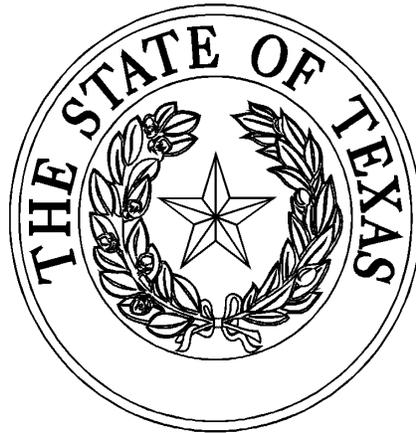


**PUBLIC UTILITY COMMISSION OF TEXAS**  
**REQUEST FOR PROPOSALS**  
**TO PROVIDE TECHNICAL CONSULTING SERVICES**

*Authorized by*

**PUBLIC UTILITY REGULATORY ACT, SECTION 14.001**



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

**Closing Time and Date – 2:00 p.m., Central Standard Time**

**March 14, 2016**

**Project No. 45523**  
**RFP Number 473-16-00153**  
**NIGP CLASS ITEM**  
**918-32**

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**PUBLIC UTILITY COMMISSION OF TEXAS**  
**REQUEST FOR PROPOSAL NO. 473-16-00153**  
**TO PROVIDE TECHNICAL CONSULTING SERVICES**

**SECTION 1 – INTRODUCTION**

The Public Utility Commission of Texas (PUCT or Commission) is announcing its intent to extend its contract with Liberty Consulting (The Liberty Consulting Group) for technical consulting services related to Entergy Texas, Inc.'s (ETI) participation in and orderly transition out of the Entergy System Agreement (ESA).

Liberty Consulting and the PUCT entered this contract in March 2014, after the PUCT chose Liberty Consulting through a competitive bidding process. The initial term of Contract No. 473-14-00153 is scheduled to end March 16, 2016, unless the parties renew it under the terms of the contract. Because of factors outside the parties' control, the work has not been completed and the funds set aside for the contract have not been expended. Depending on the proposals received, the not-to-exceed price of the original contract may need to be increased based upon the additional work needed.

Therefore, The PUCT is posting this Request for Proposals in accordance with Texas Government Code Section 2254.029, and intends to exercise the extension option in its existing Contract No. 473-14-00153 with Liberty Consulting unless a better offer is received.

**SECTION 2 – ELIGIBLE PROPOSERS**

For proposers other than the incumbent, the proposer must demonstrate how it would ensure a smooth transition to prevent interruption of the services provided under the original contract.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for any contract the PUCT solicits.

**SECTION 3 – AUTHORITY**

This Request for Proposal is issued pursuant to Public Utility Regulatory Act, Section 14.001

**SECTION 4 – ANTICIPATED SCHEDULE OF ACTIVITIES**

RFP Release	02/12/2016, 2:00 p.m. CST
Last day to submit written question(s) regarding the RFP	02/16/2016, 5:00 p.m. CST
Deadline for submission of proposals	03/14/2016, 2:00 p.m. CST
Staff recommendation for selection	03/16/2016
Selection approved	03/18/2016
Contract negotiations	03/21/2016
Contract period begins	03/28/2016

**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 ESDB**

**Disclaimer: Dates are subject to change at the PUCT's discretion and an addendum will be posted to the ESBD if schedule of activities change.**

## **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 RFP No. 473-16-00153.

Direct questions about the RFP to:

Jay Stone, CTPM, CTCM  
[Purchasing@puc.texas.gov](mailto:Purchasing@puc.texas.gov)

**Please Note: Mr. Stone is the only permitted point of contact. 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, RFP 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 website for updates to the procurement prior to submitting a bid. The Proposer's failure to periodically check the ESBD and the PUCT's website will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

<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. 45523 at PUCT Central Records before March 14, 2016, 2:00 p.m., CST. Proposals submitted in response to this request must meet all requirements in this RFP 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. CST 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. 45523  
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 RFP.**

**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 No. 45523; and the RFP title and number. The information sheet is the first page before the sealed proposal submission. Upon receipt of proposals, the PUCT will file the information sheets in Project No. 45523. 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. 45523: CONFIDENTIAL."

Proposers shall submit one (1) clearly marked "Original" of their proposal response with original signature and three (3) 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 price information shall be included in any other portion of the response.** The three (3) copies of the proposal shall be identical to the original except for omitting the price 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 shall make the proposal non-responsive and thus disqualified from consideration.

