

PUBLIC UTILITY COMMISSION OF TEXAS

REQUEST FOR PROPOSALS

TO PROVIDE TECHNICAL CONSULTING SERVICES

Authorized by

Public Utility Regulatory Act, Section 39.4525



**Closing Time and Date – 3:00 PM CDT
October 28, 2011**

Project No. 39587

RFP Number 473-11-00313

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PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST FOR PROPOSALS NO. 473-11-00313
TO PROVIDE TECHNICAL CONSULTING SERVICES

SECTION 1 – INTRODUCTION

The Public Utility Commission of Texas (PUCT) is issuing a Request for Proposals (RFP) to acquire analyst services related to the costs and benefits of Entergy Texas joining a regional transmission organization and amending the Entergy System Agreement.

SECTION 2 – ELIGIBLE PROPOSERS

Proposers **must** have a minimum of five years' experience providing services similar to those described in the Statement of Work (SOW), Attachment A. An entity or company in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team 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 Texas Utilities Code, Section 39.4525.

SECTION 4 – ANTICIPATED SCHEDULE OF ACTIVITIES

Notice of RFP Release Published in Texas Register	October 7, 2011
Last day to submit written question regarding the RFP	October 21, 2011
Deadline for submission of proposals	October 28, 2011
Post-proposal interviews or presentations, if required	November 4, 2011
Staff Recommendation for selection	November 9, 2011
Selection approved	November 11, 2011
Contract negotiations	November 14-18, 2011
Contract execution	November 18, 2011

Disclaimer: Dates are subject to change at the PUCT's discretion

SECTION 5 – COMPENSATION

Compensation for the services outlined in Attachment A will be based on an hourly fee that will cover all expenses, except travel. Expenses for approved travel will be reimbursed in accordance with rules of the state of Texas for reimbursing employee travel expenses. Unless otherwise approved in writing by the PUCT, payments will be made based on the invoicing and payment terms of the resulting contract.

SECTION 6 – QUESTIONS

The PUCT will accept **only written** questions and requests for clarification by mail, fax, or e-mail to the attention of the personnel below. Inquiries and comments must reference RFP No. 473-11-00313.

Direct general questions about the RFP to:

Richard Greffe
Competitive Markets Division
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326
Fax: (512) 936-7361
richard.greffe@puc.state.tx.us

Legal questions may be directed to:
Leticia E. Flores
Director of General Law
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326
Fax: (512) 936-7058
leticia.flores@puc.state.tx.us

Please Note: Mr. Greffe and Ms. Flores are the only permitted points 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 website at: www.puc.state.tx.us/about/procurement/index.cfm. Proposers should check the website often to ensure they have the most current information.

SECTION 7 – PROPOSAL REQUIREMENTS

Proposers must file their sealed proposals in Project No. 39587 at PUCT Central Records before 3:00 p.m. CDT, October 28, 2011. Proposals submitted in response to this request must meet all requirements in this RFP to be considered for selection. Fax or email proposals 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. CDT, excluding holidays. Central Records is also closed every Friday from 12 noon to 1 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 3:00 p.m. CST 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. 39587
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

Please Note: The PUCT WILL NOT accept a U.S. Postal Service postmark, round validation stamp, mail receipt with the date of mailing stamped by the U.S. Postal Service, a dated shipping label, 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.

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

Number and Appearance

The proposal submission must 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 is the first page before the sealed proposal submission. Upon receipt of proposals, the PUCT will file the information sheets in Project No. 39587. All parts of the proposal after the information sheet must be submitted in an envelope or other sealed container that is marked with the proposer's name and "Project No. 39587: CONFIDENTIAL."

Proposers must submit one (1) clearly marked "Original" of their proposal response with original signature and five (5) identical copies of their proposal. Proposers must also submit one (1) electronic copy of the complete RFP response on a compact disk or memory stick (flash drive) in Microsoft Word.

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

Proposals must be bound in a three-ring binder.

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

Proposals must be free of any extrinsic items.

SECTION 8 – PROPOSAL CONTENTS

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

Statement of the Requirements

Each proposer must state succinctly its understanding of this RFP's requirements and describe how it would perform the tasks in the Statement of Work (Attachment A). Each proposer must demonstrate the capability to prepare testimony consistent with the procedural schedule. If a proposer believes there are additional tasks needed to accomplish the PUCT's goals, identify them, explain why they are needed, and how the proposer would perform them.

