

PUBLIC UTILITY COMMISSION OF TEXAS

REQUEST FOR QUALIFICATIONS

**FOR OUTSIDE COUNSEL TO REPRESENT THE PUBLIC UTILITY
COMMISSION OF TEXAS WITH REGARD TO FEDERAL
PROCEEDINGS**

Authorized by

**PUBLIC UTILITY REGULATORY ACT, SECTIONS 14.001, 39.408,
39.4525, and 39.504**



**Public Utility Commission of Texas
William B. Travis Building
1701 North Congress Ave.
Austin, Texas 78711**

Closing Time and Date – 2pm, Central Time

08/31/2016

**Project No. 45746
RFQ Number 473-16-001318
NIGP CLASS ITEM
918-74**

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SECTION 1 – INTRODUCTION

The Public Utility Commission of Texas (PUCT) issues this request for qualifications (RFQ) to obtain outside counsel to provide legal advice and representation to the PUCT regarding proceedings before the Federal Regulatory Commission (FERC) and before courts reviewing proceedings of FERC. The subject matter of the advice and representation will be regarding the following electric utilities: Southwestern Public Service Company (SPS), Entergy Texas, Inc. (ETI), and Southwestern Electric Power Company (SWEPCO). Specifically, the representation will cover each electric utility's relationship to a power region, regional transmission organization, or independent system operator; approval of an agreement among each electric utility and that electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates; or other matters related to those electric utilities that may affect the ultimate rates paid by retail customers in Texas.

The outside counsel's fees will be paid by the electric utilities that are the subject of this representation after invoices are approved by the PUCT and the Office of the Attorney General of Texas.

The PUCT is a state agency that is responsible for, among other duties, oversight of the electric and telecommunications industries in Texas. The PUCT has jurisdiction over the rates, operations, and services of an electric utility and must ensure that a utility's rates are just and reasonable. The PUCT must ensure that electric utilities and transmission and distribution utilities provide nondiscriminatory access for wholesale transmission and necessary ancillary services. The PUCT must certify an independent organization to oversee each power region, assure the reliability of the regional electrical network, and authorize a utility to offer customer choice. The PUCT is authorized to monitor and limit market power and rectify abuses of market power, and must approve the merger, consolidation, or change in operational control of an electric utility.

SECTION 2 – ELIGIBLE PROPOSERS

Responses to this request for qualifications (RFQ) may be submitted by an individual law firm, an attorney, or a joint venture between two or more law firms and/or attorneys.

Responses to this RFQ should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described in the Statement of Work in Attachment A; (2) the names, experience, education and expertise of the attorneys who will be assigned to work on such matters; (3) the availability of the lead attorney and other firm personnel who will be assigned to work on these matters; (4) appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in

the provision of these legal services; (5) information regarding the capabilities, locations, and resources of the firm's offices which might serve the PUCT's requirements, including a summary of physical resources that would be assigned to the department, and an organization chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (6) fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (7) an abstract of the firm's cost control procedures and how it charges for its services; (8) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely manner; (9) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity involved in a proceeding before the PUCT or any individual with an interest adverse to the PUCT or to the State of Texas or any of its agencies and (10) confirmation of willingness to comply with the rules policies, directives, and guidelines of the Commission, and of the Attorney General of the State of Texas.

Proposers must have a minimum of five years of experience providing services similar to those described in the Statement of Work in Attachment A. An entity in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team have the minimum required experience. Proposers who do not meet this requirement are not eligible for an award under this RFQ.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

SECTION 3 – AUTHORITY

This RFQ is issued under the authority provided by sections 14.001, 39.408, 39.4525, and 39.504 of the Texas Utilities Code.

SECTION 4 – ANTICIPATED SCHEDULE OF ACTIVITIES

RFQ Release	07/22/2016
Last day to submit written question(s) regarding the RFQ	08/08/2016, 5:00 p.m. CT
Deadline for submission of proposals	08/31/2016 2:00 p.m. CT
Post-proposal interviews or presentations, if required	09/14/2016
Staff Recommendation for selection	09/21/2016
Selection approved by Executive Director	Late September 2016
Selection approved by the Office of the Attorney General	Early October 2016
Contract negotiations	Early October 2016
Expected contract execution	Within four business days of Office of the Attorney General selection approval

Questions submitted to the PUCT will be answered within two business days after receipt and answers to all questions will be provided through an Addendum, posted on the ESBD.

Disclaimer: Dates are subject to change at the PUCT's discretion.

SECTION 5 – QUESTIONS

The PUCT will accept **only written** questions and requests for clarification by e-mail to the attention of the personnel below. Inquiries and comments must reference RFQ No. 473-16-001318.

Direct questions about the RFQ to:

Jay Stone, CTPM, CTCM

RFPCorrespondence@puc.texas.gov

Please Note: Mr. Stone is the only permitted point of contact for questions related to this RFQ. Contact or attempted contact with other PUCT employees, including Commissioners and their staffs, may result in a Proposer's immediate disqualification.

The PUCT will post additional information, responses to written questions, RFQ modifications, and addenda on the PUCT website and the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the ESBD and PUCT's websites for updates to the procurement prior to submitting a bid. The Proposer's failure to periodically check the ESBD and the PUCT's websites will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFQ. The websites that must be checked are as follows:

<http://www.puc.texas.gov/agency/about/procurement/Default.aspx>

<http://esbd.cpa.state.tx.us/>

Proposers should check both websites often to ensure they have the most current information.

SECTION 6 – PROPOSAL REQUIREMENTS

Proposers must file their sealed proposals in Project No. 45746 at PUCT Central Records before 08/31/2016, 2:00 p.m., CT. Proposals submitted in response to this request must meet all requirements in this RFQ to be considered for selection. Fax or email proposals will not be accepted under any circumstances.

The PUCT's Central Records Division is open to the public for filing Monday through Friday from 9:00 a.m. to 5:00 p.m., excluding holidays. Central Records is also closed every Friday from noon to 1:00 p.m. unless there is an Open Meeting of the Commission that day. Proposals will not be considered if received in the Central Records Division after 2:00 p.m. CT on the closing date.

Delivery Address

Central Records Division
Room 8-100
William B. Travis Building
1701 North Congress
Austin, Texas 78701

Mailing Address

Central Records Division
Project No. 45746
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

Please Note: The PUCT WILL NOT accept a U.S. Postal Service postmark, round validation stamp, mail receipt with the date of mailing stamped by the U.S. Postal Service, a dated shipping label, invoice or receipt from a commercial carrier, or any other documentation as proof of timely submission of any proposal. The PUCT assumes no responsibility, under any circumstances, for the receipt of a proposal after the deadline time and date established in this RFQ.

