



THE TEXAS
STATE
UNIVERSITY
SYSTEM

REQUEST FOR QUALIFICATIONS

Request for Qualification (“RFQ”) No: 758-19-00069

FOR

OUTSIDE COUNSEL

ALL RESPONSES MUST BE RECEIVED NO LATER THAN:

Wednesday, July 17, 2019 AT 2:30 PM CENTRAL

Prepared by TSUS Office of General Counsel

Issue Date: 6/17/19

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Section 1 – General Information

1.1 OBJECTIVE

In accordance with the provisions of Texas Government Code Chapter 2254, Subchapter D and Texas Administrative Code, Title 1, Chapter 57, the Texas State University System requests responses to this Request for Qualification (“**RFQ**”) from qualified law firms and attorneys (“**Respondents**”) for the provision of legal services (the “**Services**”), under the direction and supervision of the Texas State University System’s Office of General Counsel (“**OGC**”), in the following areas of law:

- construction;
- Federal Communications Commission and Information Technology (FCC laws and regulations);
- financial;
- health;
- immigration;
- international;
- intellectual property;
- litigation;
- oil and gas, mineral interests, and/or utilities matters;
- public finance and bond issuance;
- public school;
- real estate;
- tax; and
- wills, trusts and estates law.

1.2 DESCRIPTION OF TEXAS STATE UNIVERSITY SYSTEM

The Texas State University System (the “**System**”), founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, the System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas.

Today, seven component institutions offer a broad range of academic and career opportunities. Throughout the System, faculty and staff are preparing students to work in and contribute to our global society. The System and its component institutions (“**Component Institutions**”) are:

- The Texas State University System Administration, Austin, Texas
- Lamar University, Beaumont, Texas
- Sam Houston State University, Huntsville, Texas
- Sul Ross State University, Alpine, Texas
- Texas State University, San Marcos, Texas

- Lamar Institute of Technology, Beaumont, Texas
- Lamar State College - Orange, Orange, Texas
- Lamar State College - Port Arthur, Port Arthur, Texas

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. The administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the Component Institutions and state government.

The current members of the Board of Regents are: William Scott, Chairman; David Montagne, Vice Chairman; Charlie Amato; Duke Austin; Garry Crain; Veronica Edwards; Don Flores; Nicki Harle; and Alan Tinsley. The current student regent is Katey McCall. Brian McCall, PhD, is Chancellor of the Texas State University System and Secretary to the Board of Regents.

1.3 BACKGROUND & SPECIAL CIRCUMSTANCES

This RFQ and the responses thereto will establish a “**Referral List**” of law firms or attorneys practicing in each of the areas of law identified in **Section 1.1**, so that the OGC, on behalf of the System and its Component Institutions, may contract with those law firms or attorneys, as appropriate, to serve as counsel representing the System and/or its Component Institutions on specific matters as the need arises during the timeframe beginning September 1, 2019 to August 31, 2021.

The number and length of contracts resulting from this RFQ and all procedures relating to such contracts are within the discretion of the System and contingent upon approval of the Office of the Attorney General (“**OAG**”).

All contracts for outside legal services and invoices issued under those contracts are subject to the OAG’s administrative rules related to the retention and contracting of outside legal counsel by university systems and institutions of higher education (Title 1, Chapter 57 of the Texas Administrative Code). Respondents should familiarize itself with the requirements of those administrative rules and review the Outside Counsel Contract template (ref. **APPENDIX ONE**) promulgated by the OAG and the memorandum issued by the OAG in December 2016 regarding Outside Counsel Rules and Templates (ref. **APPENDIX TWO**). The OAG advises that the Outside Counsel Contract template and Outside Counsel rules referenced may be changed after the RFQ posting but will be substantially similar.

To the extent that Senate Bill No. 1370 (86th Texas Legislative Session) compels any additional reporting or contracting requirements, the System expects full cooperation from Respondents and any firms selected to enter into contracts for specialized legal services.

It is the policy of the System to make a good faith effort to include participation of Historically Underutilized Businesses (“**HUB**”) certified firms in its contracts. A “HUB” is a for profit business that meets the requirements of Texas Government Code, Chapter 2161 and administrative rules of the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter B. In order to comply with the System’s HUB policy, the System may

select, from firms responding to this RFQ, one or more firms to serve as outside counsel in each area of law listed above.

The System will not participate in any programs, nor will it conduct business, with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, gender identity, age, national origin, religion, physical or mental disability, or sexual orientation.

Section 2 – Notice to Respondents

2.1 General Instructions

- A. Respondents should carefully read the information contained herein.
- B. Submittals and any other information submitted by Respondents in response to this RFQ shall become the property of the System.
- C. Failure to comply with the requirements contained in this RFQ may result in rejection of the response.

2.2 Point of Contact

Any questions or concerns regarding this RFQ must be directed in writing via email to:

Therese Sternenberg
Email: Therese.Sternenberg@tsus.edu

The System specifically requests that Respondents restrict all contact and questions regarding this RFQ to the above-named individual via email. Discussions (written or verbal) related to the services in this RFQ with parties other than the Point of Contact are grounds for Respondent disqualification.

2.3 Submittal Deadline

The System will accept responses until **Wednesday, July 17, 2019 at 2:30 p.m. Central Time.**

NOTE: A public opening of responses will not be conducted for this RFQ.

2.4 Preparation and Submittal Instructions

- A. Respondents must complete, sign and return the attached Certification of Qualification (ref. **Section 5**) form as part of the RFQ response. Form must be signed by an officer of the Respondent (“**Contact**”) authorized to sign for Respondent’s firm and enter into agreements with the System. Failure to sign and return this form will subject Respondent’s response to be disqualified.

B. Submission

1. Responses to the RFQ, including any supplemental printed material referenced with the RFQ, must be submitted and received by the Point of Contact on or before the submittal deadline (ref. **Section 2.3**), as follows:

The Texas State University System
Attn: Therese Sternenberg
601 Colorado Street
Austin, Texas 78701
Re: RFQ 758-19-09095

2. The materials must be enclosed in a sealed mailing envelope, box or container. The following items must be clearly visible on the outside of the mailing package: the submittal deadline; the RFQ number; and the name and the return address of the Respondent.

C. Number of Copies

Respondents must submit (a) five (5) complete hard copies of the entire response, and (b) one (1) USB flash drive with an electronic copy of the entire response. The USB flash drive must include a protective cover and be labeled with Respondent's name and the RFQ number. An *original* signature by an authorized officer of Respondent's firm must appear on the Certification of Qualification (ref. **Section 5**) of the electronic copy of the entire response and at least one (1) paper copy of the submitted response. The paper copy of the Respondent's response bearing an original signature should contain the mark "original" on the front cover of the response.

D. Pricing

Pricing is not an element of the RFQ process and information related to pricing should not be included in response to this RFQ.

- E. Late responses properly identified will be returned to Respondent unopened. Late responses will not be considered under any circumstances.

