

**TEXAS STATE UNIVERSITY SYSTEM
REQUEST FOR QUALIFICATIONS FOR
OUTSIDE COUNSEL**

RFQ ISSUE DATE: June 23, 2015

**PROPOSALS DUE: July 24, 2015
3:00 PM CDT**

PURPOSE

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 ("System") solicits responses to this Request for Qualifications ("RFQ") from law firms and attorneys interested in providing outside counsel services to the System and its component institutions in the area(s) of: intellectual property; real estate; tax; immigration; Federal Communications Commission (FCC laws and regulations); wills, trusts and estates; health; public finance and bond issuance; oil and gas, mineral interests, and/or utilities matters; and/or financial law.

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 below, so that the System Office of General Counsel, 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, 2015 to August 31, 2019.

The System invites responses to this RFQ from qualified law firms and attorneys for the provision of legal services under the direction and supervision of the System's Office of General Counsel. The number and length of contracts resulting from this RFQ and all procedures relating to such contracts are within the discretion of the System, contingent upon approval of the 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*). A bidding firm should familiarize itself with the requirements of those administrative rules, and review the Outside Counsel Contract template promulgated by the OAG and the memorandum issued by the OAG in June 2104 regarding Outside Counsel Rules and Templates, copies of which are included with this posting.

To the extent that Senate Bill No. 20 (84th Texas Legislative Session) compels any additional reporting or contracting requirements, the System expects full cooperation from bidding firms and 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 Texas State University 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.

THE SYSTEM

The System was created by the Texas Legislature in 1911; its institutional components include Lamar University, Sam Houston State University, Sul Ross State University (including Sul Ross Rio Grande College), Texas State University, Lamar Institute of Technology, Lamar State College – Orange, and Lamar State College – Port Arthur.

The System is governed by a nine-member Board plus one non-voting student regent. Regents are appointed by the Governor with consent of the Senate for six-year, staggered terms. The student regent is appointed by the Governor for a one-year term. The current members of the Board are: Jaime Garza, D.D.S., M.D. Chairman; Rossanna Salazar, Vice Chairman; Charlie Amato; Veronica Edwards; David Montagne; Vernon Reaser; Bill Scott; Alan Tinsley; and Donna Williams. The current student regent is Ana Sandoval. Brian McCall, PhD, is Chancellor of the Texas State University System and Secretary to the Board of Regents.

SCOPE OF SERVICES

Responses to this RFQ should be based upon performance, under the direction of the Vice Chancellor and General Counsel, of the following tasks:

Intellectual Property

- (1) Assisting in making presentations and required submissions and obtaining approval of patents and other intellectual property.
- (2) 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.
- (3) Attending meetings as requested.
- (4) Preparing patents, licensing agreements, and other such documents.
- (5) Representing the System and its component institutions in presentations and proceedings involving patent applications.

(6) Rendering advice to the System and its component institutions on intellectual property matters.

(7) Assisting on other matters necessary or incidental to the intellectual property operations of the System and its component institutions.

Real Estate

(1) Preparing and reviewing contracts and other documents intended for the acquisition, purchase, sale, or lease of real estate.

(2) Advising the System and its component institutions on real estate matters.

Tax

(1) 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.

(2) Preparing and reviewing tax returns and information submitted to the Internal Revenue Service and to state taxing authorities.

(3) Representing the System and its component institutions before federal, state and/or other tax agencies.

(4) Advising as to creation and structuring of deferred compensation instruments.

Immigration

(1) Representing the System's component institutions in matters relating to immigration and employment.

(2) 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.

Federal Communications Commission (FCC) Law

(1) Advising and representing the System and its component institutions in matters related to radio, television and other mass communication outlets before the Federal Communications Commission and other state and federal agencies.

(2) Preparing and reviewing documents related to licenses, permits, and fees associated with the System's component institutions mass communications outlets.

Wills, Trusts and Estates

(1) 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.

(2) 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.

Health Law

(1) 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, and the review of health insurance payor contracts.

Public Finance and Bond Issuance

(1) Preparing all resolutions and other instruments pursuant to which bonds will be authorized, sold and delivered in consultation with the System Board of Regents; the Underwriters with respect to the bonds, if any; the Financial Advisor(s); and the offices of the System and its component institutions.

(2) Preparing any trust indenture or trust agreements authorizing or securing bonds.

(3) Attending meetings of the System Board of Regents to the extent required or requested with reference to authorization and issuance of bonds.

(4) Attending meetings with prospective bond purchasers or rating agencies to the extent required or requested.

(5) Attending meetings of the State Bond Review Board to the extent required or requested.

(6) 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.

