

<b>SOLICITATION, OFFER, AND AWARD</b>  Government of the District of Columbia		1. Caption		Page of Pages	
		Outside Counsel for Climate Change Litigation		1      58	
2. Contract Number		3. Solicitation Number		4. Type of Solicitation	
		<b>DCCB-2019-R-0011</b>		<input type="checkbox"/> Sealed Bid (IFB)	
				<input checked="" type="checkbox"/> Sealed Proposals(RFP)	
				<input type="checkbox"/> Other	
		5. Date Issued		6. Type of Market	
		<b>2/28/2019</b>		<input type="checkbox"/> Open	
				<input type="checkbox"/> Set Aside	
				<input checked="" type="checkbox"/> Open with Sub-Contracting Set Aside	
7. Issued By:				8. Address Offer to:	
Office of the Attorney General Support Services Division/Procurement Unit 441 Fourth Street NW, Suite 1100 South Washington, DC 20001				<b>OAG.businessopportunities@dc.gov</b>	

NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"

### SOLICITATION

9. Sealed offers for furnishing the supplies or services in the Schedule will be received by electronic mail at the place specified in Item 8, until **10:00 a.m.** local time **March 29, 2019.**

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR Chapter 50, Section 5020 and 5021. All offers are subject to all terms & conditions in this solicitation.

10. For Information Contact 	A. Name		B. Telephone Number		C. E-mail Address	
	Janice Parker Watson		202 727-3400		Fax 202-730-0484 <a href="mailto:Janice.Watson@dc.gov">Janice.Watson@dc.gov</a>	

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### OFFER

12. The undersigned agrees, if this offer is accepted within 30 calendar days from the date for receipt of offers specified above to furnish any and all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment 		10 Calendar days %	20 Calendar days %	30 Calendar days %	___ Calendar days %
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):		Amendment Number	Date	Amendment Number	Date
15A. Name and Address of Offeror			16. Name and Title of Person Authorized to Sign Offer/Contract		
15B. Telephone			17. Signature		18. Offer Date
(Area Code)	(Number)	(Ext)			
			<input type="checkbox"/> 15 C. Check if remittance address is different from above - Refer to Section G		

### AWARD

19. Accepted as to Items numbered		20. Amount	21. Accounting and Appropriation Data	
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)	
			24. Award Date	

**SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST**

**B.1** The Office of the Attorney General (OAG) for the District of Columbia (“District”) is seeking a Contractor for legal services in support of OAG’s investigation and potential litigation against ExxonMobil Corporation (Exxon), and/or any other subsidiary, affiliate or successor-in-interest responsible for potential violations of the Consumer Protection Procedures Act (CPPA) or other District laws in connection with Exxon’s statements or omissions about the effects of its fossil fuel products on climate change.

**B.2** In accordance with 27 DCMR 5025.3, the District contemplates award of a contingency fee contract to the Contractor, with a cost-reimbursement component. The Contractor shall receive a percentage of any Gross Recovery (as defined in C.3.4, below) and a percentage of any attorney’s fees awarded to the District from the successful prosecution of cost-recovery litigation or through settlement. If no recovery is realized, the Contractor subject to this contingency fee contract shall receive no compensation or reimbursement of costs and expenses.

**B.3 PRICE SCHEDULE**

**B.3.1 BASE PERIOD – Five (5) Years from Date of Award**

<b>Contract Line Item No. (CLIN)</b>	<b>Services</b>	<b>Percentage of Gross Recovery and Any Attorney’s Fee Award to District</b>	<b>Not to Exceed Total</b>
<b>0001</b>	All Legal Services as described in Section C, Statement of Work		<b>NTE \$25,000,000.00</b>
<b>0002</b>	Reimbursable Costs	N/A	<b>Ceiling NTE \$1,000,000.00</b>
<b>Not-to-Exceed Contract Amount</b>			<b>NTE \$26,000,000.00</b>

**B.3.2 OPTION PERIOD ONE (1) (YEARS SIX AND SEVEN)**

<b>Contract Line Item No. (CLIN)</b>	<b>Services</b>	<b>Percentage of Gross Recovery and Any Attorney’s Fee Award to District</b>	<b>Not to Exceed Total</b>
<b>1001</b>	All Legal Services as described in Section C, Statement of Work		<b>NTE \$25,000,000.00</b>
<b>1002</b>	Reimbursable Costs	N/A	<b>Ceiling NTE \$1,000,000.00</b>
<b>Not-to-Exceed Contract Amount</b>			<b>NTE \$26,000,000.00</b>

**B.3.3 OPTION PERIOD TWO (2) (YEARS EIGHT AND NINE)**

<b>Contract Line Item No. (CLIN)</b>	<b>Services</b>	<b>Percentage of Gross Recovery and Any Attorney's Fee Award to District</b>	<b>Not to Exceed Total</b>
<b>2001</b>	All Legal Services as described in Section C, Statement of Work		<b>NTE \$25,000,000.00</b>
<b>2002</b>	Reimbursable Costs	N/A	<b>Ceiling NTE \$1,000,000.00</b>
<b>Not-to-Exceed Contract Amount</b>			<b>NTE \$26,000,000.00</b>

**B.3.4 GRAND TOTAL**

<b>GRAND TOTAL NOT-TO-EXCEED CONTRACT AMOUNT</b>	<b>NTE \$26,000,000.00</b>
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**The Grand Total of this contract is estimated to be approximately \_\_\_\_\_ % of the recovery by the District (if any), not-to-exceed \$26,000,000.00.**

**There is a single contingency fee for the total Gross Recovery regardless of whether recovery occurs in the base period or the option periods, if exercised.**

**B.3.5 REIMBURSABLE COSTS**

Reimbursable Costs may be paid under this contract. The ceiling for such costs is \$1,000,000.00, which may be modified as determined reasonable and necessary in the course of investigation and litigation. See Sections C.5.3 and G.3, COST REIMBURSEMENT CEILING.

The Contractor shall be responsible for all costs and expenses incurred throughout the investigation and litigation. The District will reimburse reasonable costs and expenses only if the Contractor secures monetary recovery for the District. In the event there is no recovery, the District will not owe any costs or expenses incurred by the Contractor. The District understands and agrees, however, that it may incur internal costs attributable to efforts of its own personnel in overseeing and aiding in the investigation and litigation. Any such internal costs will not be reimbursed by the Contractor to the District.

If the Contractor is hired for multiple matters against multiple defendants under one contract, Contractor will only be entitled to fees, costs, and expenses for a matter against a defendant that Contractor is successful in assisting the District in obtaining a recovery against, and Contractor will not be entitled to fees, costs, or expenses for any matter against a defendant where there is no recovery by the District. Notwithstanding any other provision in this agreement, in no event will the District be required to pay costs out of any fund other than monies recovered in this litigation.

## SECTION C: SPECIFICATIONS/STATEMENT OF WORK

### C.1 SCOPE:

The Office of the Attorney General for the District of Columbia (OAG) is seeking a Contractor for legal services in support of OAG’s investigation and potential litigation against ExxonMobil Corporation (Exxon), and/or any other subsidiary, affiliate or successor-in-interest responsible for potential violations of the Consumer Protection Procedures Act (CPPA) or other District laws in connection with Exxon’s statements or omissions about the effects of its fossil fuel products on climate change.

**OAG will retain sole authority at all times to direct the litigation in all respects, including but not limited to whether and when to initiate litigation, against who actions will be taken, the claims to be brought in said litigation, approval and/or rejection of settlements and the amount and type of damages to be requested.**

### C.2 APPLICABLE DOCUMENTS

The following documents are applicable to this procurement:

Item No.	Document Type	Title	Date
1	D.C. Code	D.C. Code Title 28, Subchapter 39	Most recent
2			

### C.3 DEFINITIONS/GLOSSARY

These terms when used in this contract have the following meanings:

- C.3.1 Attorney’s fees** – Any fees recovered by the District for counsel’s representation as part of any cause of action that provides a basis for such an award.
- C.3.2 Contractor** – the Offeror whose response to this solicitation is accepted and to whom award is made.
- C.3.3 Exxon** – ExxonMobil Corporation, or any other subsidiary, affiliate or successor-in-interest who is or may be liable for costs associated with Exxon’s statements or omissions about the effects of its fossil fuel products on climate change.
- C.3.4 Gross Recovery** — the dollar amount the District of Columbia receives on a cost recovery award or other monetary relief from each defendant as a result of Contractor’s representation of the District in the litigation or in settlement and any subsequent collection efforts.

**C.3.5 OAG** -- The Office of the Attorney General for the District of Columbia. OAG represents the District of Columbia and other District agencies in litigation. The Office of Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for protecting the public interest.

**C.3.6 Offeror** -- The Offeror is a legal entity that submits a proposal in response to this solicitation.

**C.3.7 Other Direct Costs** – all reasonable costs for goods and services necessary for the potential investigation and litigation against Exxon and/or any other subsidiary, affiliate or successor-in-interest responsible for potential violations of the CPPA or other District laws in connection with Exxon’s statements or omissions about the effects of its fossil fuel products on climate change.

#### **C.4 BACKGROUND**

Exxon is the world’s largest publicly traded oil and gas company. Exxon also operates or allows to be branded a significant number of Exxon gas stations in Washington, DC. Since at least the 1970s, Exxon has been aware that its fossil fuel products were significantly contributing to climate change, and that climate change would accelerate and lead to significant harms to the environment in the twenty-first century. However, despite this knowledge, in connection with selling gasoline to DC consumers and others, Exxon has failed to inform consumers about the effects of its fossil fuel products on climate change. Exxon has also engaged or funded efforts to mislead DC consumers and others about the potential impacts of climate change. This conduct may violate the District’s CPPA as well as other District laws. OAG has determined this conduct should be the subject of an investigation or litigation against Exxon to secure injunctive relief stopping violations of the CPPA or other District law, as well as securing consumer restitution, penalties and the costs of any litigation.

#### **C.5 REQUIREMENTS**

**C.5.1** The Contractor shall perform legal services that include, but are not limited to the following:

**C.5.1.1** Performing an assessment of OAG’s proposed litigation against Exxon including statutory theories of liability, jurisdiction, venue, standing, applicable statutes of limitations, laches, and other potential defenses likely to be raised by Exxon in such litigation.