NOTE: It is the responsibility of the Respondent to ensure that their response is submitted to meet the deadline date and time requirements.

- F. Responses submitted by email or facsimile (FAX) are not acceptable in response to this RFQ.

2.5 Submittal Checklist

Respondents are instructed to complete and return the following documents as a part of their response. **Failure to return all of these completed documents may subject the response to disqualification.**

- ✓ Responses to Qualification Criteria (Section 4)
- ✓ Signed and Completed Certification of Qualification Form (Section 5)
- ✓ Completed Appendix THREE

2.6 Criteria for Selection

The evaluation of responses and the selection of qualified Respondents will be based on the information provided by Respondent in its response to **Section 4** of this RFQ. Consideration may be given to additional information if the System deems such information relevant.

The System reserves the right to award any, all or none of the Services described in this RFQ.

2.7 Notice of Qualification/Non-Qualification

All Respondents will be notified of determination of qualification / non-qualification by the Point of Contact via e-mail.

2.8 Schedule of Events

Below is the *anticipated* schedule of events for the RFQ process. The System reserves the right to make modifications to the schedule as needed.

Issuance of RFQ.....	June 17, 2019
RFQ Submittal Deadline.....	July 17, 2019 at 2:30 pm
Estimated Notice to Respondent(s) of Initial Selection.....	July 23, 2019

2.9 VALIDITY PERIOD

By submitting a response to this RFQ, Respondent accepts that the response will remain valid for selection for one or more outside counsel services contracts between the Respondent and the System and its Component Institutions, with such contracts having a starting date during the period September 1, 2019 through August 31, 2021.

2.10 PUBLIC INFORMATION

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the solicitation is completed.

- A. The System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, and *Texas Government Code*.

- B. Respondent is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
- C. Information provided to Respondent by the System, including information from representatives of the System or any of its Component Institutions, and information provided to Respondent by members of the public or any other third party shall belong to the System.
- D. Information created or otherwise produced by Respondent shall remain the exclusive property of Respondent. Respondent acknowledges any final report or papers will be provided in accordance with this RFQ, and that any information contained in any report or papers, which Respondent believes is confidential under Texas law will be clearly designated as such by Respondent.
- E. If the System receives a request for public information for any portion of any final report or papers that have been designated by Respondent to be confidential, the System will provide notice to Respondent and Respondent may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

2.11 RESERVATION OF RIGHTS

The System may evaluate the Responses based on the anticipated completion of all or any portion of the Services. The System reserves the right to divide the Services into multiple parts, to reject any and all responses and re-solicit for new responses, or to reject any and all responses and temporarily or permanently abandon the project. The System makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

2.12 ACCEPTANCE OF EVALUATION METHODOLOGY

By submitting its response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that the determination of the “qualified” firm(s) will require subjective judgments by the System.

2.13 NON-REIMBURSEMENT FOR COSTS

Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFQ process shall be at the sole risk and responsibility of the Respondent. Respondents submit responses at their own risk and expense.

2.14 CONFLICTS/CONTACT

Respondents shall not contact existing members of the System Board of Regents, the System employees, including those of Component Institutions, about this RFQ until the resulting contract(s), if any, are fully executed.

2.15 OWNERSHIP AND USE OF WORK MATERIAL

All work material, whether or not accepted or rejected by the System, is the sole property of the System and for its exclusive use and re-use at any time without further compensation and without any restriction.

2.16 CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION

Firms responding to this RFQ must maintain a Texas office staffed with personnel who are responsible for providing legal services to the System. Attorneys representing the System in matters of Texas law must be licensed by the State Bar of Texas.

In accordance with Texas Government Code, sections 1201.027 and 2254.004, the System will evaluate responses to this RFQ to identify the firm(s) it judges to be the most highly qualified. Fees may not be considered and may not be indicated in responses to this RFQ. The System will then attempt to negotiate a contract at a fair and reasonable price with such firm(s) deemed to be most highly qualified. If a satisfactory contract cannot be negotiated, the System will proceed with another firm.

The System reserves the right to negotiate all elements of the contract for legal services, with the approval of the OAG, and to approve all personnel assigned to the System's work. If personnel assignments are to be changed, the firm will have to submit resumes of the to-be assigned attorneys and their addition to the contract will be subject to the System's approval.

Further, the System reserves the right to terminate any resulting contract for legal services, for any reason, subject to thirty (30) days prior written notice, and upon payment of earned fees and expenses accrued as of the date of termination.

Any contract resulting from this RFQ must be approved by the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General.

Section 3 – Scope of Services Required

The purpose of this RFQ is to identify a qualified firm or firms to provide the Services as described herein. The successful Respondent, if any, is referred to as the “**Contractor.**” The Services described in this RFQ will be provided to, and on behalf of, the System which includes all Component Institutions.

Contractor will provide legal services to the System and its Component Institutions in one or more of the following areas of law:

3.1 Construction Law

- A. Advising and representing the System and its Component Institutions on construction matters.
- B. Preparing, reviewing, and negotiating design and construction contracts and other instruments required for the System’s Office of Finance, including, but not limited to, drafting and negotiating public construction contracts; project delivery methods, including design build and other development processes from design to completion; building systems and equipment; public financing; construction related insurance and suretyship issues; construction lien and payment bond claims; design, defect and delay claims; commercial licensing/registration requirements for architects, engineers and relevant others; procurement laws and processes; risk transfer and management strategies; and, green building and sustainability.

3.2 Federal Communications Commission (FCC) and Information Technology

Advising and representing the System and its Component Institutions in matters related to communications, media and information technology matters regulated by the Federal Communications Commission and other federal and state government agencies in matters related to regulatory compliance, transactions, corporate, and litigation in the telecommunications, media, Internet, information services and technology industries, including but not limited to commercial and noncommercial broadcast issues; First Amendment and broadcast journalism legal issues; digital rights, privacy and security issues; and preparing, reviewing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications.

3.3 Financial

- A. Advising and representing the System and its Component Institutions in financial matters, including but not necessarily limited to the acquisition, purchase or sale of System or component held business entities, equity shares in such entities, stocks, and other transactions.
- B. Preparing and reviewing documents related to corporate and financial matters involving the System, its Component Institutions, and their affiliated private support organizations.

- C. Assisting and representing the System and its Component Institutions in negotiations related to the matters stated in this section.
- D. Advising and representing the System and its Component Institutions in reviewing and providing assistance with respect to various aspects of its investment program, negotiating complex investment documents, including, but not limited to, investment documents associated with certain investments, including alternative asset investments.

3.4 Health Law

Advising and representing the System and its Component Institutions in matters related to health law, including but not limited to, medical insurance billing, prompt pay discounts, review of health insurance payor contracts, compliance with federal and state laws and regulations on privacy and security of protected health information, including the Health Insurance Portability and Accountability Act (HIPAA), health regulatory and research compliance, investigations, and related matters; and contractual and business transactions; and other general health law matters.

