABAG POWER and constitutes part of and is subject to all of the terms and provisions of such Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. The price stated above is the contract price for this transaction and is inclusive of all taxes (except ABAG POWER's taxes under section 11.12.1 of the Agreement), fees, and transmission charges to the Delivery Point(s), emission allowance charges and similar charges. The ABAG POWER shall not be obligated to compensate Counterparty for energy deliveries in excess of amounts contracted for by ABAG POWER.

Please confirm that the terms stated herein accurately reflect the agreement reached on _____, 199__ between ABAG POWER and Counterparty by returning an executed copy of this letter by facsimile to the ABAG POWER. Your response should reflect the appropriate person in your organization who has the authority to enter into this transaction, and should be received by ABAG POWER no later than _____.

COUNTERPARTY

Association of Bay Area Governments
Publicly Owned Energy Resources
(ABAG POWER),

By: _____

Title: _____

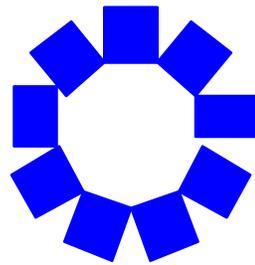
Date: _____

By: _____

Title: _____

Date: _____

**REQUEST FOR PROPOSALS
FOR
POWER SUPPLY**



**for
ABAG Publicly Owned Energy Resources (ABAG POWER)
ABAG POWER**

**Distributed: December 7, 1998
Due: Noon, December 21, 1998**

The Association of Bay Area Governments (ABAG) is accepting proposals for power supply. Two copies of the proposal must be delivered, separately, to: 1) David D. Finigan, ABAG, address below, and 2) Tom Green, NCPA, 180 Cirby Way, Roseville, CA 95678 before Noon on Monday, December 21, 1998.

ASSOCIATION OF BAY AREA GOVERNMENTS
101-8th Street
Oakland, CA 94607-4756
Telephone (510) 464-7997
Fax (510) 464-7985

1. ABAG POWER Description and Background

ABAG Publicly Owned Energy Resources (ABAG POWER) is a joint powers agency of 59 local government entities in Northern California formed to make pooled purchases of electricity after the California market was restructured in 1998. ABAG POWER has the power, in its own name, to make and enter into contracts; employ agents and employees; acquire, hold, and dispose of property; and incur debts, liabilities, or obligations necessary to carry out its business. As a joint powers agency, ABAG POWER is obliged to comply with the same requirements imposed on other public agencies such as open and announced meetings and annual financial audits.

The Association of Bay Area Governments (ABAG) is the administering member of ABAG POWER. ABAG is also a joint powers agency with the power, in its own name, to make and enter into contracts; employ agents and employees; acquire, hold, and dispose of property; and incur debts, liabilities, or obligations necessary to carry out its business. As a joint powers agency, ABAG POWER is obliged to comply with the same requirements imposed on other public agencies such as open and announced meetings and annual financial audits.

2. Project Description and Background

The principal goal of ABAG POWER is to conduct pooled purchasing of electricity on behalf of the 59 local governments and special districts in the Pacific Gas and Electric Company (PG&E) Service territory who are members of the Electric Pool. ABAG secured legal commitments to participate in the Electric Pool from the members and initiated a successful Electric Pool program on April 1, 1998. In order to secure electric power supply in 1999 for the second year of this program, ABAG is now soliciting proposals from interested power suppliers.

3. Supply Proposals Requested

ABAG POWER solicits firm power products described below for calendar year 1999. The attached tables describe the amount of ABAG POWER's firm power requirement each month during on-peak and off-peak hours at load factors associated with 5 MW increments. ABAG POWER requests one or more power product offerings as described below. Proposers are invited to offer additional firm power products that the proposer wishes ABAG POWER to consider as alternatives. Power deliveries shall be prescheduled in accordance with the ISO Tariff and ISO Protocols.

- 1) A 25 MW baseload (7 x 24) firm power product, or a 25 MW on-peak (6 x 16) firm power product, or a 25 MW off-peak (6 x 8 + 24) firm power product, for 12 months beginning January 1, 1999.
- 2) A 10 MW on-peak (6 x 16) firm power product for the period January through December 1999.
- 3) A 10 MW on-peak (6 x 16) firm power product for the period June through September 1999.
- 4) A 10 MW on-peak (5 x 6) firm power product for the period June through September, 1999.

For components 1, 2 and 3, ABAG POWER requests that each proposer provides three independent price options, one of which will be selected by ABAG POWER and adopted per contract.

The first price option shall be a fixed price per MWh each month for effective firm power delivered to the ISO Congestion Zone “NP15”. Under this pricing option, the proposer shall reimburse ABAG POWER for all costs charged by the ISO to, in effect, result in firm power being delivered at NP15. At any time, the proposer will have the choice to schedule power at either (1) ISO Control Area Tie-Points for import by Northern California Power Agency (NCPA) on ABAG POWER’s behalf, or (2) at NP15 in the form of a Scheduling Coordinator to Scheduling Coordinator trade with NCPA on behalf of ABAG POWER. Depending on where the proposer chooses to schedule power for delivery, ISO charges that are subject to reimbursement by proposer shall include charges for Congestion, Import Deviation Imbalance Energy, and Ancillary Services.