The PUCT will accept ONLY the time/date stamp of its Central Records Division as evidence of timely submission.

6.1 Number and Appearance

The proposal submission shall include an information sheet that clearly states the name of the Proposer; the name, address, and telephone number of the proposer's point of contact; the project number; and the RFQ title and number. The information sheet must be included as the first page of the proposal before the sealed proposal submission. Upon receipt of proposals, the PUCT will file the information sheets in Project No. 45746. All parts of the proposal following the information sheet shall be submitted in an envelope or other sealed container that is marked with the Proposer's name and "Project No. 45746: CONFIDENTIAL."

Proposers shall submit one (1) clearly marked "Original" of their proposal with original signature and five (5) copies of their proposal. Proposers shall also submit one (1) electronic copy of the complete proposal on a compact disk or memory stick (flash drive) in Microsoft Word. **Information required by Section 7.4 Compensation shall be included only in the original and electronic copy. No compensation information shall be included in any other portion of the response.** The five (5) copies of the proposal shall be identical to the original except for the omitted compensation information.

Proposals shall be written only on 8 ½" x 11" white paper using double or 1.5 spacing, and 12-point or larger Times New Roman font.

Proposals shall include all required attachments and certifications. The PUCT will not accept attachments and certifications submitted after the deadline. Failure to provide all required information at the time of submittal shall make the proposal non-responsive and thus disqualified from consideration.

Proposals shall be bound in a three-ring binder.

Proposers shall not use the state seal or the PUCT seal in or on the proposal.

Proposals shall be free of any extrinsic items.

Proposals are limited to 75 pages, including all attachments and certifications, but excluding section tabs or dividers. Proposals longer than 75 pages may be subject to immediate rejection without review. Evaluation team members will not read past the 75th page.

SECTION 7 – PROPOSAL CONTENTS

Proposals shall include the contents outlined below. Mark each section with an index tab. Within each section, pages shall be consecutively numbered. The PUCT may reject a proposal that fails to include the required content.

7.1 Statement of the Requirements

Each Proposer shall succinctly state its understanding of this RFQ's requirements and describe how it would perform the tasks described in Attachment A, SOW.

7.2 Competence and Knowledge

Each Proposer shall demonstrate the competence and knowledge to fulfill the requirements identified in Attachment A, SOW. The Proposer should also describe any prior experience in providing similar services. The Proposer shall describe methods they intend to use to develop and implement these Services and an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to this work.

7.3 Qualifications

For each person a Proposer identifies to perform the work described in this RFQ, provide a detailed resume that describes the Services they would perform, their qualifications, and their experience.

7.4 Compensation

Compensation for the services outlined in the Statement of Work in Attachment A will be based on an hourly fee (or other approved compensation arrangement) that will cover all expenses, except travel. Absent specific approval from the Public Utility Commission and the Office of the Attorney General of Texas, hourly fees for attorneys must be less than \$525/hour, while hourly rates for paralegals shall not exceed \$225/hour. Charges for administrative expenses and overhead are not allowed. Expenses for approved travel will be reimbursed in accordance with rules of the State of Texas for reimbursing employee travel expenses. Rates for travel expenses can be found on the website for the Texas Comptroller at: <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>. Unless otherwise approved in advance, in writing by the PUCT, payments will be made based on the invoicing and payment terms of the resulting contract.

Entergy Texas, Inc.; Southwestern Electric Power Company; or Southwestern Public Service Company will each pay the reasonable costs of legal services related to its matters, as determined by the PUCT, subject to review and approval by the Office of the Attorney General.

Please note:

Compensation for the Services outlined in Attachment A, SOW, will be based on hourly fees with a not-to-exceed price . Unless otherwise approved in writing by the PUCT, payments will be made based on the invoicing and payment terms of the resulting contract. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution.

7.5 References

Each Proposer shall provide at least three references, including contact information. The PUCT prefers references from clients for whom the Proposer has performed similar work, including other state commissions or boards. Do not use the PUCT or any individuals employed by the Commission as a reference for this RFQ. Any negative responses received may be grounds for disqualification of the proposal.

7.6 Statement on Potential Conflicts of Interest and Prohibited Relationships

Proposers must be neutral and impartial, must not advocate specific positions to the PUCT, and must not have a direct financial interest in the provision of electric, telephone, cable, water or sewer service in the state of Texas. Proposers (including all employees and sub-contractors of proposers) must identify any personal or business relationships with the following entities: Xcel Energy; any affiliate of Xcel Energy (including, but not limited to Southwestern Public Service Company (SPS)); Entergy Corporation; any affiliate of Entergy Corporation (including, but not limited to Entergy Texas, Inc. (ETI)); American Electric Power (AEP); any affiliate of AEP (including, but not limited to Southwestern Electric Power Company (SWEPCO)); the Southwest Power Pool (SPP); the Midcontinent Independent System Operator (MISO); a utility regulatory commission that regulates the retail rates of an electric utility that is a market participant in SPP or MISO; any electric, telecommunications, cable, water or sewer utility or utility affiliate operating in Texas or any company participating in, or having a pending application at the PUCT to enter, the Texas retail electric market, telecommunications market, or water or sewer utility

market. Proposers must identify the extent, nature, and time aspects of those relationships. Entities having a conflict of interest, as determined by the PUCT, will not be eligible for contract award.

If a Proposer does not have any known or potential conflicts of interest, the proposal must include such a statement. Failure to provide either a statement describing potential conflicts of interest or a statement that no potential conflicts exist shall automatically disqualify the Proposer. This statement shall be signed before a notary public by the highest-ranking officer of Proposer's entity having responsibility for vetting corporate conflicts of interest, e.g. a corporate Executive Vice President rather than the head of an operating or regional unit of the firm. If the circumstances described by a Proposer change or additional information is obtained subsequent to submission of proposals, the Proposer must supplement its response under this provision as soon as reasonably possible upon learning of any change to their affirmation.

The PUCT will determine whether a conflict of interest or the perception of a conflict of interest exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict of interest or the appearance of a conflict of interest exists. The PUCT encourages Proposers to provide complete disclosure of matters that might be considered a conflict of interest. Completeness of disclosure may be a factor in evaluating proposals.

Each Proposer also should address how the Proposer intends to ensure that no interest arising or potentially arising as a result of its activities or those of its parent, affiliate, or other related entity shall conflict with Proposer's duty should it be selected to provide these Services.

