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UT System RFQ - (Outside Counsel – September 1, 2015 to August 31, 2017)

Open Date: 06/08/15 11:45 PM

Agency Requisition Number: 20150608

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In accordance with the provisions of Texas Government Code Chapter 2254, Subchapter D and Texas Administrative Code, Title 1, Chapter 57, The University of Texas System (U. T. System) requests responses to this Request for Qualifications ("RFQ") from law firms and attorneys interested in representing U. T. System and U. T. System institutions in the areas of law described herein.

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The University of Texas System

Request for Qualifications (Outside Counsel – September 1, 2015 to August 31, 2017) (RFQ No. 20150608)

In accordance with the provisions of Texas Government Code Chapter 2254, Subchapter D and Texas Administrative Code, Title 1, Chapter 57, The University of Texas System (U. T. System) requests responses to this Request for Qualifications (“RFQ”) from law firms and attorneys interested in representing U. T. System and U. T. System institutions in the areas of law described below. The U. T. System is located in Austin and governs six health institutions (located in Dallas, Galveston, Houston, San Antonio, and Tyler) and nine academic institutions (located in Arlington, Austin, Brownsville, Dallas, Edinburg, El Paso, Midland-Odessa, San Antonio, and Tyler). However, in 2015 the two U. T. System academic institutions located in Edinburg and Brownsville will be replaced with a single U. T. System institution, UT Rio Grande Valley (“UT RGV”) that spans the entire Texas Rio Grande Valley. UT RGV will have a presence in each of the major metropolitan areas of Brownsville, Edinburg, Harlingen and McAllen, and will also be home to a school of medicine. This RFQ is issued to establish a “Referral List” of law firms or attorneys practicing in each of the areas of law identified below, so that the U. T. System Office of General Counsel, on behalf of U. T. System and the U. T. System institutions may contract with those law firms or attorneys as appropriate to serve as counsel representing the U. T. System and/or the U. T. System institutions on specific matters as the need arises during the timeframe beginning September 1, 2015 to August 31, 2017. U. T. System invites responses to this RFQ from qualified law firms and attorneys for the provision of legal services under the direction and supervision of the U. T. System’s Office of General Counsel. Subject to approval by the Office of the Attorney General and compliance with applicable state laws and regulations, U. T. System and U. T. System institutions may engage outside counsel from any Referral List with experience in the following areas of law:

- **Communications, Media, and Information Technology:** Representation and advice regarding communications, media and information technology matters regulated by the Federal Communications Commission and other federal and state government agencies in matters related to regulatory compliance, transactions, corporate, and litigation in the telecommunications, media, Internet, information services and technology industries, including but not limited to commercial and noncommercial broadcast issues; First Amendment and broadcast journalism legal issues; digital rights, privacy and security issues; and preparing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications.
- **Corporate Law:** Representation and advice regarding corporate and securities transactions and regulations, including but not limited to entity formation, such as corporations, joint ventures, limited partnerships, limited liability companies, 501(c)(3) corporations, and public-private partnerships; drafting and filing entity documents; filing for certificates of authority to transact business in other states; private equity investing; and the range of corporate legal services related to technology transfer.

- **Employment Law:** Representation and advice regarding complex employment and employee benefits law issues.
- **Ethics, Regulatory Compliance, and Investigations:** Representation and advice regarding compliance with federal and state laws and regulations related to revenue, expense, and contributions transparency and other related matters, including institutional or federal or state government investigations.
- **Export Controls:** Representation and advice regarding U.S. export controls and related technology transfer controls, including but not limited to review, revision, implementation or updating of compliance policies and procedures; compliance training; review of deemed export or technical data export aspects of educational activities, laboratory research, sponsored research contracts, and other activities; export control classification, jurisdiction, and licensing advice; U.S. economic sanctions, embargoes, denied parties, and related matters; import/export counseling; compliance reviews. In addition, legal services may be provided concerning government contracting issues and application of relevant U.S. laws and regulations relating to same.
- **Health Law:** Representation and advice regarding (1) compliance with federal and state laws and regulations on privacy and security of protected health information, including the Health Insurance Portability and Accountability Act (HIPAA), other individually identifiable information maintained by the University, and health information technology matters; (2) Medicare/Medicaid/Tricare and private third party certification, payment, managed care, and related matters; (3) health regulatory and research compliance, investigations, and related matters; (4) contractual and business transactions; and other general health law matters.
- **Immigration Law:** Representation and advice regarding immigration law matters, including but not limited to petitioning for nonimmigrant visas (including H-1Bs); petitioning for employer sponsored permanent residence; representation before the Department of Labor, including labor condition applications, labor certifications, Program Electronic Review Management (PERM) complying with the Student and Exchange Visitor Information System (SEVIS) requirements; impact of homeland security issues on immigration law; and interaction with and representation before applicable U.S. governmental agencies, including the Department of Homeland Security and the Department of Labor, as well as the U. T. System Office of General Counsel, U. T. System institutions' international offices, and human resources offices. . Family members will not be covered under any outside counsel contract for legal services.
- **Intellectual Property Matters:** Representation and advice regarding intellectual property matters, including but not limited to preparing, filing, prosecuting, and maintaining patent applications in the United States and other countries; securing copyright protection for computer software; preparing, filing, and prosecuting applications to register trademarks and service marks in the United States and other countries; complex licensing transactions; and all other related matters.

