


AWARD/CONTRACT		1. Caption Outside Legal Counsel (Climate Change)		Page of Pages 1 45							
2. Contract Number DCCB-2019-C-0011		3. Effective Date See Block 20C		4. Requisition/Purchase Request/Project No. N/A							
5. Issued by: Office of the Attorney General Support Services Division/Procurement Unit 441 4th Street NW, Suite 1100 South Washington, DC 20001		Code CB0JPW		6. Administered by (If other than line 5) Office of the Deputy Attorney General Public Advocacy Division 441 4th Street NW, Suite 650 North Washington, DC 20001							
8. Name and Address of Contractor (No. street, city, state and zip code) Sher Edling LLP 100 Montgomery Street, Suite 1410 San Francisco, CA 94104 matt@sheredling.com; Phone: (628) 231-2520 Tycko & Zavareei LLP 1828 L Street NW, Suite 1000 Washington, DC 20036 hzavareei@tzlegal.com; Phone (202) 973-0900		8. Delivery <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other (See Schedule Section F)		9. Discount for prompt payment Net 30 days							
		10. Submit invoices to the Address shown in (3 copies unless otherwise specified) <input checked="" type="checkbox"/> Section G.2		11. Ship to/Mark For Office of the Attorney General Public Advocacy Division 441 4th Street NW, Suite 650 North Washington, DC 20001							
12. Payment will be made by: The Office of Finance and Resource Management Office of the Controller/Agency CFO 441 4th Street NW, Suite 890 North Washington, DC 20032-0247		13. Reserved for future use		14. Accounting and Appropriation Data N/A							
		15A. Item		15B. Supplies/Services		15C. Qty.		15D. Unit		15E. Unit Price	
0001 - 0002		Outside Legal Counsel in support of investigation and potential litigation as set forth in Section C.		SEE		SECTION		B ON		PAGES 3 - 5	
Total Estimated NOT-TO-EXCEED Amount of Contract <input checked="" type="checkbox"/>										\$70,000,000.00	
16. Table of Contents											
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X	D	Packaging and Marking	11								
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X	H	Special Contract Requirements	21		M	Evaluation factors for award					
Contracting Officer will complete Item 17 or 18 as applicable											
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return one (1) copy to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.						18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number <u>DCCB-2019-R-0011</u> including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.					
19A. Name and Title of Signer (Type or print) SEE PAGE 2						20A. Name of Contracting Officer Janice Parker Watson					

19B. Name of Contractor Sher Edling LLP and Tycko & Zavareei LLP SEE SIGNATURES BELOW (Signature of person authorized to sign)	19C. Date Signed	20B. District of Columbia SEE BELOW (Signature of Contracting Officer)	20C. Date Signed
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SIGNATURE PAGE

FOR THE CONTRACTOR:



MATTHEW K. EDLING
Partner, Sher Edling LLP

09/25/2019

Date



HASSAN A. ZAVAREEI
Partner, Tycko & Zavareei LLP

09/26/2019

Date

FOR THE DISTRICT OF COLUMBIA:

Janice Parker Watson

Digitally signed by Janice Parker Watson
Date: 2019.11.21 17:52:06 -05'00'



JANICE PARKER WATSON
Contracting Officer

November 21, 2019

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 contracting with Sher Edling LLP and Tycko & Zavareei LLP (Contractor) to provide legal services in support of OAG’s investigation and potential litigation against ExxonMobil Corporation, any other subsidiary, affiliate or successor-in-interest, and/or others responsible for potential violations of the Consumer Protection Procedures Act (CPPA) or other District laws in connection with statements or omissions about the effects of fossil fuel products on climate change.
- B.2** This is the definitive contract contemplated by the Letter Contract dated July 24, 2019. The Letter Contract is merged herewith and is superseded by this Contract.
- B.3** In accordance with 27 DCMR 5025.3, the District hereby awards 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.3.5 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 – Nine (9) Years from Date of Award

Contract Line Item No. (CLIN)	Services	Percentage of Gross Recovery and Any Attorney’s Fee Award to District	Not to Exceed Total
0001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District:		
0001A	Prior to Discovery	12%	\$25,000,000.00
0001B	After Commencement of Discovery, but Prior to Trial	12%	\$45,000,000.00
0001C	After Commencement of Trial	12%	\$65,000,000.00
0002	Reimbursable Costs	N/A	Ceiling \$5,000,000.00
NOT-TO-EXCEED CONTRACT AMOUNT			\$30,000,000.00 \$50,000,000.00 \$70,000,000.00