Each Proposer shall identify its lobbyists registered with the Texas Ethics Commission and their compensation and shall include a statement of what involvement, if any, the lobbyists shall have in connection with (1) this engagement and (2) electric utility, telecommunication utility, or water and/or sewer utility legislation and policy.

The PUCT is restricted in its ability to enter into contracts with former PUCT employees, Commissioners, or Executive Directors and entities that employ those individuals by Texas Government Code Section 669.003. Persons who have been employed by the PUCT or by another state agency in Texas fewer than four years ago shall disclose in the proposal the nature of previous employment with the state agency and the date the employment ended.

7.7 Historically Underutilized Business Certification and Required HUB Subcontracting Plan

If the Proposer is HUB certified by the Texas Comptroller of Public Accounts or the former Texas Building and Procurement Commission, now known as the Texas Procurement and Support Services Division (TPASS), the Proposer shall submit a copy of its HUB certificate.

In accordance with Texas Government Code section 2161.252, the PUCT has determined that subcontracting opportunities are possible under this contract. Therefore, Proposers, including State of Texas certified HUBs, must complete, sign and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response if the total dollar amount of the proposal response is greater than \$100,000.

Note: Responses that do not include a complete HSP will be rejected as required by Texas Government Code section 2161.252(b). See Attachment C for further information.

7.8 Required Certifications

Proposals must contain a signed statement certifying to the following:

- A. All statements and information prepared and submitted in response to this RFQ are current, complete and accurate;
- B. The Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this proposal;
- C. The Proposer is not currently delinquent in the payment of any franchise tax owed to the State of Texas;
- D. The Proposer has not, nor has the firm, corporation, partnership, or institution represented by the Proposer, or anyone acting for such a firm, corporation, partnership or institution, (i) violated the antitrust laws of this state or federal antitrust laws, or (ii) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business pursuant to 15 U.S.C. Section 1, et seq. and Texas Business & Commerce Code Section 15.01, et seq.;
- E. The Proposer has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this proposal pursuant to Texas Government Code § 2155.004(a);
- F. The Proposer is in compliance with Texas Government Code Section 669.003, relating to contracting with the current or former executive head of a state agency. If the Proposer is a current or former executive head of a state agency or employs or contracts with a current or former head of a state agency, the Proposer shall provide (1) the executive's name; (2) the name of the state agency; (3) date of separation from the state agency; (4) current position with Proposer; and (5) date employment with Proposer began;
- G. The Proposer is not ineligible for contract award under Texas Government Code Section 2155.006 and acknowledges that any contract may be terminated and payment withheld if this certification is or becomes inaccurate; and
- H. The Proposer played no part in the development or drafting of this RFQ.
- I. If a Texas address is shown as the address of the Proposer, Proposer qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20, or Proposer has included in the proposal a statement that Proposer does not qualify as a Texas Resident Bidder.

7.9 Other

If incorporated in Texas, Proposer shall attach to the proposal a current franchise-tax Certificate of Good Standing, issued by the Texas State Comptroller's office.

If incorporated in Texas, Proposer shall also provide to PUCT the corporation's charter number issued by the Texas Secretary of State's office.

Proposer shall provide its 9-digit Federal Employer's Identification Number (EIN) or 5-digit State of Texas Vendor's Identification Number (VIN).

Pursuant to Texas Family Code Section 231.006, Proposer shall include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the bid or application.

At the time the selected proposer submits a signed contract to the PUCT, the selected proposer will be required to submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form can be

found at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>

SECTION 8 – CONDITIONS

8.1. All proposals and copies of proposals become the property of the PUCT upon receipt.

8.2. The PUCT reserves the right to amend or cancel this RFQ at any time. After the proposal due date, amendments to the RFQ shall be sent only to Proposers who submitted a proposal.

8.3. Neither the PUCT nor the State of Texas shall reimburse any Proposer for any costs related to preparing a response to this RFQ.

8.4. The PUCT reserves the right to reject any and all proposals and to cancel the procurement at any time.

8.5. The PUCT may request a best and final offer. The PUCT may request an oral presentation or other additional information from one or more Proposers.

8.6. A copy of draft terms and conditions for this type of contract is included as Attachment B. Proposers may not bind the PUCT to other terms and conditions by attaching them to the proposal. Subject to the authority of the Attorney General of Texas, the PUCT and proposers may negotiate the terms and conditions to be included in the final contract.

8.7. The PUCT reserves the right to negotiate all or portions of any proposal tentatively selected for award, including the proposed fee.

8.8. Proposers understand and agree that no public disclosures or news releases pertaining to this RFQ, any subsequent contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFQ or subsequent contract shall be made without prior written approval of the PUCT.

8.9. Proposers understand that any proposal may be withdrawn in writing before the deadline for receipt of proposals. The PUCT will not return withdrawn proposals. Proposers further agree that any proposal that is not withdrawn shall constitute an irrevocable offer to provide the Services set forth in Attachment A, SOW. The offer shall remain irrevocable for a period of 90 days from the RFQ closing date.

8.10. The PUCT reserves the right to seek proposal clarification from any Proposer to assist in making decisions. Conference calls and/or a meeting and presentation by selected Proposers may be called by the PUCT and held in Austin to obtain further information. Any cost incurred by the Proposer for the meeting and presentation shall be borne solely by the Proposer and the presentation shall become the property of the PUCT.

8.11. Section 2155.077 of the Texas Government Code provides that a vendor may be barred from participating in certain state contracts, including contracts for which purchasing authority is delegated to a state agency. If a Proposer is barred from participating in state contracts, its proposal shall be disqualified and shall receive no further consideration.

A Proposer's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code Sections 2155.074, 2155.075, 2156.007, and 2157.125.

Proposers may fail this selection criterion for any of the following conditions:

- 1) Having a score of less than 90% in the Vendor Performance System;
- 2) Being currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA);

- 3) Having repeated negative Vendor Performance Reports for the same or similar reason; or
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (e.g. late delivery, etc.).

Contractor performance information is located on the CPA web site at:
http://www.window.state.tx.us/procurement/prog/vendor_performance/.

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code § 20.108), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Proposer.

