

**PUBLIC UTILITY COMMISSION OF TEXAS
REVISED REQUEST FOR QUALIFICATIONS (RFQ) ADDENDUM 1
FOR OUTSIDE LEGAL COUNSEL TO ASSIST THE COMMISSION IN STANDING UP
THE TEXAS ELECTRIC UTILITY SYSTEM RESTORATION CORPORATION
(HB1510)**



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

**Closing Time and Date:
August 23, 2024
10:00 am., Central Time**

**Revised RFQ Number: 473-24-00009A Addendum 1
Project Number: 56642**

NIGP Class Item: 918-74, 946-30, 946-38, 946-48, 946-49, 961-49, 961-83

Table of Contents

SECTION 1 – INTRODUCTION _____ **3**

SECTION 2 – DEFINITIONS _____ **3**

SECTION 3 – STATEMENT OF WORK _____ **4**

SECTION 4 – ELIGIBILITY AND EVALUATION CRITERIA _____ **4**

4.A. EEO and HUB Statement _____ **6**

4.B. Minimum Eligibility Requirements _____ **7**

4.C. Evaluation Criteria _____ **7**

4.D. Texas Vendor Preference _____ **8**

4.E. References _____ **8**

SECTION 5 – SCHEDULE AND PROCESS _____ **9**

5.A. Anticipated Schedule _____ **9**

5.B. PUCT Contact Person _____ **9**

5.C. Process for Asking Questions _____ **9**

5.D. Process for Submitting Proposals _____ **9**

5.E. PUCT’s Standard Process for Selecting Vendors _____ **10**

SECTION 6 – REQUIRED COMPONENTS AND FORMAT _____ **11**

6.A. Components _____ **11**

6.B. Format Requirements _____ **17**

SECTION 7 – CONDITIONS _____ **18**

7.A. Irrevocable Offer _____ **18**

7.B. Proposals are the Property of the PUCT _____ **18**

7.C. Public Information Act Notice _____ **18**

7.D. Publicity _____ **18**

7.E. No Proposal Costs Reimbursed _____ **18**

7.F. Contract Terms and Conditions _____ **19**

7.G. Vendor Performance Tracking System _____ **19**

ATTACHMENT A – Required Office of Attorney General Outside Counsel Contract _____ **20**

SECTION 1 – INTRODUCTION

HB 1510 (87th R.S.) directs the creation of the Texas Electric Utility System Restoration Corporation (Corporation) as a special purpose public, nonprofit corporation to provide a lower-cost, supplemental financing mechanism subject to regulation by the Public Utility Commission of Texas (PUCT) and available to electric utilities operating outside of the ERCOT power region. The purpose of the Corporation is to allow eligible electric utilities to obtain timely recovery of system restoration costs through securitization and the issuance of transition or system restoration bonds by an issuer other than the electric utility or a special purpose entity affiliated with the electric utility. HB 1510 is codified as Subchapter J of Chapter 36 of the Public Utility Regulatory Act (PURA).

SECTION 2 – DEFINITIONS

As used in this RFQ, the following terms have the meanings specified:

- 1) **“Business day”** means a day other than: (i) a Saturday or Sunday; (ii) a national holiday under Texas Government Code § 662.003(a); or (iii) a state holiday under Texas Government Code § 662.003(b).
- 2) **“Contractor”** means the person, organization, business entity, or other entity that is selected for the contract contemplated by this RFQ.
- 3) **“May”** means “is authorized to.”
- 4) **“Proposer”** means “a person, organization, business entity, or other entity that submitted a proposal to this RFQ.”
- 5) **“PUCT”** means “the Public Utility Commission of Texas, an agency of the state of Texas.”
- 6) **“Vendor”** means “a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency.”
- 7) **“Vendor Performance Tracking System”** means “the system the Texas Comptroller of Public Accounts is required to provide under Texas Government Code § 2262.055 for evaluating vendor performance.” The Vendor Performance Tracking System is located at: <http://txsmartbuy.com/vpts>

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SECTION 3 – STATEMENT OF WORK

Background. HB 1510 (87th R.S.) directs the creation of the Texas Electric Utility System Restoration Corporation (“Corporation”) as a special purpose public, nonprofit corporation to provide a lower-cost, supplemental financing mechanism subject to regulation by the PUCT and available to electric utilities operating outside of the ERCOT power region. The purpose of the Corporation is to allow eligible electric utilities to obtain timely recovery of system restoration costs through securitization and the issuance of transition or system restoration bonds by an issuer other than the electric utility or a special purpose entity affiliated with the electric utility. HB 1510 is codified as Subchapter J of Chapter 36 of PURA.