3.5 Immigration

- A. Representing the System's Component Institutions in matters relating to immigration and employment.
- B. Representing the Component Institutions when they recruit and hire international applicants in order to fill vacant faculty or other positions. This involves sponsoring candidates to obtain appropriate work authorization and the institutions' paying fees and costs associated with filing the labor certification application.

3.6 International Law

Representation and advice regarding international law obligations and requirements in the following areas: doing business in foreign jurisdictions and related registration and tax obligations, employment issues regarding university employees and foreign nationals, affiliation and collaborative research agreements with foreign universities and other entities, study abroad programs, and contracting and procurement issues in foreign jurisdictions.

3.7 Intellectual Property

- A. Assisting in making presentations and required submissions and obtaining approval of patents and other intellectual property.
- B. Preparing resolutions, agreements, contracts, and other documents to which the System is a party and which will be necessary in connection with the issuance of patents.
- C. Attending meetings as requested.
- D. Preparing patents, licensing agreements, and other such documents.

- E. Representing the System and its Component Institutions in presentations and proceedings involving patent applications.
- F. Rendering advice to the System and its Component Institutions on intellectual property matters.
- G. Assisting on other matters necessary or incidental to the intellectual property operations of the System and its Component Institutions.

3.8 Litigation - General

Representation and advice regarding complex litigation matters, including but not limited to employment litigation, real estate litigation, environmental litigation, wills and estate litigation, Texas Public Information Act litigation, commercial litigation, creditors' rights litigation, and third party issues such as subpoenas and discovery matters.

3.9 Oil and Gas, Mineral Interests, and/or Utilities Matters

- A. Advising, preparing, reviewing, and representing the System and its Component Institutions as to contracts and leases relating to oil and gas, mineral interests and/or utilities matters.
- B. Assisting, advising, and representing the System and its Component Institutions in negotiations relating to the procurement, sale and/or exchange of natural gas and other utilities.

3.10 Public Finance and Bond Issuance

- A. Prepare or assist in the preparation of the Preliminary Official Statement, the Final Official Statement, or any other disclosure documents for each sale, including review of the information therein describing the bonds, the security therefor and the federal income tax status thereof, with the understanding that outside counsel will not be expected to independently verify other data contained in the Official Statement and that the Official Statement may so state.
- B. To the extent requested, advise the System with respect to the System's compliance with its undertakings under Rule 15c2-12 or other applicable disclosure rules, promulgated by the Securities and Exchange Commission including assisting with any event notices.
- C. Preparing any trust indenture or trust agreements authorizing or securing bonds.
- D. Attending meetings to the extent required or requested with reference to authorization and issuance of bonds.
- E. Attending meetings with rating agencies to the extent required or requested.
- F. Obtaining approval for the bonds from the OAG and registration of the bonds by the Comptroller of Public Accounts of the State of Texas, as required by law.

- G. Supervising the execution of bonds and delivery thereof to purchasers.
- H. When so delivered, rendering the opinion covering the validity of the bonds under Texas law and the tax exempt status of the interest thereon under federal income tax laws.
- I. Interpreting bond covenants and providing public finance-related advice when requested by the System.

3.11 Public School Law

Representation and advice regarding public school law issues regarding institutional charter schools and other interactions with K-12 education.

3.12 Real Estate

- A. Preparing and reviewing contracts and other documents intended for the acquisition, purchase, sale, exchange, or lease of real estate, including easements whether the System or Component Institutions are acquiring or disposing of the same.
- B. Advising the System and its Component Institutions on real estate matters.

3.13 Tax

- A. Advising the System and its Component Institutions on taxation matters that apply to state agencies and their affiliated private support organizations, including but not necessarily limited to matters related to unrelated business income taxation.
- B. Preparing and reviewing tax returns and information submitted to the Internal Revenue Service and to state taxing authorities.
- C. Representing the System and its Component Institutions before federal, state and/or other tax agencies.
- D. Advising as to creation and structuring of deferred compensation instruments.

3.14 Wills, Trusts and Estates

- A. Advising and representing the System, its Component Institutions, and their affiliated private support organizations, in matters related to wills, trusts, and estates, including but not necessarily limited to, planned giving by supporters of the institutions and the acceptance of donor gifts.
- B. Advising as to wills, trusts, and estates and the creation of legal instruments and structuring of mechanisms to best protect and enhance the growth of donated or other funds.

Section 4 – Qualification Criteria

RESPONDENT IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFQ CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

To be considered for selection as a Qualified Respondent, Respondents must address each item in this Section. Responses to the following information and materials (the “**Qualification Materials**”) must be in the order asked and following the same numbering format.

4.1 Overview of Firm

Provide a brief description of Respondent’s firm, including the total number of attorneys and employees, indicate the area(s) of law and the number of attorneys practicing in those area(s) for which Respondent is responding, and the number of years the firm has been engaged in such practice in Texas. Explain how the firm is organized and how its resources will be applied to the System’s work.

4.2 Qualifications

Provide a brief narrative of Respondent’s work since July 2017 assisting higher education clients in the area(s) of law for which Respondent is responding.

4.3 Resumes

Provide resumes of those persons who would be assigned to serve the System and indicate specifically the proposed role of each individual. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas, and/or other jurisdiction, and the number of years’ experience in the area(s) of law in which he/she is expected to work for the System. Further, identify who would be assigned as the primary, day-to-day contact for the System.

4.4 References

Please provide the names, addresses, and phone numbers of three (3) references.

4.5 Conflicts of Interest

Disclose any actual or potential conflicts of interest. Identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the System.

In addition, identify every matter in which the firm represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly averse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed state agency officials in connection with their official job duties and responsibilities. “Litigation” means the matter has been filed in the public record in either state or federal court.

4.6 Business Practices and Participation of Minorities & Women

- A. Describe the approach of Respondent's firm to working with co-counsel, including level of effort, division of duties and providing opinions.
- B. Describe Respondent's previous experience and involvement working with HUB certified firms (if Respondent's firm is not HUB certified) or as a HUB certified firm in a co-counsel relationship.
- C. Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services.
- D. In response to **APPENDIX THREE**, Workforce Breakdown, specify whether Respondent's firm has adopted formal Equal Employment Opportunity and Affirmative Action policies and to provide a summary of the firm's hiring and promotion statistics for women, minority and disabled veteran attorneys from January 2018 to date.

Section 5 – Certification of Qualification

THIS CERTIFICATION OF QUALIFICATIONS MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S QUALIFICATION MATERIALS. FAILURE TO COMPLETE, SIGN, AND RETURN THIS CERTIFICATION OF QUALIFICATIONS WITH THE QUALIFICATION MATERIALS MAY RESULT IN THE DISQUALIFICATION OF RESPONDENT.

By submitting a response to this RFQ, Respondent certifies that, to the best of its knowledge, all responses are true, correct and complete.