8.12. Administrative Fee

As required by Texas Government Code §402.0212(c), outside counsel must pay an administrative fee to the OAG for review of invoices. This fee is non-refundable and outside counsel may not charge or seek reimbursement for the fee from the PUCT. The administrative fee is set on a sliding scale, based on the contract cap amount, as follows:

Limitation of Liability Amount	Administrative Fee
Less than \$2,000, but more than \$0.00	\$100.00
Equal to or greater than \$2,000 but less than \$10,000	\$200.00
Equal to or greater than \$10,000 but less than \$50,000	\$500.00
Equal to or greater than \$50,000 but less than \$150,000	\$1,000.00
Equal to or greater than \$150,000 but less than \$1,000,000	\$1,500.00
Equal to or greater than \$1,000,000	\$2,000.00

Outside Counsel will submit the administrative fee to the following address:

Outside Counsel Invoice
 Office of the Attorney General
 P.O. Box 13175
 Austin, Texas 78711-3175

Checks or money orders must be made payable to the “Office of the Attorney General” and reference the OCC Number.

For more information, see:

<https://www.texasattorneygeneral.gov/agency/publications>
 Under “Outside Counsel Contracts” click “Letter to Agencies”

SECTION 9 – SELECTION CRITERIA

The PUCT shall make the selection and award on the basis of the Proposer’s demonstrated knowledge, competence, and qualifications to provide the Services as indicated below:

- 1. Demonstrated qualifications of the firm or attorneys performing the legal services

- described in this RFQ. 40%
2. Demonstrated experience and understanding of representation before the Federal Regulatory Commission (FERC) and before a court reviewing proceedings of FERC as described in this RFQ. 40%
 3. Price, including total expected cost and pricing terms. 20%

All other factors being equal, preference shall be given to a Proposer who is incorporated in Texas, whose principal place of business is in Texas, or who has an established physical presence in Texas.

SECTION 10 – REVIEW OF PROPOSALS

The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually using the criteria stated above. After individual scoring, the evaluation team will meet and discuss the proposals and will make a recommendation for selection or a recommendation to take further action. **No information will be provided to Proposers about the status of the proposals while they are under evaluation.**

After the evaluation team ranks each proposal based on individual scores, the evaluation team may pose clarifying questions of, or ask for best and final proposals from, the highest-ranked Proposers. The evaluation team may also hold discussion sessions with the highest-ranked Proposers. The team may rate proposals again following questions, requests for best and final proposals, or oral presentations/discussion sessions.

Final recommendations will be presented to the Executive Director of the Public Utility Commission of Texas. The Executive Director may (1) approve the recommended selection in whole or in part, (2) disapprove the recommendation, or (3) defer action on the selection.

The PUCT will begin contract negotiations shortly after notification. Draft contract terms are found in Attachment B. These draft contract terms have not been pre-approved by the Office of the Attorney General of Texas. The successful Proposer may offer changes to these terms or additional terms in their proposal, but the PUCT may reject them. Additionally, the PUCT must obtain approval from the Office of the Attorney General before the contract may be signed. The Office of the Attorney General may also reject any contract terms. The parties will negotiate a final schedule for performance that will be incorporated into the final contract.

The PUCT will notify each Proposer of the final action taken upon execution of the final contract with the selected Proposer.

SECTION 11 – CONTRACT TERM

The contract shall begin on the date signed by the last party to sign and shall continue in effect until May 31, 2020. The contract has no renewal options available.

SECTION 12 – TEXAS PUBLIC INFORMATION ACT

Following award of a contract, all proposals are public information and subject to release. Some information in proposals may not be subject to release because it is confidential business or financial information or a trade secret. Proposers are advised to consult legal counsel regarding disclosure issues and to take appropriate precautions to safeguard trade secrets and any other proprietary information, including copyrighted information. If a Proposer believes that parts of its proposal are confidential, then the Proposer MUST stamp the term “**CONFIDENTIAL**” in bold on the part(s) of the proposal that the Proposer believes to be confidential.

If the PUCT receives a request for any information submitted to the PUCT in connection with

this RFQ, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552) by notifying Proposers and the Office of the Attorney General. The PUCT assumes no obligation for asserting legal arguments on behalf of Proposers. The PUCT may release parts of proposals that are **not** marked confidential without notifying the Proposer.

ATTACHMENT A
STATEMENT OF WORK

Overview

The Public Utility Commission of Texas (PUCT) is issuing this request for qualifications (RFQ) for a contractor to provide legal services related to certain proceedings before the Federal Energy Regulatory Commission (FERC) or before a court reviewing FERC proceedings.

Contractor's Objectives

The contractor will provide legal services and advice to the PUCT related to certain proceedings before the FERC or before a court reviewing a FERC proceeding concerning the following:

- a. Southwestern Public Service Company's (SPS), Entergy Texas, Inc.'s (ETI), or Southwestern Electric Power Company's (SWEPCO) relationship to a power region, regional transmission organization, or independent system operator;
- b. approval of an agreement among SPS and that electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates;
- c. approval of an agreement among ETI and that electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates;
- d. approval of an agreement among SWEPCO and that electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates;
or
- e. any other matters related to SPS, ETI, or SWEPCO that may affect the ultimate rates paid by retail customers in Texas.

The legal services to be provided by outside counsel may include, but are not limited to, the following:

- a. Advising the PUCT on how a proceeding before FERC may impact matters within the jurisdiction of the PUCT.
- b. Advising the PUCT on the procedural and substantive issues related to a proceeding at FERC.
- c. Advising the PUCT on a litigation strategy at FERC.
- d. Advising the commission on the need for witnesses, consultants, accountants, auditors, or engineers and, if appropriate, obtaining these witnesses, consultants, accountants, auditors, or engineers and preparing witnesses to testify at the FERC proceeding.
- e. In consultation with the PUCT, developing and preparing briefs or other legal pleadings before FERC.
- f. Representing the PUCT at proceedings before FERC.
- g. In consultation with the PUCT, advising whether to appeal any decision by FERC and prosecuting that appeal in the courts.
- h. Advising and representing the PUCT in any appeals to a court.

The use of the term PUCT in this statement of work includes any individual commissioner and employee of the PUCT.

Deliverables:

The contractor will provide the following deliverables

- 1) Invoices: a separate invoice detailing work performed for each project (as described in the contract terms in Attachment B, Contract Terms);
- 2) An electronic copy of all final documents filed with FERC or any court reviewing a FERC decision.

