

AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT		1. Solicitation Number OAG-FY17-R-0001		Page of Pages 1 1	
2. Amendment A0006		3. Effective Date See Block 16C		4. Requisition N/A	
				5. Solicitation Caption Outside Legal Counsel	
6. Issued by: Office of the Attorney General 441 - 4 th Street, N.W., Suite 1100 South Washington, D.C. 20001		Code		7. Administered by (If other than line 6) Office of the Attorney General 441 - 4 th Street, N.W., Suite 1100 South Washington, D.C. 20001	
8. Name and Address of Contractor (No. street, city, county, state and zip code) To All Prospective Offerors		9A. Amendment of Solicitation No. OAG-FY17-R-0001			
		X 9B. Dated 7/21/17			
		10A. Modification of Contract/Order No. N/A			
Code		Facility		10B. Dated (See Item 13)	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of RFP <input type="checkbox"/> is extended. <input checked="" type="checkbox"/> is not extended. ISP must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) acknowledging receipt of this amendment on each copy of the offer submitted; or (c) separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR ISP. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter, telegram or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. Accounting and Appropriation Data: (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14					
A. This change order is issued pursuant to (Specify Authority): The changes set forth in Item 14 are made in the contract/order no. in item 10A.					
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data etc.) set forth in item 14, pursuant to the authority of 27 DCMR, Chapter 15, Section 1517					
C. This supplemental agreement is entered into pursuant to authority of: The Changes Clause					
D. Other (Specify type of modification and authority) 27DCMR section: 1623 AMENDMENT OF SOLICITATION					
E. IMPORTANT: Contractor is required to sign this amendment and return <u>1</u> copy to the issuing office					
14. Description of amendment/modification (Organized by Section headings, including solicitation/contract subject matter where feasible.) -The purpose of this amendment is to provide answers to questions (see attachment A) and to provide OAG's response to comments received for the 35% Sub-Contracting Waiver Request (see attachment B).					
Except as provided herein, all terms and conditions of the document is referenced in Item 9A or 10A remain unchanged and in full force and effect.					
15A. Name and Title of Signer (Type or print)		16A. Name of Contracting Officer Sanaz Etninan			
15B. Name of Contractor (Signature of person authorized to sign)		15C. Date Signed		16B. District of Columbia (Signature of Contracting Officer)	
				16C. Date Signed 9/8/17	

ATTACHMENT B – OAG-FY17-R-0001
Amendment A0006

Comments Received:

Director Harvey, Deputy Director Edwards and Ms. Etminan:

I write in regard the above-referenced waiver request. We respectfully submit that the waiver request and the solicitation as amended do not meet the statutory requirements. In addition, the waiver of the subcontracting requirement, not only puts small business enterprises (SBEs) and certified business enterprises (CBEs) at a disadvantage, but it effectively prevents SBEs and CBEs from participating in the solicitation, although we realize that is not OAG's intent. As such, for the reasons below, we request requiring the alternative statutory 35% CBE requirement, or at a minimum, setting aside a number of contract awards to SBEs/CBEs if the waiver is granted.

1. The Waiver Does Not Identify Number of Qualified CBEs and Other D.C. Code 2-218.51 Requirements

Pursuant D.C. Official Code 2-218.51, the subcontracting requirements of D.C. Code 2-218.46 may be waived only if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level. An agency seeking waiver shall submit to DSLBD a request for waiver which shall include: (1) the number of CBEs, if any, qualified to perform the elements of work that comprise the project; (2) a summary of the market research or outreach conducted to analyze the relevant market; and (3) the consideration given to alternate methods for acquiring the work to be subcontracted in order to make the work more amenable to being performed by CBEs.

The waiver request does not provide: (i) the number of CBEs qualified to perform the services; (ii) what market research or outreach was performed, other than OAG's receipt of questions related to CBE/SBE participation;; nor (iii) whether consideration was given to alternate methods for acquiring the work to be subcontracted. This is particularly important given that there are 2 SBE's other than this firm, interested and qualified to perform the work, which attended proposal conferences related to the solicitation.

2. The Waiver and Amended Solicitation do not require an CBE Participation

D.C. Official Code 2-218.46(a)(2) permits a waiver if there are not qualified SBEs to completely fulfill the subcontracting requirement to SBEs, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any qualified CBEs; provided, that all reasonable efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontracting work. The

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



September 8, 2017

Ms. Tene Dolphin
Interim Director
Department of Small and Local
Business Development
441 4th Street, NW, Suite 850
Washington, DC 20001

RE: Response to Concerns Raised by [REDACTED] to Amended Solicitation No.
OAG-FY17-R-0001

Dear Ms. Dolphin:

This letter responds to concerns raised by [REDACTED] regarding Amended Solicitation No. OAG-FY17-R-0001 seeking legal services on a contingency fee basis to investigate and possibly litigate against distributors of prescription opioid pharmaceuticals or any other potentially liable parties, including manufacturers. [REDACTED] overarching concern is that the waiver and amendment disadvantages and/or prevents Certified Business Enterprises (CBE) from participating in the solicitation.

The Office of the Attorney General (OAG) acknowledges and understands the concerns that [REDACTED] raised. In structuring the solicitation, OAG sought to maximize CBE participation. OAG firmly believes that providing CBEs with opportunities to provide goods and services to the District Government benefits District agencies, District residents and supports the vitality of the city.

Unfortunately, given the nature of this solicitation, the normal process for ensuring CBE participation was not adequate to achieve that goal. In a normal contract, the price compensates the contractor and CBE for the continued cost of performance. Therefore, those responding to a solicitation can precisely determine what aspects of the proposal a CBE can perform and the dollar amount of the contract that will be allocated to CBEs. This solicitation, however, is a request for proposals wherein the law firm will advance all costs of the investigation and litigation and receive a percentage of any recovery the firm secures on behalf of the District of Columbia. If the firm does not recover a settlement or judgment for the District, the firm receives no payment for any services rendered or expenses incurred. With a contingency fee

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contract for legal services, the contract amount is therefore not assured to compensate the contractor for the continued cost of performance. Consequently, requiring proposing firms to submit a plan for 35% CBE participation for an unknown dollar amount was not possible.

OAG consulted with the Department of Small and Local Business Development (DSLBD) to devise an effective way to maximize CBE participation in the contingency fee request for proposals. After considering all issues and the inherent uncertainty of a contingency fee contract, OAG and DSLBD agreed that waiving the general 35% CBE subcontracting plan requirement and making the submission of a CBE subcontracting plan a separate evaluation factor was the best mechanism for maximizing CBE participation. This approach encourages non-CBE firms who seek to submit a proposal to structure an equitable arrangement with CBEs for their participation. Firms that submit thoughtful subcontracting plans with meaningful CBE participation would receive a greater number of points for this evaluation factor. Additionally, a CBE firm submitting a proposal as the prime contractor would have the advantage of receiving any CBE preference points as well as the maximum number of points for the evaluation factor. Most importantly, if a proposing firm does not submit a CBE subcontracting plan, OAG would reject the proposal. Therefore, any non-CBE firm that seeks consideration has an incentive to engage CBE firms and to submit a robust CBE subcontracting plan.

OAG looks forward to receiving proposals that integrate CBE firms and believes that the aforementioned approach is the most equitable way of ensuring maximum CBE participation in this contingency fee request for proposals. If you have any further questions, please contact Sanaz Etminan, Senior Contracting Officer at (202) 442-9882.

Sincerely,

A handwritten signature in black ink, appearing to read "Tarifah Coaxum", written in a cursive style.

Tarifah Coaxum
Chief Administrative Officer