- 5.1** Respondent acknowledges this RFQ is a solicitation for the submission of qualifications and is not a contract or an offer to contract. Submission of Qualification Materials by Respondent in response to this RFQ will not create a contract between the System and Respondent. The System has made no representations, warranties, or guarantees, written or oral, that one or more contracts with the System will be awarded under this RFQ.
- 5.2** By signature hereon, Respondent hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.
- 5.3** Respondent acknowledges that if Respondent is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.
- 5.4** By executing this certification, Respondent affirms that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted response to this RFQ. Failure to sign the certification, or signing it with a false statement, shall void the submitted response or any resulting contracts, and the Respondent shall be removed from all solicitation lists.
- 5.5** By the signature hereon affixed, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. By signing this certification, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualified as a Texas Resident Respondent as defined in Rule 1 TAC 113.8.

5.6 Acknowledgement of Addenda: The undersigned Respondent hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Note: If there was only one (1) Addendum issued, initial just the first blank after No. 1, not all five (5) blanks above.

Federal Employer Identification Number (FEIN): _____

Respondent/Firm: _____

Signature: _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____

Telephone Number: _____ E-mail: _____

APPENDIX ONE
Outside Counsel Contract

(SEE SEPARATE ATTACHMENT)

APPENDIX TWO

Memorandum: Outside Counsel Contract Rules & Templates

(SEE SEPARATE ATTACHMENT)

**APPENDIX THREE
Workforce Breakdown**

Use this form to provide a breakdown of Respondent’s Company workforce, as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B.

Females

	Year	White	Black	Hispanic	Asian Pacific	Native American	Disabled Veteran	Total
Partners or Shareholders	2018							
Associates	2018							
Subtotal Partners or Shareholders and Associates	2018							
Clerical/ Technical and other support	2018							

Males

	Year	White	Black	Hispanic	Asian Pacific	Native American	Disabled Veteran	Total
Partners or Shareholders	2018							
Associates	2018							
Subtotal Partners or Shareholders and Associates	2018							
Clerical/ Technical and other support	2018							

Does Respondent's firm have an Equal Opportunity/Affirmative Action Plan? Yes / No

What percentage of Respondent's firm is minority owned, if any? _____**

What percentage of Respondent's firm is women owned, if any? _____**

**If Respondent's firm is a certified Texas HUB, include a copy of the certification with response.

APPENDIX ONE

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 _____ (“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 (“Attorney General” or “OAG”). This OCC is made and entered into with reference to the following facts:

INDUCEMENTS

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

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

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

AGREEMENT

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

Section 1. Purpose/OAG Approval.

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

1.2 OAG Approval. The Attorney General’s, or his Designee’s, signature on this OCC represents the OAG’s approval of Outside Counsel serving as legal counsel to 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. Outside Counsel shall not represent agency in any litigation unless Addendum A specifically and unambiguously authorizes litigation in a particular matter. If Addendum A does not specifically authorize Outside Counsel’s representation of Agency in a particular litigation matter and the Agency requires such representation, 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 litigation matters. If Addendum A specifically authorizes litigation in a particular matter, Outside Counsel has the duty to promptly notify the Agency and OAG of the desirability or likelihood of an appeal.

1.2.2 Appellate Matters. Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, whether as appellant, appellee, respondent, applicant, or otherwise, without first obtaining the written permission of the Attorney General, First Assistant Attorney General, or Solicitor General.

1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment. In addition to OAG approval to contract for legal services, Outside Counsel invoices must be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code.

Section 2. OCC Term.

This OCC shall commence on _____, and shall terminate on _____ (hereinafter “OCC Term”), unless terminated earlier pursuant to Section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to Section 9.12 of this OCC.

Section 3. Obligations of Outside Counsel.

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

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

3.3 Public Information and Client Communications. 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. 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). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel’s duty to provide

full disclosure to Agency and the OAG as necessary in Outside Counsel’s judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

3.5 Subcontracting Authority. In the event Outside Counsel determines it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s) after obtaining express written approval from Agency. If Outside Counsel purports to enter into a subcontract without express written approval from Agency, the parties agree that such contract shall be voidable at the option of Agency, in consultation with OAG, and that Outside Counsel shall have no recourse against Agency, OAG, or the State of Texas for any direct or indirect costs, damages, or any other expenses related to the subcontractor. For all subcontracts entered by Outside Counsel, the Parties agree that all such subcontracts are subject to Section 4 (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 Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that the Agency shall not be liable to 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 OAG. Any subcontracted legal counsel must comply with Subsection 9.8 (Conflict of Interest) of this OCC.

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 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 Agency’s total liability to 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:

\$ _____ **for this OCC Term.**

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 Agency is voidable by the OAG, unless this OCC is amended to modify this limitation of liability. Outside Counsel agrees

that the OAG, the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC or the performances of this OCC to 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. Subject to Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Services for non-attorney timekeeper classifications listed on Addendum B, if applicable, such as paralegal, legal assistant, or patent agent, must be of a substantive legal nature in order to be reimbursable. Outside Counsel agrees to the fee schedule as described in Addendum B.

5.2 Reimbursement of Expenses. Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. 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. Agency will reimburse Outside Counsel 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's website, at: <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php>.

5.2.2 Meals. Agency will reimburse Outside Counsel 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. Agency will not reimburse Outside Counsel for the purchase of alcohol.

5.2.3 Lodging. Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Unless otherwise agreed upon by Agency in writing 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 Agency in writing 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. Agency will not reimburse Outside Counsel for expenses relating to first-class airfare, which includes first- or business-class airfare or any other expense related to premium or preferred airfare benefits.

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

5.2.6 Other Reimbursable Expenses. Agency will reimburse the actual cost for other expenses if 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. Agency expects 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, Agency will not reimburse Outside Counsel 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. Agency will not reimburse Outside Counsel for tips or gratuities.

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

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

5.3 Subcontractor Payments. Subject to Agency's prior approval, Agency will reimburse Outside Counsel for the actual, reasonable and necessary expenses relating to Outside Counsel's use of subcontractors. Outside Counsel shall be responsible for any payments and other claims due to subcontractors for work performed under this OCC. 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 Agency shall not be directly liable in any manner to Outside Counsel's subcontractor(s).

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

While Agency should be paying Outside Counsel to apply the knowledge and expertise for which it was hired, and not paying Outside Counsel to obtain that knowledge through extensive legal research, 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 Outside Counsel and Agency.

5.5 Administrative Staff/Clerks. Agency will only pay for substantive legal work performed by attorneys or other qualified personnel, regardless of the job title or classification applicable to such individual. For purposes of this agreement, "substantive legal work" has the same meaning as defined by the Texas Paralegal Standards adopted by the Board of Directors of the State Bar of Texas. Agency will not pay for law clerks or interns, however classified, under any circumstances, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and

billing clerks, for activities 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. The OAG cannot approve payment of any invoice if OAG determines, in its sole discretion, that the invoice includes a request for payment for services or expenses incurred that are administrative, clerical, or any other form of services other than substantive legal work.