ATTACHMENT B
CONTRACT TERMS
OUTSIDE COUNSEL CONTRACT
OAG Contract No. _____

This Agreement, including all Addenda (the Addenda are incorporated herein by reference), is hereinafter referred to as the “Outside Counsel Contract” or “OCC.” This Outside Counsel Contract is made and entered into by and between the Public Utility Commission of Texas (“Agency”) and _____ (“Outside Counsel”). The term “Parties” as used in this OCC refers to the Agency and the Outside Counsel, and does not include the Office of the Attorney General of Texas (“OAG”). This OCC is made and entered into with reference to the following facts:

INDUCEMENTS

Whereas, the Agency requires the assistance of outside legal counsel in carrying out its responsibilities; and

Whereas, the Texas Legislature has authorized the Agency to retain outside counsel under section 39.408, 39.4525, and 39.504 of the Texas Utilities Code to represent the Agency in a proceeding before the Federal Energy Regulatory Commission (FERC), or before a court reviewing proceedings of the FERC, related to specific subjects; and

Whereas, the Agency has received prior approval from the OAG to contract for outside legal services; and

Whereas, the Outside Counsel desires to provide legal services to the Agency, subject to the authority of the OAG.

AGREEMENT

Now, therefore, in consideration of the inducements, covenants, agreements and conditions herein contained, the Parties agree as follows:

Section 1. Purpose and OAG Approval.

1.1 Purpose. The purpose of this OCC is for the Outside Counsel to provide legal services to the Agency, as described in Addendum A. The Outside Counsel and the Agency understand and agree to the OAG’s continuing authority and right to expand or limit the scope of legal services provided by the Outside Counsel to the Agency.

1.2 OAG Approval. The Attorney General’s, or his designee’s, signature on this OCC represents the OAG’s approval of the Outside Counsel serving as legal counsel to the Agency during the term of, and for the purposes expressed in, this OCC. Consistent with Section 402.0212 of the Texas Government Code, the OAG may withdraw, modify, or expand this approval at any time.

1.2.1 Litigation. The Outside Counsel shall not represent the Agency in any litigation

unless Addendum A specifically authorizes litigation in a particular matter. If Addendum A does not specifically authorize the Outside Counsel's representation of the Agency in a particular litigation matter and the Agency requires such representation, then the Agency must request litigation authority from the OAG and submit a new Outside Counsel Contract to the OAG for approval before filing or responding to that litigation matter. This provision does not require the Agency to seek authority from the OAG before the Outside Counsel may represent the Agency in a proceeding at the FERC.

1.2.2 Appellate Matters. Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, the Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, without first obtaining the written permission of the Attorney General, First Assistant Attorney General, or Solicitor General. The Outside Counsel has the duty to promptly notify the Agency and the OAG, as provided in section 9.6.2, of the desirability or likelihood of an appeal.

1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment. In addition to OAG approval to contract for legal service, the Outside Counsel invoices must be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title I, Chapter 57 of the Texas Administrative Code.

Section 3. Obligations of Outside Counsel.

3.1 Duties. The Outside Counsel will provide professional legal services to the Agency as described in Addendum A. The Outside Counsel shall represent the Agency with due professional care as required by applicable law and disciplinary rules.

3.2 Staff. The Outside Counsel is expected to perform valuable services for the Agency and the method and amount or rate of compensation are specified in Section 5 and Addendum B of this OCC. [When the contract is drafted, the Statement of Work (Attachment A to this RFQ) will become Addendum B to the contract.] The Outside Counsel staff and employees are expected to perform work of a type commensurate with their professional title. The Outside Counsel agrees that any person employed or engaged by the Outside Counsel and who assists in performing the services agreed to herein shall not be considered employees or agents of the Agency or the State of Texas.

3.3 Public Information and Client Communication. The Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format pursuant to section 2252.907 of the Texas Government Code. The Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). The Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit the Outside Counsel's duty to provide full disclosure to the Agency and the OAG as necessary in the Outside Counsel's judgement to represent the Agency with due professional care or as required by applicable law or disciplinary rules.

3.4 Status. In accordance with the standard of professional care owed to the Agency, the Outside Counsel shall endeavor to keep the Agency fully informed about all material matters relating to legal services provided under this OCC.

3.5 Subcontracting Authority. In the event that the Outside Counsel determines that it is

necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, the Outside Counsel may enter into such subcontracts only with the prior written approval of the Agency. If the Outside Counsel enters into a subcontract, then the Parties agree that all such subcontracts are subject to section 4 (Limitation of Liability), subsection 5.2 (Reimbursement of Expenses), subsection 5.3 (Subcontractor Payments), subsection 6.2 (Subcontractor Invoices), and subsection 6.5 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore if the Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that the Agency shall not be liable to the Outside Counsel for any hourly rates or rate ranges greater than the highest hourly rate or rate range specified in Addendum B unless prior written approval is obtained from the Agency and the OAG. Any subcontracted legal counsel must also comply with subsection 9.8 (Conflict of Interest) of this OCC.

The Outside Counsel agrees to comply with all state and federal laws applicable to any subcontractors, including, but not limited to, laws regarding wages, taxes, insurance, historically underutilized businesses and workers' compensation.

In no event shall this section or any other provision of this OCC be construed as relieving the Outside Counsel of the responsibility for ensuring that all performances rendered under this OCC, and any subcontracts thereto, are rendered in compliance with all of the terms of this OCC.

Section 4. Liability.

4.1. Limitation of Liability. The Parties stipulate and agree that the State of Texas and the Agency's total liability to the Outside Counsel, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations, and for reimbursement of all expenses, if any, as set forth in this OCC or other liability arising out of any performance herein shall not exceed:

\$0 for the term of this OCC.

The Parties stipulate and agree that the total amount the Agency shall direct Southwestern Public Service Company (SPS), Entergy Texas, Inc. (ETI), or Southwestern Electric Power Company (SWEPCO), as determined by the Commission, to pay the Outside Counsel, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations, and for reimbursement of all expenses, if any, as set forth in this OCC or other liability arising out of any performance herein shall not exceed:

[Amount] for the term of this OCC.

The Parties stipulate and agree that any act, action, or representation by either party, their agents or employees that purport to increase the liability of the State of Texas or the Agency is voidable by the OAG, unless this OCC is amended to modify this limitation of liability. The Outside Counsel agrees that the OAG, the State of Texas and its agencies (other than the Agency) shall have no liability arising out of this OCC or the performances of this OCC to the Outside Counsel.

4.2 Subject to Appropriation. The Parties acknowledge and agree that nothing in this OCC will be interpreted to create a future obligation or liability in excess of the funds currently appropriated to the Agency.

Section 5. Compensation/Expenses.

