

**PUBLIC UTILITY COMMISSION OF TEXAS**

**REQUEST FOR PROPOSALS**

**FOR ASSISTANCE IN REVIEWING THE  
CHANGE IN CONTROL FILING OF  
ENERGY FUTURE HOLDINGS CORPORATION**

**Authorized by**

**Chapter 39 of the  
Public Utility Regulatory Act, Tex. Util. Code Ann.  
(West 2016)**



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

**Closing Time and Date – 2pm, Central Time**

**October 07, 2016**

**Project No. 46244  
RFP Number 473-16-001681  
NIGP CLASS ITEM  
918-32**

## TABLE OF CONTENTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
1	INTRODUCTION	3
2	ELIGIBLE PROPOSERS	3
3	AUTHORITY	4
4	ANTICIPATED SCHEDULE OF ACTIVITIES	4
5	QUESTIONS	4
6	PROPOSAL REQUIREMENTS	5-6
7	PROPOSAL CONTENTS	6-9
8	CONDITIONS	9-10
9	SELECTION CRITERIA	10-11
10	REVIEW OF PROPOSALS	11
11	CONTRACT TERM	11
12	TEXAS PUBLIC INFORMATION ACT	11

<u>ATTACHMENTS</u>	<u>TITLE</u>	<u>PAGE</u>
A	STATEMENT OF WORK	12-14
B	SAMPLE CONTRACT TERMS	15-27
C	HUB SUBCONTRACTING PLAN INFORMATION	28

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REQUEST FOR PROPOSALS NO. 473-16-001681**

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**SECTION 1 – INTRODUCTION**

The Public Utility Commission of Texas (PUCT or Commission) is issuing a Request for Proposals (RFP) for an entity to provide technical consulting services as a consulting expert, and possibly as a testifying expert, in order to assist the PUCT in its review of the change in control filing(s) that Energy Future Holdings Corporation (EFH) may file with the PUCT in 2017 through 2021, as well as any other proceedings related to the EFH change of control filing. At a minimum, the entity will assist the Commission in discharging its mandate to determine whether the transaction is consistent with the public interest pursuant to the Public Utility Regulatory Act (PURA) sections 39.262 and 39.915, as well as any other legal and/or factual determinations that are necessary as part of the Commission's review of the EFH transaction.

The work shall include reviewing and evaluating EFH's change in control filing and participating as necessary in the contested case proceeding on behalf of Commission Staff (Contested Case Services). This work shall begin immediately upon contract execution and shall end after the contested case proceeding(s) and any subsequent compliance proceedings are concluded at the PUCT, which will likely be some time in 2017.

**SECTION 2 – ELIGIBLE PROPOSERS**

Each proposer must demonstrate experience in the review of acquisitions, mergers, or financial restructurings of regulated electric utilities as well as experience in bankruptcy matters and the effect on the electric utility of actual or potential liabilities at a holding company level. Proposers should also demonstrate their experience in connection with reviewing proposed financing, the proposed organization of the resulting company, and codes of conduct or other measures that ensure non-discriminatory service from a regulated entity. Specific areas of experience and competence include acquisition financing, company organization (including legal and management issues), business separation and codes of conduct, and financial independence.

In connection with Contested Case Services, proposers must demonstrate experience in participating in proceedings regarding regulated entities, including experience in providing testimony, participating in the discovery process, and all other aspects of contested proceedings.

Proposers **must** have a minimum of 5 years' experience similar to that described in Attachment A, Statement of Work (SOW). An entity or company with fewer than 5 years' experience is eligible to submit a proposal if key personnel on the proposal team (including subcontractors) have the minimum required experience. Proposers who do not meet this requirement are not eligible for award.

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

### **SECTION 3 – AUTHORITY**

This Request for Proposals is issued pursuant to the PUCT’s authority under Chapter 39 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (West 2016).

### **SECTION 4 – ANTICIPATED SCHEDULE OF ACTIVITIES**

RFP Release	9/09/2016
Last day to submit written question(s) regarding the RFP	9/23/2016, 5:00 p.m. CT
Deadline for submission of proposals	10/07/2016, 2:00 p.m. CT
Post-proposal interviews or presentations, if required	10/14/2016
Staff Recommendation for selection	10/21/2016
Selection approved	November 2016
Contract negotiations	November 2016
Contract period expected to begin	End of November 2016

**Questions submitted to the PUCT will be answered within two business days after receipt and answers to all questions will be provided through an addendum posted on the Electronic State Business Daily (ESBD) website.**

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

### **SECTION 5 – QUESTIONS**

The PUCT will accept **only written** questions and requests for clarification by e-mail to the attention of the personnel below. Inquiries and comments must reference RFP No. 473-16-001681.