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

Section 6. Invoices for Payment.

6.1 General. Agency and Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review and approval of invoices found at Title 1, Chapter 57 of the Texas Administrative Code. Agency and Outside Counsel understand and agree that no invoice shall seek reimbursement for services performed or expenses incurred in violation of the provisions of this OCC. Agency and Outside Counsel further understand and agree that the OAG cannot approve payment of any invoice if OAG determines, in its sole discretion, that the invoice includes a request for payment for services or expenses incurred that are prohibited by this OCC.

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

6.1.2 Billable Time. Agency will only pay for the services of individuals covered in Addendum B. All times 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. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the OCC and submission of invoices.

6.1.3 Submission of Invoices. Outside Counsel must submit invoices to Agency at:

Agency must submit invoices and other related information to the OAG at the following e-mail address or mailing address:

OCCInvoice@texasattorneygeneral.gov

OR

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

6.2 Subcontractor Invoices. Subcontractor(s) shall directly invoice Outside Counsel, and Outside Counsel shall then invoice Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice supported by attached documentation.

6.3 Prompt Payment. Payments to Outside Counsel by Agency under this OCC shall be in compliance with Chapters 402 and 2251 of the Texas Government Code and Title 34, Chapter 20, Subchapter D of the Texas Administrative Code. Outside Counsel agrees that this agreement shall serve as notice that invoices are automatically in error for purposes of Chapters 402 and 2251 of the Texas Government Code and Title 34, Chapter 20, Subchapter D of the Texas Administrative Code until such time as OAG has approved the payment of such invoice.

6.4 Administrative Fee. Outside Counsel agrees that, pursuant to 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 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. Outside Counsel may not charge or seek reimbursement from the Agency for the payment of the administrative fee.

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. Outside Counsel shall maintain adequate records to support its charges, procedures, and performances to Agency for all work related to this OCC. Outside Counsel shall also maintain such records as are deemed necessary by Agency, OAG, the State Auditor's Office, or federal auditors if federal funds are used to pay Outside Counsel, to ensure proper accounting for all costs and performances related to this OCC.

6.5.2 Records Retention. 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 or (2) the resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving 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. 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 Agency, the State of Texas, or their authorized representatives. 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 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 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of 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 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, Outside Counsel or any other entity or person 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. 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. Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through 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 Outside Counsel related to this OCC.

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 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 termination. In the event of such termination, 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, Agency shall be liable for 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 Agency, in consultation with the OAG, shall terminate this OCC for convenience.

7.2 Cause/Default. In the event that Outside Counsel commits a material breach of this OCC, Agency may, upon written notice to 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, Outside Counsel shall, subject to Outside Counsel's professional obligations, immediately transfer to Agency all information and associated work products prepared by Outside Counsel or otherwise prepared for Agency pursuant to this OCC, in whatever form such information and work products may exist, to the extent requested by Agency. At no additional cost to Agency and in any manner Agency deems appropriate in its sole discretion, 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 Agency of its rights of early termination, Outside Counsel shall not be relieved of any liability to Agency for damages due to Agency by virtue of any breach of this OCC by Outside Counsel or for amounts otherwise due Agency by Outside Counsel.

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

Section 8. Certifications of Outside Counsel

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

8.1 Delinquent Child Support Obligations. 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, 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. 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, 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. 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. Outside Counsel will notify 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, 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. Outside Counsel acknowledges and agrees that, to the extent 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, 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 Compliance with State Law Contracting Provisions. Agency and Outside Counsel certify that this OCC is compliant, and will remain compliant, with any and all applicable laws governing contracts involving the State of Texas or its agencies, including, but not limited to, Sections 572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense), 572.069 (Certain Employment for Former State Officer or Employee Restricted), 669.003 (Contracting with Executive Head of State Agency), 2252.901 (Contracts with Former or Retired Agency Employees), 2252.908 (Disclosure of Interested

Parties), and 2261.252 (Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited) of the Texas Government Code.

8.9 Does not Boycott Israel. As required by Texas Government Code section 2270.002, Outside Counsel certifies, by executing this OCC, that Outside Counsel does not, and will not during the term of this OCC, boycott Israel. Outside Counsel further certifies that no subcontractor of Outside Counsel boycotts Israel, or will boycott Israel during the term of this OCC. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

8.10 Prohibited Companies. Outside Counsel certifies, by executing this OCC, that neither Outside Counsel, nor any subcontractor of Outside Counsel, is a company under Texas Government Code section 2252.152 with which Agency may be prohibited from contracting. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

8.11 Limitation on Abortion Funding. Outside Counsel acknowledges and agrees that, under article IX, section 6.25 of the General Appropriations Act, 85th Leg., R.S. (2017), and except as provided by that Act, funds may not be distributed under this OCC to any individual or entity that: (1) performs an abortion procedure that is not reimbursable under the State's Medicaid program; (2) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State's Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State's Medicaid program.

Section 9. General Terms and Conditions

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

9.1.1 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 Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or 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, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. Agency shall not be liable to 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 Agency or the State of Texas shall nonetheless become liable for such payments or obligations, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability or obligation.

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

9.3 Survival. The obligations of 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, 8.8, 9.7, 9.8, 9.11, and 9.13.

9.4 Copyright/Intellectual Property. Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for any copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by Outside Counsel pursuant to this OCC (other than equipment, materials, information, or ideas supplied or required by Agency or its employees or other agents). Outside Counsel and 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. Outside Counsel understands that the OAG and Agency do not endorse any vendor, commodity, or service. 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 Agency without the prior written approval of the OAG and 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 Outside Counsel for all purposes under this OCC and for all notices hereunder shall be:

9.6.2 OAG's and Agency's Addresses. The addresses for the OAG and 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

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

9.7.2 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, 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/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 Outside Counsel and Agency otherwise entitled to notice under this OCC. Compliance by 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 Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of this OCC by Agency or the State of Texas if the Parties are unable to resolve their disputes under Section 9.7.2 of this OCC.

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 Agency nor any other conduct of any representative of Agency relating to this OCC shall be considered a waiver of sovereign immunity.

9.7.5 The submission, processing, and resolution of 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 appropriated by the General Appropriations Act 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, § 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 appropriated by the General Appropriations Act 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, § 16.01(a)(4).

9.8.3 Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and immediately disclose, in writing, to Agency and OAG any actual or potential conflict with respect to Agency, OAG, or the State of Texas.

9.8.4 Outside Counsel has a continual and ongoing obligation to immediately notify OAG and Agency, in writing, upon discovery of any actual or potential conflict to Agency, 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, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. More specifically, Agency shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, Agency will provide, upon the request of 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.

Outside Counsel agrees that the Agency and/or the State of Texas do not waive any immunity (including, without limitation, state or federal sovereign immunity). 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. 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. Outside Counsel hereby waives and agrees not to assert: (a) that 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 hereto, may be amended only upon 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. Outside Counsel certifies that it presently maintains malpractice insurance in an amount not less than Agency's limitation of liability under Section 4.1 of this OCC.