The second price option shall be a fixed price per MWh each month for firm power delivered at the California-Oregon Border (COB). Under this pricing option, proposer shall relieve ABAG POWER of the obligation to take and pay for energy at COB during uncontrollable forces that will include periods of ISO imposed curtailments that occur after the close of the day ahead market.

The third price option shall be an indexed price equal to the PX day ahead zonal market clearing price in NP15, plus a premium applicable within the month that compensates the proposer for a monthly price cap that would limit the price ABAG POWER would pay for firm power delivered at NP15 in that month. ABAG POWER requests that proposers specify both the premium and the associated price cap. Proposers are invited to offer a range of optional sets of premiums and price caps, only one of which would be adopted. As with the first price option, the proposer shall reimburse ABAG POWER for all costs charged by the ISO to, in effect, result in firm power being delivered at NP15. At any time, the proposer will have the choice to schedule power at either (1) ISO Control Area Tie-Points for import by NCPA on ABAG POWER’s behalf, or (2) at NP15 in the form of a Scheduling Coordinator to Scheduling Coordinator trade with NCPA on behalf of ABAG POWER. Depending on where the proposer chooses to schedule power for delivery, ISO charges that are subject to reimbursement by proposer shall include charges for Congestion, Import Deviation Imbalance Energy, and Ancillary Services.

In addition to the offerings solicited above, ABAG POWER requests proposals to serve some or all of ABAG POWER’s requirements at a discounted price relative to ABAG POWER’s aggregate alternative power cost from PG&E that would be applied to ABAG POWER’s members absent their direct access.

As ABAG will not likely be able to take delivery of all power requirements due to necessary phasing of Direct Access service accounts, ABAG reserves the right to reject all or some portion of proposers offerings. In the alternative, ABAG POWER may elect to accept power products offered and sell any surplus power in the bulk power market. ABAG POWER requests that proposers specify any price differentials if the proposer would otherwise limit ABAG POWER’s ability to sell surplus power to third parties.

**Please refer to accompanying document LoadTables.pdf
(<http://www.abag.ca.gov/services/power/LoadTables.pdf>) for insertion here.....**

4. Proposal Format

Proposals should include the following information:

- A. A cover page clearly displaying: 1) company name; and 2) a contact person's name, address, phone and fax number, and e-mail address. **The cover page must be signed by an officer of the company authorized to submit a firm bid and sign subsequent contracts with ABAG POWER.**
- B. Signed Enabling Agreement (as defined below).
- C. Signed Confirmation (as defined below) for each proposal and price option.

5. Submission Process and Competitive Negotiation Process

Two copies of the proposal must be delivered, separately, to: 1) David G. Finigan, ABAG, address above, and 2) Tom Green, NCPA, 180 Cirby Way, Roseville, CA 95678 before Noon on Monday, December 21, 1998. NCPA is ABAG's consultant and will assist in the evaluation of proposals. Price is the predominant selection criteria for this RFP. ABAG will contact proposers by Monday, December 28, 1998 to negotiate final prices by December 29. Confirmations (as defined below) will be executed and returned by facsimile to successful proposers by December 30, 1998.

6. For Further Information

For further information, contact David G. Finigan, ABAG, P.O. Box 2050, Oakland, CA 94604; phone (510) 464-7997; fax (510) 464-7985; or by e-mail at HeidiC@abag.ca.gov.

7. General Conditions

A. No Obligation to Award

This Request for Proposal (RFQ/RFP) does not obligate ABAG to enter into an "Enabling Agreement for Purchase and Sale of Electric Energy and/or Capacity" (Engagement Agreement) with, or accept a "Confirmation – Negotiated Sale of Electric Energy and/or Capacity" (Confirmation) from, any Proposer. ABAG may, at its option, revise the schedule of events or anticipated date of award, may request further information from any Proposer or may withdraw this RFQ/RFP in part or in its entirety.

B. Form Of Proposal And Signature

Each Proposer, by submission of an executed Engagement Agreement or Confirmation, thereby represents and warrants to ABAG POWER and ABAG that each document is signed by a person with authority to bind Proposer to the terms of such document and that the document is duly and validly executed. In particular, documents submitted by a sole owner will be signed by the sole owner with his/her full name and his/her address. Documents submitted by a partnership will be signed by at least one general partner who will also sign his/her/its own name with the address of each partner. Documents submitted by a corporation will be signed by an officer or other individual who has the full and proper authorization to do so. Documents submitted by a joint venture will be signed on

behalf of each participating entity in the manner prescribed above in accordance with its legal status. Documents submitted in any other form will be considered nonresponsive and will be rejected.