Competence and Knowledge

Each proposer must demonstrate the competence and knowledge to fulfill the requirements identified in Attachment A. The proposer should also describe any prior experience in providing similar services, especially for FERC regulated electric utilities and regional transmission organizations, or governmental organizations. The proposer should describe the processes and procedures it intends to use to provide these services and an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to

this work.

Qualifications

Proposers **must** have a minimum of five years' experience providing services similar to those described in the SOW. An entity or company in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team have the minimum required experience.

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, including testimony given or participation in matters before FERC, state utility commissions, and RTOs.

Compensation

Each proposal shall propose its fixed price or its rates to provide the services identified in Attachment A. 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 work. The PUCT encourages, but does not require, proposers to demonstrate how elements of the price correspond to elements of the proposed work plan.

Please note: The proposed compensation must include all anticipated expenses. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution.

References

Each proposer must provide at least three references, including contact information. The PUCT prefers references from clients for whom the proposer has performed similar work, including other state utility commissions or electric utilities. Do not use the PUCT or any individuals employed by the Commission as a reference.

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 or telephone service in the state of Texas. Proposers must identify any personal or business relationships with Entergy Corporation, any affiliate of Entergy Corporation, the Southwest Power Pool, or the Midwest Independent System Operator. Proposers must also identify all engagements that they or their affiliates performed for any party within the last five years that pertain to Entergy Corporation or its affiliates. Proposers must identify the extent, nature, and length of these relationships or engagements. 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 should include such a statement. Failure to provide either a statement on potential conflicts of interest or a statement that no potential conflicts exist will automatically disqualify the proposer. This statement must 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.

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. Completeness of disclosure may be a factor in evaluating proposals.

Each proposer also should 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 these services.

Proposers must identify its lobbyists registered with the Texas Ethics Commission and their compensation and must include a statement of what involvement, if any, the lobbyists will have in connection with (1) this engagement and (2) electric utility or telecommunication utility legislation and policy.

Historically Underutilized Business Certification and Required Subcontracting Plan HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency 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 bid 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 Gov't Code §2161.252(b). See Attachment C.

The PUCT may not enter into a contract with a person who has been employed by the PUCT within the past 12 months. Persons who have been employed by the PUCT or by another state agency in Texas more than 12 months but fewer than 24 months before the closing date must disclose in the proposal the nature of previous employment with the state agency and the date the employment ended.

Required Certifications

Proposals must contain a statement certifying that 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;
- is not currently delinquent in the payment of any franchise tax owed the State of Texas;
- neither the firm, corporation, partnership, or institution represented by the proposer, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor 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. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq.;
- 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);
- is in compliance with Texas Government Code, § 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 a current or former head of a state agency, the proposer must 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 employer; and (5) date employment

with proposer began;

- is not ineligible for contract award under Texas Government Code § 2155.006; and
- acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate.

Other

If incorporated in Texas, proposers must 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 must also provide the corporation's charter number issued by the Texas Secretary of State's office. Proposer must provide its 9-digit Federal Employer's Identification Number (EIN) or 5-digit State of Texas Vendor's Identification Number (VIN).

SECTION 9 – CONDITIONS

- All proposals and copies of proposals become the property of the PUCT upon receipt.
- The PUCT reserves the right to amend or cancel this RFP at any time.
- Neither the PUCT nor the State of Texas will reimburse any proposer for any costs related to preparing a response to this RFP, including traveling to the proposers' conference (if required), under any circumstances.
- The PUCT reserves the right to reject any and all proposals and to cancel the procurement at any time.
- 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.
- The PUCT reserves the right to negotiate all or portions of any proposal tentatively selected for award, including the proposed fee.
- Proposers understand and agree that no public disclosures or news releases pertaining to this RFP, 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.
- Proposers understand that any proposal may be withdrawn in writing before 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 for a period of 90 days from the RFP closing date to provide the services set forth in Attachment A, or until the PUCT has made a selection.

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.

SECTION 10 – SOLE POINT OF CONTACT

This Request for Proposals is issued by the Commission, which is the sole point of contact in the State of Texas for issues regarding this Request for Proposals.

SECTION 11 – SELECTION CRITERIA

The PUCT will evaluate proposals and make the contract award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services outlined in Attachment A. The criteria are listed in their order of importance.