Direct questions about the RFP to:

Jay Stone, CTPM, CTCM

[RFPCorrespondence@puc.texas.gov](mailto:RFPCorrespondence@puc.texas.gov)

**Please note: Mr. Stone is the only permitted point of contact. Contact or attempted contact with other PUCT employees, including Commissioners and their staffs, may result in a proposer’s immediate disqualification.**

The PUCT will post additional information, responses to written questions, RFP modifications, and addenda on the PUCT and ESBD websites. It is the responsibility of interested parties to periodically check the websites for updates to the procurement prior to submitting a bid. The proposer’s failure to periodically check the ESBD and the PUCT’s websites will in no way release the selected vendor from requirements described in addenda or additional information, which could result in additional costs to meet the requirements of the contract.

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

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

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

## SECTION 6 – PROPOSAL REQUIREMENTS

Proposers must file their sealed proposals in Project No. 46244 at PUCT Central Records before October 07, 2016, 2:00 p.m., CT. Proposals submitted in response to this request must meet all requirements in this RFP to be considered for selection. Proposals delivered by facsimile or electronic mail will not be accepted under any circumstances.

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

### Delivery Address

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

### Mailing Address

Central Records Division  
Project No. 44710  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, TX 78711-3326

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

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

### **6.1 Number and Appearance**

The proposal submission shall include an information sheet that clearly states the name of the proposer; the name, address, and telephone number of the proposer's point of contact; the project number; and the RFP title and number. The information sheet must be the first page before the sealed proposal submission. Upon receipt of proposals, the PUCT will file the information sheets in Project No. 46244. All parts of the proposal following the information sheet shall be submitted in an envelope or other sealed container that is marked with the proposer's name and "Project No. 46244: CONFIDENTIAL."

Proposers shall submit one (1) copy of their proposal clearly marked "Original" with an original signature and 4 additional hard copies of their proposal. Proposers shall also submit one (1) electronic copy of the complete proposal on a compact disk or flash drive in Microsoft Word. **Information required by Section 7.4 Compensation shall be included only in the original and electronic copy. No price information shall be included in any other portion of the response.** The 4 hard copies of the proposal shall be identical to the original except for omitting the price information.

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

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

Proposals shall be bound in a three-ring binder.

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

Proposals shall be free of any extrinsic items.

**Proposals are limited to 100 pages, including all attachments and certifications, but excluding section tabs or dividers. Proposals longer than 100 pages may be subject to immediate rejection without review. Evaluation team members will not read past the 100th page.**

## **SECTION 7 – PROPOSAL CONTENTS**

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

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

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

### **7.2 Competence and Knowledge**

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

### **7.3 Qualifications**

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

### **7.4 Compensation**

Each proposal also shall include a fee to provide the Contested Case Services identified in the Attachment A. Proposers should structure the proposed fee as an hourly fee for professional services.

If a proposer believes that additional work is required to meet the PUCT's goals, the proposer should identify the additional work and the associated price to accomplish that additional work. The PUCT requires proposers to demonstrate how elements of the price correspond to elements of the proposed work plan.

### **Please note:**

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

### **7.5 References**

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

## **7.6 Statement on Potential Conflicts of Interest and Prohibited Relationships**

Proposers must be neutral and impartial, must not advocate specific positions to the PUCT, and must not have a direct financial interest in the provision of electric, telephone, water or sewer service in the state of Texas. Proposers (including all employees and sub-contractors of proposers) must identify any personal or business relationships with any electric, telecommunications, water or sewer utility or utility affiliate operating in Texas or any company participating in, or having a pending application at the PUCT to enter, the Texas retail electric market, telecommunications market, or water or sewer utility market. Proposers must identify the extent, nature, and time aspects of those relationships. Entities having a conflict of interest, as determined by the PUCT, will not be eligible for contract award.

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

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

Each proposer shall address how the proposer intends to ensure that no interest arising or potentially arising as a result of its activities or those of its parent, affiliate, or other related entity will conflict with proposer's duty should it be selected to provide the services described in Attachment A, SOW.