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

9.15 Additional Terms. Any additional terms agreed to by Outside Counsel and Agency shall be electronically appended to this Contract and must be approved by the OAG. These terms shall not be inconsistent with or contrary to the Contract terms listed in Sections 1–9 of this OCC, and nothing in any additional terms or conditions shall remove or modify terms contained in Sections 1–9. In the event of any conflict, ambiguity or inconsistency between any additional terms and conditions appended electronically hereto and Sections 1–9 of this Outside Counsel Contract, Sections 1–9 shall take precedence and control.

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

Tax ID#

Approved:

By the Office of the Attorney General of Texas

Attorney General or Designee

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Services

OUTSIDE COUNSEL CONTRACT
OAG Contract No. _____

Addendum B
Rates

Name(s) of Lead Counsel:

Billing Period. The billing period for this OCC shall be:

Travel Rate. An attorney's travel rate may not exceed one-half of that attorney's hourly rate listed above. If no hourly rate is identified above or no travel rate(s) listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.

APPENDIX TWO



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Memorandum

To: State Agencies, University Systems, and Institutions of Higher Education
From: Office of the Attorney General—General Counsel Division
Date: December 9, 2016
Re: Outside Counsel Contract Rules and Templates

Pursuant to subsection 402.0212(f) of the Texas Government Code, the Office of the Attorney General (“OAG”) has adopted administrative rules related to outside legal counsel contracts of state agencies, university systems, and institutions of higher education (individually “agency” and collectively “agencies”). In light of recent changes made to the processes and procedures governing these contracts, the OAG is taking this opportunity to inform agencies of these updates and direct agencies to visit the OAG’s website¹ to access the revised forms and templates.

New Policies and Procedures

Request to Retain Outside Legal Counsel. The Attorney General serves as the state’s legal counsel; therefore, the OAG serves as legal counsel to all agencies. Agencies may not retain or utilize services provided by outside counsel without first receiving authorization and approval from the OAG. If an agency requires legal services from any outside counsel whatsoever, regardless of the source of funds that would be used to pay for such legal services or the party engaging such counsel, it must first electronically submit to the OAG through DocuSign a Request to Retain Outside Counsel (“RtR”) and a proposed Outside Counsel Contract (“OCC”).² Any questions regarding the RtR and OCC DocuSign process should be sent to the following e-mail address:

general.counsel@oag.texas.gov

Upon receipt of the electronic RtR and OCC documents, the OAG will review them to determine whether the requested legal services should be provided by the OAG or whether retaining outside counsel would be in the best interests of the state. Within ten (10) business days after receiving the electronic documents, the OAG will process the RtR and OCC documents or notify the agency in writing that its request has been denied, or that additional information is required to make a decision.

¹ www.texasattorneygeneral.gov/agency/publications

² Currently available at: <https://na2.docusign.net/member/PowerFormSigning.aspx?PowerFormId=0834844b-35cc-4867-ba31-1277dc86a5d8>. Please review the OAG’s how-to information sheet for more information on this electronic submission process.

New policies governing:

Requests to Retain Outside Counsel

a. Designation of Responsible Attorney

Agencies must designate a responsible attorney employed by or representing the agency to handle all matters and correspondence with the OAG. The designated attorney must be familiar with all aspects of the RtR and maintain familiarization with any resulting OCC throughout the life of the contract to avoid any delay in processing the RtR and maintaining the contract. Agencies must ensure the contact information for a designated attorney is updated as necessary throughout the duration of the OCC.

b. Requirement for System-Wide Contracts for Universities

University systems and institutions of higher education may no longer submit on behalf of the system's or institution's individual member schools separate RtRs involving the same or similar legal services provided by the same outside counsel attorney or outside counsel firm. For example, a system may not submit a RtR for two of its member universities, (x) university and (y) university, for the same or similar legal services to be provided by the same outside counsel or outside counsel firm. Instead, all RtRs submitted by a system must contain the system as the contracting party and include the entire amount of the proposed limitation of liability applicable to both (x) university and (y) university. Legal services to be provided by outside counsel under a system OCC, whether immigration, intellectual property, real estate, etc., must be applicable to all of system's universities to which the services will pertain—in this example, both (x) university and (y) university.

c. Start and end dates for Outside Counsel Contracts

Unless OAG determines that compelling circumstances exist, the requested start date for an OCC must not be earlier than the first day of the calendar month in which the RtR is submitted for OAG review. Also, except for OCCs involving litigation legal services, OCCs should terminate no later than the end of the fiscal biennium for which the contract is requested. The term of contracts for litigation legal services may extend beyond the end of the immediate biennium or until the litigation concludes, as determined by the agency in consultation with OAG.

d. Documents that Must Accompany Requests to Retain

Along with the RtR, an agency must attach: (1) an outside counsel's signed conflict disclosure statement; (2) the agency's affirmation statement that it has reviewed the disclosure statement and is satisfied with its choice of outside counsel notwithstanding anything contained in the disclosure statement; and (3) documentation of the eligibility of the requested lead counsel to practice law in the State of Texas, where required, or in the jurisdiction in which the services will be performed. Any RtRs not accompanied by these documents will be rejected, and agencies may be required to submit a new RtR along with the required documents. Outside counsel's disclosure statement must

be dated no more than thirty (30) calendar days earlier than the date on which the RtR is submitted or the date the OAG receives the statement, whichever occurs later.

e. Rules for Scopes of Service in Requests to Retain and Contracts

In the RtR, the proposed scope of services must be narrowly tailored so as to provide the OAG with enough information to make an informed decision about whether the proposed outside counsel representation is appropriate, while also being broad enough to fulfill the agency's objectives through the representation. Failure to narrowly tailor the scope of services will result in a delay in processing the RtR, and could result in the RtR being rejected—which would require the agency to submit a new RtR. Agencies should carefully draft the scope of services in order to obtain the results it desires from the proposed outside counsel representation. Finally, no single RtR may contain a scope of services that permits legal representation across multiple practice areas, unless each is clearly related to the central subject matter of the representation and so described in the proposed scope of services.

f. Deviation from the OAG Contract Template

Although the OAG generally will not approve any deviation from the OCC template, the OAG recognizes that exceptional and compelling circumstances could necessitate such changes in rare cases. As a result, the OAG reserves the right to grant exceptions to this policy if the OAG determines it is in the State's best interest to do so. Because the electronic submission process does not allow for any changes to be made to the OCC template, agencies wishing to deviate from the OAG's OCC template must contact the OAG seeking approval for the specified changes.

Competitive Procurement Process

Unless good cause exists, an agency is required to publish a Request for Qualifications ("RFQ") before selecting outside counsel, regardless of the anticipated maximum liability of the OCC. The RFQ must be published in the Electronic State Business Daily for a minimum of thirty (30) calendar days. The RFQ may also be placed in other publications, such as the Texas Register, at the agency's discretion. Because the OAG will not review or approve an agency's RFQ, the agency is not required to provide a copy of the RFQ to the OAG. Likewise, it is up to the respective agency to determine how long a response to a published RFQ will be valid, consistent with RFQ limitations.