Proposals shall be bound in a 1 inch 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 required contents.

### **7.1 Statement of the Requirements**

Each Proposer shall succinctly state its understanding of this RFP'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 shall 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 RFP, the Proposer shall provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

Proposers **must** have a minimum of five years' experience providing services similar to those described in the SOW. An entity or company 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.

For each person a proposer identifies to perform the work described in this RFP, the proposer must provide a detailed resume that describes the services they would perform, their qualifications, and their experience, including testimony given or participation in matters before FERC, state utility commissions, and Regional Transmission Organizations (RTOs).

### **7.4 Compensation**

Each proposal shall propose a payment structure to provide the services identified in Attachment A, SOW, with a "not-to-exceed" total price.

For each category of services as described in the Statement of Work (Attachment A), each proposal shall propose its fixed price or its hourly rates to provide the services. If a proposer believes that additional work is required to meet the PUCT's goals, the proposer shall identify the additional work and the associated price to accomplish that work. The PUCT encourages proposers to demonstrate how elements of the price correspond to elements of the proposed work plan. Proposers may propose staffing each category of services with the same or different staff.

**Please note: The proposed compensation shall include all anticipated expenses. The PUCT will not reimburse any out-of-pocket expenses (other than travel) or expenses not contemplated at the time of contract execution.**

#### **Please note:**

**Unless otherwise approved in writing by the PUCT, payments will be made based on the invoicing and payment terms of the current 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 with email. 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. 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, 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 any electric, telecommunications, 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 conflict 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 or the appearance of a conflict of interests 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 Section 669.003 of the Texas Government Code. 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 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 if the total dollar amount of the proposal response is greater than \$100,000. Proposers must complete and submit their signed HUB Subcontracting Plan (HSP) with their solicitation response.

**Note: Responses that do not include a complete HSP shall be rejected pursuant to Texas Government Code Section 2161.252(b). See Attachment C.**

## **7.8 Required Certifications**

**Proposals must contain a signed statement certifying that:**

- A. All statements and information prepared and submitted in response to the RFP 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 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 RFP.
- 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.

### **SECTION 8 – CONDITIONS**

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

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

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

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

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.

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

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

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 for a period of 90 days from the RFP closing date to provide the services set forth in Attachment A, SOW, or until the PUCT has made a selection.

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.

Section 2155.077 of the Texas Government Code provides that a vendor may be barred from participating in state contracts that are subject to Subchapter B, General Purchasing Requirements, Procedures, and Programs 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/](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.

## **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 in the Table below. The criteria are listed in the order of importance to the PUCT.

- A. Understanding of Statement of Work and Technical approach (40%)
  - 1. Proposal quality
  - 2. Thoroughness and practicality of approach
  - 3. Clarity regarding proposal objectives and quality of proposed approach for meeting those objectives
  - 4. Best practice, innovation, and likelihood for success in proposed technical approach
  - 5. Creativity and balancing of complex issues
  
- B. Competence and knowledge (30%)
  - 1. Demonstrated competence and experience
  - 2. Management structure
  - 3. Assigned staffing for prime and subcontractors
  - 4. Local presence
  
- C. Proposed compensation (30%)
  - 1. Total labor and non-labor costs
  - 2. Costs relative to technical consulting services approach
  - 3. Ability to achieve goals within budget
  - 4. Billing rates and direct costs/subcontractor mark-up rates (if any)

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

## **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 ranking proposals. 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. The PUCT's standard contract terms are found in Attachment B. The successful Proposer may offer changes to these terms or additional terms in their proposal, but the PUCT may reject them. 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 contract with the selected Proposer.

#### **SECTION 11 – CONTRACT TERM**

The contract shall begin on March 28, 2016 and shall continue in effect until March 28, 2017, unless terminated earlier as provided under the terms of the Contract.

#### **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 RFP, 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**

**Topic: ESA Exit**

Scope Summary

Technical consulting services related to Entergy Texas, Inc.'s (ETI) participation in and orderly transition out of the Entergy System Agreement (ESA).

Statement of Work

Contractor shall provide technical consulting services related to the compliance proceeding, PUCT Project No. 40979, and/or any subsequent compliance proceedings as determined by the Commission concerning Entergy Texas, Inc.'s (ETI) participation in and orderly transmission out of the Entergy System Agreement (ESA). Contractor shall provide evaluation services as described below.