**C.5.1.2** Investigate and, if warranted, prepare litigation against Exxon. The Contractor shall assist in all phases of the investigation and litigation, including:

- a. Preparing complaint(s), filing complaint(s), service of summons;
- b. Responding to motions, including motions to dismiss;
- c. Drafting motions;

- d. Drafting and responding to discovery requests propounded on the district or OAG;
  - e. Tracking documents obtained in discovery;
  - f. Coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation;
  - g. Taking depositions, defending depositions, preparing witnesses for depositions;
  - h. Responding to motions for summary judgment or other dispositive pretrial motions;
  - i. Drafting motions for summary judgment or other appropriate dispositive motions on behalf of the district;
  - j. Consulting with experts necessary to analyze and develop the District's case;
  - k. Identifying experts to testify on behalf of the district;
  - l. Preparing expert witnesses for deposition or trial testimony;
  - m. Preparing legal arguments on motions practice;
  - n. Handling discovery disputes;
  - o. Representing the District in trial or any settlement negotiations;
  - p. Representing the District in responding to pretrial motions;
  - q. Representing the District in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal.
- C.5.1.3** Advise OAG on the conduct of the case and on strategy and tactics for each phase of the case.
- C.5.1.4** Third parties may submit FOIA requests to OAG regarding this matter. In such instances, OAG will notify the Contractor of the FOIA request and the Contractor shall electronically provide, within five business days, all records responsive to the FOIA request. In addition, the Contractor shall make all records regarding this matter available for examination and review by OAG, upon request. The Contractor shall be entitled to reimbursement of costs for searching and copying records as set forth in Standard Contract Provision No. 34, Freedom of Information Act.
- C.5.1.5** Provide monthly status reports to the Contract Administrator.
- C.5.1.6** Provide legal services, advice, and consultation to OAG for this litigation in a manner consistent with accepted standards of practice in the legal profession. The Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved and ended only with the express approval and signature of the Attorney General. The Attorney General, at his sole discretion, has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the Attorney General may modify at will.

**C.5.1.7** Provide legal services to the Attorney General subject to the approval of the Attorney General for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation.

**C.5.1.8** Coordinate the provision of legal services with the Attorney General or his designated assistant, other personnel of OAG, and such others as the Attorney General may appoint. All substantive pleadings, motions, briefs, and other material which may be filed with the court shall first be approved by the Attorney General and provided to his office in draft form in a reasonable and timely manner for review. Regular status meetings may be held as requested by the Attorney General or his designated assistant.

**C.5.1.9** Communicate with District entities through OAG unless authorized by OAG to communicate directly with those entities.

**C.5.1.10** Render services pursuant to this Contract as an independent contractor. Neither Contractor nor any employee of Contractor shall be regarded as employed by, or as an employee of OAG.

**C.5.1.11 FAMILIARIZATION WITH CONDITIONS**

Contractor shall thoroughly familiarize itself with the terms and conditions of this contract, acquainting itself with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. The Contractor will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to its failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

**C.5.2 STAFFING REQUIREMENTS/LABOR CATEGORY DESCRIPTIONS**

The following staff positions are required. Contractors shall submit a resume, or resumes of qualified staff, for each position required. Contractors may submit multiple candidates for each position identified. Contractors shall also designate a staff position who will interface with OAG on staffing and administrative matters. Proposed candidates shall meet or exceed the following minimum qualifications:

**C.5.2.1 Senior Lawyer**

- a. J.D. degree from an American Bar Association accredited law school, a minimum of ten (10) years' experience, and a license to practice law in Washington, DC, or is eligible to be admitted *pro hac vice* by a member of the Contractor.
- b. Relevant experience, certifications and a proven record of providing advanced legal guidance and recommendations to public sector agencies relative to federal and state consumer protection laws.
- c. Extensive knowledge and recognized industry leadership in legal areas associated with cost recovery litigation.
- d. Proven ability to manage a team of legal advisors to ensure efficient operations with limited budgets in an effective manner.
- e. Extensive experience providing advice and guidance regarding complex civil litigation.

**C.5.2.2 Legal Associate/Counsel/Junior Lawyer**

- a. J.D. degree from an American Bar Association accredited law school, a minimum of five(5) years' experience, a license to practice law in Washington, DC, or is eligible to be admitted *pro hac vice* by a member of the Contractor or Subcontractor.
- b. Relevant experience, certifications and a proven record of providing legal support and recommendations to public sector agencies relative to federal and state consumer protection laws.
- c. Knowledge and leadership in legal areas associated with cost recovery litigation.
- d. Experience conducting legal research and performing legal analyses which require discretion and independent judgment.
- e. Experience providing advice and guidance regarding complex civil litigation.

**C.5.2.3 Paralegal**

- a. Experienced in providing legal assistance including but not limited to creation of presentations, document drafting, reports, and applications.
- b. Ability to conduct research and perform legal analysis of requests or other similar legal support functions that require discretion and independent judgment.

**C.5.3 Direct Cost Limitations/Requirements**

The Contractor shall seek written approval from the Contracting Officer prior to incurring any single direct cost exceeding \$10,000.00. The contractor must seek written approval from OAG prior to engaging an expert witness or other consultants.

**C.5.4 Kickoff Meeting:**

The Contractor shall be available for an in-person kickoff meeting within seven (7) business days from date of award.

**C.5.5 Subcontracting Requirements:**

The Contractor may provide a subcontracting plan for goods and services specifically utilizing small businesses certified by the D.C. Department of Small and Local Business Development (SBE) and/or local certified enterprises (CBE). Such services could include, but are not limited to, legal services, as well as document review, copying, litigation support, graphic production, document review, document hosting, etc.

**C.5.6 The Subcontracting Plan shall:**

- a. Demonstrate a maximum level of effort of engagement of SBE/CBE businesses consistent with efficient contract performance.
- b. Identify the specific SBE/CBE business and/or businesses and a detailed outline of services to be provided by each SBE/CBE business, identifying the stage of investigation/litigation when the services will be provided (where possible).
- c. An estimated value of the subcontract(s) including fixed rates.

## **SECTION D: PACKAGING AND MARKING**

**D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

## **SECTION E: INSPECTION AND ACCEPTANCE**

**E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

## **SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES**

### **F.1 TERM OF CONTRACT**

The term of the contract shall be for a period of five (5) years from date of award specified on the cover page of this contract.

### **F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

**F.2.1** The District may extend the term of this contract for a period of two (2) two-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

**F.2.2** If the District exercises this option, the extended contract shall be considered to include this option provision.

**F.2.3** The contingency fees for the option period shall be as specified in the Section B of the contract.

**F.2.4** The total duration of this contract, including the exercise of any options under this clause, shall not exceed nine (9) years.

### **F.3 DELIVERABLES**

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.8 in accordance with the following:

<b>Item</b>	<b>Deliverable</b>	<b>Quantity</b>	<b>Format/Method of Delivery</b>	<b>Due Date</b>
1-1	Draft memorandum assessing OAG's proposed cost recovery litigation against Exxon per C.5.1.1	One	PDF/Electronic	NLT 14 days after effective date of award
1-2	Prepare and file complaint, including service of summons per C.5.1.2	TBD	PDF/Electronic	Ongoing, as requested
1-3	Respond to motions per C.5.1.2	TBD	PDF/Electronic	Ongoing
1-4	Draft motions per C.5.1.2	TBD	PDF/Electronic	Ongoing
1-5	Draft and respond to discovery requests per C.5.1.2	TBD	PDF/Electronic	Ongoing

Item	Deliverable	Quantity	Format/Method of Delivery	Due Date
1-6	Track and maintain documents obtained in discovery per C.5.1.2	TBD	PDF/Electronic	Ongoing
1-7	Coordinate litigation with other states and the federal government per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-8	Take and defend depositions, prepare witnesses for depositions per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-9	Draft responses to motions for summary judgment or other dispositive pretrial motions on behalf of the District per C.5.1.2	TBD	PDF/Electronic	Ongoing
1-10	Draft motions for summary judgment or other appropriate dispositive motions on behalf of the District per C.5.1.2	TBD	PDF/Electronic	Ongoing, as requested
1-11	Identify experts to testify on behalf of the District per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-12	Prepare expert witnesses for deposition or trial testimony per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-13	Prepare legal arguments on motions practice per C.5.1.2	TBD	PDF/Electronic	Ongoing
1-14	Handle discovery disputes per C.5.1.2	TBD	In-person/ Telephonic/Electronic	Ongoing
1-15	Represent the District in trial or any settlement negotiations per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-16	Represent the District in pretrial motions hearings per C.5.1.2	TBD	In-person/ Designated Site	Ongoing
1-17	Represent the District in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal per C.5.1.2	TBD	In-person/ Designated Site	As requested
1-18	Participate in meetings with OAG, with District, State, and Federal agencies, as needed, per C.5.1.9	TBD	In-person/ Designated Site	Ongoing, as requested
1-19	Complete legal research assignments as needed per C.5.1.10	TBD	PDF/Electronic, Telephonic, and On-site, as needed	Ongoing, as requested
1-20	Monthly Status Reports per C.5.1.5	Monthly	By email (bulleted format acceptable)	5 <sup>th</sup> of each month

**F.3.1** The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.4.2.

## **SECTION G: CONTRACT ADMINISTRATION**

### **G.1 PAYMENT – CONTINGENCY FEE**

The Contractor shall undertake the investigation and litigation on a contingency fee basis. The District shall owe the Contractor a contingency fee and attorneys' fees only if the Contractor secures Gross Recovery for the District, as defined in C.3.4, above. The Contractor shall receive a contingency fee per the Price Schedule in B.3 above. The contingency fee shall be calculated from the Gross Recovery and from Attorney's Fee award (if any) the Contractor secures from each defendant. Notwithstanding any other provision of this contract, it is understood that if no monetary recovery is realized, the Contractor shall receive no compensation or cost reimbursement whatsoever. The Contractor shall not receive reimbursement for any expenses incurred in the investigation or litigation related to any defendant against whom the Contractor does not obtain Gross Recovery.

### **G.2 PAYMENT PROCESS**

**G.2.1** In the event the District obtains a Gross Recovery as a result of the proposed litigation, whether by judgment, settlement, arbitration, or any other means, such that Contractor shall be entitled to payment of attorneys' fees and reimbursement of costs as provided in this agreement, all funds representing such Gross Recovery and any Attorney's Fee award shall be deposited into a District of Columbia Treasury account.

**G.2.2** The District will make payment to the Contractor, upon the conclusion of the litigation and the District's receipt of any Monetary Gross Recovery as a result of the firm's representation of the District in the litigation. If no Monetary Gross Recovery is realized, Contractor shall receive no compensation or reimbursement for any costs incurred.

**G.2.3** The District will pay the Contractor on or before the 15<sup>th</sup> day after receiving a proper payment request from the Contractor following the occurrence of the factors outlined in paragraph G.2.1.