- **International Law:** Representation and advice regarding international law obligations and requirements in the following areas: doing business in foreign jurisdictions and related registration and tax obligations, employment issues regarding university employees and foreign nationals, affiliation and collaborative research agreements with foreign universities and other entities, study abroad programs, and contracting and procurement issues in foreign jurisdictions.
- **Litigation – General:** Representation and advice regarding complex litigation matters, including but not limited to employment litigation, real estate litigation, wills and estate litigation, Texas Public Information Act litigation, commercial litigation, creditors’ rights litigation, and third party issues such as subpoenas and discovery matters.
- **Litigation - IP:** Representation and advice regarding all intellectual property matters, including but not limited to pursuit of litigation against infringers of U. T. System intellectual property rights and defense of any intellectual property related claims.
- **Public School Law:** Representation and advice regarding public school law issues regarding U. T. System institution charter schools and other interactions with K-12 education.
- **Real Estate and Finance Transactions:** Representation and advice regarding acquisitions, dispositions, financings, title issues, entity formation (joint ventures, limited partnerships, limited liability companies, real estate investment trusts, business trusts), securitization, leasing, construction contracting, and workouts and restructurings.
- **Real Estate and Oil & Gas Transactions Outside the State of Texas:** Representation and advice regarding real estate and oil and gas transactions, including but not limited to litigation or hearings related to oil, gas, or other mineral interests that are located outside the State of Texas and that are either owned by or proposed to be given to U. T. System or a U. T. institution; and litigation or hearings related to real estate interests and trust, estate, and probate matters that are located outside the State of Texas and that are either owned by or proposed to be given to U. T. System or a U. T. System institutions.
- **Tax-Exempt Bond Matters:** Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Under authority granted in Article VII, Section 18 of the Texas Constitution, Chapters 55 and 65, Texas Education Code and Chapters 1207 and 1371, Texas Government Code, and other applicable laws, the U. T. System issues revenue bonds for capital improvements in support of the U. T. System’s \$6.3 billion Capital Improvement Program. Commercial paper programs are generally used for interim financing with long-term bonds sold to provide more permanent financing. These long-term bonds, which may be either fixed rate or variable rate, may be combined with interest rate swap agreements pursuant to International Swaps and Derivatives Association, Inc. (ISDA) master swap agreements. Advance refunding transactions may be undertaken based on market conditions. Federal tax related matters regarding bonds issued by the U. T. System, including strategies and management practices in the conduct of an exempt debt program requires a close working

relationship with tax counsel. In addition, the U. T. System works with counsel regarding the preparation of the annual Securities and Exchange Commission filings. Contact with debt management staff is frequent due to the volume of debt issuance.

- **Tax Matters:** Representation and advice regarding state taxes of any kind, state pension issues and plans available only to universities, and regarding federal taxation of any kind, including but not limited to matters regarding: income, estate, gift, employment, and excise taxes; tax liens, tax garnishments, tax levies, tax assessments, tax valuations, summonses, subpoenas, and discovery; tax audits; administrative appeals of tax issues; tax hearings before administrative law judges and magistrates; appeals to Internal Revenue Service (IRS) appeals officers, district court, U.S. Tax Court, U.S. District Court, U.S. Court of Claims, and other venues; employee benefits such as Internal Revenue Code (I.R.C.) Section 125 cafeteria plans, the Texas Optional Retirement Program, I.R.C. Section 403(b), Section 415(m), and Section 457(a), Section 457(b), and Section 457(f) plans; unrelated business income tax; compensation issues for highly compensated employees and physicians; interaction with and representation before the IRS and other taxing authorities in any tax controversy; and charitable contributions and fundraising. Although outside counsel will not be required to prepare any tax return, it may be required to give legal advice on issues relating to the filing of such tax returns and the appropriate treatment of tax matters on such returns. Outside counsel should be admitted to practice before the Texas district courts, the U.S. Tax Court, the U.S. District Court, and the U.S. Court of Claims.
- **Utility Matters:** Representation and advice in utility matters, including but not limited to natural gas, electric, and telecommunications matters, including reviewing contracts, conducting research, rendering legal opinions, appearing in contested rate hearings, pursuing litigation, and handling other utility-related legal matters.