Under the direction of a PUCT Staff attorney, Contractor shall provide technical consulting services in connection with ensuring that ETI takes operational steps, including changes to organization structure and governance, necessary to conduct an orderly transition out of the ESA and operation in the Midcontinent Independent System Operator (MISO) Regional Transmission Organization (RTO) so as to realize the full benefits identified by the Commission arising from ETI's independent operation and planning within the MISO RTO.

The analysis and support provided by Contractor shall include, but not be limited to, identification of options and recommendations for achieving an orderly transition out of the ESA and operation in MISO, including solving operational issues, economic impacts, contract issues, and additional steps that must be taken by ETI to:

1. Function as an independent Load Serving Entity, including resource planning, generation operations planning, and generation bidding and dispatch;
2. Perform economic bidding and dispatch of its generation;
3. Plan and operate its transmission assets, including proper planning regarding transmission rights and congestion charges;
4. Acquire sufficient capacity and/or market any excess capacity associated with the potential termination of any purchased power agreements upon exit from the ESA; and
5. Operate independently and perform or contract for functions that are currently provided by the Entergy System pursuant to the terms and conditions of the ESA.

It is expected that the Contractor will interview ETI and potentially other market participants as necessary or as directed by PUCT Staff to ensure that ETI, Entergy Services, Inc., and the other Entergy affiliates are taking necessary steps to ensure that any necessary changes to ETI's personnel, governance, operating structure, and other matters are being realized in an effective, efficient, and timely manner.

Contractor shall analyze and evaluate the steps taken by ETI to operate outside of the ESA as an independent market participant in MISO. The analysis and evaluation provided by Contractor shall reflect an understanding of ETI's internal governance structure and operations, the governance structure and operations within the Entergy Operating Companies, as well as MISO RTO markets and operations. It shall also reflect an understanding of the analysis and conclusions regarding ETI's exit from the ESA contained in the ESA Transition Study as authorized by the Commission in PUCT Project No. 40979, including the findings in the ESA Transition Study regarding ETI's operational readiness to exit the ESA.

The PUCT may require Contractor to produce reports during and/or at the conclusion of the evaluation services provided. The scope and timing of these reports shall be negotiated as the work progresses.

**ATTACHMENT B**  
**SAMPLE CONTRACT TERMS**

**Article 1. DEFINITIONS**

When used in this Contract, the following terms shall have the following meanings:

**1.1 “Public Utility Commission,” “PUCT,” “Commission,” or “Agency”** means the Public Utility Commission of Texas acting through its Executive Director and the agency’s designated Contract Administrator.

**1.2 “Contractor”** includes **NAME**, and any successors, heirs, and assigns.

**1.3 “Services”** means any and all services performed and any and all goods and products delivered by Contractor as specified in Attachment A, Statement of Work (SOW).

**1.5 “Parties”** means PUCT and Contractor. **“Any Party”** means PUCT or Contractor.

**Article 2. COMPENSATION**

**2.1 Compensation.** Contractor agrees to provide all services (including labor, expenses, and any other services) described in Attachment A, SOW, as follows: **insert summary of payment terms**. Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of services to be performed will require Contractor to increase its fee, it must request the PUCT’s written authorization to increase its fee. The Contractor must document the changes in the scope of services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this Contract before the Contractor performs any services or may invoice the increased fee.

**2.2 Payment Process.** Contractor shall submit a monthly statement for services or invoice to the PUCT Contract Administrator no later than fifteen days after the end of the month for which the services were provided. The invoice must contain the name(s) of the individual(s) who performed services and a brief description of work performed. Invoices for work performed at hourly rates shall provide a detailed accounting of the time charges and the respective charge for each increment of time. On each invoice, Contractor shall identify the total due and payable.

No payment will be made for contractor’s administrative costs, overhead, overtime, etc.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the services performed and states that the services were performed in compliance with the Contract. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor’s federal taxpayer identification number, and the name and division of the PUCT Contract Administrator.

Contractor will submit the information required for reimbursement and provide such information, copies of original receipts or other documentation as required by the Agency within ninety (90) days after incurring the expense for which reimbursement is sought.