Overview. The Contractor must prepare and file all documentation necessary to create the Corporation and obtain federal tax-exempt status for the Corporation. The Contractor must also advise the PUCT on best practices for the operation of the Corporation in a manner consistent with the requirements of HB 1510.

Term. It is the PUCT’s expectation that the Contractor will promptly complete all items in this Statement of Work without unreasonable delay. Proposers should include in their response to this solicitation a timeline outlining when each item identified in this Statement of Work can be completed, based upon the date the PUCT selects the initial directors to manage the Corporation. The term of the contract awarded for this solicitation will be such time that is necessary to complete all items in this Statement of Work, but in no event longer than (2) two years from the date a contract resulting from this solicitation is fully executed. Without limitation, the tasks, duties, and responsibilities of the Contractor will include the following:

3.A. Contractor Qualifications

3.A.1.1. Minimum Contractor Knowledge and Expertise. Proposers must demonstrate knowledge and familiarity with Texas and federal law governing formation of business entities, corporate governance, development of corporate policies, contract drafting, state agency operations, issuance of public securities, conflicts of interest, and tax liability. Proposer personnel performing or overseeing the work described in this Statement of Work must have at least five (5) years of experience practicing law in the subject matter areas described in this paragraph.

3.A.1.2. Certification. Proposers must demonstrate that personnel assigned to undertake the work described in this Statement of Work are licensed attorneys in good standing to practice law in the State of Texas. Proposers must include a statement in their response identifying all instances of disciplinary history, including the outcome, with a state agency regulating the practice of law in any jurisdiction for any attorney who may undertake work described in this Statement of Work. Additionally, proposers must confirm their willingness to comply with the rules policies, directives, and guidelines of the PUCT and of the Attorney General of the State of Texas.

3.B. Formation of Corporation and Operations Documents

3.B.1. Certificate of Formation. Upon the PUCT's initial selection of at least three directors, the Contractor must prepare and file the Corporation's certificate of formation and obtain confirmation that the Corporation has been formed as a Texas nonprofit corporation.

3.B.1.1. Appropriate Directors. The Contractor must provide written recommendations to the PUCT regarding the eligibility criteria for the directors of the Corporation. Specifically, the Contractor must identify minimum qualifications for persons who may serve as directors of the Corporation in light of the statutory functions of the Corporation. The Contractor must also identify disqualifying criteria for persons who may not serve as directors, including the conflict-of-interest provisions identified in paragraph 3.B.3.1. of this Statement of Work.

3.B.2. Bylaws. In consultation with PUCT staff, the Contractor must prepare bylaws of the Corporation that incorporate standard operating provisions for a Texas nonprofit entity and that satisfy the other statutory requirements described in HB 1510. The bylaws must incorporate grounds for the removal of a director that include the conflict-of-interest provisions identified in paragraph 3.B.3.1. of this Statement of Work.

3.B.3. Conflict of Interest Policies. In consultation with PUCT staff, the Contractor must prepare written conflict-of-interest policies to address disqualifying criteria for directors and professionals retained by the Corporation.

3.B.3.1. Directors. The Contractor must prepare a written policy describing conflicts of interest applicable to directors of the Corporation based upon their professional role or personal holdings and the fiduciary obligations of a Corporation director. The conflict-of-interest policy must distinguish between conflicts that require an abstention from a Corporation vote and conflicts that require the removal of a director. The Contractor must also prepare a written conflict-of-interest acknowledgement form to be signed by the directors.

3.B.3.2. Professionals Retained by Corporation. The Contractor must prepare a written policy describing conflicts of interest applicable to professionals that the Corporation may seek to retain to undertake professional services on its behalf. This conflict-of-interest policy must prohibit the Corporation's retention of an individual or firm upon identification of a conflict of interest. The Contractor must also prepare a written conflict-of-interest acknowledgement form to be signed by any retained professional, with appropriate instruction for how to resolve a conflict of interest upon its discovery during any period for which the individual or firm provides services to, or on behalf of, the Corporation.

3.B.4. Compensation and Reimbursement Policy. In consultation with PUCT staff, the Contractor must prepare a written policy describing the compensation, if any, for directors. The policy must describe the terms of reimbursement for any necessary travel associated with director

service. The compensation and reimbursement policy must conform to the funding requirements in Texas Utilities Code § 36.453(c).