**G.2.4** The Contractor shall submit a proper payment request as specified below. The payment request shall be submitted to the agency Chief Financial Officer with concurrent copies to the CA specified in Section G.8 below. The address of the CFO is:

Office of Finance & Resource Management  
Office of the Controller/Agency CFO  
441 4th Street NW, Suite 890 North  
Washington, DC 20001 (202) 727-0333

**G.2.5** To constitute a proper payment request, the Contractor shall submit the following information on the payment request:

- a) Contractor's name, federal tax ID and payment request date (date payment request as of the date of mailing or transmittal);
- b) Contract number and payment request number;
- c) Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- d) Other supporting documentation or information, as required by the Contracting Officer;
- e) For cost reimbursement, the Contractor must submit an itemized list and description of all costs to be reimbursed and provide receipts to support the cost expenditures upon request.
- f) Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- g) Name, title, phone number of person preparing the payment request;
- h) Name, title, phone number and mailing address of person (if different from the person identified f) above) to be notified in the event of a defective payment request; and
- i) Authorized signature.

**G.2.6** If the parties disagree about the amount of the fee and/or costs owed to the Contractor, the disagreement shall be resolved according to the procedures stated in I.4, Disputes. The parties shall place any disputed amount in escrow pending the resolution of any disagreement relating to the amount of the Contractor's fee and costs and shall distribute all undisputed portions of the total monetary recovery in accordance with paragraph G.2.3.

### **G.3 COST REIMBURSEMENT CEILING**

**G.3.1** Cost reimbursement ceilings for this contract are set forth in Section B.3, CLINs 0002, 1002, and 2002.

**G.3.2** The Reimbursable Direct Costs for performing this contract shall not exceed the cost reimbursement ceiling specified in Section B.3.1, B.3.2, and B.3.3.

**G.3.3** The Contractor agrees that reasonable costs and expenses are determined at the sole discretion of OAG and will not include first class airfare or lodging rates that exceed rates set forth in the Federal Travel Regulations by more than 20%. Reimbursement for meals will be made at rates not to exceed the government per diem rate.

**G.3.4** The Contractor agrees to use its best efforts to perform the work specified in this contract and to meet all obligations under this contract within the cost reimbursement ceiling.

- G.3.5** The Contractor must notify the Contracting Officer (CO), in writing, whenever it has reason to believe that the total cost for the performance of this contract will be either greater or substantially less than the cost reimbursement ceiling.
- G.3.6** As part of the notification, the Contractor must provide the CO a revised estimate of the total cost of performing this contract.
- G.3.7** The District is not obligated to reimburse the Contractor for costs incurred in excess of the cost reimbursement ceiling specified in Section B.3, and the Contractor is not obligated to continue performance under this contract (including actions under the Termination clauses of this contract), or otherwise incur costs in excess of the cost reimbursement ceiling specified in Section B.3, until the CO notifies the Contractor, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling for performing this contract.
- G.3.8** No notice, communication, or representation in any form from any person other than the Contracting Officer shall change the cost reimbursement ceiling. In the absence of the specified notice, the District is not obligated to reimburse the Contractor for any costs in excess of the costs reimbursement ceiling, whether such costs were incurred during the course of contract performance or as a result of termination.
- G.3.9** If any cost reimbursement ceiling specified in Section B.3 is increased, any costs the Contractor incurs before the increase that are in excess of the previous cost reimbursement ceiling shall be allowable to the same extent as if incurred afterward, unless the CO issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G.3.10** A change order shall not be considered an authorization to exceed the applicable cost reimbursement ceiling specified in Section B.3, unless the change order specifically increases the cost reimbursement ceiling.
- G.3.11** Only costs determined in writing to be reimbursable in accordance with this Section G.3 and the cost principles set forth in rules issued pursuant to Title V of the D.C. Procurement Practices Reform Act of 2010 shall be reimbursable.

#### **G.4 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- G.4.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.4.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

## **G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make  
payment of this invoice to \_\_\_\_\_.”  
*(name and address of assignee)*

## **G.6 CONTRACTING OFFICER (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Janice Parker Watson  
Contracting Officer  
Office of the Attorney General  
Support Services Division/Procurement Unit  
441 4<sup>th</sup> Street NW, Suite 1100 South  
Washington, DC 20001

Email: Janice.Watson@dc.gov  
Phone: 202-442-9882 or 727-3400  
Fax: 202-730-0484

## **G.7 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

**G.7.1** The Contracting Officer (CO) is the only person authorized to approve changes in any of the requirements of this contract.

**G.7.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

**G.7.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

## **G.8 CONTRACT ADMINISTRATOR ( CA )**

**G.8.1** The Contract Administrator is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.8.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.8.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.8.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.8.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

**G.8.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.8.2** The name, address and telephone number of the Contract Administrator is:

Name: Robyn R. Bender  
Title: Deputy Attorney General,  
Public Advocacy Division  
Office of the Attorney General  
for the District of Columbia  
441 4th Street NW, Suite 650 North  
Washington, DC 20001

Email: [robyn.bender@dc.gov](mailto:robyn.bender@dc.gov)  
Tel: (202) 724-6610 Fax: (202) 730-0657

**G.8.3** The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

**G.8.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **SECTION H: SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

**H.1.1** For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

**H.1.2** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

### **H.2 RESERVED**

### **H.3 PREGNANT WORKERS FAIRNESS**

**H.3.1** The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

**H.3.2** The Contractor shall not:

- a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;
- b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:
  - (1) Pay;
  - (2) Accumulated seniority and retirement;
  - (3) Benefits; and
  - (4) Other applicable service credits;

- c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;
- d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;
- e) Require an employee to take leave if a reasonable accommodation can be provided; or
- f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

**H.3.3** The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

- (a) New employees at the commencement of employment;
- (b) Existing employees; and
- (c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

**H.3.4** The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

**H.3.5** Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

#### **H.4 UNEMPLOYED ANTI-DISCRIMINATION**

**H.4.1** The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

**H.4.2** The Contractor shall not:

- (a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
- (b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
  - (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
  - (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**H.4.3** Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

#### **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT (February 2012)**

**H.5.1** For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).

**H.5.2** The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

**H.5.3** The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

**H.5.4** The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

**H.5.5** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

- H.5.6** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.
- H.5.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.
- H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.
- H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **Clause 14 of the SCP, Disputes**.
- H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations that employ 50 employees or less.

## **H.6 SUBCONTRACTING REQUIREMENTS**

- H.6.1** The Director of the Department of Small and Local Business Development (DSLBD) has been requested to approve a waiver of the mandatory subcontracting requirements for this contract.
- H.6.2** A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.6.3** A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.6.4** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- H.6.5** A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at

least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

## **H.7 FAIR CRIMINAL RECORD SCREENING**

- H.7.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the “Act” as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- H.7.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.
- H.7.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.
- H.7.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.
- H.7.5** This section and the provisions of the Act shall not apply:
- (a) Where a federal or District law or regulation requires the consideration of an applicant’s criminal history for the purposes of employment;
  - (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
  - (c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or
  - (d) To employers that employ less than 11 employees.
- H.7.6** A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

## **H.8 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The key personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the Contracting Officer at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

1. Senior Lawyer
2. Junior Lawyer

## **H.9 AUDITS AND RECORDS**

**H.9.1** As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**H.9.2 Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

**H.9.3 Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to:

- a) The proposal for the contract, subcontract, or modification;
- b) The discussions conducted on the proposal(s), including those related to negotiating;
- c) Pricing of the contract, subcontract, or modification; or
- d) Performance of the contract, subcontract or modification.

## **H.9.4 Comptroller General**

**H.9.4.1** The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder.

**H.9.4.2** This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**H.9.5 Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- b) the data reported.

**H.9.6 Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.9.1 through H.9.5, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this contract. In addition:

- a) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

**H.9.7** The Contractor shall insert a clause containing all the terms of this clause, including this section H.9.7, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- b) For which cost or pricing data are required; or
- c) That require the subcontractor to furnish reports as discussed in H.9.5 of this clause.

## **H.10 DISTRICT RIGHTS AND RESPONSIBILITIES**

**H.10.1** The Attorney General shall retain complete control over the course and conduct of the matter and shall retain all decision-making authority over the matter, including but not limited to whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in litigation, approval and rejection of all settlement offers, the scope and nature of any injunctive relief, and the amount and type of any restitution, damages and/or penalties to be sought.

- H.10.2** The Attorney General may designate a Government Attorney and other staff members to oversee and assist Contractor with this investigation and litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General or his designee.
- H.10.3** Any party may contact the Government Attorney directly, without having to confer with the private counsel.
- H.10.4** A Government Attorney with supervisory authority for the case shall participate in all significant litigation matters and settlement conferences.
- H.10.5** All substantive pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designee.
- H.10.6** All settlement decisions shall be made exclusively at the discretion of the Attorney General or his designee.
- H.10.7** The Office of Attorney General will provide the Contractor with conference room space for meetings and/or depositions as needed in Washington, D.C. throughout this engagement.

## **H.11 CONTRACTOR RESPONSIBILITIES**

### **H.11.1 Records Retainage**

- H.11.2** The Contractor shall maintain detailed, current billing records for all costs, and expenses. The Contractor shall retain and make available all billing records related to the services provided under this contract for a minimum of twelve (12) years from the expiration or termination of the contract or the resolution of any appeal, whichever occurs later.
- H.11.3** The Contractor shall preserve and make available to OAG all records related to the matter for a minimum of twelve (12) years from the date of final settlement or until the litigation is completed, including the resolution of any appeal, whichever occurs later.
- (a) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated for twelve (12) years after any resulting final termination settlement; and
  - (b) The Contractor shall make available records relating to appeals under the Disputes Clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

### **H.11.4 Subcontracting Plan Reporting**

The Contractor shall submit a quarterly report to the CO, CA, District of Columbia auditor and Director of DSLBD. The quarterly report shall include the following information for each subcontractor identified in the subcontracting plan, if applicable:

- a) The price that the prime contractor will pay each subcontractor under the subcontract;
- b) A description of the goods acquired or the services subcontracted for;
- c) The amount paid by the prime contractor under the subcontract; and
- d) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

## **H.14 ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST**

**H.14.1** An attorney-client relationship will exist between the District and any attorney who performs work under the contract, as well as between the District and the firm of any attorney who performs work under the contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

**H.14.2** In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize that in the performance of the contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

**H.14.3** Before any contractor can be retained to perform legal services under the contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. After notice of its selection, the prospective contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the contract that require waiver pursuant to Rule 1.7(b) because the contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide

implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the contract, whether or not such representations are related to the matter for which the work is to be performed under the contract.