On submission of the statements, Contractor is certifying to the following: that invoices accurately describe the services performed, that the services have been performed in compliance with the Agreement, and the charges and expenses shown on the invoice are reasonable, and either necessary, or advisable and have been approved by the Agency and do not exceed any limitation provided for in this Agreement.

Contractor shall submit the statement or invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, TX 78711-3326

Upon approval of the statements by the Agency, the Agency will direct ETI to make payment to Contractor.

Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this Agreement.

**2.3 Compensation for Time.** In consideration of full and satisfactory performance of the services hereunder, the Agency shall direct Entergy Texas, Inc. (ETI) to pay Contractor pursuant to the Final Order in PUC Docket No. 40346, Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO (Item 410) for each hour of work performed pursuant to this Agreement according to the fee schedule attached in the Statement of Work (SOW), Attachment A. Payment by a third party shall not affect Contractor's independence of professional judgment. Compensation for time will be paid only for time actually spent working on Agency matters under this Agreement. Under no circumstances will Contractor be compensated for off-duty hours while traveling. Contractor agrees to follow the Contractor Billing Guidelines set forth in the SOW, Attachment A.

The Contractor will not be compensated for administrative costs or overhead.

**2.4 Reimbursement of Expenses.** The Agency will direct ETI to reimburse Contractor pursuant to the Final Order in PUC Docket No. 40346, Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO (Item 410) for reasonable actual expenses incurred in the performance of the services herein. Unless otherwise agreed upon by the parties in writing in advance, the Agency will also direct ETI to reimburse Contractor for travel expenses related to the services to be delivered under this Agreement, including reasonable mileage at the rate of \$0.54 per mile and the lesser amount of the actual expense or \$250 per night for lodging or overnight accommodations and a per diem rate of \$50 for each individual requiring overnight travel outside of Texas. Unless otherwise agreed upon by the parties in writing in advance, in state (Texas) lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200 per night and a per diem rate of \$50 for each individual requiring overnight travel. Contractor shall provide copies of original receipts as evidence of actual expenditures. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for coach fares for commercial airlines.

**2.5 Payments made to Subcontractors.** Contractor shall pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment shall be overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Sec. 5.1).

**2.6 Records.** Contractor and its subcontractors, if any, shall maintain records and books of account relating to services provided under this Contract. Contractor shall, for a period of seven (7) years following the expiration or termination of this Contract, maintain its records (electronic and paper) of the work performed under this Contract. Records include, but are not limited to correspondence concerning the subject of this Contract between Contractor and the PUCT;

Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor shall make all records that support the performance of services and payment available to PUCT and/or its designees or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT Contract Administrator.

**2.7 Sole Compensation.** Payments under this Article are Contractor's sole compensation under this Contract. Contractor shall not incur expenses with the expectation that the PUCT or any other agency of the state of Texas will directly pay the expense to a third-party vendor irrespective of the reason for incurring those expenses.

### **Article 3. CONTRACT ADMINISTRATION**

**3.1 PUCT Contract Administration.** The PUCT designates **Margaret Uhlig Pemberton** to serve as its primary point of contact and Contract Administrator throughout the term of this Contract. Contractor acknowledges that the PUCT Contract Administrator does not have any authority to amend this Contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission or its authorized designee, Executive Director Brian H. Lloyd.

**3.2 Contractor Contract Administration.** Contractor designates its Contract Administrator as follows: **[Insert Designee(s) Here]**

**3.3 Reporting.** Contractor shall report directly to the PUCT Contract Administrator and shall perform all activities in accordance with reasonable instructions, directions, requests, rules, and regulations issued during the term of this Contract as conveyed to Contractor by the PUCT Contract Administrator.

**3.4 Cooperation.** The Parties' respective Contract Administrators shall handle all communications between them in a timely and cooperative manner. The Parties shall timely notify each other by email or other written communication of any change in designee or contact information.

**3.5 Inquiries and Prompt Referral.** Contractor will promptly notify PUCT of all inquiries regarding this Contract received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

### **Article 4. REPORTS AND RECORDS**

**4.1 Written Reports.** Contractor will provide written reports to the PUCT in the form and with the frequency specified in Attachment A, SOW, or as otherwise agreed to in writing between the Parties.

**4.2 Distribution of Consultant Reports.** PUCT shall have the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. PUCT shall also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that PUCT may assert for the report or any portion thereof.