3.B.5. Standard Meeting Minutes Form. The Contractor must provide a written template for recording meeting minutes of the Corporation.

3.B.6. Corporate Practices and Requirements Memorandum. The Contractor must prepare a written memorandum describing all necessary activities to keep the Corporation in good standing and to maintain its tax-exempt status. The memorandum should identify best practices for Texas nonprofit entities, actions that may compromise nonprofit or tax-exempt status, and any necessary filing or tax reporting requirements.

3.B.7. Director and Officer Insurance. The Contractor must advise in writing on the benefits and prudence of procuring director and officer liability insurance. The Contractor must recommend appropriate coverage areas and coverage limits for a director and officer liability insurance policy.

3.C. Tax-Exempt Status

3.C.1. Tax-Exempt Status Application. The Contractor must prepare and submit an application to the Internal Revenue Service (“IRS”) to obtain tax-exempt status for the Corporation. The Contractor must identify the appropriate provision of the Internal Revenue Code under which the Corporation may obtain tax-exempt status and submit a corresponding application. The Contractor must assemble and include all necessary materials to present a complete application to the IRS. If the IRS does not grant tax-exempt status to the Corporation, then the Contractor must amend and resubmit the application until such status is authorized. Further, to the extent application must also be made and submitted to the Texas Comptroller of Public Accounts to obtain tax-exempt status, the Contractor must assemble and present all necessary materials to the Texas Comptroller of Public Accounts to obtain such authorization.

3.D. Miscellaneous

3.D.1. Reporting and Routine Advising to PUCT. The Contractor must provide status reports to the PUCT on relevant updates related to the formation of the Corporation and its tax- exempt status. The Contractor must advise the PUCT’s executive management team as necessary or requested by the PUCT to accomplish the items in this Statement of Work. The Contractor must advise the PUCT of any routine considerations related to good corporate operations not addressed in this Statement of Work and incorporate such recommendations into the Contractor’s written deliverables where appropriate.

SECTION 4 – ELIGIBILITY AND EVALUATION CRITERIA

4.A. EEO and HUB Statement

The PUCT is an equal employment opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability in

employment or in the provision of services. This commitment extends to proposers, vendors, and their employees as well.

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

4.B. Minimum Eligibility Requirements

4.B.1. To pass the initial screening criteria, proposals must demonstrate that all of the personnel who will perform or oversee the work, including any subcontractors, have a minimum of five (5) years of experience in the practice areas specified in Section 3, Statement of Work.

Additionally, proposals must:

- meet all deadlines set out in this RFQ;
- follow the appropriate process for submitting proposals (see Section 6 of this RFQ, Required Components and Format);
- include all required components described in this RFQ (see Section 6);
- meet all format requirements set out in this RFQ (see Section 6); and
- provide documentation for each attorney on the proposal team verifying his/her eligibility to practice law in Texas.

4.B.2. Under Texas law, vendors may be barred from participating in state contracts that are subject to Texas Government Code Chapter 2155, Subchapter B (General Purchasing Requirements, Procedures, and Programs). TEX. GOV'T. CODE § 2155.077. If a proposer is barred from participating in state contracts, its proposal will be disqualified and will receive no further consideration.

4.B.3. The PUCT is required to purchase goods and services that provide the best value to the state. TEX. GOV'T. CODE § 2155.074. To that end, the PUCT will review information in the statewide Vendor Performance Tracking System regarding proposers' past performance. Any of the following conditions may result in a proposer being disqualified from consideration for this RFQ:

- having a score of less than a C in the Vendor Performance Tracking System;
- currently being under a corrective action plan through the Texas Comptroller of Public Accounts;
- having repeated negative Vendor Performance Reports for the same or similar reason; or
- having purchase orders that have been cancelled in the previous 12 months for non-performance (for example, late delivery or failing to meet quality standards).