- (7) Supervising the execution of bonds and delivery thereof to purchasers.
- (8) 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.
- (9) Interpreting bond covenants and providing public finance-related advice when requested by the System.
- (10) 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.
- (11) To the extent requested, advise the System with respect to the System's compliance with its undertakings under Rule 15c2-12 or any other applicable disclosure rule, promulgated by the Securities and Exchange Commission including assisting with any event notices.

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

- (1) 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.
- (2) Assisting, advising, and representing the System and its component institutions in negotiations to procure natural gas and other utilities.

Financial

- (1) Advising and representing the System and its component institutions in complex 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.
- (2) Preparing and reviewing documents related to corporate and financial matters involving the System, its component institutions, and their affiliated private support organizations.
- (3) Assisting and representing the System and its component institutions in negotiations related to the matters stated in this section.

SCHEDULE OF EVENTS

The System anticipates that the outside counsel RFQ process will proceed in accordance with the following schedule:

June 23, 2015 RFQ Issued

July 24, 2015 **DEADLINE FOR SUBMISSION OF PROPOSALS** (3:00 PM)

Evaluation Completed by August 4, 2015

Selection of firm(s) to receive initial contracts August 7, 2015

The System reserves the right to change this schedule. Notice of any changes will be posted on the System's website, but under no circumstances will the deadline for submission of proposals be earlier than 30 days from the date of this posting.

FORM OF RESPONSE

1. Overview of the Firm

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

2. Qualifications

Provide a brief narrative of your firm's work since **July 2013** assisting **higher education** clients in the area(s) of law for which you are responding.

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. Business Practices

A. Participation of minorities and women.

(1) Describe your previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-counsel relationship. Please describe your firm's approach to working with co-counsel, including level of effort, division of duties and providing opinions.

(2) 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. Specify whether the firm has adopted formal Equal Employment Opportunity and Affirmative Action policies, and provide a summary of the firm's hiring and promotion statistics for women, minority and disabled veteran attorneys from January 2012 to date. Download and complete **EXHIBIT A**, the grid describing workforce composition of your firm, which is included with this posting, and return it as part of your proposal.

5. Conflicts of Interest

Please 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 adverse 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.

6. References

Please provide names, addresses, and phone numbers of three references.

PROPOSAL MODIFICATION

Any response to this RFQ may be modified or withdrawn at any time prior to the proposal due date. No changes will be allowed after the expiration of the proposal due date. The System reserves the right to make amendments to the RFQ by giving written notice to all firms who receive the RFQ or posting notice thereof as indicated in the RFQ Notice published at www.tsus.edu.

TIME SCHEDULE AND SUBMISSION DIRECTIONS

Be certain to attach a completed EXHIBIT A (RFQ), which is part of this posting and attach it to your proposal.

Proposals are due no later than **3:00 PM CDT, July 24, 2015**. Proposals may be submitted electronically or by mail. If you submit your proposal electronically, email it to: therese.sternenberg@tsus.edu and enter the phrase **PROPOSAL – OUTSIDE COUNSEL** in the subject line of the email message. If you submit your proposal by mail, please mail six (6) copies

to: Fernando Gomez, Vice Chancellor and General Counsel, Texas State University System, 208 East 10th Street, Suite 600, Austin, Texas 78701.

If you submit your proposal by mail, mark the outside of the envelope or shipping container as "**PROPOSAL - OUTSIDE COUNSEL.**" All proposals become the property of the System. Proposals must set forth accurate and complete information as required by this RFQ. Oral instructions or offers will not be considered. **CONTACT WITH BOARD MEMBERS, OR SYSTEM OR COMPONENT INSTITUTION OFFICIALS, REGARDING THIS RFQ IS EXPRESSLY PROHIBITED AND WILL RESULT IN DISQUALIFICATION OF YOUR FIRM FROM CONSIDERATION.**

The System's staff will review the proposals.

CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION

The System has the sole discretion and reserves the right to reject any and all responses to this RFQ and to cancel the RFQ if it is deemed in the best interest of the System to do so. Issuance of this RFQ in no way constitutes a commitment by the System to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFQ or in the production of a contract for legal services. Firms responding 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 a 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 General Counsel Division of the Office of the Attorney General.

COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFQ or any supplemental information required to clarify your original response shall be the sole responsibility of, and shall be borne by, your firm.

RELEASE OF INFORMATION AND OPEN RECORDS

Information submitted in response to this RFQ shall not be released by the System during the proposal evaluation process, unless required by an Attorney General ruling or court order. After the evaluation process is completed, all proposals and the information contained therein may be subject to public disclosure under the *Public Information Act*, Texas *Government Code*, Chapter 552.

GENERAL SCOPE OF SERVICES APPLICABLE TO ALL OUTSIDE COUNSEL

Upon approval of the OAG, outside counsel may represent the System and its component institutions in court and other legal proceedings.