### **Article 5. SUBCONTRACTING PARTIES**

**5.1 Use of Subcontractors.** The Parties acknowledge and agree that at the time of execution of this Contract, Contractor intends to perform the Services required under this Contract using its own employees **[or intends to perform the Services required under this Contract using the following subcontractors:]**. Contractor will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such

other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7.

**5.2 Sole Responsibility.** Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all such work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this Contract.

**5.3 Prime Vendor Contract.** The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

## **Article 6. TERM, SUSPENSION, AND TERMINATION**

**6.1 Term.** The extended term of this Contract shall begin March 17, 2016 and shall continue in effect until March 18, 2018 unless sooner terminated under Sections 6.3 and 6.4 of this Contract.

**6.2 Options for Renewal.** This Contract does not provide for any extension options.

**6.3 Termination for Cause by the PUCT.** If Contractor is in default of any material term of this Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this Contract for default and shall have all rights and remedies provided by law and under this Contract. If PUCT terminates Contractor under Article 18.12, PUCT need not provide any notice or opportunity for curing the default.

**6.4 Termination for the Convenience of the PUCT.** The PUCT may, upon thirty (30) days written notice to Contractor, terminate this Contract whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided. The PUCT shall not be liable for any damages and/or loss to Contractor as a result of termination for convenience.

**6.5. Transfer of Duties.** In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption to the provision of outreach services.

**6.6 Remedies for Breach.** All remedies available to PUCT for breach or anticipatory breach of this Contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunction relief, and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

**6.7 Survival.** In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Sections 2.6, 2.7, 3.5, 4.2, 6.5, 6.6, 7.5, 9.2, 9.4 through 9.6, 17.2 and 19.1 through 19.5, 19.9 and Articles 1, 10, 12, 14, 15, 16, 20, 21, 23, and 28 shall survive in their entirety.

## **Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS**

**7.1 Material Change Requests.** PUCT may propose changes to Attachment A, SOW. Upon receipt of a written request from the PUCT for a change to Attachment A, SOW, Contractor shall, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this Contract. No changes to Attachment A, SOW, will occur without the Parties' written consent as provided in accordance with the terms stated in this Contract.

**7.2 Changes in Law, Rules, or Rulings.** Subsequent changes in federal or state legislation, rules and regulations or rulings by the PUCT may require modification of the terms of this Contract, including an increase or decrease in Contractor's duties or compensation. In the event of such subsequent changes to statutes, rules, and/or regulations, the PUCT and Contractor shall negotiate the terms of a contract modification in good faith and incorporate such modification into this Contract by written amendment.

**7.3 No Assignment of Duties.** This Contract shall be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided however that Contractor shall not otherwise, without the prior written consent of the PUCT, assign or transfer this Contract or any obligation incurred under this Contract. Any attempt by Contractor to assign or transfer this Contract or any obligation incurred under this Contract, in contravention of this paragraph, shall be void and of no force and effect.

**7.4 Amendments and Modifications.** This Contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this Contract.

**7.5 Binding on Successors.** The terms of this Contract shall be binding on any successor organization of any of the Parties.

## **Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**8.1 Warranty of Performance.** Contractor represents, warrants, and covenants that it will perform the services outlined in Attachment A, SOW, in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

**8.2 Warranty of Services.** Contractor warrants that the services shall be rendered by the qualified personnel named in Section 19.8 of this Contract. If Services provided under this Contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

## **Article 9. RISK OF LOSS AND PROPERTY RIGHTS**

**9.1 Risk of Loss.** The risk of loss for all items to be furnished hereunder shall remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss shall pass to the PUCT.

**9.2 Ownership.** Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights shall remain the property of the third party, all finished materials, conceptions, or products created, purchased, and/or prepared for or on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of services hereunder, shall be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the Contract. Notwithstanding the foregoing, materials created, purchased and/or prepared exclusively by or for the PUCT or on

behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this Contract.

**9.3 Licensed Software.** With PUCT's advanced written consent, contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing services under this Contract. Contractor shall provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing services under this Contract.

**9.4 Prior Works.** Except as provided herein, all previously owned materials, conceptions, or products shall remain the property of Contractor and nothing contained in this Contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

**9.5 Trademarks.** The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this Contract, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this Contract does not give the PUCT any rights of ownership in the trademark or the software.