4.C. Evaluation Criteria

The PUCT will make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services described in Section 3, Statement of Work. A description of the categories under which each proposal will be judged, and the percentage of weight given to each category, are as follows:

- **Proposal Substance – 40%**
 - Proposal demonstrates a clear understanding of the objectives, as described in Section 3 – Statement of Work.
 - Proposed approach is both thorough and practical.
 - Proposed approach for meeting objectives is desirable.
 - Conditions included in the proposal are acceptable.
 - Consideration will be given to executable designs, supported by industry experience.
- **Competence and Knowledge – 40%**
 - Competence and experience are demonstrated by the qualifications described in the proposal.
 - Management structure is well-suited to the objectives described in Section 3 – Statement of Work.
 - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3 – Statement of Work.
 - The proposer has the capacity and financial resources to perform the contract and meet deadlines without delay or interference.
 - The proposal demonstrates the team’s qualifications and experience, drawing on lessons learned and best practices.
 - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3 – Statement of Work.
- **Proposed Compensation – 20%**

4.D. Texas Vendor Preference

All other factors being equal, preference will be given to a proposer who meets one or more of the following criteria:

- Proposer is incorporated in Texas;
- Proposer’s principal place of business is in Texas; or
- Proposer has an established physical presence in Texas.

Proposers who may qualify for the Texas Vendor Preference should provide information establishing the applicable criteria as part of the proposal package.

4.E. References

The PUCT may check references as part of the evaluation process. This is a pass/fail criteria and may be conducted at any time between receipt of a proposal and acceptance or rejection of a proposal. Information gained through reference checks can be used as grounds for disqualification of a proposal if the information casts doubt upon the ability of the proposer to successfully meet the objectives of the RFQ. However, any information obtained through a reference check that is discriminatory on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability will not be considered.

SECTION 5 – SCHEDULE AND PROCESS

5.A. Anticipated Schedule

Disclaimer: Dates are subject to change at the PUCT’s discretion. Changes to proposer deadlines will be posted on the Electronic State Business Daily (ESBD) website and the PUCT’s Procurement webpage, along with any other RFQ modifications and addenda. It is the proposer’s responsibility to periodically check the websites prior to submitting a proposal. A proposer’s failure to review additional information posted on the ESBD and PUCT websites will not release the proposer from requirements described in those postings and could result in disqualification of a proposal or additional costs to meet the requirements of the contract should the proposer be selected for the contract.

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

ESBD Website: <https://www.txsmartbuy.com/esbd>

Event

RFQ Release

Last day to submit written questions regarding the RFQ

Deadline for submission of proposals

Post-proposal interviews or presentations, if required

Staff recommendation for selection

Selection approved

Contract period begins

Anticipated Date

July 15, 2024

July 31, 2024, noon CT

August 23, 2024, 10 am CT

August 28 - September 3, 2024

September 5, 2024

September 26, 2024

Upon contract execution

5.B. PUCT Contact Person

Jay Stone, CTCD, CTCM, is the only permitted PUCT point of contact regarding this RFQ. Contact or attempted contact with other PUCT employees, including commissioners and their staffs, may result in a proposer’s immediate disqualification. Proposers will be notified if circumstances require a designated substitute contact for this RFQ.

5.C. Process for Asking Questions

The PUCT will only accept written questions and requests for clarification. Requests must be sent by email to RFPCorrespondence@puc.texas.gov, attention: Jay Stone, CTCD, CTCM. Inquiries and comments must reference RFQ No. 473-24-00009A.

The PUCT aims to answer all questions within two business days after receipt. Answers to all questions will be provided through an addendum posted on the ESBD and agency procurement websites.

5.D. Process for Submitting Proposals

5.D.1. Proposers must submit their proposals by email to RFPCorrespondence@puc.texas.gov before the stated closing date and time. Proposals will not be considered if received in the RFPCorrespondence@puc.texas.gov email inbox after 10 am Central Time, on August 23, 2024.

All required information must be provided at that time. Supplements will only be allowed if information is requested by the PUCT after the closing date of the RFQ.

Jay Stone, CTCD, CTCM, or his designated substitute will file the sealed proposals confidentially in Project Number 56642 with the PUCT's Central Records Division.

5.D.2. Confidential filing is required because this RFQ is conducted using a sealed bid process. Confidential filing does not guarantee confidentiality after the RFQ has ended and a contract has been executed. Any portion of the proposal considered to be confidential after the RFQ has been cancelled or a contract has been awarded (for example, trade secrets) must be marked with the word, "**CONFIDENTIAL**" in all-caps and bold on each page considered to contain confidential information.

5.D.3. Proposers are advised to seek legal counsel regarding the best way to protect any trade secrets or other proprietary information.

5.D.4. For more information about how the PUCT will respond to PIA requests relating to this RFQ, please see Section 7.C. of this RFQ, Public Information Act Notice.

