

GOVERNMENT CODE
CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES
SUBCHAPTER A. PROFESSIONAL SERVICES

Sec. 2254.001. SHORT TITLE. This subchapter may be cited as the Professional Services Procurement Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.002. DEFINITIONS. In this subchapter:

- (1) "Governmental entity" means:
- (A) a state agency or department;
 - (B) a district, authority, county, municipality, or other political subdivision of the state;
 - (C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or
 - (D) a publicly owned utility.
- (2) "Professional services" means services:
- (A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
 - (ii) architecture;
 - (iii) landscape architecture;
 - (iv) land surveying;
 - (v) medicine;
 - (vi) optometry;
 - (vii) professional engineering;
 - (viii) real estate appraising; or
 - (ix) professional nursing; or
- (B) provided in connection with the professional employment or practice of a person who is licensed or registered as:
- (i) a certified public accountant;
 - (ii) an architect;
 - (iii) a landscape architect;
 - (iv) a land surveyor;
 - (v) a physician, including a surgeon;
 - (vi) an optometrist;
 - (vii) a professional engineer;
 - (viii) a state certified or state licensed real estate appraiser; or
 - (ix) a registered nurse.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1542, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 2001.

Sec. 2254.003. SELECTION OF PROVIDER; FEES. (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.

(b) The professional fees under the contract:

- (1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
- (2) may not exceed any maximum provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.0031. INDEMNIFICATION. A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.37, eff. Sept. 1, 1999.

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR. (a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:

- (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider;

and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1997.

Sec. 2254.005. VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.006. CONTRACT NOTIFICATION. A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 13, eff. Sept. 1, 1999.

SUBCHAPTER B. CONSULTING SERVICES

Sec. 2254.021. DEFINITIONS. In this subchapter:

(1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(3) "Consultant" means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

(4) "Political subdivision" means:

(A) a county;

(B) an incorporated or unincorporated municipality;

(C) a public junior college;

(D) a public school district or other educational or rehabilitative district;

(E) a metropolitan or regional transit authority;

(F) an airport authority;

(G) a river authority or compact;

(H) a regional planning commission, a council of governments, or a similar regional planning agency created under Chapter 391, Local Government Code;

(I) the Edwards Aquifer Authority or a district governed by Title 4, Water Code;

(J) a soil and water conservation district;

(K) a county or municipal improvement district;

(L) a county road or road utility district;

(M) a county housing authority;

(N) an emergency services or communications district;

(O) a fire prevention district;

(P) a public health or hospital authority or district;

(Q) a mosquito control district;

(R) a special waste district;

(S) a rural rail transportation district; or

(T) any other local government or special district of this state.

(5) "State agency" has the meaning assigned by Section 2151.002.

(6) "State governmental entity" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as defined by Section 61.003, Education Code. The term does not include a political subdivision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.44(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(11), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 3, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, Sec. 1.02, eff. June 20, 2003.

Sec. 2254.022. INTERPRETATION OF SUBCHAPTER. (a) This subchapter shall be interpreted to ensure:

(1) the greatest and fairest competition in the selection by state agencies of consultants; and

(2) the giving of notice to all potential consultants of the need for and opportunity to provide consulting services.

(b) This subchapter does not:

(1) discourage state agencies from using consultants if the agencies reasonably foresee that the use of consultants will produce a more efficient and less costly operation or project;

(2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified consultant at a reasonable fee, after compliance with this subchapter; or

(3) require or prohibit the use of competitive bidding procedures to purchase consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 4, eff. June 19, 1997.

Sec. 2254.023. APPLICABILITY OF SUBCHAPTER. This subchapter applies to consulting services that a state agency acquires with money:

(1) appropriated by the legislature;

(2) derived from the exercise of the statutory duties of a state agency; or

(3) received from the federal government, unless a federal law or regulation conflicts with the application of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.024. EXEMPTIONS. (a) This subchapter does not apply to or discourage the use of consulting services provided by:

(1) practitioners of professional services described in Subchapter A;

(2) private legal counsel;

(3) investment counselors;

(4) actuaries;

(5) medical or dental services providers; or

(6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the governing board to perform its constitutional fiduciary duties, except that the governing board shall comply with Section 2254.030.

(b) If the governor, comptroller, and General Services Commission consider it more advantageous to the state to procure a particular consulting service under the procedures of Chapters 2155-2158, instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Chapters 2155-2158.

(c) The comptroller by rule may define circumstances in which a state agency may procure, without complying with this subchapter, certain consulting services that will cost less than a minimum amount established by the comptroller. The comptroller must determine that noncompliance in those circumstances is more cost-effective for the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(1), eff. Sept. 1, 1997.

Sec. 2254.025. EMERGENCY WAIVER. (a) The governor, after receipt of a request complying with this section, may grant a

limited waiver of the provisions of this subchapter for a state agency that requires consulting services before compliance with this subchapter can be completed because of an unforeseen emergency.

(b) A state agency's request for a waiver must include information required by the governor, including:

- (1) information about the nature of the emergency;
- (2) the reason that the state agency did not foresee the emergency;
- (3) the name of the consultant with whom the agency intends to contract; and
- (4) the amount of the intended contract.

(c) As soon as possible after the governor grants a limited waiver, a state agency shall comply with this subchapter to the extent that the requirements of this subchapter are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated.

(d) The governor shall adopt rules to administer this section.