**9.6 Program Information.** Program information, data, and details relating to Contractor's services under this Contract shall be maintained separately from Contractor's other activities. Contractor shall undertake all reasonable care and precaution in the handling and storing of this information.

**9.7 Provision to be Inserted in Subcontracts.** Contractor shall insert an article containing paragraphs 9.2 and 9.6 of this Contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Contract.

## **Article 10. PUBLIC INFORMATION**

**10.1 Texas Public Information Act. (Texas Government Code Chapter 552).** The Parties acknowledge that notwithstanding any other provisions of this Contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the Commission. The Commission will notify Contractor of requests for Contractor's information as provided under the PIA.

**10.2 Contract Not Confidential.** The Parties acknowledge that not all terms of this Contract may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Additionally, the parties acknowledge that this Contract will be posted on the PUCT's public website, pursuant to Texas Government Code Section 2261.253. The Parties further acknowledge that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

**10.3 Contractor's Duty to Provide Public Information.** Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the Texas Public Information Act, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor's information or data; it shall be Contractor's sole responsibility to do so.

## **Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION**

**11.1 No Conflicting Relationships.** Contractor certifies to the Commission that no existing or contemplated relationship exists between Contractor and the Commission that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the Commission.

**11.2 Prohibition on Transactions with Parties Adverse to Commission.** Contractor agrees that during the term of this Contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the Commission or that has interests that are directly or indirectly adverse to those of the Commission. The Commission may waive this provision in writing if, in the Commission's sole judgment, such activities of the Contractor will not be adverse to the interests of the Commission.

**11.3 Notice of Conflict.** Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. Contractor's failure to do so shall be grounds for termination of this contract for cause, pursuant to Section 6.3.

**11.4 Revolving Door.** Contractor agrees that it will not hire any current or former PUCT employees whose employment with contractor would violate any of the revolving door provisions in the Texas Government Code or the Public Utility Regulatory Act (Title II, Texas Utilities Code.).

## **Article 12. INDEMNIFICATION**

Contractor shall indemnify, defend and hold harmless the PUCT, the State of Texas and their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this Contract. Contractor shall have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that PUCT may participate in the defense with counsel of their own choosing. Any defense shall be coordinated by contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and the PUCT agrees to furnish timely written notice to each other of any such claim.

If all or any part of the deliverables of this Contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any Intellectual Property Right, Contractor may, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor shall, at its expense do one of the following things: (i) procure for PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; or (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

## **Article 13. INSURANCE**

**13.1 Legal Compliance.** Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas shall be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee.

**13.2 Minimum Insurance.** Contractor shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

(a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations – \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;

(b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and

(c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.

The PUCT and the State of Texas shall be named additional insureds on the commercial liability and automobile policies.

Insurance coverage shall be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

**13.3 Certificates of Insurance.** Contractor shall furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the Effective Date of this Contract, and upon request thereafter. Contractor shall provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, shall constitute a material breach of this Contract. Contractor shall provide thirty (30) days written notice of any notice for renewal and/or cancellation of insurance.

## **Article 14. DISPUTE RESOLUTION**

The Parties agree to resolve disputes arising under this Contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

## **Article 15. SOVEREIGN IMMUNITY**

The State of Texas and the PUCT do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

## **Article 16. GOVERNING LAW**

Notwithstanding anything to the contrary in this Contract, this Contract shall be deemed entered into in the State of Texas and shall be governed by, construed and interpreted in accordance with

the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract.

#### **Article 17. COMPLIANCE WITH LAW**

**17.1 General.** Contractor shall comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

**17.2 Taxes.** Contractor agrees to comply with any and all applicable state tax laws that may require any filing with and/or payment to the State of Texas as a result of any action taken as a result of this Contract.

**17.3 Workers' Compensation.** Contractor agrees that it shall be in compliance with applicable state workers' compensation laws throughout the term of this Contract and any renewals or extensions thereof.

**17.4 Conflicts.** Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the Commission. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this Contract as necessary.

**17.5 Compliance with Deceptive Trade Practices Act.** Contractor shall comply with Texas Business and Commerce Code Chapter 17.

**17.6 Compliance with Americans with Disabilities Act.** Contractor shall comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

**17.7 Prohibited Use of Appropriated/Other Funds.** Contractor shall comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

#### **Article 18. CONTRACTOR'S CERTIFICATION**

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this Contract for cause.

