

**REQUEST FOR REVIEW AND APPROVAL OF INITIAL CONTINGENT FEE LEGAL SERVICES
CONTRACT
AND/OR RENEWAL OR AMENDMENT OF SUCH CONTRACT;
§403.0305, TEX GOV'T CODE**

Instructions: Under §403.0305, Tex Gov't Code, as added by hb3560, 80th Legislature, 2007, a public agency as defined in §30.003(3), Texas Water Code, may not enter into a contract as provided by Subchapter C, Chapter 2254, Tex Gov't Code, without review and approval by the Comptroller of Public Accounts (Comptroller).

A public agency must submit this completed questionnaire and all applicable attachments, including the proposed contingent fee legal services contract, to request the Comptroller's review and approval of the contract. This applies to any contracts requested to be effective on and after September 1, 2007 and any renewals or amendments of such contracts.

In conducting these reviews and granting these approvals, the Comptroller shall apply the requirements of Subchapter C, Chapter 2254, Tex Gov't Code, to all requesting public agencies, including those that do not fall within the definition of state governmental entity or are exempt under that subchapter.

The e-mail address for submission of the completed questionnaire and all attachments is:

contracts@cpa.state.tx.us

Requesting public agencies must allow a minimum of 30 days from date of submission prior to the requested effective date of the contract or contract renewal or amendment. Requests submitted without all pertinent information and attachments will be returned without approval and may delay a final review response beyond the initial 30 day period.

Contracts and contract renewals and amendments subject to these provisions may not be effective until reviewed and approved by the Comptroller. All other requisite reviews, findings and approvals must first be completed prior to submission to the Comptroller for review and approval and must be clearly reflected in the attachments submitted with the request. In addition to the signature and date lines for the public agency, the contractor and any other applicable entities (such as the Office of the Attorney General), the public agency shall also include the following after those lines on the last page of the contract or contract renewal or amendment:

**“APPROVED BY:
OFFICE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS:**

By: Deputy Comptroller or his designee

Date: _____”

Note: Contingent fee contracts subject to the Comptroller's review and approval under these provisions do not include contracts with bond counsel in connection with the issuance of securities since fees of such counsel do not fall within the definition of contingent fees under Subchapter C, Chapter 2254, Tex Gov't Code.

Update: 2/19/08: Contingent fee contracts subject to the Comptroller's review and approval under these provisions also do not include contracts entered into by a local government with its outside legal counsel on a contingent fee basis for the collection of delinquent ad valorem taxes as provided in §6.30, Texas Tax Code, **and** for the collection of delinquent court fines and fees as provided in Article 103.0031, Texas Code of Criminal Procedure.

Update: 9/21/09: Contingent fee contracts subject to the Comptroller's review and approval under these provisions also do not include contracts entered into by a public agency with its outside legal counsel on a contingent fee basis for the collection of delinquent accounts receivable – such as weed liens and paving liens – or other special assessments.

Questionnaire
Request for Review and Approval
of Proposed Contingent Fee Legal Services Contract
§403.0305, Tex Gov't Code

1. Name, mailing address and website of the requesting public agency as defined in §30.003(3), Texas Water Code.
2. Name, mailing address, e-mail address, phone and fax number of the primary contact person for this request, and one backup contact person for this request, for the requesting public agency.
3. Specify all of the following and include the attachment:
 - (a) general enabling legislation or authority for the public agency *and* the specific legislation or authority that brings the submitting entity within the provisions of §30.003(3), Texas Water Code and therefore §403.0305, Tex Gov't Code;
 - (b) legal authority to enter into outside counsel contracts; and
 - (c) description of governing body or elected or appointed officer.

Attach a copy of the resolutions or minutes approving signature of the contract on behalf of the public agency.
4. Specify whether this is a new contract or a renewal or amendment of a prior contract and requested effective date. For renewals or amendments, attach the written approval of the Comptroller's Office of the initial contract under these provisions or an explanation as to why it is not attached.
5. State the reason for the request and describe the legal services that are required.
6. Are the legal fees and expenses estimated to be \$25,000 or more for this contract?
If "yes" answer (a) and (b) below.
 - (a) Did the public agency publish a Request for Proposal/Request for Information ("RFP/RFI") in the *Texas Register*, or any other publication for these legal services? Explain. If yes, attach a copy.
 - (b) If no RFP/RFI was published, provide an explanation of the circumstances that justified no solicitation or request for information.
7. In certain circumstances, Chapter 2254, Subchapter C, Tex Gov't Code, prescribes the manner in which a contingency fee must be computed. So that we may determine whether Chapter 2254, Subchapter C, Tex Gov't Code, applies to your proposed contract, please answer the following questions. If one recovery is expected under the contract, will the estimated amount that may be recovered exceed \$100,000? If a series of recoveries under the contract is contemplated, will the estimated amount that may be recovered under any one recovery exceed \$100,000? Explain.

8. Name, mailing address, e-mail address, phone and fax number of the lead contact at the requesting public agency who will be responsible, after contract signature and approval, for communicating with and supervising the work of the outside counsel.
9. Attach a copy of all of the following, or for any not attached, a detailed explanation as to why not attached:
- (a) the Office of the Attorney General's prior written approval as required under §402.0212, Tex Gov't Code, and Subchapter C, Chapter 2254, Tex Gov't Code;
 - (b) the governor's prior written approval and signature as required under §2254.103(c), Tx Gov't Code;
 - (c) the Legislative Budget Board's written finding as required under §2254.103(e), Tex Gov't Code, and Article IX, Sec. 16.01(k)(1), App Act; and
 - (d) the written finding by the governing body, elected or appointed officer, or governor, as appropriate under §2254.103(d), Tex Gov't Code, that:
 - (1) there is a substantial need for the legal services;
 - (2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the public agency or by the attorneys and supporting personnel of another public agency; and
 - (3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the public agency does not have appropriated or other budgeted funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.
10. Attach a scanned copy of the proposed final contract, as signed and dated on behalf of the public agency and the proposed counsel, that complies with all of the following requirements.