**H.14.4** The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

**H.14.5** Before any contractor can be retained pursuant to the contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct (“RPC”) 1.6, 1.7, 1.8, 1.9 and 1.10. Each prospective contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, attached as Attachment J.9 hereto, a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The following Standard Contract Provisions for Use with District of Columbia Government Supplies and Services Contracts dated July 2010 (“SCP”) are incorporated into the contract:

1. *Covenant Against Contingent Fees*
2. *Shipping Instructions – Consignment*
3. *Patents*
4. *Quality*
5. *Inspection of Supplies*
6. *Inspection of Services*
7. *Waiver*
8. *Default*
9. *Indemnification*
10. *Transfer*
11. *Taxes*
12. *Appointment of Attorney*
13. *District Employees Not to Benefit*
14. *Disputes (DELETED – Replaced by I.4)*
15. *Changes (DELETED – Replaced by I.5)*
16. *Termination for Convenience of the District*
17. *Recovery of Debts Owed the District*
18. *Retention and Examination of Records*
19. *Non-Discrimination Clause (DELETED – Replaced by I.6)*
20. *Definitions*
21. *Health and Safety Standards*
22. *Appropriation of Funds*
23. *Buy American Act*
24. *Service Contract Act of 1965*
25. *Cost and Pricing Data (DELETED)*
26. *Multiyear Contracts*
27. *Termination of Contracts for Certain Crimes and Violations*
28. *Invoice Payment*
29. *Assignment of Contract Payments*
30. *The Quick Payment Act*
31. *Authorized Changes by the Contracting Officer (CO)*
32. *Contract Administrator*
33. *Publicity*
34. *Freedom of Information Act*
35. *51% District Residents New Hires and 1st Source Agreement (DELETED: Replaced by H.5)*
36. *Section 504 of the Rehabilitation Act of 1973, as amended*
37. *Americans with Disabilities Act of 1990 (ADA)*
38. *Way to Work Amendment Act of 2006*

39. *Contracts that Cross Fiscal Years*
40. *Confidentiality of Information*
41. *Time*
42. *Rights in Data (DELETED – Replaced by I.2)*
43. *Other Contractors*
44. *Subcontracts*
45. *Subcontracting Requirements*
46. *Equal Employment Opportunity*
47. *Contracts in Excess of One Million Dollars*
48. *Governing Law*

**The full text of the provisions above is available at <http://ocp.dc.gov>, under Quick Links click on “Required Solicitation Documents”.**

- I.2** Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

#### **RIGHTS IN DATA (January 2018)**

##### **A. Definitions**

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.
2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.
3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. “District” – The District of Columbia and its agencies.

## **B. Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor's bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District's satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

## **C. Transfers or Assignments of Existing or Custom Products by the District**

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor's business.

## **D. Subcontractor Rights**

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

### **E. Source Code Escrow**

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.
3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

### **F. Indemnification and Limitation of Liability**

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

### **I.3 INSURANCE**

- I.3.1 A. GENERAL REQUIREMENTS.** The Contractor at its sole expense shall acquire and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.
- I.3.2** All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.
- I.3.3** The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.
- I.3.4** If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.
1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy,

written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor’s commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers’ Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.
4. Employer’s Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer’s liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 4 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

5. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This

insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

6. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
  7. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.
- B. PRIMARY AND NONCONTRIBUTORY INSURANCE.** The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.
- C. DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.
- D. LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- E. CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- F. MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

**G. NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

**H. CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to the Government of the District of Columbia and mailed to the attention of:

Janice Parker Watson  
Contracting Officer  
Office of the Attorney General  
Support Services Division/Procurement Unit  
441 4<sup>th</sup> Street NW, Suite 1100 South  
Washington, DC 20001

Email: Janice.Watson@dc.gov  
Phone: 202-442-9882 or 727-3400  
Fax: 202-730-0484

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

**I. DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

**J. CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

## **I.4 DISPUTES**

Delete Article 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes, in its place:

### **14. DISPUTES (April 2012)**

All disputes arising under or relating to the contract shall be resolved as provided herein.

- (a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant
- (1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:
    - (i) A description of the claim and the amount in dispute;
    - (ii) Data or other information in support of the claim;
    - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
    - (iv) The Contractor's request for relief or other action by the CO.
  - (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
  - (3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
  - (4) The CO's written decision shall do the following:
    - i. Provide a description of the claim or dispute;
    - ii. Refer to the pertinent contract terms;
    - iii. State the factual areas of agreement and disagreement;
    - iv. State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
    - v. If all or any part of the claim is determined to be valid, determine the amount of

- monetary settlement, the contract adjustment to be made, or other relief to be granted;
- vi. Indicate that the written document is the CO's final decision; and
  - vii. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2 360.04.
- (6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.
- (b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.
  - (2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:
    - (i) Provide a description of the claim or dispute;
    - (ii) Refer to the pertinent contract terms;
    - (iii) State the factual areas of agreement and disagreement;
    - (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
    - (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
    - (vi) Indicate that the written document is the CO's final decision; and
    - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

- (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
- (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
- (5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.
- (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.
- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

## **I.5 CHANGES**

Delete clause 15, Changes, of the Standard Contract Provisions dated July 2010 for Use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 15, Changes, in its place:

### **15. Changes (April 2012)**

- (a) The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in **clause 14 Disputes**.
- (b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this contract, unless the CO:
  - (1) Agrees with Contractor, and if applicable, the subcontractor on a price for the

- additional work;
  - (2) Obtains a certification of funding to pay for the additional work;
  - (3) Makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
  - (4) Provides the Contractor with written notice of the funding certification.
- (c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:
- (1) Within five (5) business days of its receipt of notice the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
  - (2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within 10 days of receipt of payment from the District; and
  - (3) Notify the subcontractor and CO in writing of the reason the Contractor withholds any payment from a subcontractor for the additional work.
- (d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays, until the parties to agree on a price for the additional work.

## **I.6 NON-DISCRIMINATION CLAUSE**

Delete clause 19, Non-Discrimination Clause, of the Standard Contract Provisions dated July 2010 for Use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 19, Non-Discrimination Clause, in its place:

### **19. Non-Discrimination Clause (September 2011)**

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (“Act”, as used in this clause). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.
- (a) Pursuant to Mayor’s Order 85-85, (6/10/85), Mayor’s Order 2002-175 (10/23/02), Mayor’s Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the contract:
  - (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. The affirmative action shall include, but not be limited to the following:
  - (a) employment, upgrading or transfer;
  - (b) recruitment, or recruitment advertising;
  - (c) demotion, layoff or termination;
  - (d) rates of pay, or other forms of compensation; and
  - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in paragraphs 19(b) (1) and (b) (2) concerning non-discrimination and affirmative action.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 19(b) (2).
- (5) The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, i.e., paragraphs 19(b) (1) through (b) (9) of this clause, so that such provisions shall be binding upon each subcontractor.
- (9) The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

## **I.7 CONFIDENTIALITY OF INFORMATION**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

## **I.8 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.2. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

## **I.10 ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended
- (6) BAFOs (in order of most recent to earliest)
- (7) Proposal

**SECTION J: LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

- I. The following list of attachments is incorporated into the solicitation by reference. *(available at <http://ocp.dc.gov>, under Quick Links click on “Required Solicitation Documents”)*

Attachment Number	Document
<b>J.1</b>	Government of the District of Columbia Standard Contract Provisions for Use with Supplies and Services Contracts (July 2010)
<b>J.2</b>	Equal Employment Opportunity Employer Information Report and Mayor’s Order 85-85  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.3</b>	Department of Employment Services First Source Employment Agreement  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.4</b>	Living Wage Act of 2006 - Living Wage Notice  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.5</b>	Living Wage Act of 2006 - Living Wage Fact Sheet  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.6</b>	Tax Certification Affidavit  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.7</b>	Subcontracting Plan (if required by law)  <i>(available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>, under Quick Links click on “Required Solicitation Documents”)</i>
<b>J.8</b>	First Source Initial Employment Plan (if contract is \$300,000 or more)

**II.** The documents listed below are incorporated and attached to this solicitation:

<b>J.9</b>	D.C. Bar Legal Ethics Committee Opinion No. 268 <a href="https://www.dcbart.org/bar-resources/legal-ethics/opinions/opinion268.cfm#.XHfvoFV57lA.email">https://www.dcbart.org/bar-resources/legal-ethics/opinions/opinion268.cfm#.XHfvoFV57lA.email</a>
<b>J.10</b>	Bidder/Offeror Certification Form

**SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS  
OF OFFERORS**

The Offeror shall complete and submit with its Offer the

**Bidder/Offeror Certification Form (J.10),**

also available at <http://ocp.dc.gov>, under Quick Links,

click on “Required Solicitation Documents”.

## **SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**

### **L.1 CONTRACT AWARD**

#### **L.1.1 Most Advantageous to the District**

The District intends to award a single contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

#### **L.1.2 SELECTION OF NEGOTIATION PROCESS**

In accordance with 27 DCMR § 5035, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations. If the CO elects to proceed with discussions under subsection §5035.10 of 27 DCMR, the CO may negotiate with the highest ranked Offeror in accordance with D.C. Code § 2–354.03(h)(2).

### **L.2 PROPOSAL ORGANIZATION AND CONTENT**

**L.2.1** This solicitation will be conducted electronically using electronic mail. To be considered, an Offeror must submit the required attachments to [OAG.businessopportunities@dc.gov](mailto:OAG.businessopportunities@dc.gov) before the closing date and time. Paper, telephonic, telegraphic, and facsimile proposals may not be accepted.

**L.2.2** All attachments shall be submitted as .pdf files. The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered.

**L.2.3** The Offeror shall submit four (4) separately labeled attachments in its electronic submission: 1) cover letter, 2) technical proposal, 3) price proposal, and 4) redacted version of technical proposal (L.8).

### **L.3 GENERAL PROPOSAL INSTRUCTIONS**

**L.3.1** Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the District requiring prompt submission of missing information and/or giving lowered evaluation scores of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the District.

**L.3.2** Proposals shall be formatted using the Times New Roman font and print shall be no smaller than 12 point with standard one (1) inch margins.

L.3.3 Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of solicitation. Emphasis should be placed on completeness and clarity of content.

L.3.4 Proposals should be prepared with a cover letter to accompany its Technical Proposal and Price Proposal. The cover letter shall at a minimum include the following:

- a. Identify the Contact person for the Offeror's proposal
- b. Provide the Contact person's address, phone number, and e-mail address
- c. A statement affirming the offeror's acceptance of the contract provisions as described in the solicitation.
- d. Signature of an authorized representative of the Offeror's organization.

L.3.5 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The Offeror shall respond to each factor in a way that will allow the District to evaluate the Offeror's response. The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the Offeror proposes to fully meet the requirements in Section C. See further instructions in L.4 below.

**L.4 TECHNICAL PROPOSAL REQUIREMENTS:** Proposals shall clearly be labeled in the format described below:

**L.4.1 TECHNICAL APPROACH (NO MORE THAN 10 PAGES)**

**L.4.1.1** The proposal shall contain a detailed technical approach which is clear, concise, comprehensive, and explains the Offeror's understanding of the requirements outlined in the scope. The approach should include the Offeror's theory of the case (e.g., [consumer protection](#), public nuisance, negligence, products liability, unjust enrichment) as well as the most critical potential issues and risks involved in the proposed litigation against [Exxon](#) and any other potentially liable parties. The Offeror shall describe in detail the technical, institutional, and legal elements necessary to achieve the successful completion of the contract. Responses should draw upon past experience, industry standards, and best practices in the project approach.