- **Understanding of the scope of work in this request for proposals**
- **Qualifications and relevant experience**
- **Proposed compensation**
- **References**

All other factors being equal, preference will 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 12 – 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. 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 ranking proposals. 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. The team leader will assemble the final recommendation and present it 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 notify each proposer in writing of the final action taken. 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 during the negotiation process, but the PUCT may reject them. The parties will negotiate a final schedule for performance that will be incorporated into the final contract.

SECTION 13 – CONTRACT TERM

The awarded contract will have a term of about 25 months, beginning on or about November 18, 2011 and ending December 31, 2013.

SECTION 14 – 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 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, including copyrighted, information. If a proposer believes that all or part of its proposal is 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 Govt. 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 will release all proposals and 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 certain proceedings before the Federal Energy Regulatory Commission (FERC) and the Public Utility Commission of Texas (PUCT) concerning the membership of Entergy Texas, Inc. (ETI) in a Regional Transmission Organization (RTO). The contractor will provide evaluation services and may, at the PUCT's election, provide contested case services, as described below.

Evaluation Services

Under the direction of PUCT staff, the contractor will evaluate the costs and benefits of ETI joining a regional transmission organization and make findings and recommendations, as specified below:

- Analyze and evaluate the cost-benefit studies and related addendum studies performed by Charles River Associates concerning membership of Entergy Operating Companies (OpCos) in the Southwest Power Pool (SPP) or the Midwest Independent Transmission System Operator (MISO). This will include evaluation of Entergy's allocation of costs and benefits to the OpCos in accordance with the Entergy System Agreement (ESA).
- Analyze and evaluate Entergy's recommendation to join MISO, including its supporting analysis of the costs and benefits of joining SPP or MISO.
- Analyze and evaluate relevant documents such as the MISO-SPP Joint Operating Agreement and the MISO tariff waiver request for Entergy to join MISO.
- Analyze and evaluate the impact of SPP or MISO membership on ETI and its customers, including the impact of their respective market designs, transmission cost allocation methods, governance, and membership agreements.
- Analyze and evaluate the costs and benefits to ETI of continued participation in the Entergy System Agreement (ESA) if the OpCos in the Entergy System join SPP or MISO. Also review and evaluate proposed changes to the ESA.
- Develop findings and recommendations with regard to the costs and benefits to ETI and its customers of the Entergy OpCos joining SPP or MISO.

To the extent that the contractor relies on information obtained from outside sources, the contractor shall incorporate the information into its report so that the information could be admitted in evidence in an administrative hearing.

Hearing Services

At the PUCT's election, the contractor will work with PUCT staff and attorneys in connection with FERC and PUCT proceedings related to the topics in the evaluation services scope of work. The contractor's duties may include, but are not limited to:

- propounding and responding to discovery requests;
- reviewing and providing critical analysis of testimony submitted by other parties;
- preparing and presenting testimony at a hearing in FERC or PUCT proceedings;
- attending hearings in FERC or state proceedings;
- assisting PUCT counsel in cross-examining expert witnesses;
- assisting PUCT staff during hearings as directed; and
- assisting PUCT counsel in preparing post-hearing briefing.

The contractor will provide hearing services under the direction of PUCT staff who will review the contractor's analysis, review any proposed testimony, conduct direct and re-direct examination of the contractor's witness, if any, and generally manage the staff case before, during, and after a hearing.

ATTACHMENT B SAMPLE CONTRACT TERMS

Article 1. DEFINITIONS

When used in this Agreement, 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.

Article 2. COMPENSATION/PENALTIES

2.1 Compensation. Contractor agrees to provide all services (including labor, expenses, and any other services) described in Attachment A as follows:

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 Commission must approve the increase in fee by written amendment to this Agreement before the Contractor performs any services or may invoice the increased fee.

2.2 Payment Process. Unless otherwise specified in Addendum A, Contractor shall submit a statement for services to the PUCT upon completion of and acceptance by the PUCT of the final deliverable. By submitting the statement, Contractor is certifying to the following that the invoice accurately describes the services performed, that the services were performed in compliance with the Agreement, and that the amount of the invoice does not exceed the contractual cap of the Agreement.

The invoice presented must specify the Texas Comptroller issued vendor identification number or federal taxpayer identification number, a description of the services provided, and the name and division of the Agency Contract manager. Contractor shall submit the invoice as follows:

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

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 shall maintain records and books of account relating to services provided under this Agreement. Such records and books shall be made available to the PUCT, its designee, or the Texas State Auditor’s Office for review upon reasonable notice during Contractor’s normal business hours for a period of at least four years after the end of the term of the Agreement.

