

Contingency Fee Contracts Must be Reviewed by Comptroller

Texas Government Code Section 403.0305 (enacted by House Bill 3560, effective September 1, 2007) requires a city to present any potential contingency fee contract to the Texas comptroller's office for approval before the city can enter into the contract. Contingency fee contracts are defined as legal services contracts where the payment amount from the city to the attorney or law firm is based in whole or in part on the outcome of the legal matter at issue.

Sections 2254.101-.109 of the Texas Government Code govern the review of the contracts by the comptroller. Before the city's contract will be approved, the city must show that: (1) there is a substantial need for the legal services; (2) the city attorney or legal department cannot adequately perform the services; and (3) the services cannot reasonably be obtained from private attorneys on an hourly basis. TEX. GOV'T CODE § 2254.103. The contract must require that the contracting attorney or firm keep current and complete time and expense records that can be inspected by the city and others at any time. These time records are subject to the Public Information Act to the extent that the records do not interfere with the city's strategy or position in pending or reasonably anticipated litigation. *Id.* § 2254.104. The contract must also provide: (1) the method by which the contingent fee will be calculated; (2) a description of any difference in calculation based on whether the matter is settled, tried, or tried and appealed; (3) a description of who pays the expenses and any possible reimbursement; (4) information regarding any subcontracted legal or other services; and (5) a statement that the contingent fee amount and reimbursement of expenses will be paid and limited under Chapter 2254. *Id.* § 2254.105. The fee and reimbursement of expenses for these contracts are governed by Sections 2254.106-.108.

Before a city may enter into a contingency fee contract for legal services, the city must follow the procedure outlined on the comptroller's Web site at:

<http://www.window.state.tx.us/taxbud/contfee.doc>

The comptroller has noted in its contingency fee procedure that certain city contracts do not fall under this approval procedure including: (1) contracts with bond counsel in connection with the issuance of securities; (2) contracts entered into by a city with outside legal counsel for the collection of delinquent property taxes under Texas Tax Code § 6.30; and (3) contracts for the collection of delinquent court fines and fees as provided in Article 103.0031, Texas Code of Criminal Procedure.

A city must submit a completed questionnaire and all required attachments, including the proposed contract, to the comptroller at contracts@cpa.state.tx.us for review and approval. The city must allow a minimum of thirty days between the time of submission and the requested effective date of the contract. The approval procedure applies to any contracts requested to be effective on and after September 1, 2007, and any renewals or amendments of such contracts.