B.3.2 OPTION PERIOD ONE (1) (YEARS TEN AND ELEVEN)

Contract Line Item No. (CLIN)	Services	Percentage of Gross Recovery and Any Attorney's Fee Award to District	Not to Exceed Total
1001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District:		
1001A	Prior to Discovery	12%	\$25,000,000.00
1001B	After Commencement of Discovery, but Prior to Trial	12%	\$45,000,000.00
1001C	After Commencement of Trial	12%	\$65,000,000.00
1002	Reimbursable Costs	N/A	Ceiling \$5,000,000.00
NOT-TO-EXCEED CONTRACT AMOUNT			\$30,000,000.00 \$50,000,000.00 \$70,000,000.00

B.3.3 OPTION PERIOD TWO (2) (YEARS TWELVE AND THIRTEEN)

Contract Line Item No. (CLIN)	Services	Percentage of Gross Recovery and Any Attorney's Fee Award to District	Not to Exceed Total
2001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District:		
2001A	Prior to Discovery	12%	\$25,000,000.00
2001B	After Commencement of Discovery, but Prior to Trial	12%	\$45,000,000.00
2001C	After Commencement of Trial	12%	\$65,000,000.00
2002	Reimbursable Costs	N/A	Ceiling \$5,000,000.00
NOT-TO-EXCEED CONTRACT AMOUNT			\$30,000,000.00 \$50,000,000.00 \$70,000,000.00

B.3.3 GRAND TOTAL

GRAND TOTAL NOT-TO-EXCEED CONTRACT AMOUNT	\$30,000,000.00*
	\$50,000,000.00*
	\$70,000,000.00*

***The Grand Total of this contract is not-to-exceed \$30,000,000.00 if recovery occurs prior to discovery, \$50,000,000.00 if recovery occurs after commencement of discovery but prior to trial, and \$70,000,000 if recovery occurs after commencement of trial.**

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.3.4 REIMBURSABLE COSTS

Reimbursable Costs may be paid under this contract. The ceiling for such costs is five million dollars (\$5,000,000.00), 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.

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 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 Contractor to the District.

If 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, any other subsidiary, affiliate or successor-in-interest, and/or others responsible for potential violations of the Consumer Protection Procedures Act (CPPA) or other District laws in connection with statements or omissions about the effects of 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, Chapter 39 Consumer Protection Procedures	Most recent

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, any other subsidiary, affiliate or successor-in-interest, or others who or may be liable for costs associated with statements or omissions about the effects of fossil fuel products on climate change.

C.3.4 IOLTA - Interest on Lawyer Trust Accounts is program operated by every [state](#), the [District of Columbia](#) and the [U.S. Virgin Islands](#) as a method of raising money for charitable purposes, primarily the provision of civil [legal services](#) to [indigent](#) persons, through the use of interest earned on certain lawyer trust accounts. The establishment of IOLTA in the United States followed changes to federal banking laws passed by Congress in 1980 which allowed some checking accounts to bear interest.

- C.3.5 Gross Recovery** — the total recovery for the District as a result of Contractor's representation of the District whether by settlement, arbitration award, court judgment following trial or appeal, or otherwise. "Gross recovery" shall include, without limitation, the following: the present value of any monetary payments to be made to the District. "Gross recovery" may come from any source, including, but not limited to, adverse parties to the Action and/or their insurance carriers and/or any third party, whether or not a party to the Action. Notwithstanding any other provision in this agreement, in no event will the District be required to pay legal fees out of any fund other than monies recovered in this litigation.
- 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 the 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 Reimbursable Costs** – all reasonable direct costs or expenses for goods and services necessary for the potential investigation and litigation against Exxon, any other subsidiary, affiliate or successor-in-interest, and/or others responsible for potential violations of the CPPA or other District laws in connection with statements or omissions about the effects of 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 failed to inform consumers about the effects of its fossil fuel products on climate change. Exxon 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 and potentially others to secure injunctive relief stopping violations of the CPPA or other District law, as well as securing 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 Perform 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, municipalities and/or 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 drafting and/or 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 minimum staff positions are required. Contractor shall submit a resume, or resumes of qualified staff, for each position required. Contractor may submit multiple candidates for each position identified. Contractor shall also designate a staff position who will interface with OAG on staffing and administrative matters. Proposed candidates, whether employees, subcontractors or independent consultants, shall meet or exceed the following minimum qualifications at the time of contract award:

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. Experience 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 expert witnesses 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:

C.5.5.1 The Contractor agrees to 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.5.5.2 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 base period of nine (9) years from date of award specified on the cover page of this contract or settlement of the litigation, whichever comes first.

