

Title 1, Chapter 57 of the Texas Administrative Code

§57.1.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency--A department, commission, board, authority, office, or other agency in the executive branch of state government, including university systems and institutions of higher education as defined by §61.003 of the Education Code, but excluding public junior colleges.
- (2) Chief Administrator--Has the meaning defined by §660.002(4) of the Government Code.
- (3) Contingency Fee--Has the meaning defined by §2254.101(1) of the Government Code.
- (4) Invoice--An itemized list of legal services provided, and fees, charges, or expenses associated with those services, by Outside Counsel to an Agency pursuant to an Outside Counsel Contract.
- (5) Invoice Summary--As provided by the Outside Counsel Contract, a document furnished by Outside Counsel to the Agency that supports a submitted Invoice. The Invoice Summary must indicate the total number of hours worked by each legal professional during the billing period and the total number of hours billed by each timekeeper during the billing period; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters. The Invoice Summary must also include a subtotal for all legal fees, expenses, and the total amount of the Invoice, as well as the total amount of all Invoices submitted to the Agency to date under the Outside Counsel Contract.
- (6) Outside Counsel--An attorney or law firm selected by an Agency to provide legal services. The term does not include a full-time employee of the Agency or the Office of the Attorney General.
- (7) Outside Counsel Contract--A contract for legal services between an Agency and Outside Counsel selected by the Agency that must be approved by the Office of the Attorney General pursuant to this chapter.
- (8) Request for Voucher Approval--A request made by an Agency to the Office of the Attorney General for the Office of the Attorney General to:
 - (A) review an Outside Counsel's Invoice; and
 - (B) to approve the payment of the Invoice, pursuant to this chapter.
- (9) Request to Retain Outside Counsel--A request made by an Agency to the Office of the Attorney General for approval to retain an Outside Counsel pursuant to this chapter.
- (10) State Fiscal Biennium--Period of time running concurrent with that set by the General Appropriations Act.

§57.2.Application.

(a) This chapter does not constitute independent authority for any Agency to contract for legal services with Outside Counsel.

(b) This chapter does not apply to an Agency excluded by §402.0212(a) of the Government Code or an Agency granted an exemption by, and at the sole discretion of, the Office of the Attorney General.

(c) The Attorney General, First Assistant Attorney General, or their designee, as designated in writing, may waive or modify any provision or requirement contained in this chapter at their sole discretion. To be effective, any such waiver or modification must be in writing.

(d) The Office of the Attorney General, at its sole discretion, may grant exemptions from or modify the retention of Outside Counsel process and the Request for Voucher Approval process in certain instances. Such exemptions or modifications may be based on the type and subject matter of the Outside Counsel Contract at issue.

§57.3.Retention of Outside Counsel.

(a) The Attorney General serves as the State of Texas' legal counsel and the Office of the Attorney General therefore represents state agencies and institutions of higher education. Accordingly, Agencies may not retain or select any Outside Counsel without first receiving authorization and approval from the Office of the Attorney General to do so. The Office of the Attorney General will determine if retaining Outside Counsel is in the best interest of the State.

(b) An Agency requiring legal services from Outside Counsel must first submit a completed Request to Retain Outside Counsel form to the Office of the Attorney General. The form and instructions for submitting the form are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) No later than ten (10) business days of receipt of the Request to Retain Outside Counsel form, the Office of the Attorney General will notify the requesting Agency that:

(1) the Agency's request has been approved and it may proceed with the process of selecting Outside Counsel;

(2) the Agency's request has been denied; or

(3) the Agency must provide the Office of the Attorney General with additional information before a decision to approve or deny the request will be made.

(d) A notification under subsection (c)(1) of this section may include limitations and requirements on the selection and retention of Outside Counsel, including, but not limited to, the requirement that the requesting Agency use the Request for Qualification Process outlined in §57.4 of this chapter.

(e) A notification under subsection (c)(1) of this section does not constitute approval of an Outside Counsel Contract.

