

RFQ769-19-924TL
University of North Texas System

Request for Qualifications
Outside Counsel Services
September 1, 2019 – August 31, 2021

In accordance with the provisions of *Texas Government Code*, Chapter 2254, the University of North Texas System (UNT System) requests information from law firms interested in representing UNT System and its institutions in the areas of law described below. UNT System is comprised of the System Administration, one health related institution, and two general academic institutions all located in North Texas. This RFQ is issued to establish a referral list from which UNT System, by and through its Office of General Counsel, will select appropriate counsel for representation of UNT System and its institutions on specific matters as the need arises during the timeframe beginning September 1, 2019, to August 31, 2021. UNT System invites responses to this RFQ from qualified firms for the provision of legal services under the direction and supervision of the UNT System's Office of General Counsel. Subject to approval by the Office of the Attorney General of Texas, UNT System will engage outside counsel with experience in the following areas of law:

Communications (FCC): Representation and advice regarding communications law, noncommercial broadcast issues, First Amendment, and broadcast journalism legal issues, including but not limited to preparing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications with the Federal Communications Commission.

Construction Law: Representation and advice regarding construction law, including contracting, procurement, and dispute resolution.

Corporate and Business Law (General): 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, with emphasis on the unique exposure of an agency of the State of Texas and its officers and employees in public-private activities and relationships; drafting and filing entity documents; insurance and insurance coverage; filing for certificates of authority to transact business in other states; private equity investing; and complex business and commercial transactions.

Corporate and Business Law (Technology Commercialization): Representation and advice regarding corporate and business law in connection with (i) establishment and operation of corporations, either for profit or not for profit, and limited liability companies, (ii) preparation of organizational documents, shareholder and member agreements and stock options, (iii) the issuance and transfer of securities subject to state and federal securities laws, (iv) advice regarding financing startup companies, capital-raising and investing activities, (v) taxation, and (vi) other complex corporate governance and compliance issues. IP representation will also include drafting

and negotiation of sales/procurement, inbound/outbound technology licensing and development, outsourcing IT and business processes, services, and confidentiality agreements.

Cybersecurity: Representation and advice regarding every aspect of cybersecurity and data protection, including (i) data protection and security policies, procedures, and technical practices, (ii) data breach or incident response plans, (iii) obligations under federal, state, local, and international law, both generally and in the event of a data breach or incident, and (iv) IT related contracts.

Employment Law: Representation and advice regarding employment law issues, including conducting internal investigations, procuring insurance, interpreting insurance policies and advising on coverage questions.

Export Control Law: 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 and voluntary disclosures. In addition, legal services may be provided concerning government contracting issues and application of relevant U.S. laws and regulations relating to same.

Federal Contracting Law: Representation and advice in every aspect of US government procurement and contracting matters for a variety of industries, including, but not limited to, federal regulatory and contractual requirements, interpretation of Uniform Guidance and FAR requirements and clauses, Cost Accounting Standards and solicitations, teaming and subcontract arrangements, federal compliance, bid protests, government investigations, intellectual property rights and general business strategy counseling in the context of government projects.

Federal Research Compliance: Representation and advice on compliance with federal laws and regulations relating to the conduct of academic and clinical research, including but not limited to those of the Department of Health and Human Services (HHS), the Department of Justice (DOJ), the Department of Defense (DOD), the National Institutes of Health (NIH), the National Science Foundation (NSF), Centers for Disease Control (CDC), the Department of Agriculture (USDA), and the Food and Drug Administration (FDA). In addition, legal services may be provided concerning internal and government investigations, audits, and reviews.

Foundation and Affiliated Entity Matters: Representation and advice regarding the design, formation and operation of foundations, affiliated entities, and other types of organizations created to support the mission of the UNT System and its member institutions, including filing appropriate documents with state and federal agencies including the Texas Secretary of State and the United States Internal Revenue Service, and other ancillary matters.

Health Law: Representation and advice involving academic medical centers, including but not limited to, regulatory compliance, investigations, and enforcement; clinical trials and research;

transactional matters; insurance, managed care, Medicare, Medicaid and Tricare; and other general health law matters.