2.6 Sole Compensation. Payments under this Article are Contractor’s sole compensation under this Agreement. 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 _____ to serve as its Technical Point of Contact and primary point of contact with Contractor throughout the term of this Agreement. The PUCT designates _____ as its Contract Administrator to serve as the PUCT's point of contact for contract administration. Contractor acknowledges that neither the PUCT Contract Administrator nor the PUCT Technical Point of Contact have any authority to amend this Agreement 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:

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 Agreement as conveyed to Contractor by the PUCT Contract Administrator and the PUCT Technical Point of Contact.

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. The Parties also recognize that implementation of the securitization in the marketplace is a dynamic process and often is done under tight time demands.

3.5 Inquiries and Prompt Referral. Contractor will promptly refer all inquiries regarding this Agreement 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 or as agreed to between the parties.

4.2 Records Review. Contractor shall, for a period of four (4) years following the expiration or termination of this Agreement, maintain its records (electronic and paper) of the work performed under this Agreement. Records include, but are not limited to correspondence concerning the subject of this Agreement 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 given reasonable notice, upon the request of the PUCT Contract Administrator.

4.3 Progress Reports. In addition to the reports required by Attachment A, Contractor shall provide regular progress reports, either orally or electronically, to the PUCT Contract Administrator or the PUCT Technical Point of Contact, in a format and on a schedule agreed upon. If Contractor cannot provide such reports without incurring unreasonable additional expense, Contractor shall notify the PUCT's Contract Administrator of the estimated cost for providing the additional reports and information substantiating the cost, prior to incurring the expense. Failure to provide these reports may result in termination of this contract.

Article 5. SUBCONTRACTING PARTIES

5.1 Use of Subcontractors. The Parties acknowledge and agree that at the time of execution of this Agreement, Contractor intends (**or** does not intend) to perform the Services required under this Agreement using its own employees. 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 Agreement.

5.3 Prime Vendor Contract. The Parties expressly agree that this Agreement 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 Agreement, notwithstanding the engagement of any subcontractor to perform an obligation under this Agreement.

Article 6. TERM, SUSPENSION AND TERMINATION

6.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue in effect until the end of the contract term unless sooner terminated under Sections 6.2 or 6.3 of this Agreement.

6.2 Termination for Cause by the PUCT. If Contractor is in default of any material term of this Agreement, 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 Agreement for default and shall have all rights and remedies provided by law and under this Agreement. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Agreement to another entity without disruption to the progress of the workforce assessment.

6.3 Termination for the Convenience of the PUCT. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this Agreement whenever the interests of the PUCT so require.

6.4 Survival. In the event that this Agreement expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Article 2, Sections 4.2, 7.3, 7.5 and 19.1 through 19.10 and Articles 10, 11, 12, 14, 15 and 16 shall survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS AND MODIFICATIONS

7.1 Material Change Requests. PUCT may propose changes to Attachment A. Upon receipt of a written request from the PUCT for a change to Attachment A, 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 Agreement. No changes to Attachment A will occur without the Parties' written consent as provided in accordance with the terms stated in this Agreement.

7.2 Changes in Law, Rules, or Rulings. Subsequent changes in federal and state legislation or rules and regulations or rulings by the PUCT may require modification of the terms of this Agreement, 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, whether an increase or a decrease in Contractor's duties or compensation, in good faith and incorporate such modification into this Agreement by written amendment.

7.3 No Assignment of Duties. This Agreement 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 Agreement or any obligation incurred under this Agreement. Any attempt by Contractor to assign or transfer this Agreement or any obligation incurred under this Agreement, in contravention of this paragraph, shall be void and of no force and effect.

7.4 Amendments and Modifications. This Agreement 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 Agreement.

7.5 Binding on Successors. The terms of this Agreement 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 in a professional and workmanlike manner, consistent with professional standards of practice in the industry.

8.2 Warranty of Services. Contractor warrants that the services shall be rendered by the qualified personnel named in Section 19.7 of this Agreement. If Services provided under this Agreement 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 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 Agreement or upon termination or expiration of the Agreement. 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 Agreement.

9.3 Licensed Software. 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 Agreement. 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 Agreement.

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 Agreement 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 Agreement, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this Agreement 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 Agreement 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 Agreement in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Agreement.

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 Agreement, 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 soon as practicable.