5.1 Fees to Outside Counsel. The Agency agrees to direct SPS, ETI, or SWEPCO, as determined by the Commission, to pay the Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. The Outside Counsel agrees to

the following fee schedule, subject to the limitations described in this OCC (see Addendum B for additional terms and conditions regarding fees and compensation to the Outside Counsel).

5.2 Reimbursement of Expenses. The Agency will direct ETI, SPS, or SWEPCO, as appropriate, to reimburse the Outside Counsel for reasonable actual expenses incurred in the performance of the legal services described in Addendum A, if such services are necessary or advisable. The Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include:

5.2.1 Mileage. The Outside Counsel will be reimbursed for reasonable and necessary travel mileage at the per-mile rate posted on the Texas Mileage Guide adopted under section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website, at: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php>.

5.2.2 Meals. The Outside Counsel will be reimbursed for reasonable and necessary meal expenses at the rate of [\$_____] or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. Outside Counsel will not be reimbursed for the purchase of alcohol.

5.2.3 Lodging. The Outside Counsel will be reimbursed for reasonable and necessary lodging expenses. Unless otherwise agreed upon by the Agency in writing and in advance, in-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per night. Unless otherwise agreed upon by the Agency in writing and in advance, out-of-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per night.

5.2.4 Airfare. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. The Outside Counsel will not be reimbursed for expenses relating to first-class airfare.

5.2.5 Expert Services. Subject to the Agency's prior approval, the Outside Counsel will be reimbursed for the reasonable and necessary cost of expert services.

5.2.6 Other Reimbursable Expenses. The Outside Counsel will be reimbursed for the actual cost for other actual expenses if the Outside Counsel provides a reasonable and sufficient explanation of the nature and purpose of the charge and the charge is reasonable and either necessary or advisable.

5.2.7 Non-Reimbursable Expenses. The Agency expects the Outside Counsel to anticipate and include routine operating expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, the Outside Counsel will not be reimbursed for: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls); all delivery services performed by internal staff; electricity or other utilities; software costs or subscription fees, and internet or wireless access charges.

5.2.8 Gratuity. The Outside Counsel will not be reimbursed for tips or gratuities.

5.2.9 Reimbursement for Agency Employee Expenses. The Outside Counsel will not be reimbursed for the cost of expenses incurred by the Agency employees.

5.2.10 No Mark-up. The Outside Counsel will only be reimbursed for actual expenses. The Outside Counsel shall not be reimbursed for any mark-up or other overhead costs.

5.3 Subcontractor Payments. Subject to the Agency's prior approval, the Outside Counsel

will be reimbursed for the actual, reasonable, and necessary expenses relating to the Outside Counsel's use of subcontractors. The Outside Counsel shall be responsible for any payments and other claims due to subcontractors for work performed under this OCC. The Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein (e.g., expert services, local counsel, and other services) expressly understands and agrees that the Agency shall not be directly liable in any manner to the Outside Counsel's subcontractor(s).

5.4 Legal Research. The Outside Counsel may be reimbursed for its reasonable and necessary expenses relating to legal research, including online legal research.

While the Outside Counsel will be paid to apply the knowledge and expertise for which it was hired, and not to obtain that knowledge through extensive legal research, the Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. Therefore, the need for extensive legal research will be addressed on a case-by-case basis by the Outside Counsel and the Agency.

5.5 Administrative Staff/Clerks. The Outside Counsel will not be paid for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

5.6 Training. The Outside Counsel will not be paid for the education or training of attorneys, paralegals, or other staff of the Outside Counsel, including assigning such staff on a transient basis to an Agency matter.

Section 6. Invoices for Payment.

6.1.1 General. Unless waived in advance and in writing by the OAG, the Agency and the Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review and approval of invoices. These rules are found at title 1, chapter 57 of the Texas Administrative Code.

6.1.2 Billing Period. The billing period is the interval (ex. monthly) that determines the frequency the Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B.

6.1.3 Billable Time. The Outside Counsel will only be paid for the services of individuals covered in Addendum B. All time must be billed in one-tenth hour or one-quarter hour increments, and must reflect only actual time spent. Tasks referencing correspondence and filings must describe the document received or authored. The Agency expects billing to reflect the actual time it takes to modify standardized forms, filings and/or correspondence for use on the matter being billed. The Outside Counsel will not be reimbursed for the time it originally took to prepare any such standardized documents. The Outside Counsel will not be paid for review, execution, and processing of the OCC and submission of invoices.

6.1.4 Submission of Invoices. The Outside Counsel must submit invoices to the Agency at:

Accounts Payable
Fiscal Division
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

Or by email to: Payables@puc.texas.gov.

The Agency must submit invoices and other related information to the OAG at the following email address or mailing address:

OCCInvoice@texasattorneygeneral.gov

OR

Attn.: OCC Invoice
Office of the Attorney General
General Counsel Division, Mail Code 074
P.O. Box 12548
Austin, Texas 78711-2548

6.2 Subcontractor Invoices. Subcontractors shall directly invoice the Outside Counsel, and the Outside Counsel shall then submit an invoice to the Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice supported by attaching documentation.

6.3 Prompt Payment. The Agency shall direct ETI, SPS, or SWEPCO to make payments to the Outside Counsel under this OCC in compliance with chapter 2251 of the Texas Government Code and title 34, chapter 20, subchapter D of the Texas Administrative Code to the extent applicable, and otherwise in a reasonably prompt manner.

6.4 Administrative Fee. The Outside Counsel agrees that, under subsection 402.0212(c) of the Texas Government Code and title 1, chapter 57 of the Texas Administrative Code, a non-refundable administrative fee is due to the OAG for the review of Outside Counsel invoices. In the event that the Outside Counsel fails to timely submit to the OAG the required administrative fee, any invoices shall be deemed incorrect and incomplete and not eligible for payment. The Outside Counsel may not charge or seek reimbursement from the Agency for the payment of the administrative fee.

The Outside Counsel will submit the administrative fee to the following address:

Outside Counsel Invoice
Office of the Attorney General
P.O. Box 13175
Austin, TX 78711-3175

Checks or money orders must be made payable to the "Office of the Attorney General" and reference the OCC Number.

6.5 Supporting Documents; Right-to-Audit; Inspection of Records.

6.5.1 Duty to Maintain Records. The Outside Counsel shall maintain adequate records to support its charges procedures, and performances to the Agency for all work related to this OCC. The Outside Counsel shall also maintain such records as are deemed necessary by the Agency, the OAG, or the State Auditor's Office, to ensure proper accounting for all costs and performances related to this OCC.