5.E. PUCT's Standard Process for Selecting Vendors

5.E.1. The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually based on the factors of Proposal Substance and Competence and Knowledge, described under Section 4.C. of this RFQ, Evaluation Criteria. Maximum point values will be assigned to each scoring factor according to the percentage of weight given to that factor and evaluators will assign a point value up to the maximum allowed for each factor. The purchaser will calculate scoring for compensation. The compensation score will be calculated using the following formula:

Compensation Score = (Lowest Price / Price of Response Being Evaluated) multiplied by the Maximum Number of Available Points for Compensation. Evaluation team members will not have access to compensation information while they are reviewing and scoring the proposals.

5.E.2. After individual scoring, the evaluation team will email their scoring sheets to the purchaser. The purchaser will review the individual scoring sheets and compile a summary scoring sheet combining all evaluation team scoring and including the compensation scoring to calculate overall scores.

5.E.3. After overall scores are calculated, the evaluation team, with guidance from the purchaser, will then take one of the following actions: recommend selection of a specific proposer, gather more information before selecting a specific proposer, or recommend that the RFQ be withdrawn or reposted.

5.E.4. If the evaluation team needs more information to make a decision, the PUCT may request any of the following from one or more proposers: additional information or clarification, an interview, an oral presentation, or a best and final offer. Additional information, clarification,

interviews, oral presentations or best and final offers will be used to re-score proposals, based on the same criteria used to score the initial proposals, unless different criteria is specified by the purchaser when the additional information is requested.

5.E.5. The PUCT may require selected proposers to participate in conference calls, attend meetings in Austin, Texas, give presentations, or participate in all these activities to provide additional information about their proposals. Any cost associated with any such call, meeting, or presentation will be borne solely by the proposer.

5.E.6. If clarification, presentations, or best and final offers are requested, the evaluation team may request the clarification, presentations, or best and final offers from the top-ranked proposer or proposers only, or all of the proposers, at the discretion of the evaluation team.

5.E.7. Final recommendations will be presented to the Executive Director of the PUCT. The Executive Director may do one of the following: approve the recommended selection in whole or in part, disapprove the recommendation, or defer action on the selection.

5.E.8. The PUCT will begin contract negotiations shortly after the Executive Director approves a recommendation to select a specific proposer. The PUCT may negotiate any portion of any proposal, including: the proposed fee and a final schedule for performance to be incorporated into the contract. However, the terms and conditions contained in the Required Office of Attorney General Outside Counsel Contract found in Attachment A to this RFQ are not negotiable.

5.E.9. The PUCT will notify each proposer of the final action taken upon execution of the contract with the selected proposer.

5.E.10. No questions about the status of the proposals will be answered while proposals are under evaluation.

5.E.11. The PUCT may reject any and all proposals, amend this RFQ, or cancel this RFQ at any time. After the proposal due date, the PUCT will only notify proposers who submitted a proposal prior to the proposal submission deadline of amendments to the RFQ.

SECTION 6 – REQUIRED COMPONENTS AND FORMAT

6.A. Components

Proposals must include all required attachments and certifications. The PUCT will not accept attachments or certifications submitted after the proposal deadline. Proposals that do not include all required information will be considered non-responsive and will be disqualified.

Proposals must include the contents described in 6.A.1 through 6.A.10 with each section clearly defined on a table of contents page.

6.A.1. Statement of the Requirements

In this section, each proposer must succinctly state its understanding of the RFQ's requirements and describe how it would perform the tasks described in Section 3, Statement of Work.

6.A.2. Competence and Knowledge

Each proposer must provide a detailed work plan to demonstrate how it intends to fulfill the requirements identified in Section 3, Statement of Work. The proposal must include an organizational chart identifying functions and reporting relationships of the personnel who will be assigned to this work. The proposer should also describe any prior experience proposer's organization has in providing similar services.

6.A.3. Qualifications

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

6.A.4. Compensation

Each proposer must propose pricing to provide the services identified in Section 3, Statement of Work.

Compensation for the services identified in Section 3, Statement of Work must be proposed as a firm fixed price or hourly rate. The proposal must differentiate the hourly rates by job classification (eg., associate attorney, junior partner, senior partner).

The proposal must include detailed information that establishes the basis for the price proposed.

Unless otherwise approved in writing by the PUCT, payments will be made based upon the invoicing and payment terms of the resulting contract. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution.