(e) In this section, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

(f) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 5, eff. June 19, 1997.

Sec. 2254.026. CONTRACT WITH CONSULTANT. A state agency may contract with a consultant only if:

- (1) there is a substantial need for the consulting services; and
- (2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 6, eff. June 19, 1997.

Sec. 2254.027. SELECTION OF CONSULTANT. In selecting a consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 7, eff. June 19, 1997.

Sec. 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT. (a) Before entering into a major consulting services contract, a state agency shall:

(1) notify the Legislative Budget Board and the governor's Budget and Planning Office that the agency intends to contract with a consultant;

(2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and

(3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void.

(c) Subsection (a)(3) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a

finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 8, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, Sec. 1.03, eff. June 20, 2003.

Sec. 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. (a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:

(1) an invitation for consultants to provide offers of consulting services;

(2) the name of the individual who should be contacted by a consultant that intends to make an offer;

(3) the closing date for the receipt of offers; and

(4) the procedure by which the state agency will award the contract.

(b) If the consulting services sought by a state agency relate to services previously provided by a consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 9, eff. June 19, 1997.

Sec. 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. Not later than the 20th day after the date of entering into a major consulting services contract, the contracting state agency shall file with the secretary of state for publication in the Texas Register:

(1) a description of the activities that the consultant will conduct;

(2) the name and business address of the consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 10, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.30, eff. Sept. 1, 1999.

Sec. 2254.0301. CONTRACT NOTIFICATION. A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 14, eff. Sept. 1, 1999.

Sec. 2254.031. RENEWAL; AMENDMENT; EXTENSION. (a) A state agency that intends to renew a major consulting services contract shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 20th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(c) A state agency that intends to amend or extend a major consulting services contract shall:

(1) not later than the 20th day after the date the contract is amended or extended, file the information required by

Section 2254.030 with the secretary of state for publication in the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 11, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1266, Sec. 1.04, eff. June 20, 2003.

Sec. 2254.032. CONFLICTS OF INTEREST. (a) An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that:

(1) the officer or employee has in the private consultant who submitted the offer; or

(2) an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573, has in the private consultant who submitted the offer.

(b) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY. (a) An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other agency;

(2) the date the employment was terminated; and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an offer from an individual described in Subsection (a) shall include in the information filed under Section 2254.030 a statement about the individual's previous employment and the nature of the employment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.034. CONTRACT VOID. (a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.

(b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void.

(c) If a contract is void under this section:

(1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and

(2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.

(d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1467, Sec. 1.32, eff. June 19, 1999.

Sec. 2254.035. DIVIDING CONTRACTS. (a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.036. ARCHIVES. (a) On request, a state agency shall, after the agency's contract with a consultant has ended, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

(b) Copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.

(c) The Texas State Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 12, eff. June 19, 1997.

Sec. 2254.037. REPORTS. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any consultant with whom the state agency contracts during the previous biennium.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 13, eff. June 19, 1997.

Sec. 2254.038. MIXED CONTRACTS. This subchapter applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.039. COMPTROLLER'S RULES. (a) The comptroller shall adopt rules to implement and administer this subchapter. The comptroller's rules may not conflict with or cover a matter on which this subchapter authorizes the governor to adopt rules.

(b) The comptroller shall give proposed rules to the governor and the General Services Commission for review and comment before adopting the rules.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.040. PROCUREMENT BY GENERAL SERVICES COMMISSION. (a) The General Services Commission may, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.

(b) The commission may require reimbursement for the costs it incurs in procuring the services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 16, eff. June 18, 1999.

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) includes the state when a state officer is bringing a parens patriae proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.102. APPLICABILITY. (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.

(b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a

contingent fee contract for legal services.

(c) This subchapter does not apply to a contract for legal services entered into by an institution of higher education under Section 153.006, Education Code.

(d) This subchapter does not apply to a contract for legal services entered into by the Teacher Retirement System of Texas if the services are paid for from money that is not appropriated from the general revenue fund, including funds of a trust administered by the retirement system.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 1.13, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 1359, Sec. 31, eff. Sept. 1, 2005.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find 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 state governmental entity or by the attorneys and supporting personnel of another state governmental entity; 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 state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that the conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT. (a) The contract must require that the contracting attorney or law firm keep current and complete written time and

expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity 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 required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state 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 this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must establish 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. The contract 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. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a

contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish 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. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

(1) limit the amount of expenses that may be reimbursed; and

(2) provide 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 rate basis without regard to the outcome of the matter.

(f) Except as provided by Section 2254.107, this section does not apply to a contingent fee contract for legal services:

(1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or

(2) 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.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK. (a) This section applies only to a contingent fee contract:

(1) under which 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 rate basis without regard to the outcome of the matter; or

(2) under which reimbursable expenses are incurred for 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.

(b) Sections 2254.106(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section 2254.106 on the amount of the contingent fee apply 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.

(d) The limitations prescribed by Section 2254.108 on payment of the fee apply only to payment of the contingent portion of the fee.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT. (a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.

(b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.109. EFFECT ON OTHER LAW. (a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

SUBCHAPTER D. OUTSIDE LEGAL SERVICES

Sec. 2254.151. DEFINITION. In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.152. APPLICABILITY. This subchapter does not apply to a contingent fee contract for legal services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED. Subject to Section 402.0212, a state agency may

contract for outside legal services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT. The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.