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

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

## **7.7 Historically Underutilized Business Certification and Required HUB Subcontracting Plan**

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

In accordance with Texas Government Code Section 2161.252, the PUCT has determined that

subcontracting opportunities are probable under this contract. Therefore, proposers, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response if the total dollar amount of the proposal response is greater than \$100,000. Proposers must complete and submit their signed HUB Subcontracting Plan (HSP) with their solicitation response.

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

### **7.8 Required Certifications**

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

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

### **7.9 Other**

Proposer shall provide an audited financial statement that demonstrates proposer is financially capable and possesses sufficient resources to sustain a project of this size throughout the duration of the contract.

If incorporated in Texas, proposer shall attach to the proposal a current franchise tax Certificate

of Good Standing, issued by the Texas State Comptroller's office.

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

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

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

## **SECTION 8 – CONDITIONS**

- 8.1** All proposals and copies of proposals become the property of the PUCT upon receipt.
- 8.2** The PUCT reserves the right to reject any and all proposals, to amend this RFP, and/or cancel this RFP at any time. After the proposal due date, amendments to the RFP shall be sent only to proposers who submitted a proposal.
- 8.3** Neither the PUCT nor the State of Texas shall reimburse any proposer for any costs related to preparing a response to this RFP.
- 8.4** The PUCT reserves the right to negotiate all or portions of any proposal tentatively selected for award, including the proposed fee. The PUCT may request a best and final offer. The PUCT may request an oral presentation or other additional information from one or more proposers.
- 8.5** Proposers understand and agree that no public disclosures or news releases pertaining to this RFP, any subsequent contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFP or subsequent contract shall be made without prior written approval of the PUCT.
- 8.6** Proposers understand that any proposal may be withdrawn in writing before the deadline for receipt of proposals. The PUCT will not return withdrawn proposals. Proposers further agree that any proposal that is not withdrawn shall constitute an irrevocable offer to provide the services set forth in Attachment A, SOW, for the shorter of: a period of 90 days from the RFP closing date or until the PUCT has made a selection.
- 8.7** The PUCT reserves the right to seek proposal clarification from any proposer to assist in making decisions. Conference calls and/or a meeting and presentation by selected proposers may be called by the PUCT and held in Austin to obtain further information. Any cost incurred by the proposer for the meeting and presentation shall be borne solely by the proposer and the presentation shall become the property of the PUCT.
- 8.8** Section 2155.077 of the Texas Government Code provides that a vendor may be barred from participating in state contracts that are subject to Subchapter B, General Purchasing Requirements, Procedures, and Programs including contracts for which purchasing authority is delegated to a state agency. If a proposer is barred from participating in state contracts, its proposal shall be disqualified and shall receive no further consideration.
- 8.9** For each purchase of goods or services for which a state agency is required to use the best value standard, the state agency is required to input into the statewide vendor tracking system information about whether the vendor satisfied that standard. At the end of the contract, the PUCT shall input the required information about the contractor's

performance. Likewise, when PUCT is evaluating proposals, each proposer's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code Sections 2155.074, 2155.075, 2156.007, and 2157.125.

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

- 1) Having a score of less than 90% in the Vendor Performance System;
- 2) Being currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA);
- 3) Having repeated negative Vendor Performance Reports for the same or similar reason;  
or
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (e.g. late delivery, etc.).

Contractor performance information is located on the CPA web site at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/).

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

## **SECTION 9 – SELECTION CRITERIA**

The PUCT shall make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services described in Attachment A, SOW, as indicated in the table below. The criteria are listed in the order of importance to the PUCT.

### **A. Proposal Quality 30%**

1. Clear understanding of Statement of Work
2. Thoroughness and practicality of approach
3. Clarity regarding proposal objectives and quality of proposed approach for meeting those objectives
4. Creativity and balancing of complex issues

### **Competence and knowledge 40%**

1. Demonstrated competence and experience
2. Management Structure
3. Assigned staffing qualifications

### **B. Proposed Compensation 30%**

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

## **SECTION 10 – REVIEW OF PROPOSALS**

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

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

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

The PUCT will begin contract negotiations shortly after notification. The PUCT's standard contract terms are found in Attachment B. The successful proposer may offer changes to these terms or additional terms in their proposal, but the PUCT may reject them in our sole discretion. The parties will negotiate a final schedule for performance that will be incorporated into the final contract.