**L.4.1.2** The proposal should demonstrate the Offeror's ability to provide resources sufficient to respond to significant and voluminous motions practice and discovery demands. The proposal shall demonstrate Offeror's knowledge of and experience with sophisticated document or case management software sufficient to manage the voluminous documents expected to be produced in any proposed litigation.

**L.4.1.3** The proposal shall provide a detailed approach of how the Offeror will evaluate and report any actual, potential or perceived conflict of interest that exists or may exist as a result of any (1) work performed or (2) conclusion reached for any former or current client which would cause the Offeror to be disqualified or provide a basis to question the Offeror's impartiality or objectivity throughout the lifetime of the contract.

**L.4.2** **OFFEROR'S EXPERIENCE AND PAST PERFORMANCE**  
**(no more than 10 pages, charts not included)**

**L.4.2.1** A brief description of the Offeror's organization, including date established and location of offices and number of professional staff.

**L.4.2.2** The proposal shall contain relevant case studies demonstrating the Offeror's previous experience in advising and representing clients (including state or municipal clients) in connection with **consumer protection cases** and experience with any other related litigation. As part of each case study, Offerors should address the extent, nature, and success of both (a) the cooperative processes, and (b) activities involving litigation.

**L.4.2.3** Offerors shall describe their experience with complex litigation involving multiple defendants and multiple claims as well as their experience with complex litigation in federal and state courts, including removal of cases to federal court and remand issues and experience with multi-district litigation.

**L.4.2.4** The Offeror shall provide a list of three (3) previous contracts for which the Offeror provided identical or similar work within the last five (5) years. For each contract please provide the following information: Name of Company/Organization; Title of Project; Contract Number; Dollar Amount; Period of Performance, Contact Person's Name, Title, Telephone Number and Email Address. For each project listed the Offeror shall provide detailed information that describes the projects and highlight similarities between it and the scope of this solicitation.

**L.4.2.5** The Offeror shall also provide a minimum of three (3) references, including at least two from a state or local government body that can comment on the Offeror's ability to successfully achieve the objectives stated in the statement of work. The three projects submitted as past performance and as references may be the same and do not have to be separate and distinct.

**L.4.2.6** The Offeror shall provide information related to any legal malpractice cases in which the Offeror has been a defendant, including details of any such claims and any monetary awards or settlements. The Offeror shall also provide information related to any active bar complaints against the law firm or any personnel who will be working on this matter.

### **L.4.3 STAFFING/KEY PERSONNEL**

- L.4.3.1** The proposal shall contain a staffing plan detailing the resource allocation to fulfill the requirements described in the scope which identifies all key personnel, per Section L.22 of this solicitation. The proposal shall also include the location of key personnel that will be assigned to this matter.
- L.4.3.2** Offerors shall further provide a description of each team member's capabilities and experience in providing similar services to other organizations or government entities in the applicable solicitation labor category the offeror's team member falls under.
- L.4.3.3** Offerors shall provide resumes, including certifications, and credentials for all team members (prime and subcontractors), which will not count against the page limit.

### **L.4.4 SUBCONTRACTING PLAN**

A Subcontracting Plan form is available at <http://ocp.dc.gov>. Go to quick links at the bottom of the page and then click on "Required Solicitation Documents". The plan shall:

- a. Demonstrate a maximum level of effort of engagement of SBE/CBE businesses consistent with efficient contract performance.
- b. Identify the specific SBE/CBE business and/or businesses and a detailed outline of services to be provided by each SBE/CBE business, identifying the stage of investigation/litigation when the services will be provided (where possible).
- c. An estimated value of the subcontract(s) including fixed rates.

### **L.5 PRICE PROPOSAL GUIDELINES**

The price proposal shall be a percentage of the District of Columbia's Gross Recovery from the litigation or settlement. Unless otherwise directed in writing, the price proposal shall at a minimum include:

- a) Completed/signed copy of the solicitation cover page. Amendments to the solicitation should be acknowledged in accordance with section L.16 of this solicitation.
- b) Completed Rate/Price Schedule for all years for all service areas the Offeror is proposing. (Section B.3); and
- c) Offerors are required to submit a copy of their price proposal in both PDF and MS Excel formats.

### **PROPOSALS WITH OPTION YEARS**

The Offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

**L.6 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC**

In addition to the proposal submission requirements in Section L.2 above, the Offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code § 2-534. Redacted copies of the Offeror's proposal must be submitted by e-mail attachment to the contact person designated in the solicitation. D.C. Official Code § 2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable Freedom of Information Act (FOIA) exemption under § 2-534(a)(1). Successful proposals will be published on the OCP and/or OAG websites in accordance with D.C. Official Code § 2-361.04, subject to applicable FOIA exemptions.

**L.7 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS**

**L.7.1 PROPOSAL SUBMISSION**

**L.7.1.1** Proposals must be emailed to [OAG.businessopportunities@dc.gov](mailto:OAG.businessopportunities@dc.gov) no later than the closing date and time on the cover page 1.

**L.7.1.2** Paper, telephonic, telegraphic, and proposals may not be accepted or considered for award.

**L.7.1.3** It is solely the Offeror's sole responsibility to ensure that all attachments are included and sends the email in sufficient time to be transmitted before the closing time.

**L.7.2 WITHDRAWAL OR MODIFICATION OF PROPOSALS**

An Offeror may modify or withdraw its proposal via email to: [OAG.businessopportunities@dc.gov](mailto:OAG.businessopportunities@dc.gov) at any time before the closing date and time for receipt of proposals.

**L.7.3 LATE PROPOSALS**

Late proposals, received after the closing date and time for receipt of proposals, will not be accepted.

**L.7.4 LATE MODIFICATIONS**

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

## **L.8 EXPLANATION TO PROSPECTIVE OFFERORS**

If a prospective Offeror has any questions relating to this solicitation, the prospective Offeror shall submit the question electronically via email to [OAG.businessopportunities@dc.gov](mailto:OAG.businessopportunities@dc.gov). The prospective Offeror must submit questions no later than 15 days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than 15 days before the date set for submission of proposals. The District will furnish responses via email to all prospective Offerors to which it sent the solicitation. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective Offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

## **L.9 RESTRICTION ON DISCLOSURE AND USE OF DATA**

**L.9.1** Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

**"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.**

**If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."**

**L.9.2** Mark each sheet of data it wishes to restrict with the following legend:

**"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."**

## **L.10 PROPOSAL PROTESTS**

Any actual or prospective Offeror or Contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which

are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

#### **L.11 UNNECESSARILY ELABORATE PROPOSALS**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

#### **L.12 RETENTION OF PROPOSALS**

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the Offerors.

#### **L.13 PROPOSAL COSTS**

The District is not liable for any costs incurred by the Offerors in submitting proposals in response to this solicitation.

#### **L.14 CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.3 to:

Janice Parker Watson  
Contracting Officer  
Office of the Attorney General  
Support Services Division/Procurement Unit  
441 4<sup>th</sup> Street NW, Suite 1100 South  
Washington, DC 20001

Email: Janice.Watson@dc.gov  
Phone: 202-442-9882 or 727-3400 Fax: 202-730-0484

#### **L.15 ACKNOWLEDGMENT OF AMENDMENTS**

The Offeror shall acknowledge receipt of any amendment to this solicitation. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An Offeror's failure to acknowledge an amendment may result in rejection of its offer.

## **L.16 BEST AND FINAL OFFERS**

If, subsequent to receiving original proposals, negotiations are conducted under 27 DCMR § 5035.11, all Offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at a designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After evaluation of best and final offers, the CO may award the contract to the highest- ranked Offeror, or negotiate with the highest ranked Offeror in accordance with 27 DCMR § 5035.11.

## **L.17 LEGAL STATUS OF OFFEROR**

Each technical proposal must provide the following information:

- L.18.1** Name, address, telephone number and federal tax identification number of Offeror;
- L.18.2** A copy of each District of Columbia license, registration or certification that the Offeror is required by law to obtain. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the Offeror shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and
- L.18.3** If the Offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

## **L.19 FAMILIARIZATION WITH CONDITIONS**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. The Contractor will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

## **L.20 GENERAL STANDARDS OF RESPONSIBILITY**

The prospective Contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective Contractor must submit relevant documentation within five (5) days of the request by the District.

**L.20.1** To be determined responsible, a prospective Contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended,  
D.C. Official Code § 2-219.01 *et seq.*;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

**L.20.2** If the prospective Contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective Contractor to be non-responsible.

## **L.21 PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held on **March 6, 2019 at 10:00 am at 441 4<sup>th</sup> Street NW, Suite 1100 South Washington, DC 20001**. Prospective Offerors will be given an opportunity to ask questions regarding this solicitation at the conference. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending Offerors must complete the pre-proposal conference Attendance Roster at the conference so that their attendance can be properly recorded.

Impromptu questions will be permitted and spontaneous answers will be provided at the District's discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the District's final position. All oral questions must be submitted in writing following the close of the pre-proposal conference but no later than five working days after the pre-proposal conference in order to generate an official answer. The District will furnish responses via email to all prospective Offerors to which it sent the solicitation. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting proposals, or if the lack of it would be prejudicial to any prospective Offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

## **L.22 KEY PERSONNEL**

**L.22.1** The District considers the following positions to be key personnel for this contract:

3. Senior Lawyer
4. Junior Lawyer

**L.22.2** The Offeror shall set forth in its proposal the names and reporting relationships of the key personnel the Offeror will use to perform the work under the proposed contract. Their resumes shall be included. The hours that each will devote to the contract shall be provided in total and broken down by task.

## SECTION M - EVALUATION FACTORS

### M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible Offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

**M.1.1** The District reserves the right to request an in-person presentation from up to five of the most qualified, top ranked Offerors. The District also reserves the right to reassess the Offeror's technical evaluation as a result of the presentation.

### M.2 TECHNICAL RATING

**M.2.1** The Technical Rating Scale is as follows:

<b>Numeric Rating</b>	<b>Adjective</b>	<b>Description</b>
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

**M.2.2** The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the Offeror's score for each factor. The Offeror's total technical score will be determined by adding the Offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the Offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the Offeror's total technical score will be determined by adding the Offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the Offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

### **M.3 EVALUATION CRITERIA**

The District shall evaluate proposals on the basis of the factors and subfactors below, based on the extent to which the proposal contains a detailed response to each factor and subfactor that is clear, concise, comprehensive and complete.

#### **M.3.1 TECHNICAL CRITERIA (80 POINTS MAXIMUM)**

##### **M.3.1.1 Technical Approach (30 points):**

This evaluation factor evaluates the Offeror's proposed technical approach setting forth its process for carrying out the objectives in the scope of work successfully.