The proposed contract (or renewal or amendment) must include a provision that the contract (or renewal or amendment) is effective after review and approval by the Comptroller. Specify the contract (or renewal or amendment) page # and contract section # that includes this provision.

Also specify the page # and section # of the scanned contract that includes each of the following provisions [items (a) through (u)] or, if any are not included, a detailed explanation as to why the specific provision is not included.

(a) the contracting attorney or law firm must keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract as required under §2254.104(a), Tex Gov't Code; contract page# ____; contract section# ____

(b) the contracting attorney or law firm shall permit the governing body or governing officer of the public agency, the attorney general, and the state auditor, or other officials as appropriate, to inspect or obtain copies of the time and expense records at any time on request, as required under §2254.104(b), Tex Gov't Code; contract page# ____; contract section# ____

(c) on conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the public agency with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records, as required under §2254.104(a), Tex Gov't Code; contract page#____; contract section#____

(d) provisions regarding disclosure and public information that meet the requirements of §2254.104(d), Tex Gov't Code; contract page#____; contract section#____

(e) method by which the contingent fee is computed, as required under §2254.105(1), Tex Gov't Code; contract page#____; contract section#____

(f) the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed, as required under §2254.105(2), Tex Gov't Code; contract page#____; contract section#____

(g) the method for payment of litigation and other expenses and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted, as required under §2254.105(3), Tex Gov't Code; contract page#____; contract section#____

(h) provision that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with Subchapter C, Chapter 2254, Tex Gov't Code, as required under §2254.105(4), Tex Gov't Code; contract page#____; contract section#____

(i) provision that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with Subchapter C, Chapter 2254, Tex Gov't Code, as required under §2254.105(5), Tex Gov't Code; contract page#____; contract section#____

(j) establishment of the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work, as required under §2254.106(a), Tex Gov't Code; contract page#____; contract section#____ (note: may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons.)

(k) for rates established under (j) above, the highest hourly rate for a named person under a rate schedule may not exceed \$1,000 an hour, as required under §2254.106(a), Tex Gov't Code; contract page#____; contract section#____

(l) establishment of a base fee, as required under §2254.106(b), Tex Gov't Code; contract page#____; contract section#____

(m) subject to the limitation under §2254.106(d), Tex Gov't Code, computation of the contingent fee by multiplying the base fee under §2254.106(b), Tex Gov't Code, by a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery, as required under §2254.106(c), Tex Gov't Code; contract page#____; contract section#____ (note: multiplier may not exceed four without the prior approval by the legislature.)

(n) in addition to establishing the method of computing the fee under §2254.106(a),(b) and (c), Tex Gov't Code, limitation of the amount of the contingent fee to a stated percentage of the amount recovered and provision that the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under §2254.106(a),(b) and (c), Tex Gov't Code, as required under §2254.106(d), Tex Gov't Code; contract page#____; contract section#____ (note: percentage limitation may not exceed 35 percent without the prior approval by the legislature.)

(o) optional in discretion of public agency, limitation of the amount of expenses that may be reimbursed and provision that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly basis without regard to the outcome of the matter, as provided under §2254.106(e), Tex Gov't Code; contract page#____; contract section#____

(p) except as provided in §2254.107, Tex Gov't Code, for mixed hourly and contingent fee contracts or for reimbursement of subcontracted work, the §2254.106, Tex Gov't Code, requirements [items (j) through (o) above] do not apply to a contingent fee contract for legal services in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000, as provided under §2254.106(f), Tex Gov't Code; contract page#____; contract section#____

(q) for each individual recovery that exceeds \$100,000 under a contract described in (p) above, the §2254.106, Tex Gov't Code, requirements [items (j) through (o) above] do apply and contract includes provisions for computing the fee in accordance with such requirements for each individual recovery that actually exceeds \$100,000, as provided under §2254.106(f), Tex Gov't Code; contract page#____; contract section#____

(r) for mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under §2254.107, Tex Gov't Code, provisions that meet the §2254.106(a), Tex Gov't Code [items (j) and (k) above] and §2254.106(e), Tex Gov't Code [item o above] requirements without regard to the expected or actual amount of recovery under the contract, as required under §2254.107(b), Tex Gov't Code; contract page#____; contract section#____

(s) for mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under §2254.107, Tex Gov't Code, provision that applies the limitations under §2254.106, Tex Gov't Code, on the amount of the contingent fee [items (j) through (o) above] to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter, as required under §2254.107(c), Tex Gov't Code; contract page#____; contract section#____

(t) for mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under §2254.107, Tex Gov't Code, provision that applies the limitations on payment of the fee under §2254.108, Tex Gov't Code [item (u) below] to payment of the contingent portion of the fee, as required under §2254.107(d), Tex Gov't Code; contract page#____; contract section#_____

(u) limitation on payment of fees and expenses, as required under §2254.108, Tex Gov't Code; contract page#____; contract section#_____