Proposer must demonstrate how elements of the price correspond to elements of the proposed work plan.

6.A.5. References

Each proposer must provide at least three references. Proposers must include a phone number and email address for each reference.

The PUCT prefers references from clients for whom the proposer has performed similar work, including other state commissions or boards.

Proposers must not use the PUCT or any individuals employed by the PUCT as a reference.

6.A.6. Conflicts Statement

Proposers must be neutral and impartial. No entity that has a direct interest in the PUCT's regulation, other than as a consumer of electric, telecommunication, water, or sewer service in the State of Texas, may submit a proposal. Proposers must not have a direct financial interest in the provision of electric, telephone, water, or sewer service in the state of Texas., nor in the lease, sale, installation, or operation of on-site electric generation or battery storage equipment. Additionally, proposers should be aware that the chosen contractor will be disqualified from applying for a loan or grant that is the subject of this RFQ.

Proposers having a conflict of interest, as determined by the PUCT, will not be eligible for contract award. Proposers may also be disqualified if there are facts that would create an appearance of impropriety, even if no actual conflict exists.

The PUCT will determine whether a conflict of interest or an appearance of impropriety exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict or an appearance of impropriety exists.

The requirements for the conflicts statement are as follows:

- It must be **signed and notarized** by the highest-ranking officer of proposer's entity having responsibility for vetting corporate conflicts of interest.
- It must identify any personal or business relationships of proposers, including all employees and subcontractors of proposers, with: any electric, telecommunications, water, or sewer utility, or any utility affiliate operating in Texas; any entity having a pending application at the PUCT to enter the Texas retail electric market, telecommunications market, water utility market, or sewer utility market; and any entity likely to have a direct interest in any of the loan or grant programs that are the subject of this RFQ. It must identify the extent, nature, and time aspects of those relationships.
- If a proposer does not have any known or potential conflict of interest or appearance of impropriety, the conflicts statement must include a statement that there is no known or potential conflict of interest or appearance of impropriety. Failure to provide either a statement describing potential conflicts of interest or appearances of impropriety or a statement that no potential conflict or appearance of impropriety exists will automatically disqualify the proposer.
- The conflicts statement must address how the proposer intends to address any known conflicts of interest or appearance of impropriety.
- The conflicts statement must address how the proposer intends to ensure that no interest may arise as a result of its activities or those of its parent, affiliate, or other related entity that will conflict with the proposer's duty should it be selected to provide the services described in Section 3, Statement of Work.
- The conflicts statement must identify a proposer's lobbyists who are registered or required to register with the Texas Ethics Commission and their compensation. The conflicts statement must also describe any involvement the proposer's lobbyists will have in connection with this engagement or electric utility, telecommunication utility, water utility, or sewer utility legislation or policy.
- The conflicts statement must identify any owner, executive, board member, employee, or subcontractor of proposer who has been employed by the PUCT or another state agency in Texas fewer than four years ago. If any individual is identified under this provision, the conflicts statement must disclose: 1) the former PUCT or state agency employee's name and current position with proposer; 2) the name of the state agency; 3) the nature of the

previous employment with the state agency; and 4) the dates the employment ended with the state agency and began with proposer. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ these individuals under some circumstances. *See* Texas Government Code § 669.003.

- The conflicts statement must certify either that the proposer does not employ an individual who has been employed by the PUCT or another agency of the State of Texas at any time during the two years preceding the submission of the proposal or that it has disclosed in its proposal the following: (i) the nature of the previous employment with the PUCT or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ certain individuals under some circumstances. *See* Texas Government Code §§ 2254.033 and 2252.901.
- If the circumstances described by a proposer change or additional information is obtained subsequent to the submission of proposals, the proposer must supplement its conflicts statement as soon as reasonably possible upon learning of any change to their statement. If a supplement to the conflicts statement is required after the deadline for submission of proposals, the supplement is exempt from the requirement that all proposal documents must be submitted before the deadline in order for the proposal to be considered.
- The PUCT encourages proposers to provide complete disclosure of any matters that might be considered a conflict of interest or appearance of impropriety. The PUCT may consider completeness of disclosure in evaluating whether a conflict of interest or an appearance of impropriety exists.

6.A.7. Historically Underutilized Business (HUB) Certification and HUB Subcontracting Plan (HSP)

Any proposer that is HUB certified by the Statewide Procurement Division (SPD) of the Texas Comptroller of Public Accounts or one of its predecessors must submit a copy of its HUB certificate.