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

## **SECTION 11 – CONTRACT TERM**

The contract shall begin on December 1, 2016, and shall continue in effect until November 30, 2020, unless terminated earlier as provided under the terms of the contract.

## **SECTION 12 – TEXAS PUBLIC INFORMATION ACT**

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

If the PUCT receives a request for any information submitted to the PUCT in connection with this RFP, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552) by notifying proposers and the Office of the Attorney General. The PUCT assumes no obligation for asserting legal arguments on behalf of proposers. The PUCT may release parts of proposals that are **not** marked confidential without notifying the proposer.

**ATTACHMENT A**  
**STATEMENT OF WORK**

The contractor will provide technical consulting services related to the change in control filing that the PUCT expects Energy Future Holdings Corporation (EFH) may file, as well as any related proceedings that may be necessary as determined by the Commission. The contractor will participate in the contested case proceedings as necessary, including evaluating the proposed EFH transaction, submitting pre-filed written testimony, responding to discovery, testifying at hearings, and assisting Commission Staff with its general litigation activities in connection with the EFH transaction. Contractor's participation as an expert in contested case proceedings will be at the discretion of the PUCT Contract Administrator. The contractor shall also provide technical support and evaluation services described below.

An understanding of the PUCT's order in PUCT Docket No. 34077, including the "ring fence" provisions of that order and the related stipulation described below, Oncor's governance structures, financial relationships, and operations, the financial relationships, governance structures, and operations within the Energy Future Holdings Corporation and affiliates, shall be necessary to analyze and evaluate properly the proposed EFH transaction.

The contractor should anticipate and understand the potential liabilities, including adverse tax consequences, which may result from continuing developments within the EFH bankruptcy, including the separation of TXU Energy and Luminant from EFH. The contractor should understand what effects these developments may have on Oncor's financial stability and be able to suggest ways to protect Oncor from such effects.

The contractor should be familiar with the likely corporate and ownership structures that Oncor may take, including as a Real Estate Investment Trust, as well as the related tax attributes of each structure. The contractor should also be able to identify the financial and operational costs and benefits associated with each of the likely corporate and ownership structures.

Background Information: On April 29, 2014, EFH filed a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Delaware (Case No. 14-10979 (CSS)). One of EFH's affiliates is Oncor Electric Delivery Company (Oncor). Oncor is a transmission and distribution utility that is regulated by the PUCT. Oncor is not part of the EFH bankruptcy.

Oncor's ultimate parent company, EFH, was formed following the 2007 leveraged buyout of the former TXU Corporation. Because Oncor is subject to PUCT jurisdiction, the companies involved in the merger sought and obtained a determination from the PUCT that the merger was in the public interest pursuant to Public Utility Regulatory Act (PURA) §14.101. As part of the §14.101 proceeding before the PUCT, the buyers agreed to a number of commitments which were intended to keep Oncor totally separate from EFH's power generation and retail units. This segregation is built into the "ring fence" provisions of the PUCT's order in PUCT Docket No. 34077, which were designed to protect Oncor and Oncor's retail customers from financial problems in other aspects of the business. (Proposers may review the documents filed in PUCT Docket No. 34077 by logging into the PUC Interchange. To do so, go to the "Filings Search" page at:

<http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/login/pgLogin.asp>

Click on "Filings Search." The next screen is the PUC Filing Locator. In the "Control Number" field, enter 34077, then click on "Search.").

In its bankruptcy filing, EFH has acknowledged that it may need to seek certain regulatory approvals as part of its restructuring process. The first change of control proceeding filed was Docket No. 45188 styled Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(l)-(m), and 39.915. A hearing on the merits in this docket was held before the Commission on January 11-14, 2016. The Commission entered an order in the docket on March 24, 2016. (Proposers may review documents filed in PUCT Docket No. 45188 by logging into the PUC Interchange at the link above, and search for Control Number 45188.) The PUCT anticipates that EFH will file one or more additional change of control proceedings between now and the end of 2017 seeking approval. In the next change in control proceeding(s), the PUCT anticipates that EFH will again seek PUCT approval of the change in controlling interest in Oncor that may occur as a result of EFH's proposed restructuring or modifications to the proposed restructuring ordered by the bankruptcy court.