(f) Except as expressly allowed by a Texas statute, final decision by the Texas Supreme Court or a final judgment by a federal court, an Agency requiring legal services from Outside Counsel on a contingency fee arrangement must first seek the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee, before submitting a Request to Retain Outside Counsel form pursuant to subsection (b) of this section. The Office of the Attorney General shall not approve an Agency's Request to Retain Outside Counsel, involving a contingency fee arrangement, until the Agency provides the Office of the Attorney General with the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee.

§57.4. Request for Qualification Process.

(a) An Agency seeking to obtain legal services from Outside Counsel must publish a Request for Qualifications for Outside Counsel in the Texas State Business Daily for thirty (30) days.

(b) The Request for Qualifications for Outside Counsel publication must contain:

(1) a description of the legal services that the Outside Counsel will provide;

(2) the name and contact information for an Agency employee who should be contacted by an attorney or law firm that intends to submit their qualifications;

(3) the closing date for the receipt of qualifications;

(4) the procedure by which the Agency will make a selection of Outside Counsel;

(5) notice that the selection of and contracting with, Outside Counsel is subject to the approval of the Office of the Attorney General; and

(6) any other information the Agency deems necessary.

(c) After the closing date for the receipt of qualifications, the Agency may select an Outside Counsel. The Agency may only select an Outside Counsel that complied with the Request for Qualifications for Outside Counsel. The Agency shall make the selection of Outside Counsel:

(1) on the basis of demonstrated competence and qualifications to perform the legal services; and

(2) for a fair and reasonable price, which includes, but is not limited to, the hourly rates or fixed fee basis or fee schedule and expenses for legal services.

§57.5. Outside Counsel Contract.

(a) Except as authorized by law, an Outside Counsel Contract or any amendment to an Outside Counsel Contract must be approved by the Office of the Attorney General to be valid and enforceable.

(b) When entering into an Outside Counsel Contract, an Agency and Outside Counsel must use the Outside Counsel Contract template promulgated by the Office of the Attorney General. The contract template and instructions on submitting it are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) In the event of an inconsistency between this chapter and an executed Outside Counsel Contract, the contract shall prevail.

(d) Once an Agency selects an Outside Counsel, the Agency shall submit one copy of its proposed Outside Counsel Contract to the Office of the Attorney General for approval pursuant to this chapter. The Outside Counsel Contract must be signed by an authorized representative of the Outside Counsel and the chief administrator of the Agency, or authorized designee.

(e) Upon receipt of a proposed Outside Counsel Contract, the Office of the Attorney General will review the contract and either approve or reject it based upon the best interest of the State and compliance with state law.

(f) If the Office of the Attorney General approves a proposed Outside Counsel Contract, an authorized representative of the Office of the Attorney General will indicate that approval on the contract and return the signed copy to the Agency.

(g) If the Office of the Attorney General rejects a proposed Outside Counsel Contract, it will contact the submitting Agency to discuss the basis for the rejection and to explore whether revisions to the proposed contract could rectify the basis for the rejection. In the event the proposed contract is rejected and rectifying amendments are not acceptable or possible, the Office of the Attorney General will contact the submitting Agency to discuss alternatives to representation by the selected Outside Counsel.

§57.6. Invoices for Legal Services and Expenses.

(a) Outside Counsel shall prepare correct and complete Invoices and submit them, along with an Invoice Summary, for the billing period to the Agency for payment.

(b) A correct and complete Invoice must include, at a minimum, the following information:

(1) Outside Counsel Contract identification number;

(2) Agency name;

(3) Outside Counsel name;

(4) Vendor Identification Number (assigned by the Texas Comptroller of Public Accounts), Social Security Number of an authorized representative of Outside Counsel or other appropriate payment identification number;

(5) Invoice number and date;

(6) Billing period of services rendered for which payment is being sought;

(7) Description and date of the task or service provided, the billable time for the task or service, the name and position (partner, associate, paralegal, etc.) of the timekeeper that performed the task or service, and the applicable hourly rate; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters;

(8) For filing charges, a description of the document filed and the name and location of the entity the document was filed with;

(9) For expenses, a copy of each receipt or other proof of payment; and

(10) Other information requested by the Agency or the Office of the Attorney General.