6.5.2 Records Retention. The Outside Counsel shall retain, for a period of at least seven (7) years after the later of (1) the expiration or termination of this OCC, (2) an audit

relating to this OCC, or (3) litigation relating to this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

6.5.3 Inspection of Records and Right to Audit. The Outside Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, services performed, and charges, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this OCC, for purposes of inspecting, monitoring, auditing, or evaluating by the Agency, the State of Texas, or their authorized representatives. The Outside Counsel shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such State property as requested by the Agency or the State of Texas.

6.5.4 State Auditor. In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.003 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of the Outside Counsel or any other entity or person receiving funds from the State directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by the Outside Counsel or any other entity or person directly under this OCC or indirectly through a subcontract under this OCC acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, the Outside Counsel or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Outside Counsel further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Outside Counsel and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Outside Counsel related to this OCC.

6.5.5 Notwithstanding any other section, no release of any information on a matter in which the duty of the Outside Counsel to the Agency under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas or a similar rule or law of another state or the District of Columbia is authorized by this Outside Counsel Contract without specific written approval of the Agency.

Section 7. Termination

7.1 Convenience of the State. The Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying the Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of the termination. In the event of such termination, the Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, the Agency shall direct ETI, SPS, or SWEPCO, as appropriate, to make payments for all services performed under this OCC to the effective date of termination, plus any necessary services to cost effectively wind-up.

In the event the OAG withdraws its approval of this OCC during the OCC term, then the Agency, in consultation with the OAG, shall terminate this OCC for convenience.

7.2 Cause/Default. In the event that the Outside Counsel commits a material breach of this OCC, the Agency may, upon written notice to the Outside Counsel, immediately terminate all or any part of this OCC. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this OCC.

7.3 Rights Upon Termination or Expiration. Upon expiration or termination of this OCC for any reason, the Outside Counsel shall, subject to the Outside Counsel's professional obligations, immediately transfer to the Agency all information and associated work products prepared by the Outside Counsel or otherwise prepared for the Agency pursuant to this OCC, in whatever form such information and work products may exist, to the extent requested by the Agency. At no additional cost to the Agency and in any manner the Agency deems appropriate in its sole discretion, the Agency is granted the unrestricted right to use, copy, modify, prepare derivative works from, publish, and distribute any component of the information, work product, or other deliverable made the subject of this OCC.

7.4 Remedies. Notwithstanding any exercise by the Agency of its rights of early termination, the Outside Counsel may terminate this OCC upon reasonable notice for material breach by the Agency.

7.5 Termination by Outside Counsel. Consistent with applicable rules of professional conduct, the Outside Counsel may terminate this OCC upon reasonable notice for material breach by the Agency.

Section 8. Certifications of Outside Counsel

By agreeing to and signing this OCC, the Outside Counsel hereby makes the following certifications and warranties:

8.1 Delinquent Child Support Obligations. The Outside Counsel certifies that it is not ineligible to receive any grant, loan, or payment under this OCC pursuant to section 231.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.

8.2 Buy Texas. With respect to any services purchased pursuant to this OCC, the Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials. This subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.

8.3 Gift to Public Servant. The Outside Counsel warrants that it has not given, nor does it intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this OCC.

8.4 Franchise Tax. By signing this OCC, the Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from or not subject to such tax, consistent with Chapter 171 of the Texas Tax Code.

8.5 Outside Counsel License/Conduct. The Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. The Outside Counsel will notify the Agency and the OAG in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, the Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas Law.

8.6 Debt to State. The Outside Counsel acknowledges and agrees that, to the extent the Outside Counsel owes any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments Outside Counsel are owed under this OCC may be applied by the Comptroller of Public Accounts toward any such debt or delinquent taxes until such debt or delinquent taxes are paid in full.

8.7 Prohibited Bids and Contracts. Under section 2155.004 of the Texas Government Code, the Outside Counsel certifies that it is not ineligible to receive this OCC and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate.

8.8 Former Executive Head and Employees of the Agency. The Agency and the Outside Counsel certify that this OCC is compliant, and will remain in compliance during the OCC term, with sections 669.003 (Contracting with Executive Head of State Agency) and 2252.901 (Contracts with Former or Retired Agency Employees) of the Texas Government Code.

SECTION 9. GENERAL TERMS AND CONDITIONS

9.1 Independent Contractor. The Outside Counsel agrees and acknowledges that during the OCC Term, the Outside Counsel and the Outside Counsel's subcontractors are independent contractors of the Agency or the State of Texas and are not employees of the Agency or the State of Texas.

9.1.1 The Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this OCC.

9.1.2 The Outside Counsel agrees and acknowledges that during the OCC Term, the Outside Counsel shall be entirely responsible for the liability and payment for the Outside Counsel or the Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this OCC. Other than the payments described in this OCC, the Outside Counsel agrees and acknowledges that the Outside Counsel or the Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. The Agency shall not be liable to the Outside Counsel, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation, or any benefit due to a state employee. If the Agency or the State of Texas shall nonetheless become liable for such payments or obligations, the Outside Counsel shall promptly pay or reimburse the Agency or the State of Texas for such liability or obligation.

9.2 Assignment of OCC. The Outside Counsel may not assign this OCC, or assign or delegate any right or duty under this OCC, without prior written approval from the Agency and the OAG.

9.3 Survival. The obligations of the Outside Counsel under the following sections and subsections shall survive the termination or expiration of this OCC: 3.3, 4, 5, 6.5, 7.1, 7.3, 7.4, 9.7, 9.8, 9.11, and 9.13.

9.4 Copyright/Intellectual Property. The Outside Counsel shall take reasonable measures to protect the Agency from material risks of Agency liability known to the Outside Counsel for copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by the Outside Counsel pursuant to this OCC (other than equipment, materials, information, or ideas supplied or required by the Agency or its employees or other agents). The Outside Counsel and the Agency agree to furnish timely written notice to each other, and to the OAG, of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this OCC.

9.5 Media Releases or Pronouncements. The Outside Counsel understands that the OAG and the Agency do not endorse any vendor, commodity, or service. The Outside Counsel, its employees, representatives, agents, or subcontractors may not participate in any media event or issue any media release, advertisement, publication, editorial, article, or public pronouncement that pertains to this OCC or the services or project to which this OCC relates or that mentions the OAG or the Agency without the prior written approval of the OAG and the Agency.