### Services

As part of the technical consulting services related to the proceedings associated with the EFH transaction described above, the contractor will undertake, but is not limited to, the following tasks as deemed necessary by the Commission Staff:

- review and evaluate EFH's change in control filing(s) and the proposed EFH transaction's potential impact on the public interest, Oncor, Oncor's parent company and Oncor's retail customers in Texas and provide a written evaluation with conclusions and recommendations on modifications that may be needed to protect the public interest;
- review and evaluate the change in control filing(s) to determine the need for continuation, modification or additions to the existing "ring fence" provisions applicable to Oncor;
- review and evaluate the need for any commitments made by the new owners of Oncor concerning, among others, financing and reorganization;
- review the effect, if any, the proposed transaction will have on Oncor as a separate legal entity from EFH, and EFH affiliates including Energy Future Intermediate Holding Company (EFIH), Texas Competitive Electric Holdings Company (TCEH), TXU Energy and Luminant;
- review the effect, if any, of the bankruptcy court allowing TXU Energy and Luminant to be sold and leave bankruptcy, as well as the resulting effect on Oncor of any tax or other liabilities remaining at EFH;
- review the separation of management and staff of Oncor from the management and staff of EFH, TXU Energy and Luminant;
- review the proposed transaction(s) to ensure Oncor's continued financial independence from EFH, TXU Energy and Luminant;
- make a determination whether the proposed transaction(s) provides reasonable assurance that Oncor will be in compliance with PURA and the PUCT's rules relating to, among other

things, the separation of competitive and regulated businesses that are under common ownership and the Commission's code of conduct rules (*see* <http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>)

- make a determination whether Oncor will be sufficiently capitalized based on the capital needs for providing transmission and distribution service in its service area and managing the risks associated with providing such service; and
- make a determination whether Oncor will have sufficient access to capital to permit it to provide adequate service to customers, taking into account the growth expectations for the Oncor service area and other factors that may result in future capital needs.

The contractor will provide PUCT Staff a written evaluation and analysis of the EFH transaction.

The contractor may also, at the discretion of the PUCT Contract Administrator, participate in the EFH change in control contested case proceeding(s) and any related proceedings at the PUCT. Work in the contested case(s) and subsequent compliance proceedings related to the EFH transaction will include, but is not limited to:

- attending Open Meetings at which the Commissioners consider matters related to the EFH transaction;
- propounding and responding to discovery requests;
- preparing and presenting direct testimony;
- testifying at contested case hearings and in depositions;
- attending hearings, prehearing conferences, technical conferences and other meetings as deemed necessary in the course of the proceeding(s);
- assisting Commission Staff during the proceeding with its general litigation preparation and other matters as necessary;
- providing other technical consulting services as necessary to support Commission Staff in the proceeding(s); and
- assisting in preparing post-hearing briefs, exceptions and replies to proposals for decision, motions, and other written pleadings as necessary.

If required, the contested case services will be provided under the direction of a Commission Staff attorney, who will review proposed testimony, conduct direct and re-direct examination of the contractor's witness, and generally manage the Commission Staff case during the hearing.

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

**Article 1. DEFINITIONS**

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

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

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

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

**Article 2. COMPENSATION**

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

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

**2.2 Payment Process.** Contractor shall submit a statement for services or invoice to the PUCT Contract Administrator no later than the 15th day of the month after the month that the Services were performed. The invoice must contain the name of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, etc.

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

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

By email to: Payables@puc.texas.gov

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

**2.3 Payment for Services.** Contractor’s acceptance of payment releases the PUCT of all claims for compensation owed in connection with this Contract.

**2.4 Payments made to Subcontractors.** Contractor shall pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor

receives the payment. The subcontractor's payment shall be overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Sec. 5.1).

**2.5 Records.** Contractor and its subcontractors, if any, shall maintain records and books of account relating to Services provided under this Contract. Contractor shall, for a period of seven (7) years following the expiration or termination of this Contract, maintain its records (electronic and paper) of the work performed under this Contract. Records include, but are not limited to correspondence concerning the subject of this Contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor shall make all records that support the performance of Services and payment available to PUCT and/or its designees or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT Contract Administrator.

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

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

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

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

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

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

**3.5 Inquiries and Prompt Referral.** Contractor understands that the PUCT does not endorse any vendor, commodity, or service. Contractor, its employees, representatives, other agents, or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Contract or the Services or project to which this Contract relates or which mentions the PUCT without the prior approval of the PUCT. Contractor will promptly refer all inquiries regarding this Contract received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

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

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

**4.2 Distribution of Consultant Reports.** PUCT shall have the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas

legislature to distribute it. PUCT shall also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that PUCT may assert for the report or any portion thereof.