F.2 CONTINUATION BEYOND THE EXPIRATION OF BASE PERIOD

F.2.1 If the Contractor has filed a lawsuit and that lawsuit has not been decided ninety (90) days prior to the expiration of the base period (year nine) or has been decided and is subject to appeal, the District may extend the Contract for up to two (2) additional 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 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. In no event shall any such extension of the Contract entitle the Contractor to additional fees.

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

F.2.4 Continuation Beyond the Expiration of Option Period Two

If the Contractor has filed a lawsuit and that lawsuit has not been adjudicated ninety (90) days prior to the expiration of Option Period Two (Year 13), the District may extend the Contract for up to two (2) additional two-year option periods. In no event shall any such extension of the Contract entitle the Contractor to additional fees. The total duration of this contract, including the exercise of any options under this clause, shall not exceed thirteen (13) years or the life of the litigation, whichever is greater.

F.2 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 table:

Item	Deliverable	Quantity	Format/Method of Delivery	Due Date
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
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 th of each month

F.2.1 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.

*****NOTHING FOLLOWS ON THIS PAGE*****

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 cost reimbursement only if the Contractor secures Gross Recovery for the District, as defined in C.3.5, 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 plus 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 Contractor, into a designated Attorney IOLTA account established prior to any request for payment, upon the District's receipt of any monetary recovery from the Contractor's representation of the District in a Matter. If no monetary 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 15th 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 people 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 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. Reimbursable Costs may include, in addition to travel expenses, expenses for discovery, expert witnesses, other consultants, and such other costs necessary to continue the litigation as may be approved by OAG in accordance with C.5.3.

- 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 4th 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: Jimmy R. Rock
Title: Assistant Deputy Attorney General,
Public Advocacy Division
Office of the Attorney General
for the District of Columbia
441 4th Street NW, Suite 600 South
Washington, DC 20001

Email: jimmy.rock@dc.gov
Tel: 202-741-0770 | Fax: 202-741-8873

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.

*****NOTHING FOLLOWS ON THIS PAGE *****

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 Lawyers: Victor M. Sher, Matthew K. Edling, Corrie Yackulic; Jonathan K. Tycko and Hassan A. Zavareei
2. Junior Lawyers: Adam Shapiro, Stephanie Biehl, Martin D. Quiñones, Meredith Wilensky, Katie Jones, Timothy Sloane; Katherine Aizpuru, Tanya Koshy, and Matthew Lanahan

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 Retention

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. 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. 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.** Contractor at its sole expense shall acquire and maintain, during the entire period of performance under this Contract, the types of insurance specified below. Contractor shall have its insurance brokers or insurance companies submit Certificates 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. 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 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 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 Contractor or its subcontractors, or anyone for whom 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 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 Grantee and subcontractors.
1. Commercial General Liability Insurance ("CGL") - 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 - 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 - 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.

Employer's Liability Insurance - 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 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.
 4. Cyber Liability Insurance - Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 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.

5. Professional Liability Insurance (Errors & Omissions) - 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 \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. Contractor warrants that any applicable retroactive date precedes the date 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.
6. Commercial Umbrella or Excess Liability - 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) \$15,000,000 per occurrence and \$15,000,000 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.** 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. Contractor shall include all of the costs of insurance and bonds in the contract price.

- G. NOTIFICATION.** 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. Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- H. CERTIFICATES OF INSURANCE.** 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:

Janice Parker Watson
Contracting Officer
Office of the Attorney General
Support Services Division/Procurement Unit
441 4th 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 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 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.** 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) 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
J.1	Government of the District of Columbia Standard Contract Provisions for Use with Supplies and Services Contracts (July 2010)
J.2	Equal Employment Opportunity Employer Information Report and Mayor's Order 85-85
J.3	Department of Employment Services First Source Employment Agreement
J.4	Living Wage Act of 2006 - Living Wage Notice
J.5	Living Wage Act of 2006 - Living Wage Fact Sheet
J.6	Tax Certification Affidavit
J.7	Subcontracting Plan (if required by law)
J.8	First Source Initial Employment Plan (if contract is \$300,000 or more)

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

J.9	D.C. Bar Legal Ethics Committee Opinion No. 268 https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion268.cfm#.XHfvoFV571A.email
J.10	U.S. Department of Labor Wage Determination No. 2015-4281, Revision 14 dated July 16, 2019 (20 pages)
J.11	Completed Bidder/Offeror Certification Forms
J.12	DOES First Source Employment Agreements