Additionally, the PUCT has determined that subcontracting opportunities may be available under this contract. Therefore, all proposers, including State of Texas certified HUBs, must complete and submit a State of Texas HSP with their proposal if the total dollar amount of the proposal response is \$100,000 or more.

Proposers can find HSP forms and instructions on the Texas Comptroller of Public Account's website at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

Responses that do not include a completed HSP will be rejected as required by Texas Government Code § 2161.252(b).

6.A.8. Certifications

Each proposal must contain a signed statement with the following certifications:

- The proposer has made a good faith effort to ensure all statements and information proposer submitted in response to this RFQ are current, complete, and accurate. The proposer represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a proposal with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract.
- The proposer has not given nor offered to give and does not 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 this proposal.
- The proposer is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- The proposer, the firm, corporation, partnership, institution, or other legal entity represented by the proposer, and anyone acting for such a firm, corporation, partnership, institution, or other legal entity, have not, in connection with this RFQ:
 - Violated the antitrust laws of this state or federal antitrust laws;
 - Communicated directly or indirectly the bid made to any competitor or other person engaged in such line of business; or
 - Otherwise violated 15 U.S.C. §1, *et. seq.*, or Texas Business and Commerce Code § 15.01, *et.seq.*
- Under Texas Government Code § 2155.004, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

A proposer is ineligible to receive a contract award if the proposer is “ a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.” *See* Texas Government Code § 2155.004(a).

- The proposer is in compliance with Texas Government Code § 669.003, relating to contracting with the current or former executive head of a state agency.
- Under Texas Government Code §§2155.006 and 2261.053, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate.

A proposer is ineligible to receive a contract award if the proposer has violated certain laws or been subject to certain penalties in connection with hurricane relief, recovery, or reconstruction efforts. *See* Texas Government Code §§2155.006 and 2261.053.

- Under Texas Family Code § 231.006, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive payment under the proposed contract and acknowledges that any contract resulting from this proposal may be terminated and payment may be withheld if this certification is inaccurate.

A child support obligor who is more than 30 days delinquent in paying child support, or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent, is not eligible to receive payments from state funds under a contract to provide property, materials, or services. *See* Texas Family Code § 231.006(a).

- If a proposer includes a Texas address in its proposal, the proposer must certify whether or not it qualifies as a Texas Resident Bidder, as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.
- Proposer represents and warrants that it is not aware of any court or government agency actions, proceedings or investigations pending or threatened against proposer or any of the individuals or entities included in the response within the five calendar years immediately preceding the submission of the proposal that would or could impair respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the PUCT's consideration of the proposal. If proposer is unable to make the preceding representation and warranty, then proposer instead represents and warrants that it has included as a detailed attachment in its proposal a complete disclosure of any such court or governmental agency actions, proceedings or investigations. In addition, proposer represents and warrants that it will notify the PUCT in writing within five business days of any changes to the representations or warranties in this clause and understands that failure to timely update the PUCT may result in the proposer's disqualification at the PUCT's sole discretion, or if during the performance of the contract, will constitute a breach of contract and may result in immediate termination of the contract for cause at the PUCT's sole discretion.
- Pursuant to Texas Government Code § 2275.0102, Proposer certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code § 2275.0103; or (ii) headquartered in any of those countries.

6.A.9. Evidence of Financial Capability

Proposer must provide evidence of financial capability. The preferred evidence of financial capability is an audited financial statement, if proposer has a current audited financial statement available or if it is practicable to obtain one for the proposal. If no audited financial statement is available, proposer must demonstrate its financial capability in whatever manner it deems appropriate. Evidence of financial capability will be considered in evaluating the competence of the proposer.

6.A.10. Other Required Items

- Any proposer incorporated in Texas must include a copy of its current franchise tax Certificate of Good Standing, issued by the Texas Comptroller of Public Accounts and the corporation's charter number, issued by the Texas Secretary of State's Office.
- Each proposer must provide its 9-digit Federal Employer's Identification Number (EIN) or its 5-digit State of Texas Vendor's Identification Number (VIN).
- Each proposer must provide the name and social security number of each of the following, as applicable: an individual or sole proprietor; or each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the proposal.

Proposers may decline to provide social security numbers at the time of submission but will be required to provide the information before the contract is executed.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of each applicable SSN is required under Texas Family Code §§ 231.006(c) and 231.302(c)(2). The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Texas Family Code § 231.302(e).