Higher Education Law: Representation and advice on federal laws and regulations relating to institutions of higher education, including but not limited to Title IX, Title VI, ADA and Section 504 compliance, the Family Educational Rights and Privacy Act (FERPA), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), accreditation and federal student aid programs regulated by the United States Department of Education.

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; labor condition applications, labor certifications, and 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, Department of State and the Department of Labor, as well as interaction with UNT System institutions' international, academic affairs, and human resources offices under the direction and supervision of the UNT System Office of General Counsel. Outside Counsel should be admitted to practice before all United States District Courts in Texas.

Intellectual Property Matters: Representation and advice regarding intellectual property and technology transfer matters, including but not limited to preparing, filing, prosecuting, and maintaining patent applications in the United States and other countries; securing copyright protection; preparing, filing, and prosecuting applications to register trademarks and service marks in the United States and other countries; advising on and other legal services related to trademark and copyright licensing, contracting and protection issues; 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 registrations and tax obligations, doing business with foreign entities, the Foreign Corrupt Practice Act, establishing campuses abroad, employment issues regarding employees and foreign nationals, affiliation and collaborative research agreements with foreign universities and other entities, study abroad programs, contracting and procurement issues in foreign jurisdictions, and conducting investigations.

Investment Matters: Representation and advice regarding the discharge of fiduciary duties in managing investment funds, including issues related to regulatory compliance, statutory duties, and applicable standards of oversight and care related to investment policies, strategies and fund management.

Litigation – General: Representation and advice regarding complex litigation matters, including but not limited to employment litigation, construction litigation, real estate litigation, wills and estate litigation, Texas Public Information Act litigation, and commercial and creditors' rights litigation. If selected, Respondents will be retained if and when a general litigation matter requires

outside counsel representation. In most instances, however, the Office of the Attorney General of Texas represents UNT System and its institutions in litigation matters.

Real Estate and Finance Transactions: Representation and advice regarding land development, acquisitions, dispositions, eminent domain, financings, 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: Representation and advice on a broad range of matters involving real estate, real estate development, oil and gas, and mineral interests, including but not limited to evaluating proposals, reviewing surveys, examining title and title commitments, curing title exceptions and/or defects, drafting, reviewing, and negotiating contracts, lease agreements, and business operations agreements and providing such other guidance and expertise as may be necessary to protect and develop real estate interests, oil and gas interests, and/or mineral interests.

Sports Law: Representation and advice regarding compliance with the rules and eligibility regulations of applicable intercollegiate athletics conferences. In addition, advice and counsel relating to various state and federal laws and regulations relating to intercollegiate athletics.

Tax-Exempt Bond Matters: Representation and advice on specific bond and commercial paper matters, securities law issues, and related financial matters as the need arises. Bonds are issued under authority granted the UNT System in Article VII, §17 of the Texas Constitution. UNT System's needs include the usual and necessary services of a bond counsel in connection with the issuance, sale, and delivery of bonds, and outside counsel shall be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds as needed by UNT System. Outside counsel shall provide advice and representation on federal tax related matters regarding bonds issued by UNT System, including strategies and management practices in the conduct of a debt program. Outside counsel may be requested to address issues related to the issuance of commercial paper and increasing the UNT System's self-liquidity. Outside counsel may be called on to provide representation and advice in regard to filings or proceedings before administrative agencies, including, by way of example, the Texas Higher Education Coordinating Board, the Texas Bond Review Board, the Internal Revenue Service, the Securities and Exchange Commission, and the State Securities Administrator. Outside counsel may be asked to prepare prospectuses, official statements or other materials on behalf of UNT System in accordance with various securities laws. Outside counsel may be requested to perform title examinations and issue title opinions.

Tax Matters: Representation and advice regarding federal and state income, estate, gift, employment, ad valorem, and excise taxes, including but not limited to matters regarding: taxation of any kind, including tax liens, tax garnishments, tax levies, tax assessments, tax valuations, as well as summonses, subpoenas, and discovery relating to tax matters; tax audits; 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 on tax matters; employee benefits such as Internal Revenue Code (I.R.C.) Section 125 cafeteria plans, defined benefit and contribution plans including 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; income tax matters, including unrelated business income tax as it relates to universities; federal tax matters regarding compensation issues related to university physicians; interaction with and representation before the IRS and other taxing authorities in any tax controversy; and charitable fundraising activities. 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.