9.6 Written Notice Delivery. Any notice required or permitted to be given under this OCC by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this subsection or on the date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

9.6.1 Outside Counsel's Address. The address for the Outside Counsel for all purposes under this OCC and for all notices hereunder shall be:

[Outside Counsel Name and Address]

9.6.2 OAG's and Agency's Addresses. The addresses for the OAG and the Agency for all purposes under this OCC, except as provided by subsection 6.4, and for all notices hereunder shall be:

Outside Counsel Contract Coordinator
Office of the Attorney General
General Counsel Division, Mail Code 074
Post Office Box 12548
Austin, Texas 78711-2548

Brian H. Lloyd, Executive Director
Public Utility Commission of Texas
1701 N. Congress Ave., 7th Floor
Austin, Texas 78701

With a copy to the PUCT Contract Administrator at the same address.

9.7 Dispute Resolution

9.7.1 The dispute resolution process provided for in chapter 2260 of the Texas Government Code shall be used, as further described herein, by the Agency and by the Outside

Counsel to attempt to resolve any claim for breach of this OCC made by the Outside Counsel.

9.7.2 The Outside Counsel's claims for breach of this OCC that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in chapter 2260, subchapter B, of the Government Code. To initiate the process, the Outside Counsel shall submit written notice, as required by subchapter B, to the Agency's contact with a copy to the First Assistant Attorney General or his or her designee. Said notice shall specifically state that the provisions of chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the Outside Counsel and the Agency otherwise entitled to notice under this OCC. Compliance by the Outside Counsel with subchapter B is a condition precedent to the filing of a contested case proceeding under chapter 2260, subchapter C, of the Government Code.

9.7.3 The contested-case process provided in chapter 2260, subchapter C, of the Texas Government Code is the Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of this OCC by the Agency or the State of Texas if the parties are unable to resolve their disputes under Section 9.7.2.

9.7.4 Compliance with the contested-case process provided in chapter 2260, subchapter C, of the Texas Government Code is a condition precedent to seeking consent to sue from the Legislature under chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this OCC by the Agency nor any other conduct of any representative of the Agency relating to this OCC shall be considered a waiver of sovereign immunity.

9.7.5 The submission, processing, and resolution of the Outside Counsel's claim is governed by the published rules, if any. If no Agency rules have been published, then title 1, chapter 68 of the Texas Administrative Code adopted by the OAG pursuant to chapter 2260, as currently effective, hereafter enacted, or subsequently amended, shall govern.

9.8 Conflict of Interest

9.8.1 Funds expended under this Contract may not be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in a contested matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. *See* General Appropriations Act, art. IX, sec. 16.01(j). For these purposes, "proceedings seeking monetary damages" do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney's fees.

9.8.2 Funds expended under this Contract may not be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before the Agency. *See* General Appropriations Act, art. IX, sec. 16.01(a)(4).

9.8.3 The Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and disclose any actual or potential conflict to the Agency.

9.8.4 The Outside Counsel has a continual and ongoing obligation to immediately notify the OAG and the Agency, in writing, upon discovery of any actual or potential conflict to the Agency, the OAG, or the State of Texas.

9.9 Taxes. This OCC shall not be construed so as to supersede the laws of the United States

or the State of Texas that accord the State of Texas, the Agency, and all departments, agencies and instrumentalities of the State of Texas exemptions from payment of any taxes of whatever kind. More specifically, the Agency shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, the Agency will provide, upon the request of the Outside Counsel during this OCC Term, all applicable tax exemption documentation.

9.10 Signatories. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this OCC and are acting in their official capacities.

9.11 Applicable Law and Venue. This OCC is made and entered into in the State of Texas, and this OCC and all disputes arising out of or relating to this OCC shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict-of-law rules or requirements.

The Outside Counsel agrees that the Agency and the State of Texas do not waive any immunity (including, without limitation, state or federal sovereign immunity). The Outside Counsel further agrees that any properly allowed litigation arising out of or in any way relating to this OCC shall be commenced exclusively in a court of competent jurisdiction in Travis County, Texas. The Outside Counsel thus hereby irrevocably and unconditionally consents to the exclusive jurisdiction of a court of competent jurisdiction in Travis County, Texas for the purpose of prosecuting and/or defending such litigation. The Outside Counsel hereby waives and agrees not to assert (a) that the Outside Counsel is not personally subject to the jurisdiction of a court of competent jurisdiction in Travis County, Texas, (b) that the suit, action, or proceeding is brought in an inconvenient forum, (c) that the venue of the suit, action, or proceeding is improper, or (d) any other challenge to jurisdiction or venue.

9.12 Amendments. This OCC, including addenda here to, may be amended only by written agreement signed by the Parties and approved by the OAG.

9.13 Severability/Interpretation. The fact that a particular provision in this OCC is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this OCC will continue to be binding on both Parties. Any provision that is held to be void or unenforceable will be interpreted by the Parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

9.14 Insurance Required. The Outside Counsel presently maintains malpractice insurance in an amount of not less than [\$5,000,000.00].

The Outside Counsel agrees to maintain at least this amount of insurance coverage during this OCC Term. Further, the Outside Counsel agrees to give notice to the Agency and to the OAG in the event any amount of malpractice insurance is canceled. The Outside Counsel also agrees to furnish to the Agency or to the OAG certified copies of such insurance policies when requested. The Outside Counsel agrees that no claim by the Agency and the State of Texas for damages resulting from breach of the Outside Counsel's duties to the Agency under this OCC shall be limited to the amount of malpractice insurance maintained by the Outside Counsel.

9.15 Additional Terms. Any additional terms agreed to by the Outside Counsel and the Agency shall be listed in an optional Addendum C and must be approved by the OAG. These terms shall not be inconsistent or contrary to the Contract terms listed above, and nothing in Addendum C shall remove or modify terms contained in sections 1 – 9. In the event of any conflict, ambiguity, or inconsistency between the terms of Addendum C and Sections 1 – 9 of

this OCC, Sections 1 – 9 shall take precedence and control.

IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS OCC.

The Public Utility Commission of Texas

Contractor

By:

By:

Brian H. Lloyd
Executive Director

Name
Title
Firm Address
City, State Zip
Phone
Fax
Email
Tax ID#

Date Signed: _____

Date Signed: _____

**Approved:
By the Office of the Attorney General of Texas**

Attorney General or Designee

ATTACHMENT C
HUB SUBCONTRACTING PLAN INFORMATION

In accordance with Texas Government Code Section 2161.252, the PUCT has determined that subcontracting opportunities are probable under this contract. Therefore, Proposers, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Government Code Section 2161.252(b).

Proposers can find the HUB Subcontracting Plan forms and instructions for filling out the forms on the Comptroller of Public Accounts' website at

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.