C. Conditioned Proposal

Unauthorized conditions, limitations or provisions attached to a proposal will render it non-responsive and may cause its rejection.

D. Withdrawal Of Proposal

A Proposer may withdraw its proposal without prejudice to itself, by submitting a written request for its withdrawal to the Program Manager before the due date.

E. Firm Proposal

All proposals shall remain in effect until December 30, 1998.

F. Rejection Of Proposal

ABAG may reject any and all proposals and will reject the proposal of any party who has been delinquent or unfaithful in any former contract with ABAG or ABAG POWER. The right is reserved to reject any or all proposals, and to waive technical defects, as the interests of ABAG or ABAG POWER may require.

G. Clarification/Submission Of Questions

Requests for clarification and submission of questions must be received by ABAG and NCPA, in writing, not less than five (5) calendar days before the due date. ABAG and/or NCPA's response to requests for clarification and submission of questions will be transmitted by email to all qualified proposers no less than (3) full calendar days before the due date.

H. Pre-contractual Expenses.

Neither ABAG nor ABAG POWER shall be liable for any pre-contractual expenses incurred by any Proposer or its Consultant(s). Proposers shall not include any such expenses as part of the price proposed in response to this RFQ/RFP. ABAG and ABAG POWER shall be held harmless from any and all liability, claims, or expenses incurred by or on behalf of any person, agency, company or organization responding to this RFQ/RFP. Pre-contractual expenses are defined as expenses incurred by Proposers and the selected Consultant(s) in:

- (1) Preparing a proposal in response to this RFQ/RFP.
- (2) Submitting proposal to ABAG.
- (3) Oral presentation to and negotiations with ABAG on any matter related to the proposal.
- (4) Other expenses incurred by the Proposer or Consultant(s) prior to the date of award of any contract.

I. Bid Protest Procedures.

- (1) A proposer may file a protest, in writing, stating the reasons for its protest addressed to the Program Manager within three (3) working days after the notice of pre-award or award or after the post-award circumstances on which the protest is based has come to its attention. A detailed description of the facts underlying the protest plus any supporting documentation should be submitted. The protest should be submitted to the Program Manager at ABAG offices.
- (2) The Program Manager shall investigate the matter and respond in writing to each point raised by the proposer within five (5) working days. In addition, the Program Manager shall specify in writing any action to be taken by ABAG.
- (3) If the proposer is not satisfied with the decision of the Program Manager, the proposer may appeal the decision in writing within three (3) working days to ABAG's Executive Director. The appeal shall be submitted at ABAG's offices.
- (4) The Executive Director will investigate and respond in writing specifying any differences between his findings and those of the Program Manager. The Executive Director will also state the action to be taken by ABAG or the fact that no action shall be taken. The decision of the Executive Director is the final decision of ABAG.
- (5) The proposer will be notified of its right to appeal to the appropriate state or local administrative or judicial authorities.
- (6) In the event a protest has been timely filed before award, ABAG will not make award prior to five (5) calendar days after resolution of the protest, unless ABAG makes a written determination that:
 - (a) The items/services to be procured are urgently required;
 - (b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - (c) Failure to make prompt award will otherwise cause undue harm to ABAG or ABAG POWER.

CONFIRMATION
NEGOTIATED SALE OF ELECTRIC ENERGY AND/OR CAPACITY

Transaction No. _____

Date: _____

Attn.: _____

This letter shall confirm the agreement reached on _____, 199_ between _____ (Counterparty) and ABAG POWER regarding the sale/purchase of capacity and/or energy under the terms and conditions as follows:

ABAG POWER to purchase and receive; Counterparty to sell and deliver

PRODUCT:

CONTRACT QUANTITY:

DELIVERY POINT(S):

CONTRACT PRICE:

PERIOD OF DELIVERY:

DELIVERY PROFILE: HE _____ -HE _____

COUNTERPARTY RESPONSIBLE CONTACT:

OTHER:

This Confirmation Letter is being provided pursuant to and in accordance with the Agreement for Purchase and Sale of Electric Energy dated _____, 199__ ("Agreement") between Counterparty and ABAG POWER and constitutes part of and is subject to all of the terms and provisions of such Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. The price stated above is the contract price for this transaction and is inclusive of all taxes (except ABAG POWER's taxes under section 11.12.1 of the Agreement), fees, and transmission charges to the Delivery Point(s), emission allowance charges and similar charges. The ABAG POWER shall not be obligated to compensate Counterparty for energy deliveries in excess of amounts contracted for by ABAG POWER.

Please confirm that the terms stated herein accurately reflect the agreement reached on _____, 199__ between ABAG POWER and Counterparty by returning an executed copy of this letter by facsimile to the ABAG POWER. Your response should reflect the appropriate person in your organization who has the authority to enter into this transaction, and should be received by ABAG POWER no later than _____.

COUNTERPARTY

Association of Bay Area Governments
Publicly Owned Energy Resources
(ABAG POWER)

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____