Information for Respondents

Responses: Responses to this RFQ **shall not exceed thirty-five (35) pages** and should include at least the following information: (1) a description of the area(s) of law described about which the firm is interested in representing UNT System and its institutions; (2) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in the specific area of law for which the firm is responding; (3) the names and expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters, the availability of the lead attorney and others assigned to the project; (4) the submission of fee information in the form of a 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 UNT System's matter and/or a proposed flat fee or other fee arrangement directly related to the achievement of specific goals and cost controls; (5) a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law in particular; and (6) confirmation of willingness to comply with policies, directives, and guidelines of UNT System and the Office of the Attorney General of Texas. You will be contacted via e-mail if UNT System chooses to contract with your firm for outside counsel services.

Selection Process: Selection of the successful offer submitted in response to this RFQ by the submittal deadline will be made using the competitive process described below.

Selection of the successful offer may be made by UNT System: (a) on the basis of the offers initially submitted, without discussion, clarification or modification; (b) after the opening of offers and upon completion of the initial review and evaluation of the offers submitted, selected respondents may be invited to participate in oral presentations; or (c) on the basis of negotiation with any of the respondents. UNT System will not disclose any information derived from the offers submitted by competing respondents in conducting any presentations or negotiations. UNT System is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT System.

UNT System reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the areas of law set forth in this RFQ with one or more respondents; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT System.

The successful offer will be the offer that is submitted in response to this RFQ by the submittal deadline and is the most advantageous to UNT System in UNT System's sole discretion. Consideration may also be given to any additional information and comments if such information or

comments increase the benefits to UNT System. The successful respondent will be required to enter into a contract acceptable to the Office of the Attorney General of Texas (OAG) and UNT System.

Disclosure Statement Regarding Conflicts of Interest: Prior to execution of an Outside Counsel Contract (OCC), the selected firm must disclose any and all conflicts that the entire firm (including any offices located outside the State of Texas) has to UNT System and all other agencies of the State of Texas. The law firm will be required to submit a written disclosure statement identifying every matter in which the firm 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. The disclosure statement 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. That obligation continues throughout the life of the contract. Outside counsel must monitor its conflicts for the duration of its representation and disclose to UNT System and the OAG any existing or potential conflicts that arise concerning UNT System, the OAG, or the State of Texas.

The OAG will not modify, alter, waive, or allow agencies to waive this disclosure requirement absent exceptional and compelling circumstances unique to the specific law firm or representation sought.

Administrative Fee: Pursuant to subsection 402.0212(c) of the Texas Government Code, outside counsel with whom a state agency contracts must pay an administrative fee to the OAG for the review of invoices. The fee is non-refundable and is due each fiscal biennium. Outside counsel may not charge or seek reimbursement from UNT System for the fee.

The administrative fee is set on a sliding scale, based on the contract cap amount. No administrative fee is due on a contract with a maximum liability of \$0.00.

If the OCC is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, outside counsel shall pay the difference between the original lesser fee and the new higher fee.

The OAG has granted a limited exception from the administrative fee and invoice review to university systems and institutions of higher education regarding certain legal services that are solely related to the prosecution and management of system or institution intellectual property, which includes patents, trademarks, and copyrights. This limited exception does not apply to the enforcement of intellectual property rights-including litigation-or corporate legal services relating to the monetization of intellectual property. The OAG may rescind this limited exception at any time.

The contract term shall be for a period of two (2) years, beginning September 1, 2019, and ending August 31, 2021.

Award of Contract: The selection of and contracting with outside counsel is subject to the approval of the Office of the Attorney General.

Format and Person to Contact: Responses must be sent via e-mail to ogcrfq@untsystem.edu. Please do not forward hard copies of any materials to UNT System. Questions should be addressed to Nancy S. Footer, Vice Chancellor and General Counsel, Office of General Counsel, University of North Texas System and sent to mallory.michaelson@untsystem.edu.

Deadline for Submission of Response: All responses must be completed and submitted to the UNT System Office of General Counsel via e-mail as noted above **no later than 11:59 p.m., May 22, 2019.**