(c) Unless requested to do so by the Agency or the Office of the Attorney General, Outside Counsel must not include information in its Invoices that is not related to compensable charges or reimbursable expenses.

(d) Outside Counsel must verify, in writing, upon the submittal of each Invoice, that the Invoice is correct and complete and that: (1) the legal services being billed for were performed and were reasonable and either necessary or advisable;

(2) the legal services being billed for were within the term and scope of services of the Outside Counsel Contract;

(3) the legal billing rates are the same as those set in the Outside Counsel Contract;

(4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

§57.7.Agency Review of Invoices.

(a) Upon receipt of an Invoice, the Agency shall immediately mark the Invoice with the date the Agency received the Invoice. The Agency must review the submitted Invoice, and any other information deemed necessary, to verify that: (1) the legal services contained in the Invoice were performed and were reasonable and either necessary or advisable;

(2) the legal services contained in the Invoice were performed within the term and scope of services of the Outside Counsel Contract;

(3) the legal billing rates are the same as those set in the Outside Counsel Contract;

(4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

(b) If the Agency determines that the submitted Invoice is correct and complete, and should be paid, the Agency's chief administrator or their designee must:

(1) approve the Invoice;

(2) verify that the requirements in subsection (a)(1) - (5) of this section have been met and attest to that verification with his or her signature;

(3) submit the Invoice and other required information to the Office of the Attorney General pursuant to §57.8(b) of this chapter; and

(4) if necessary, enter relevant information into the Uniform Statewide Accounting System.

(c) If the Agency determines that the Invoice is not correct and complete, and should not be paid, even in part, the Agency's designated representative must immediately notify Outside Counsel in writing that the Invoice is deficient and attempt to resolve the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(1) If the Invoice deficiency can be resolved in a reasonable time and in a mutually agreeable manner that results in a correct and complete Invoice, Outside Counsel should submit that Invoice to Agency for review and approval pursuant to §57.6 of this chapter.

(2) If the Invoice deficiency cannot be resolved in a reasonable time, the Agency should reject and deny payment for the disputed portions of the Invoice and approve the undisputed portions of the Invoice pursuant to subsection (b) of this section so that the undisputed portions of the Invoice can be processed for payment pursuant to this chapter. If necessary, Outside Counsel may resubmit the disputed and rejected portions of the Invoice to Agency once the deficiency is resolved in a mutually agreeable manner with Agency. In the event that Outside Counsel and Agency mutually agree on a resolution, then Outside Counsel must follow the steps in §57.6 of this chapter.

(d) Contingency Fee Outside Counsel may be required to submit Invoices for review as requested by the Office of the Attorney General.

§57.8.Agency Submission of Request for Voucher Approval to the Office of the Attorney General.

(a) An Invoice may not be paid without the prior approval of the Office of the Attorney General.

(b) If the Agency approves an Invoice, or a portion of an Invoice, pursuant to §57.7(b) of this chapter, the Agency must submit the following information to the Office of the Attorney General within ten (10) business days of receiving the Invoice from Outside Counsel:

(1) a Request for Voucher Approval;

(2) a copy of the Invoice and Invoice Summary at issue;

(3) evidence of the date the Agency received the Invoice;

(4) a copy of the verification required by §57.7(b)(2) of this chapter;

(5) other information requested by the Office of the Attorney General;

(6) any other information the Agency deems necessary for the Office of the Attorney General to conduct a review of the Invoice; and

(7) if necessary, a description of any disputed charge that the Agency has not approved for payment and the reason(s) why it was not approved.

(c) If the Office of the Attorney General determines that a properly submitted Invoice, or a portion thereof, is eligible for payment, it will provide the Agency with a voucher approval and, if necessary, enter relevant information in the Uniform Statewide Accounting System.