## **Article 5. SUBCONTRACTING PARTIES**

**5.1 Use of Subcontractors.** The Parties acknowledge and agree that at the time of execution of this Contract, Contractor intends to perform the Services required under this Contract using its own employees [or intends to perform the Services required under this Contract using the following subcontractors:]. Contractor will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7.

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

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

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

**6.1 Term.** The term of this Contract shall begin on the date signed by the last party to sign and shall continue in effect until November 30, 2020 unless sooner terminated under Sections 6.3 and 6.4 of this Contract.

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

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

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

**6.6 Remedies for Breach.** All remedies available to PUCT for breach or anticipatory breach of

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

**6.6 Survival.** In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Sections 2.5, 2.6, 3.5, 4.2, 6.5, 7.5, 9.2, 9.4 through 9.6, 17.2 and 19.1 through 19.4, 19.9 and Articles 1, 10, 11, 12, 14, 15, 16, 20, 21, 23, and 28 shall survive in their entirety.

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

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

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

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

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

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

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

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

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

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

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

loss shall pass to the PUCT.

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

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

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

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

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

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

## **Article 10. PUBLIC INFORMATION**

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

**10.2 Agreement Not Confidential.** The Parties acknowledge that not all terms of this Contract may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

**10.3 Contractor's Duty to Provide Public Information.** Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. [For the purpose of](#)

Section 10.3 of this contract, paper documents, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files shall be considered “accessible by the public,” unless another format is specified by the PUCT, at the PUCT’s sole discretion. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the Texas Public Information Act, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT’s provision of the information to the Texas Attorney General for a decision on the information’s confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor’s information or data; it shall be Contractor’s sole responsibility to do so.

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

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

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

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

## **Article 12. INDEMNIFICATION**

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

If all or any part of the Deliverables is the subject of any claim, suit, or proceeding for infringement or misappropriation of any Intellectual Property Right, Contractor may, and in the event of any adjudication that the Deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the

Deliverables or any part thereof is enjoined, Contractor shall, at its expense do one of the following things: (i) procure for PUCT the right under such patent, trademark, copyright or trade secret to fully use the Deliverables or the affected part thereof; or (ii) replace the Deliverable or affected part thereof with another non-infringing Deliverable; or (iii) suitably modify the Deliverable or affected part thereof to make it non-infringing.

### **Article 13. INSURANCE**

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

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

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

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

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

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

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

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

### **Article 14. DISPUTE RESOLUTION**

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

### **Article 15. SOVEREIGN IMMUNITY**

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

## **Article 16. GOVERNING LAW**

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

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

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

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

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

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

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

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

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

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

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

**18.1 Prohibitions on Gifts.** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

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

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

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

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

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

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

**18.6 Prohibited Compensation.** Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this Contract.

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

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

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

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

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

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

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

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

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

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

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

## **Article 19. GENERAL PROVISIONS**

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

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

**19.3 Taxes and Statutory Withholdings.** Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this Contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment,

Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this Contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

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

**IF TO THE PUCT:**

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

With copies to the PUCT Contract Administrator, and Jay Stone, CTPM, CTCM, at the same address.

**IF TO CONTRACTOR:**

ATTENTION:  
ADDRESS  
CITY, STATE, ZIP CODE

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

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

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

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

Contractor warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with

comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor shall remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

**19.9 Publicity.** Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract or any results or findings based on information provided, created, or obtained to fulfill the requirements of this Contract shall be made without the prior written approval of the PUCT.

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

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

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

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

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

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

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

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

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

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

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

General Appropriations Act for the 2014-2015 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

**Article 25. DRUG FREE WORKPLACE POLICY**

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

**Article 26. SUBSTITUTIONS**

Substitutions are not permitted without written approval of the PUCT.

**Article 27. RIGHT TO AUDIT**

Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

**Article 28. ENTIRE AGREEMENT**

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

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

**The Public Utility Commission of Texas**

**Contractor**

By:

By:

\_\_\_\_\_  
Brian H. Lloyd  
Executive Director

\_\_\_\_\_  
Name  
Title

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

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

**ATTACHMENT C**  
**HUB SUBCONTRACTING PLAN INFORMATION**

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

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

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

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