**18.1 Prohibitions on Gifts.** Contractor 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 Contract.

**18.2 Delinquent Obligations.** Contractor is not currently delinquent in the payment of any

franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

**18.3 Terrorist Financing.** The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov/>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/>

**18.4 Antitrust.** Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this State, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

**18.5 Family Code.** Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

**18.6 Prohibited Compensation.** Contractor 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 Contract.

**18.7 Government Code.** Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

**18.8 Outstanding Obligations.** Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

**18.9 Contracting with Executive Head of State Agency.** Contractor certifies this Contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

**18.10 Buy Texas.** Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

**18.11 Hurricane Recovery.** Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**18.12 E-Verify.** Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired during the term of the contract to perform duties within Texas; and
2. All persons (including subcontractors) hired by the Proposer to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

**18.13 Debarred Vendors List.** Contractor certifies that it is not on the Debarred Vendors List located at [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/debarred/](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/).

## **Article 19. GENERAL PROVISIONS**

**19.1 Relationship of Parties.** Contractor is and shall remain at all times an independent contractor, and nothing in this Contract shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this Contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel. Contractor shall be solely responsible for achieving the results contemplated by this Contract, whether performed by Contractor, its agents, employees or subcontractors.

**19.2 Non-Exclusivity.** Nothing in this contract is intended nor shall be construed as creating any exclusive arrangement between Contractor and PUCT. This contract shall not restrict PUCT from acquiring similar, equal, or like goods and/or services from other entities or sources.

**19.3 Taxes and Statutory Withholdings.** Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this Contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this Contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited

to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

**19.4 Notice.** Except as otherwise stated in this Contract, all notices provided for in this Contract shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Contract), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice with FedEx.

**IF TO THE PUCT:**

ATTENTION: Brian H. Lloyd, Executive Director  
1701 N. Congress Ave., 7<sup>th</sup> Floor  
Austin, TX 78701

With copies to the PUCT Contract Administrator, and Erica Duque, CTPM, CTCM, at the same address.

**IF TO CONTRACTOR:**

ATTENTION:  
ADDRESS  
CITY, STATE, ZIP CODE

**19.5 Headings.** Titles and headings of paragraphs and sections within this Contract are provided merely for convenience and shall not be used or relied upon in construing this Contract or the Parties' intentions with respect thereto.

**19.6 Export Laws.** Contractor represents, warrants, agrees and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this Contract in violation of any such laws, rules or regulations.

**19.7 Preprinted Forms.** The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

**19.8 Specific Personnel.** Contractor has identified the personnel for this assignment ("Team"), as follows: **[list]**

Contractor warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor shall remove from the project any individual whom the PUCT finds unacceptable for any reason in the

PUCT's sole discretion. Contractor shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

**19.9 Publicity.** Contractor understands and agrees that the PUCT does not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without the prior written approval of the PUCT: which pertains to this Contract or any services or project to which this Contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this Contract; or which mentions the PUCT.

#### **Article 20. NO IMPLIED WAIVER**

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

#### **Article 21. ORDER OF PRECEDENCE**

In the event of conflicts or inconsistencies between the provisions of this contract and its attachment(s), the following are given preference in the order listed below:

- 1) The terms and conditions of this contract;
- 2) Attachment A, SOW, including any exhibits.

#### **Article 22. FORCE MAJEURE**

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve any party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other parties as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, any party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other parties.

#### **Article 23. SEVERABILITY**

If any provision of this contract is held unlawful or otherwise unenforceable, such provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if such provision had never existed.

#### **Article 24. FUNDING OUT CLAUSE**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. *See* Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2015-2016 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

**Article 25. DRUG FREE WORKPLACE POLICY**

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

**Article 26. SUBSTITUTIONS**

Substitutions are not permitted without written approval of the PUCT.

**Article 27. RIGHT TO AUDIT**

The State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, 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, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

**Article 28. ENTIRE AGREEMENT**

This contract, including Attachment A, SOW, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this Contract by specific reference.

In WITNESS WHEREOF all parties by their duly authorized representatives have executed this contract effective as of [DATE].

**The Public Utility Commission of Texas**

By:

\_\_\_\_\_

Brian H. Lloyd  
Executive Director

Date Signed: \_\_\_\_\_

**Contractor**

By:

\_\_\_\_\_

Name

Title

Date Signed: \_\_\_\_\_

**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/>.