10.2 Agreement Not Confidential. The Parties acknowledge that not all terms of this Agreement 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.

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 performance of this Agreement, 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. 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 6.2.

Article 12. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the PUCT, the State of Texas, its officers and employees from any and all liabilities, claims, demands or causes of action of whatever kind or nature asserted by a third-Party and occurring or in any way incident to, arising out of, or in connection with wrongful acts of Contractor, its agents, employees and subcontractors, committed in the conduct of this Agreement.

Article 13. INSURANCE

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 Agreement, for its own protection and the protection of the PUCT: (a) commercial liability insurance; (b) automobile liability coverage for vehicles driven by Contractor's employees; and (c) workers' compensation insurance. The commercial liability policy shall provide a minimum coverage of \$500,000 per occurrence and \$1,000,000 aggregate. The automobile liability policy shall provide

a minimum coverage of \$500,000 per occurrence. The workers' compensation insurance shall provide the following coverage: \$300,000 for medical expenses and coverage for at least 104 weeks, \$100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks; and \$500 maximum weekly benefit. The PUCT shall be named an additional insured on the commercial liability and automobile policies.

13.2 Certificates of Insurance. Contractor shall furnish to the PUCT certificates of insurance, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten days of the Effective Date of this Agreement, upon request. 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 promptly, shall constitute a material breach of this Agreement.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this Agreement 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 Agreement and specifically retain immunity and all defenses available to them under the laws of the State of Texas or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in the State of Texas and shall be governed by and 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 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 Agreement. 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 Agreement.

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, including Equal Employment Opportunity laws, to which they are subject. All laws and regulation 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 result of any action taken as a result of this Agreement.

17.3 Worker's Compensation. Contractor agrees that it shall be in compliance with applicable state worker's compensation laws throughout the term of this Agreement.

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 Agreement and a Texas statute or PUCT rule, Contractor will so advise the PUCT and will cooperate fully to revise applicable provisions of this Agreement as necessary.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Agreement, 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 Agreement 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 Agreement.

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

18.3 Antitrust. Neither Contractor nor anyone acting for such firm, corporation, or institution 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.

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

18.5 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 Agreement.

18.6 Government Code. Pursuant to Texas Government Code § 2155.004, regarding the collection of state and local sales and use taxes, the individual or business entity named in the proposal and with whom the PUCT is contracting 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.

18.7 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.

18.8 Contracting with Executive Head of State Agency. The Agreement is in compliance with Texas Government Code § 669.003 relating to contracting with the executive head of a State agency.

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

18.10 Hurricane Recovery. Contractor certifies that the individual or business entity named in this proposal is not ineligible for contract award under Government Code § 2155.004 and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Article 19. GENERAL PROVISIONS

19.1 Relationship of Parties. Contractor is and shall remain at all times an independent contractor, and nothing in this Agreement 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 Agreement, 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 Agreement, whether performed by Contractor, its agents, employees or subcontractors.

19.2 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 Agreement. Contractor is solely responsible for all taxes (federal, state, local), withholdings, social security, unemployment, Medicare, Worker's 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, 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 Agreement. 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, Worker's 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.

19.3 Notice. Except as otherwise stated in this Agreement, all notices provided for in this Agreement 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 Agreement), (c) sent by Certified U.S. mail, Return Receipt Requested, 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., 7th Floor

Austin, TX 78701

With a copy to the PUCT Contract Administrator at the same address.

IF TO Contractor:

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

19.5 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 Agreement in violation of any such laws, rules or regulations.

19.6 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Agreement, including but not limited to Article 19.11, cannot be amended, modified or altered by any

conflicting preprinted terms, provisions or conditions contained in a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment or other preprinted form, the terms and conditions of this Agreement will govern.

19.7 Specific Personnel. Contractor has identified the personnel for this assignment ("Team"), as follows:

Contractor warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Agreement. Should personnel changes occur during the contract period, 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. 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. Contractor shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

19.8 Publicity. Contractor understands and agrees that no public disclosures or news releases pertaining to this Agreement or any results or findings based on information provided, created, or obtained to fulfill the requirements of this Agreement shall be made without 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 provisions of this contract will control.

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. Such causes, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority, will not relieve such 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 and 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 10 days prior written notice to the other party.

Article 23. SEVERABILITY

If any provision of this contract will be 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. ENTIRE AGREEMENT

This contract 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.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of the last date signed.

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

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>