If an agency would like an exemption from the RFQ process requirements, it must certify in its RtR that good cause or a reasonable justification exists for the exemption. Reasonable justifications include emergency situations or situations involving continuing legal services under a previously approved OCC that were not able to be completed within the term of the previous agreement through no fault of either the agency or outside counsel.

Outside Counsel Disclosure Statement Regarding Conflicts of Interest

As mentioned above, the outside counsel disclosure statements must be attached to the agency's electronic submission of the RtR and must be dated no earlier than thirty (30) days before the date the RtR is submitted or the OAG receives the statement, whichever occurs later. Outside counsel must sign the statement and attest to its completeness and accuracy. The agency must separately affirm it has reviewed the disclosure statement and is satisfied with the choice of the proposed outside counsel notwithstanding anything contained in the disclosure statement.

As a point of clarification, present policy requires that outside counsel disclose any and all conflicts that the entire firm (including any offices located outside the State of Texas) has to any and all agencies of the State of Texas, not merely the agency that is a party to the OCC. That obligation continues throughout the life of the contract. Outside counsel must monitor its conflicts for the duration of its representation and disclose to the agency and OAG any existing or potential conflicts that arise concerning the agency, OAG, or the State of Texas.

The OAG will not modify, alter, waive, or allow agencies to waive this disclosure requirement absent exceptional and compelling circumstances unique to the specific law firm or representation sought.

Administrative Fee

Pursuant to subsection 402.0212(c) of the Texas Government Code, outside counsel must pay an administrative fee to the OAG for the review of invoices. The fee is non-refundable and is due each fiscal biennium. Outside counsel may not charge or seek reimbursement from the agency for the fee.

The initial administrative fee is due to the OAG within thirty (30) calendar days of the date the proposed OCC is approved by the OAG and returned to the agency. If outside counsel has not submitted the required administrative fee within that time, the OAG's approval will be withdrawn, and the OCC will be rendered void. Any invoice submitted to the OAG for review prior to the receipt of the administrative fee will be deemed ineligible for payment until outside counsel submits the requisite administrative fee to the OAG. For OCCs that cross the State's fiscal biennium, separate administrative fees are due to the OAG on September 1 of each subsequent biennium covered by the term of the contract. *Please note that an administrative fee is not due for each invoice submitted.*

The OAG has granted a limited exemption from the administrative fee and invoice review to university systems and institutions of higher education regarding certain legal services that are solely related to the prosecution and management of system or institution intellectual property, which includes patents, trademarks, and copyrights. This limited exemption does not apply to the enforcement of intellectual property rights—including litigation—or corporate legal services relating to the monetization of intellectual property. The OAG may rescind this limited exemption at any time. If the OAG decides to conduct periodic testing of invoices under an OCC that qualified for this limited exemption, the exemption will be deemed rescinded and the applicable non-refundable administrative fee is immediately due upon notice by the OAG that testing will occur.

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 \$2,000.00, but more than \$0.00	\$100.00
Equal to or greater than \$2,000.00 but less than \$10,000.00	\$200.00
Equal to or greater than \$10,000.00 but less than \$50,000.00	\$500.00
Equal to or greater than \$50,000.00 but less than \$150,000.00	\$1,000.00
Equal to or greater than \$150,000.00 but less than \$1,000,000.00	\$1,500.00
Equal to or greater than \$1,000,000.00	\$2,000.00

Please note that no administrative fee is due on a contract with a maximum liability of \$0.00.

If the OCC is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, outside counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee within thirty (30) calendar days of the date the amendment is approved by the OAG and returned to the agency.

Outside counsel must 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.

Invoices for Legal Services and Expenses

Outside counsel will prepare and submit to the agency correct and complete "Invoices" and "Invoice Summaries" for legal services and expenses in accordance with the OCC and the OAG's administrative rules. Invoices cannot be paid by the agency, regardless of the source of funds used, without the prior approval of the OAG. Therefore, after the agency reviews and approves an outside counsel invoice in accordance with the administrative rules, it must seek approval from the OAG to pay the invoice.

When an agency determines that an invoice, or a portion thereof, should be paid, the agency must complete a Request for Voucher Approval, which is available on the OAG's website.³ The completed Request for Voucher Approval, a copy of the subject invoice, and all other information required to be submitted by the administrative rules should be sent to the following e-mail address:

OCCInvoice@oag.texas.gov.

³ https://www.texasattorneygeneral.gov/files/agency/voucher_approval_request_word.doc

Note that an agency should submit one Request for Voucher Approval form per billing period per contract, but one request form may be used for multiple invoices from the same billing period. Also note that all invoices within one billing period must be submitted together on a per-contract basis. Separate invoices or separate Requests for Voucher Approval that cover the same time period as other invoices and Requests for Voucher Approval, for the same contract, will be rejected as incomplete, and may result in an invoice not being approved for payment.

Outside Counsel must submit the invoice to the agency for review within one calendar month from the end of the relevant billing period covered by the invoice. The agency must submit the Request for Voucher Approval form and other required information to the OAG within ten (10) business days of the agency's receipt of a correct and complete invoice from the outside counsel. Outside counsel's failure to timely submit each invoice constitutes a breach of the outside counsel contract. Failure to timely submit invoices to OAG for review may result in OAG declining to approve payment of the invoice, unless OAG determines that good cause exists for the delay.

Once the Request for Voucher Approval form and other information are received and reviewed by the OAG, the invoice(s), or a portion thereof, will either be approved or rejected, or the agency will be notified that more information is required. If approved, the OAG will issue a Voucher Approval to the agency. The agency may then enter the payment information into the Uniform Statewide Accounting System ("USAS") or, if permitted, otherwise proceed to pay the invoice. Agencies should use Comptroller Code 7258 when entering payment information into USAS. Once an agency receives a Voucher Approval from the OAG, payment can occur when the agency enters the payment information and approves the documentation in USAS.

If an invoice is rejected, or if the OAG has questions regarding an invoice, it will contact the agency to attempt to resolve the issue. The OAG will not discuss invoice issues with outside counsel.

Policies and Procedures Remaining In Force

Obtaining the OAG's Approval of the Outside Counsel Contract

As described above, if an agency determines that a change to the OCC template is required in a particular extraordinary instance, the agency must contact the OAG; the electronic submission process does not allow for any changes to be made to the OCC template.

Agencies should not sign engagement letters with any potential outside counsel because such letters do not comply with applicable laws, rules, and procedures, and are not compatible with the OAG's contract template.

When completing the electronic RtR, please be mindful of the following:

Total Liability to Outside Counsel—The limitation of liability amount specified in the contract.