##### **M.3.1.2 Offeror's Experience and Past Performance (25 points):**

M.3.1.2.1 The Offeror's team member's expertise and previous experience providing similar services to other organizations or government entities or organizations.

M.3.1.2.2 The Offeror's technical expertise and previous experience and relevance of the work performed and previous work on similar services provided by the Offeror to other entities or organizations.

##### **M.3.1.3 Staffing/Key Personnel (15 Points)**

M.3.1.3.1 The Offeror's staffing plan addressing requirements of the scope.

M.3.1.3.2 Resumes of proposed staff

##### **M.3.1.4 Offeror's SBE and/or CBE Subcontracting Plan (10 Points)**

M.3.1.4.1 The Offeror's detailed sub-contracting plan that identifies the SBE/CBE vendor(s), services to be provided and an estimated dollar value.

**M.3.2 PRICE CRITERION (20 POINTS MAXIMUM)**

The District shall evaluate the price proposals on the basis of the following criterion:

The District of Columbia will apply the contingency fee rate from the Offeror’s price proposal to the District’s estimated recovery; taking into account the District’s view of the likely course of the litigation to the extent it is relevant to the price proposal. This evaluation will result in a projected dollar amount for the contingency fee. Proposals will be assigned points based on a rank ordering of projected dollar amounts from lowest to highest, with the lowest priced proposal receiving the highest points.

$$\frac{\text{Lowest Price (Fee) proposal}}{\text{Price (Fee) of proposal being evaluated}} \times \text{Weight (20)} = \text{Evaluated Price Score}$$

**M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 POINTS MAXIMUM)**

**M.3.4 TOTAL POINTS (112 Points Maximum)**

Total points shall be the cumulative total of the Offeror’s technical criteria points, price criterion points and preference points, if any.

**M.4 EVALUATION OF OPTION YEARS**

The District will not evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District’s requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

**M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES**

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2014”, D.C. Official Code § 2-218.01 *et seq.*, as amended (“Act”, as used in this section), the District shall apply preferences in evaluating proposals from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

### **M.5.1 APPLICATION OF PREFERENCES**

For evaluation purposes, the allowable preferences under the Act shall be applicable to prime contractors as follows:

- M.5.1.1 Any prime contractor that is a small business enterprise (SBE) certified by the DSLBD will receive the addition of three points on a 100-point scale added to the overall score.
- M.5.1.2 Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.3 Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.4 Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.5 Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100- point scale added to the overall score.
- M.5.1.6 Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.7 Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.8 Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.

### **M.5.2 MAXIMUM PREFERENCE AWARDED**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

### **M.5.3 PREFERENCES FOR CERTIFIED JOINT VENTURES**

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

**M.5.4 VERIFICATION OF OFFEROR'S CERTIFICATION AS A CERTIFIED BUSINESS ENTERPRISE**

M.5.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The CO will verify the Offeror's certification with DSLBD, and the Offeror should not submit with its proposal any additional documentation regarding its certification as a certified business enterprise.

M.5.4.2 Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development  
ATTN: CBE Certification Program  
441 Fourth Street NW, Suite 850N  
Washington DC 20001

M.5.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT**

M.6.1 Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

M.6.2 In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.

## Ethics Opinion 268

### Conflict of Interest Issues Where Private Lawyers Provide Volunteer Legal Assistance to the D.C. Corporation Counsel; Reconsideration of Opinion 92

Under the D.C. Rules of Professional Conduct, a lawyer may give volunteer legal assistance to the D.C. Corporation Counsel and continue simultaneously to represent private clients against the City and its agencies, as long as the requirements of Rule 1.7 are met. Under Rule 1.7(b)(1), a lawyer who wishes to represent a private client against the same City government client that she is representing while working for the Corporation Counsel on an unrelated matter, may do so if she obtains the informed consent of both her private client and her City government client. Similarly, the lawyer may agree to volunteer her services to represent the same City government client that she or her firm are opposing on behalf of a private client in an unrelated matter, if both clients consent after full disclosure. Client notification and consent are not required, however, where the lawyer is not opposing her own City government client but some other agency of the City that is not her client.

The City government client is not always the City as a whole, but may be more narrowly defined as one of the City's constituent agencies. The identity of the government client for conflict of interest purposes will be established in the first instance between the lawyer and responsible government officials in accordance with the general precepts of client autonomy embodied in Rule 1.2. In agreeing to undertake a particular representation, the lawyer must take steps to recognize and respect the reasonable expectation of her other clients, protected by Rule 1.7, that they will receive a conflict-free representation.

Even if Rule 1.7(b)(1) does not apply, because the lawyer's government client is not considered the same government entity she is opposing on behalf of private parties, Rule 1.7(b)(2)-(4) may require that the lawyer obtain client consent if her representation of one client will be or is likely to be "adversely affected" by her representation of the other, or if the independence of her professional judgment will be or is likely to be adversely affected by her responsibilities to third parties or by her own personal interests.

#### Applicable Rules

- Rule 1.2 (Scope of Representation)
- Rule 1.7 (Conflict of Interest: General Rule)

#### Inquiry

The Committee has been asked to reconsider several conclusions of D.C. Bar Opinion 92 (1980) ("Propriety of Private Attorneys Handling Municipal Cases on a Pro Bono Basis"). Opinion 92 examined the ethical propriety, under the D.C. Code of Professional Responsibility, of a program in which "private attorneys acting on a pro bono basis would assist the City in managing its severely crowded civil docket."<sup>1</sup> (</bar-resources/legal-ethics/opinions/opinion268.cfm#footnote1>) The Committee opined in Opinion 92 that the program would be ethically permissible as long as certain conditions were met. The inquirer has asked the Committee to reconsider the continuing validity of two of those conditions, given the intervening adoption in 1991 of the D.C. Rules of Professional Conduct.<sup>2</sup> (</bar-resources/legal-ethics/opinions/opinion268.cfm#footnote2>) The two conditions in question are as follows:

1. A lawyer or firm performing volunteer representational work for the City or any of its agencies may simultaneously represent a private party against the City or any of its agencies only with full disclosure to and consent of both the City and the private party; and.
2. Under no circumstances may a lawyer or firm volunteer to represent a particular agency of the City government while at the same time handling a private matter involving the same agency, or another matter that is or appears to be “closely related,” even with client consent.

### Summary of Conclusions

For reasons discussed more fully in Part I below, the Committee believes that the conclusion in paragraph 2 above is no longer mandated under the Rules of Professional Conduct. Thus a lawyer may represent a particular City government agency in a matter at the same time she is opposing that agency on behalf of a private client in an unrelated matter, as long as she makes full disclosure to and obtains the consent of both the City government agency and the private client. See Rule 1.7(b)(1) and 1.7(c). Moreover, as explained in Part II below, we disagree with the assumption of Opinion 92 that the entire City and all of its constituent agencies must always and necessarily be considered the lawyer’s client for conflict of interest purposes. Thus, a lawyer may under certain circumstances perform services for a particular City agency client without having to notify and obtain the consent of private clients that she is representing against another City agency that is not considered the same client. Nevertheless, even if Rule 1.7(b)(1) does not apply because the lawyer is not opposing her own client, she may be required by Rule 1.7(b)(2)-(4) to notify and seek the consent of one or both clients if her representation of one would substantially interfere with her representation of the other, or if her independent judgment in either client’s behalf would be adversely affected by her responsibilities to a third party or by her own personal interests.

### Discussion

#### I. Prohibited Representation of Private Parties Against Particular City Agencies or in Particular Matters

Opinion 92 imposed an absolute prohibition against a lawyer’s representing a private party against the same particular City agency for which she is performing volunteer services, or in a matter “closely related” to the one she is handling for the City. This absolute prohibition was derived from the “appearance of impropriety” standard of Canon 9 rather than the “conflict of interest” rules of Canon 5. The “appearance” standard was dropped entirely from the Rules of Professional Conduct, and the conflict of interest rules provide that conflicts may generally be waived by the client. See Rule 1.7(b) and (c). Under the current rules, the only conflict that cannot be relieved by client consent is the one that arises where a lawyer seeks to take “adverse” positions on behalf of two different clients *in the same matter*. See Rule 1.7(a). We therefore conclude that the absolute prohibition on opposing one’s own City agency client set forth in paragraph 2 above is no longer applicable.

While a conflict under Rule 1.7(b)(1) would arise if the volunteer lawyer attempted to represent a private client against the City in one matter at the same time she (or one of her partners) was representing the City for the Corporation Counsel in another matter, since the lawyer would in effect be opposing her own client, that conflict could in most circumstances be cured by making full disclosure to both affected clients and obtaining their consent. Thus, a lawyer may represent a private party against a City government agency while simultaneously representing that same City agency in an unrelated matter, as long as both the private client and the agency client are informed of the existence and nature of the lawyer’s conflict and do not object to the continued representation. See Rule 1.7(b)(1) & (c). See *also* Rule 1.7(b)(2)-(4). A lawyer may not, however, represent both the City and a private client in the same matter if they are adverse to each other in that matter, even if both clients consent. See Rule 1.7(a).

The fact that the lawyer is volunteering her services to the City, as opposed to serving under a paid retainer, is irrelevant to these conclusions, as it is to the conclusions reached in the remainder of this opinion.

## II. Conflicts of Interest Where Volunteer Services Are Performed for the City or One of Its Agencies

We now address the holding of Opinion 92 based on the then-applicable conflict of interest rules, described in numbered paragraph 1 above. Opinion 92 construed the conflict of interest provisions of the former Code, derived from Canon 5, to permit a lawyer to participate in the Corporation Counsel's volunteer program "notwithstanding his or her involvement in other matters affecting the City," as long as two conditions were met: first, it must be "obvious" that the lawyer can adequately represent "both the interests of the City and his or her other private clients;" and, second, "each affected client must consent to the multiple representation after full disclosure."

### A. Defining the Client for Conflict of Interest Purposes

Before turning to an analysis of how the current conflict of interest rules apply in this situation, we must deal with one important threshold issue, involving an unexamined assumption made by the drafters of Opinion 92 about the identity of the City government client. That assumption is that the client of the volunteer lawyer working for the Corporation Counsel is always and necessarily "the City" as a whole rather than one or more of the City's constituent agencies.<sup>3</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote3](#)) This definition of the government client gives the conflict rules a considerably broader application and effect than they would have if the City government client were more narrowly defined. Under Rule 1.7(b)(1), a lawyer may not take a position in a matter on behalf of one client that is adverse to a position taken in the same matter by another client (not represented by her) unless she obtains consent from both clients.<sup>4</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote4](#)) If the client of the volunteer lawyer is the City as a whole, as opposed to one or more of its constituent agencies, Rule 1.7(b)(1) would require the lawyer to obtain consent to the City representation from each and every one of the private clients that she is currently representing against the City or any of its agencies, and from the City to each and every adverse private representation the lawyer may currently be involved in against it or any of its agencies, without regard to whether there is any real possibility that the substantive concerns animating the conflicts rules are implicated.<sup>5</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote5](#))

Concerned that the breadth of this definition of the City government client will effectively discourage, if not preclude, private law firms from volunteering to assist the Corporation Counsel, the inquirer has asked the Committee to consider whether the volunteer lawyer's client may be defined as a particular City agency as opposed to the City as a whole, so as to ameliorate the sweeping requirement of notice and consent imposed by Rule 1.7(b)(1) read in the light of Opinion 92. We agree with the inquirer that the definition of the City government client contained in Opinion 92 is too broad, and that the City government client may sometimes be defined as narrowly as a single agency. As discussed more fully below, we also believe that the identity of the City government client depends upon a number of discrete considerations and must be decided on a case-by-case basis.