(d) If the Office of the Attorney General determines that any portion of an Invoice is not eligible for payment, it will immediately notify the Agency of that decision. The Agency may then, after consulting with Outside Counsel:

(1) abide by the Office of the Attorney General's determination to deny payment;

(2) inform the Office of the Attorney General that the Agency and the Outside Counsel agree that the payment should be denied and the Invoice will be withdrawn; or

(3) submit a new Invoice for review and approval after resolving the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(e) The Office of the Attorney General will not approve payment of an Invoice in an amount that is greater than the amount approved by the Agency under §57.7(b) of this chapter.

(f) The Office of the Attorney General, at its sole discretion, may permit Agencies to submit information other than the information specified in subsection (b)(1) - (7) of this section before the Office of the Attorney General approves or disapproves payment of an Invoice. The Office of the Attorney General will specify what information is acceptable for an Agency to submit under this subsection.

(g) Except as allowed by the Office of the Attorney General, Agencies may submit only one Request for Voucher Approval per billing period per contract.

§57.9. Administrative Fee.

(a) Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General for the Invoice review described in §57.8 of this chapter. Outside Counsel may not charge, or seek reimbursement from, the Agency for payment of this administrative fee.

(b) The administrative fee described in subsection (a) of this section is incurred on the date that the first Invoice after the effective date of this chapter is submitted to the Agency. Any Invoice submitted to the Office of the Attorney General by the Agency before the administrative fee has been submitted by the Outside Counsel to the Office of the Attorney General shall be deemed incorrect and incomplete and not eligible for payment.

(c) The administrative fee is set as follows:

(1) For an Outside Counsel Contract with a maximum liability of less than \$2,000.00, but more than \$0.00, the administrative fee is \$100.00.

(2) For an Outside Counsel Contract with a maximum liability equal to or greater than \$2,000.00 but less than \$10,000.00, the administrative fee is \$200.00.

(3) For an Outside Counsel Contract with a maximum liability equal to or greater than \$10,000.00 but less than \$50,000.00, the administrative fee is \$500.00.

(4) For an Outside Counsel Contract with a maximum liability equal to or greater than \$50,000.00 but less than \$150,000.00, the administrative fee is \$1,000.00.

(5) For an Outside Counsel Contract with a maximum liability equal to or greater than \$150,000.00 but less than \$1,000,000.00, the administrative fee is \$1,500.00.

(6) For an Outside Counsel Contract with a maximum liability of equal to or greater than \$1,000,000.00, the administrative fee is \$2,000.00.

(7) For Contingency Fee Outside Counsel Contracts, the Office of the Attorney General will establish a reasonable administrative fee when Invoices are submitted to the Office of the Attorney General for review.

(d) The administrative fee due under subsection (c) of this section covers the then current State Fiscal Biennium in an Outside Counsel Contract term. Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General, as set by subsection (c) of this section, for every State Fiscal Biennium covered in an Outside Counsel Contract term. Subsequent biennial administrative fees are due upon submission of the first Invoice of a new State Fiscal Biennium.

(e) The administrative fee described in subsection (a) of this section is not due for a contract having a zero dollar liability or a contract that is only seeking reimbursement for expenses.

(f) For exceptional circumstances, the Office of the Attorney General, at its sole discretion, may modify the amount of the administrative fee due under subsection (c) of this section. If the Office of the Attorney General, at its sole discretion, permits an Agency to submit information other than the information specified in §57.8(b)(1) - (7) of this chapter, the Office of the Attorney General, in its sole discretion, may reduce or waive the administrative fee.

(g) When an Outside Counsel Contract is amended to increase the maximum liability of the contract to an amount that requires Outside Counsel to pay a higher administrative fee, under subsection (c) of this section, then Outside Counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon submission of the next submitted Invoice.

(h) The administrative fee described in subsection (a) of this section shall be sent to the Office of the Attorney General and not to the Agency.