6.B. Format Requirements

6.B.1. Information Sheet – The first page of the proposal submission must be an information sheet that clearly states: the name of the proposer, the name address, and telephone number of the proposer's point of contact, the project number, and the RFQ title and number. The information sheet will be the only portion of the proposal that is not filed under seal. Information sheets must be filed publicly in Project No. 56642.

6.B.2 Copies and Price Information – Proposers must submit four versions of their proposals: one PDF and one Word version with the compensation component, and one PDF and one Word version without the compensation component. The PDF copy with the compensation component must be clearly marked "Original" and include all required signatures and notarized statements.

Price information must be excluded from one PDF and one Word version. This requirement is to allow the evaluation team to review proposals for the evaluation factors of Proposal Substance and Competence and Knowledge only. Each proposal will separately be given a score for pricing and that score will be applied to the scoring matrix to ensure that price does not inadvertently influence the evaluation of the other factors.

The copies of the proposal must be identical to the original except for the omission or redaction of the price information and the Word rather than PDF file format.

6.B.3. Proposers are prohibited from using the Texas State Seal or the PUCT Seal in or on the proposal.

6.B.4. Proposals must not contain any extrinsic items, such as promotional items or other things not contemplated in this Request for Proposals.

6.B.5. Page Limit – Proposals must be limited to 100 pages, including all attachments and certifications, but excluding financial capability submittal or writing sample (if required). The PUCT may reject any proposals longer than 100 pages without review. In any case, evaluation team members will not be provided any pages past the 100th page.

SECTION 7 – CONDITIONS

7.A. Irrevocable Offer

Proposals may be withdrawn in writing before the deadline for receipt of proposals. After the deadline, a proposal becomes an irrevocable offer to provide the services described in Section 3, Statement of Work, with the terms and conditions specified in Attachment A at the price proposed, for the shorter of: a period of 90 days from the RFQ closing date or until a contract resulting from this RFQ is signed. The PUCT will not return withdrawn proposals.

7.B. Proposals are the Property of the PUCT

All proposals and copies of proposals, as well as any best and final offer, and any records provided to the PUCT by the proposer associated with the evaluation of the proposal, will become the property of the PUCT after receipt and will be retained in accordance with the PUCT's records retention schedule.

7.C. Public Information Act Notice

Following the award of a contract, all proposals are public information and subject to release. If the PUCT receives a request for any information submitted to the PUCT in connection with this RFQ, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552). This includes notifying proposers and the Office of the Attorney General if information that the PUCT knows proposer considers to be confidential is requested under the Texas Public Information Act. The PUCT assumes no obligation to assert legal arguments on behalf of a proposer. The PUCT may release portions of proposals and other information provided by a proposer without notifying the proposer if the information is not conspicuously marked "confidential" on each page.

A copy of the contract resulting from this RFQ will be posted on the PUCT's public website. Information in PUCT contracts is public information unless it is made confidential by law. *See* Texas Government Code § 552.022(a)(3).

7.D. Publicity

Proposers are prohibited from making any public disclosures or news releases pertaining to this RFQ, any resulting contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFQ or resulting contract. This prohibition may only be waived by prior written approval of the PUCT for the specific disclosure or news release.

7.E. No Proposal Costs Reimbursed

Neither the PUCT nor the State of Texas will reimburse any proposer for any costs related to: preparing a response to this RFQ preparing a best and final offer, providing additional information

requested as part of the evaluation of proposals, or making any presentation requested as part of the evaluation of proposals.

7.F. Contract Terms and Conditions

Any contract resulting from this RFQ will use the Required Office of Attorney General Outside Counsel Contract found in Attachment A to this RFQ. No changes to the provisions of the Required Office of Attorney General Outside Counsel Contract may be negotiated. **Proposers must include a certification in their proposals that they agree to abide by all the terms and conditions contained within the Required Office of Attorney General Outside Counsel Contract.**

7.G. Vendor Performance Tracking System

At the end of any contract resulting from this RFQ, the PUCT will input required information into the Vendor Performance Tracking System regarding the contractor's performance and whether the contractor satisfied the best value standard for this contract. This information is public and other state agencies seeking goods or services are required, under most circumstances, to use the information in the Vendor Performance Tracking System to determine whether or not a particular vendor will meet the best value standard for the purchase of the goods or services.

ATTACHMENT A – Required Office of Attorney General Outside Counsel Contract