Simply as a matter of common sense it seems apparent that the client of the volunteer lawyer will not always be the entire City, but may sometimes be a smaller part of it. Much like a large modern corporation, the District of Columbia government is a complex and many-faceted entity that sometimes acts through its individual constituent parts (like the subsidiaries of a corporation) and sometimes acts as a single entity, depending upon the particular facts and circumstances. Sometimes a legal matter or issue is relevant only to a single City agency and is of no substantial interest to other agencies or the City as a whole. Sometimes a matter or issue directly affects or is otherwise significant to a number of agencies or the overall City government. In some situations the broad set of interests at stake will be apparent at the outset; in others the broader concerns may emerge during the course of the representation.

Whatever general principles about client identity in the government context can be drawn from our common sense analysis of the governmental interests implicated by particular cases, at bottom

the identity of the City government client (like the identity of the corporate client) is not primarily a question of legal ethics. The identity of the government (or corporate) client for all ethical purposes is established in the first instance between the lawyer and responsible public (or corporate) officials in accordance with the general precepts of client autonomy embodied in Rule 1.2.<sup>6</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote6](https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote6)) Cf. ABA Formal Opinion 95-390 (“Conflicts of Interest in the Corporate Family Context”) (a corporate client may specify, when engaging a lawyer, whether or not “the corporate client expects some or all of its affiliates to be treated as clients for purposes of Rule 1.7”).

The ethics rules provide at least one important limitation on what a lawyer can agree to with a client under Rule 1.2, and that is her other clients’ right to be protected from conflicts of interest under Rule 1.7. In agreeing to represent a particular government client, a lawyer must take into account the countervailing rights of her other clients whose interests may be adversely affected by this new representation to know of and object to it—just as she must consider the similar rights of the new government client to know of and be able to object to any conflicting existing representations. In working with officials who are authorized to speak for the government client to define the scope of the representation (and hence the identity of the government client for conflict of interest purposes), the lawyer may defer to the government client’s wishes only as long as she is able to fulfill her basic responsibilities to her other clients under Rule 1.7, including in particular her obligation not to take a position adverse to them on behalf of another client without their consent. This is the basic right secured to every client by Rule 1.7(b)(1).

The lawyer may not, by agreeing to a narrow definition of the government client, seek to defeat the reasonable expectation of her other clients, arising from and protected by Rule 1.7(b), that they will get a conflict-free representation from their lawyer. Accordingly, the volunteer lawyer must assure herself that the definition of the government client ultimately arrived at in discussions with authorized government officials both recognizes and respects her private clients’ right to object when their lawyer proposes to represent interests directly adverse to their own. Her government client has the same right to object to any potentially conflicting private representations.

Thus, we believe that the lawyer who wishes to perform volunteer work for the Corporation Counsel’s Office has an obligation to work with that office to develop a clear understanding of the scope of her representation of the City, and to make certain that the agreed upon definition of the government client is a reasonable one in light of all the facts and circumstances, including in particular each of her clients’ right to know about, and to give or withhold consent to, her representation of adverse interests.

Ideally, the identity of the government client should be specifically agreed upon between the volunteer lawyer and the government officials who are authorized to speak for the client at the outset of the representation, and committed to writing. In those instances where the identity of the client is not clearly defined, it may be inferred from the reasonable understandings and expectations of the lawyer and those officials. These in turn may be gleaned from such functional considerations as the organizational structure of the City and the extent to which its constituent parts are related in form and function, and from the facts and circumstances of the particular matter at issue in the representation—including the general importance of the matter to the City as a whole and to other particular components whose programs or activities are not directly involved.

There may be situations in which it can be agreed at the outset that the volunteer lawyer will represent only a single City agency in a relatively discrete matter (e.g., a particular contract) or in a relatively discrete category of cases (e.g., child abuse and neglect cases). In such a case, the lawyer would be free to agree to take on a private representation in which she would be opposing another City agency on an unrelated matter, without having to notify or obtain the consent of either her existing government client or her new private client. That is the easiest case. Another fairly clear case is the one in which the volunteer lawyer represents a City agency in a matter that plainly

has City-wide impact or public importance, so that it can fairly be said to implicate the interests of the City generally. In such a case, it would be unreasonable not to regard the lawyer's client as the City as a whole, and she therefore could not undertake a private representation against any City agency without informing and obtaining the consent of the City and, subsequently, the private client. There are dozens of permutations on these basic scenarios, in which the general City-wide interest is sometimes clear and sometimes not so clear. However, the mere fact that a matter is captioned "X v. District of Columbia" is not dispositive of the identity of the government client. Rather, as noted previously, the answer depends upon the reasonable understanding reached between the volunteer lawyer and responsible public officials based upon all relevant facts and circumstances. Of course, as with all representations, the lawyer must be alert to the need to deal with any conflicts that may arise during the course of the representation.<sup>7</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote7](https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote7))

The Corporation Counsel—as chief legal officer for the District and controller of its litigation—asserts that he has legal responsibility for determining the identity of the City government client for purposes of the conflict of interest rules. The Corporation Counsel has indicated his intention to issue guidelines for dealing with conflict issues posed by the volunteer program, that will address the identity of the client and the circumstances in which the District will waive any potential conflicts. We expect that these guidelines, when issued, will be useful to volunteer lawyers not only in determining what kinds of legal assistance they may give to the Corporation Counsel without creating a conflict with their existing private representations, but also in determining the scope of any conflicts. The guidelines may also be useful in determining what new private clients or matters a lawyer may subsequently take on in light of her responsibilities to her City government client(s).

In summary, we conclude that the Rules of Professional Conduct do not identify the City government client, and for the most part provide only general guidance for the lawyer and responsible government officials in reaching an understanding in this regard. The one clear limitation on the lawyer in this context derived from the ethics rules is her other clients' reasonable expectation that they will be allowed to object to their lawyer's representation of interests that would impinge upon her ability to zealously represent their own. Thus we believe that the private lawyer who wishes to perform volunteer work for the Corporation Counsel's office must work with that office to develop a clear understanding of the scope of her representation of the City, and hence the identity of the government client for conflicts purposes, and must take steps to protect all of her clients' right to know about and withhold consent to their lawyer's representation of interests that are adverse to their own.

## **B. Applicable Conflict of Interest Rules**

Assuming that the relevant City government client has been identified, it remains to explain how the current conflict of interest rules apply in this situation.

### **1. Direct Conflicts Under Rule 1.7(b)(1)**

As noted, Rule 1.7(b)(1) prohibits a lawyer from taking a position on behalf of one client that is directly adverse to a position taken by another client in the same matter (represented of course in this matter by another lawyer) without the consent of both clients. See note 4, *supra*. Thus, if a lawyer wishes to undertake a volunteer representation of a particular City agency that she or her firm is already opposing on behalf of a private client, the lawyer may do so only if she informs both the private client and the new City agency client of the "existence and nature of the possible conflict and the possible adverse consequences of such representation," and they give their consent.<sup>8</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote8](https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote8)) Rule 1.7(c)(1). The conflicts of each lawyer in a firm are imputed to all other lawyers in the firm. Rule 1.10.

For example, if a volunteer lawyer is considering taking on a matter for the Corporation Counsel that involves defense of a suit brought against the Mayor and/or the City Council, or a suit

attacking some City-wide program or regulation (so that the client must be deemed to be the City as a whole), the lawyer must make full disclosure to and seek consent from each of her firm's private clients who have matters pending against the City or any of its agencies. She must also inform the Corporation Counsel of any conflicting private representations being pursued by her or by other lawyers in her firm. Conversely, if a volunteer lawyer is working on a City-wide matter and is then asked to represent a private party against the City or one of its agencies, she must inform the Corporation Counsel and seek his consent. Consent must also be obtained from the new client.

On the other hand, Rule 1.7(b)(1) does not apply, and client notification and consent are not required, if a lawyer is not opposing her own City government client but some other agency of the City that is not her client. For example, if a lawyer hired to defend a program or action of a particular City agency, such as the Housing Department, were representing only the Housing Department in this matter, she would be required to disclose the fact of her Housing Department representation and seek consent from those of her firm's private clients who had matters pending against the Housing Department or against the City as a whole.<sup>9</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote9](#)) But she would not be required to disclose her Housing Department representation to private clients who had matters pending against other particular City agencies whose functions were unrelated to the Housing Department and that otherwise had no interest in the issues involved in the Housing Department representation and would be unaffected by its outcome.

Thus, in a case where a lawyer is representing the City as a whole, she is obliged to obtain the City's consent before opposing one of its constituent agencies, as well as the consent of any of her private clients who have interests adverse to the City (or, of course, the particular agency she would be representing). Similarly, if the lawyer is representing a private client against the City as a whole, she must obtain the private client's consent before undertaking any City government representation, even one involving a discrete agency program with no functional or programmatic relationship to the City-wide matter she is otherwise involved in. The only situation in which the lawyer may cabin her conflict and avoid having to conduct a broad canvass of all clients with City-related business is where both her public and her private representations involve discrete agency programs with no City-wide implications.

## **2. Indirect Conflicts Under Rule 1.7(b)(2)-(4)**

Even if Rule 1.7(b)(1) does not apply because the lawyer's City government client is not considered to be the same City client that she is opposing, her representation of a City agency may still raise an "indirect" conflict of interest under subsections (2) through (4) of Rule 1.7(b) if it "interferes in some substantial way with the representation of another" client. D.C. Bar Opinion 265 (1996) ("Positional Conflicts"). This would as a practical matter result in the same need to determine that both clients could be adequately served, and then to make full disclosure to and obtain the consent of "each affected client" to the multiple representation. Under Subsections (2) and (3) of Rule 1.7(b), if the lawyer believes that her representation of the City agency "will be or is likely to be adversely affected" by her representation of a private client, or vice versa, the lawyer must obtain the consent of the affected client or clients. Under subsection (4), client consent must be obtained if the lawyer believes that the independence of her professional judgment on behalf of a client "will be or reasonably may be adversely affected" by her responsibilities to a third party or by her own personal interests.