- Legal service fees and expenses cannot exceed the limitation of liability amount.
- All amounts paid to outside counsel, regardless of source, cannot exceed the limitation of liability amount.
- All amounts paid for expenses under a contract must count toward the limitation of liability specified in that contract, regardless of whether outside counsel was reimbursed for said expenses or whether such expenses were paid by the agency directly.
- Under no circumstances will expenses or fees relating to the representation be exempted from the limitation of liability.

Contract Term—The start date and end date of the contract term.

- In most cases, the contract term should end on or before August 31st of a biennium.
- The start of the contract term may be no earlier than the first day of the month in which the OAG received the RtR.
- Contracts for litigation legal services may be allowed to end, regardless of the biennium, at a date beyond the biennium in which the contract is executed. For example, if the contract involves litigation that has an indiscernible duration, it is acceptable to use a date such as “8/31/2030” or “8/31/2040” or similar dates to account for the uncertainty.

Addendum B to the Contract:

Timekeeper Rates—Unless expressly approved by the First Assistant Attorney General in advance, hourly rates for attorneys shall not exceed \$525/hour, while hourly rates for paralegals shall not exceed \$225/hour.

- Outside counsel may not bill for administrative staff, law clerks, or interns. Billing for administrative support is not allowed under Section 5.5 of the OCC.
- “Not to exceed”—Agencies that wish to use hourly rates to identify an entire classification of employees must now use a “not to exceed” rate. For example, such a rate would appear as “Partners’ rates shall not exceed \$300/hr.” If, however, the agency wants to ensure that certain individuals are providing the legal services, naming each individual and their specific hourly rate may be preferred. An example of identifying a particular individual, the individual’s classification, and the individual’s hourly rate would be “Susan Smith, Partner, not to exceed \$250/hr.”

Fixed Fee or Fee Schedule for Projects or Matters—Instead of using hourly rates, some legal services, such as immigration, bond, or intellectual property work, may be appropriately billed by a fixed fee per project. An example of a fixed fee per project would be “H-1B Visa Petition is \$900.” In the event a proposed outside counsel contract involves both fixed fee and hourly rates, an agency must draft and upload a new Addendum B that includes language specifically directing

when either the fixed fee or hourly rate ranges will be used. For example, under the previous example, a contract involving both fixed fees for H-1B Visa Petitions and hourly rates for other services would state “Preparation of H-1B Visa Petition is \$900. All other services are governed by the identified hourly rates.”

Billing Period—The billing period is the interval specified in the contract, which determines the frequency outside counsel will submit invoices to the agency. The agency and outside counsel will determine the billing period for a particular contract. For most contracts, the billing period will likely be monthly. Outside counsel must submit invoices timely. Any untimely invoices will delay processing and may constitute a breach of the contract, which could result in an invoice being disapproved for payment. Agencies likewise must review and forward invoices to the OAG in a timely manner. As noted below, agencies must submit invoices to the OAG within ten (10) business days of receiving them.

Travel Rate—The agency and outside counsel are permitted, but not required, to pay for time spent traveling to or from a place where legal services are to be provided to agency by setting hourly travel rates. Note that an attorney’s travel rate may not exceed half of that attorney’s standard hourly rate under the OCC. OAG does not consider it a best practice for attorneys to provide legal services while traveling; however, if an attorney is providing legal services while traveling, the attorney may charge the standard hourly rate for the time spent providing those legal services.

Contract Number—The OAG establishes a contract number for each OCC. An agency may establish its own contract number in addition to the OAG’s contract number; however, an agency must note the OAG contract number in all correspondence with the OAG.

Texas Law License—An attorney must be licensed by the State Bar of Texas in order to provide legal services and advice concerning Texas law, regardless of whether the attorney is actually located in Texas. If an OCC requires outside counsel to provide legal services and advice on Texas law, then a Texas-licensed attorney must be utilized and named as lead counsel in Addendum B of the OCC. A law firm with no Texas-licensed attorneys will not be authorized to provide legal services and advice concerning Texas law. Only in limited circumstances will the OAG approve an outside counsel firm with no attorneys licensed in Texas, such as when the scope of legal services to be performed is strictly limited to federal law practice.

Expenses

If outside counsel bills for allowable expenses, copies of actual, itemized receipts must be submitted. The following are examples of expenses that are not reimbursable: gratuity; alcohol; non-coach class airfare or premium or preferred benefits related to airfare; routine copying charges; fax charges; routine postage; office supplies; telephone charges; local travel (within 20-mile radius of office), including mileage, parking, and tolls; all delivery services incurred by internal staff; air-conditioning; electricity or other utilities; and internet charges.

Amending an Outside Counsel Contract

Any change to an executed and OAG-approved OCC must be supported by a written amendment. Any amendment to an existing OCC must also be approved by the OAG. An agency wishing to amend a contract must first submit to the OAG a completed amendment that is signed by the agency and outside counsel. A fillable electronic amendment template is available on OAG's website.⁴

Reasons to amend an existing outside counsel contract include increasing the limitation of liability amount or expanding the scope of legal services. If the limitation of liability amount is being increased, the agency should enclose a proper justification in its e-mail requesting the increase. The amendment and any supporting documentation should be submitted electronically through the fillable template on the OAG's website or, if necessary, sent to the following e-mail address:

general.counsel@oag.texas.gov.

Should you have any questions regarding these matters, please do not hesitate to contact the OAG's General Counsel Division. The OAG's website may be updated from time to time with additional information. Please consider periodically reviewing that resource. Thank you for your attention to these important matters.

⁴ <https://na2.docuSign.net/Member/PowerFormSigning.aspx?PowerFormId=939e7086-75bf-4288-85db-6a0191f554c3/>.

Important Addresses and Contact Information

The Request to Retain Outside Counsel and the Outside Counsel Contract:

general.counsel@oag.texas.gov

The Request for Voucher Approval:

OCCInvoice@oag.texas.gov

Mail may be sent to:

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

Outside Counsel must submit administrative fees to:

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

Questions may be directed to **James Burkhart, Outside Counsel Contract Coordinator,**
General Counsel Division—Telephone Number (512) 475-4291.

Addendum No. 1

Issued June 24, 2019

REQUEST FOR QUALIFICATIONS

FOR

OUTSIDE COUNSEL

RFQ No.:

758-19-00069

Notice To All Respondents:

The following is Addendum No. 1 to the Request for Qualifications (RFQ)
ESBD Posting No. 758-19-00069 was posted on June 17, 2019

Prepared by TSUS Office of General Counsel

I. Revisions:

A. Page 5 of 20, Section 2.4, Subsection B, Number 1,

Submitted: The Texas State University System
Attn: Therese Sternenberg
601 Colorado Street
Austin, Texas 78701
~~Re: RFQ 758-19-00005~~

Correction: The Texas State University System
Attn: Therese Sternenberg
601 Colorado Street
Austin, Texas 78701
Re: RFQ 758-19-00069

- **END OF ADDENDUM NO. 1** -