Responses: Responses to this RFQ should include at least the following information: (1) a description of the law firm's or attorney's qualifications for performing the above legal services, including the law firm's or attorney's prior experience in the specific area(s) of law for which the law firm or attorney is responding; (2) the expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters; (3) the submission of fee information for the law firm's or attorney's performance of the above legal services, which may be in the form of one or more of the following: (i) a proposed range of hourly rates (not to exceed \$525 per hour for attorneys and \$225 for paralegals) for each billing class of personnel who may be assigned to perform services in relation to U. T. System's or the U. T. System institutions' matters, (ii) a proposed fixed fee basis, (iii) a proposed fee schedule, and/or (iv) other proposed fee arrangement(s); provided that all fee information submitted must be directly related to the achievement of specific goals and cost controls (however, please note that any reimbursement by U. T. System or a U. T. System institution of a law firm's or attorney's expenses incurred in performing the above legal services under a contract resulting from this RFQ will only be allowed as addressed in Section 5.2 of the Outside Counsel Contract identified below); (4) a description of the efforts made by the law firm or attorney to encourage and develop the participation of minorities and women in the provision both of the law firm's or attorney's legal services generally and the specific areas of law in particular; (5) disclosures of conflicts of

interest (identifying each and every matter in which the law firm or attorney has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System, the U. T. System institutions, or the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (6) confirmation of willingness to comply with policies, directives, and guidelines of the U. T. System, the U. T. System institutions, and the Attorney General of the State of Texas.

Selection of Outside Counsel: Responses to the RFQ will be reviewed by U. T. System and U. T. System institutions. The U. T. System Office of General Counsel (“OGC”), on behalf of U. T. System and each U. T. System institution, contracts with all outside counsel and may select outside counsel from the Referral List of RFQ respondents only if and when the need for legal services arises based on OGC’s determination, at its sole discretion, of which respondent on the Referral List has (1) complied with this RFQ, (2) demonstrated in its RFQ response the competence and qualifications necessary to perform the needed legal services and (3) proposed in its RFQ response a fair and reasonable price for the needed legal services, based on the fee and expense information set forth in that response. The selection of and contracting with outside counsel is subject to the approval of the Office of the Attorney General and compliance with applicable state laws and regulations. In its response to this RFQ a law firm or attorney must state that (1) it has obtained and reviewed both (a) the Office of the Attorney General’s administrative rules found in Title 1, Chapter 57 of the Texas Administrative Code and (b) the Attorney General’s June 2014 Memorandum to State Agencies, University Systems, and Institutions of Higher Education regarding updates to outside counsel rules and templates (https://www.texasattorneygeneral.gov/files/agency/Letter_to_Agencies.pdf) and (2) it agrees that it will comply with such administrative rules and that Memorandum in its response to this RFQ and in the negotiation, processing and performance of any contract(s) resulting from this RFQ to which it is a party. Each response to this RFQ must state that it will remain valid for selection by OGC for one or more outside counsel services contracts between the respondent and either U. T. System or a U. T. System institution, with such contracts having a starting date during the period September 1, 2015 through August 31, 2017. Any contract resulting from this RFQ must use the Attorney General approved Outside Counsel Contract (“OCC”) template located at https://www.texasattorneygeneral.gov/files/agency/contract_template2014.doc .

As required by Texas Administrative Code, Title 1, Rule §57.4 (d) and (e) and Rule §57.5 (e), after U. T. System or a U. T. System institution selects a law firm or attorney as outside counsel, that law firm or attorney must submit to U. T. System or the U. T. System institution a written disclosure statement identifying every matter in which the law firm or attorney represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed state agency officials in connection with their official job duties and responsibilities. "Litigation" means the matter has been filed in the public record in either state or federal court. If a disclosure statement is submitted, it must include a short description of the nature of the matter and the relief requested or obtained in each matter and any identifying cause or case number. U. T. System or the U. T. System institution shall determine given the disclosure statement whether to continue with its choice of outside counsel. Furthermore, U. T. System or the U. T. System institution shall submit to the Office of the Attorney General the disclosure statement previously submitted by the selected outside

counsel. If U. T. System or the U. T. System institution is satisfied in its choice of outside counsel selected, it shall submit to the Office of the Attorney General an affirmative statement that it is satisfied in its choice of selected outside counsel notwithstanding the information contained in the disclosure statement.

Format and Person to Contact: Responses are to be completed online at <http://www.utsystem.edu/OGC/RFQResponse.htm>. Please do not forward any materials directly to U. T. System except as provided above. Questions should be addressed to Daniel H. Sharphorn, Vice Chancellor and General Counsel, Office of General Counsel, The University of Texas System and sent to cfaulkner@utsystem.edu. It is U. T. System's intent to respond to all appropriate questions; however, U. T. System reserves the right to decline to respond to any question.

Deadline for Submission of Response: All responses must be completed and submitted to the U. T. System Office of General Counsel online through the RFI Response web page (<http://www.utsystem.edu/OGC/RFQResponse.htm>) no later than 11:59 p.m., Monday, June 8, 2015.