In contrast to the situation involving a direct conflict under Rule 1.7(b)(1), where disclosure and informed consent are mandatory once it is apparent that the lawyer will be opposing her own client, a lawyer has some discretion in deciding whether an indirect conflict under Rule 1.7(b)(2)-(4) exists. Whether a particular volunteer representation will "adversely affect" the lawyer's representation of another client (or vice versa) depends upon the particular facts and circumstances and is in the first instance essentially a matter for the lawyer to decide. Likewise,

the existence of a conflict arising from the lawyer's responsibilities to third parties or her own personal interests is primarily a question of fact. The lawyer may decide that she should make disclosure to and seek consent from one client but need not do so from the other.

The "adverse effect" inquiry under subsections (2) through (4) is primarily a functional one, generally involving both the relative importance of the representation to the respective clients or to their lawyers and the directness of the adverseness between them. It may require inquiry into the nature of the issues, the amount of money at stake, and the likelihood that either client would otherwise be substantially and foreseeably affected by the outcome of the other's matter. Sometimes, the "adverse effect" inquiry will also involve the particular role the volunteer lawyer is expected to play in the matter, and the "intensity and duration" of her relationship with the lawyers she is opposing. *Cf.* Formal Opinion 1996-3 of the Committee on Professional and Judicial Ethics of The Association of the Bar of the City of New York (1996)(conflicts of interest where one lawyer represents another lawyer).

Without attempting to exhaust the kinds of situations that would give rise to an adverse effect under Rule 1.7(b)(2)-(4), we offer the following examples to illustrate the kinds of circumstances that in this Committee's view could require a lawyer to obtain consent from one or both clients under these provisions. 1) A volunteer lawyer whose firm is handling a matter for private clients against one City agency, and who is subsequently asked by the Corporation Counsel to defend another City agency in a matter whose outcome will have a substantial and foreseeable impact on the outcome of the firm's private clients' matter, may be required to obtain one or both clients' consent. 2) A volunteer lawyer who represents one City agency and wishes to make certain arguments about that agency's authority that are inconsistent with arguments she is making on behalf of a private client against another City agency in an unrelated matter, may be required to obtain consent from one or both clients if the success of her arguments on behalf of one client "will, in some foreseeable and ascertainable sense, adversely effect the lawyer's effectiveness on behalf of the other" client. *See* Opinion 265, *supra*. 3) A volunteer lawyer performing work for one City agency who wishes to take a leading role representing a private party in a controversial matter involving another City agency should anticipate having to obtain consent from both clients if she believes it likely that one representation will have an adverse effect on the independence of her professional judgment or her credibility in the other. 4) A volunteer lawyer who works closely and for extended periods of time with full-time Corporation Counsel lawyers, or is closely supervised by Corporation Counsel lawyers, may find it difficult to exercise independent professional judgment in opposing the same lawyers with whom she is working or who are supervising her, and in such a situation she may decide that she should not accept a private representation in which she would be opposing her colleagues, without notifying and seeking the consent of both the Corporation Counsel and her private client.<sup>10</sup> ([/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote10](https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote10))

The above examples are not intended to be exhaustive, but merely to suggest the possibilities for "indirect" conflicts to develop in the context of a volunteer program such as the one described in Opinion 92.

### **Conclusion**

The conclusion of Opinion 92 that, under the former Code of Professional Responsibility, a lawyer may never oppose a City agency that she is also representing on behalf of another client in an unrelated matter, is no longer mandated by the Rules of Professional Conduct. Under Rule 1.7(b) (1), a lawyer may oppose her own City government client on behalf of a private client in an unrelated matter as long as she makes clear the nature of the conflict to both clients and obtains their consent.

Moreover, we believe that in certain limited situations a lawyer may represent a City agency without having to notify or obtain the consent of private clients that she is representing against

other discrete City agencies. Opinion 92's apparent assumption that the client of the Corporation Counsel lawyer is always and necessarily the City as a whole is incorrect, and in any event has no foundation in the ethics rules. The rules contemplate that the identity of the City government client for conflict of interest purposes will be decided on a case-by-case basis between the lawyer and responsible government officials, taking into account the reasonable expectation of the lawyer's other clients that they will receive a conflict-free representation. Their decision will generally be based on functional considerations derived from the structure and relationship of the government entities involved and from the facts and circumstances of the particular matter at issue in the representation. Even if the lawyer would not be opposing her own client, she may be required by Rule 1.7(b)(2)-(4) to obtain client consent if her representation of one client would interfere in some substantial way with her representation of the other, or if the independence of her judgment in either client's behalf would be compromised by her responsibilities to or interests in a third party or by her own personal interests, including her personal and professional relationships with the lawyers on the other side.

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1. Under the program described in Opinion 92, private law firms were encouraged to donate the services of attorneys to assist the Corporation Counsel in a variety of legal matters, generally on a part-time basis. This program reportedly yielded little by way of relief for the Corporation Counsel's Office, at least in part because of the conditions on lawyer participation (particularly the requirement of obtaining waivers from other clients) set forth in Opinion 92. In 1992, a second and more formal effort was made to encourage lawyers from private firms to volunteer their services to the City, this time by granting them a special dispensation from the imputation rule. The amendments enacted in that year to Rule 1.10 and 1.11 provided that conflicts resulting from one lawyer's voluntary service to the Corporation Counsel need not be imputed to all other lawyers in her firm. See Rule 1.10(e) and Comment [19]; Rule 1.11(h) and Comments [12] and [13]. (The 1992 amendments to Rules 1.10 and 1.11 were made permanent in 1994 and extended to the D.C. Financial Control Board in 1996). According to the commentary to Rule 1.10, this special dispensation from the imputation rule depends upon the volunteer lawyer's working full-time for the Corporation Counsel (there must be a "temporary cessation" of a volunteer lawyer's practice with the firm, "so that during that period the lawyer's activities which involve the practice of law are devoted fully to assisting the Office of the Corporation Counsel"). Thus, when a private lawyer is detailed full-time to the Corporation Counsel's Office under the so-called "Rule 1.10 program," her firm will not be regarded as representing the City, and will not need to alert and obtain consent from those of its clients who "might reasonably consider the representation of its interests to be adversely affected" by the firm's representation of the City. See Comment [7] to Rule 1.7. (It follows by necessary implication that where a lawyer is volunteering for the City on a less than full-time basis, or does not otherwise meet the requirements of a "Rule 1.10 detail," the conflicts resulting from her government service are imputed to all lawyers in her firm.) We understand that the Rule 1.10 program has attracted few volunteers, and has accordingly provided no more benefit for the Corporation Counsel's Office than did the pre-1992 part-time details discussed in Opinion 92.

2. Amendments to the Rules issued by the D.C. Court of Appeals on October 16, 1996, make a number of revisions to the text and commentary of Rule 1.7, none of which affect the conclusions of this opinion. We would note, however, the extensive attention paid in new Comments [13]-[18] to conflicts of interest where the client is a "corporation, partnership, trade organization or other organization-type client." While not directly applicable to situations in which the client is a governmental entity, cf. Comment [7] to Rule 1.13, we believe this discussion may provide a useful supplement to the discussion of conflicts under Rule 1.7(b)(2)-(4) in Part II B(2), *infra*.

3. Opinion 92 does not say in so many words that the client of the volunteer lawyer is always and necessarily the entire City for Canon 5 conflict of interest purposes. Nevertheless, this has been the generally accepted interpretation of the opinion since its issuance more than 16 years ago, and there appears to be little support in the text for a contrary position. Moreover, the fact that the absolute bar under the “appearance” standard of Canon 9 is clearly applicable only to representations involving particular City agencies if further evidence that the drafters of Opinion 92 intended a very broad definition of the City client for conflict of interest purposes.

4. Where a conflict arises under Rule 1.7(b)(1) because the lawyer is opposing her own client on behalf of another client, both clients are presumed to be “potentially affected” under Rule 1.7(c)(1) and both must therefore consent to the representation after full disclosure.

5. Opinion 92 advises a firm wishing to participate in the Corporation Counsel’s volunteer program to “send a standardized letter to all clients identified as having present or potential future dealings with the City, describing the program and explaining in general how the judgment of the firm’s attorneys might or might not be affected by the firm’s participation in the program.” This suggests an even broader application for the condition, requiring the lawyer to obtain consent from clients with present or potential City business without regard to whether the lawyer or her firm is actually representing the client in connection with that City business. We see no basis in the current rules for such an expansive reading of the conflict of interest rules. Even in a case when the entire City is considered the lawyer’s client, consent must be obtained only from clients who the lawyer is currently representing against the City (or one of its agencies) or those who have actually asked her so to represent them.

6. We do not regard the definition of the government client contained in Rule 1.6(i) (“the client of the government lawyer is the agency that employs the lawyer”) as dispositive for conflict of interest purposes. And, there is no indication that this or any other a priori definition of the government client was intended to apply in this context in the otherwise thorough consideration of the “government lawyer” issue by the Sims Committee in 1988. See Report by the District of Columbia Bar Special Committee on Government Lawyers and the Model Rules of Professional Conduct (1989).

7. The provisions of Rule 1.7(d) (1996 amendment) govern conflicts arising after the representation commences that are “not reasonably foreseeable at the outset of a representation.” As we read this provision, it subjects such unforeseeable late-arising conflicts to the provisions of Rule 1.7(b) (2) through (4) only, and not to those of Rule 1.7(b)(1).

8. The government client can generally decide what information it needs or wants about the volunteer lawyer’s potentially conflicting representations, in the context of deciding its own identity. Thus, the process of self-definition functions for the government client as a way of consenting to the volunteer lawyer’s conflicting private representations to which it would be entitled to object if it chose to define its identity more broadly. In this fashion, the government client may decide that it has no interest in knowing about any conflicts that might otherwise be imputed to the volunteer lawyer under Rule 1.10 by virtue of representations by other lawyers in her firm.

9. Given the decision-making structure of government entities, we believe that the conflicts of the City are necessarily attributed to its constituent parts, and that the conflicts of the constituent parts of the City are necessarily attributed to the City as a whole—though the conflicts of one of the City’s constituent agencies may or may not be attributed to other City agencies.

10. Because this conflict is in the nature of a personal conflict, as opposed to one derived from the lawyer’s representation of another client, we doubt that it would be imputed to other lawyers in the firm. See ABA Formal Opinion 96-400 (“Job Negotiations with Adverse Firm or Party”) (Rule 1.10 “cannot be construed so broadly as to require that all lawyers in a firm be presumed to share their colleague’s personal interest in joining the opposing firm in a matter,” though each lawyer must

individually evaluate whether his “responsibilities to . . . a third person’—i.e., his colleague—or his own interest in his colleague’s interest, may materially limit the representation.”)