**DETERMINATION AND FINDINGS**

**FOR**

**SOLE SOURCE PROCUREMENT**

1. **Authorizationi**

* D.C. Code § 34-801
* D.C. Code § 34-804
* 15 D.C.M.R. § 3700

2. **Minimum Need**

The Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”) exclusively requests the renewed services of Spiegel & McDiarmid, LLP for the purposes of preparing Initial and Reply Briefs in Office of the People’s Counsel for the District of Columbia v. D.C. Water & Sewer Authority, D.C. Court of Appeals Case Nos. 22-AA-449, 22-AA-450 & 22-AA-469.

3. **Estimated Fair and Reasonable Price**

The total contract (“not –to-exceed”) price is $75,000.

4. **Facts That Justify a Sole Source Procurement**

1. The Office of the People’s Counsel is an independent agency of the District of Columbia Government. By law, it is the advocate for consumers of natural gas, electric, water and landline telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the District of Columbia Public Service Commission (“PSC” or “DC PSC” or “Commission”). The Office also represents the interests of District ratepayers before federal regulatory agencies. The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceedings.
2. The Office of the People's Counsel is expressly requesting to contractually renew the legal services of Spiegel & McDiarmid, LLP. The Office has been working closely with associates of Spiegel & McDiarmid, LLP to address on-going issues on the Federal level concerning PJM's minimum offer price rule. Together, with the interests of OPC and the other Joint Consumer Advocates (in New Jersey, Maryland and Delaware), Spiegel & McDiarmid, LLP has been working in tandem to appeal orders from the Federal Energy Regulatory Commission ("FERC"). The Joint Consumer Advocates, all collectively represented by Spiegel & McDiarmid, LLP, have appealed PJM's price to the Seventh Circuit Court of Appeals where those consolidated appeals are currently being held in abeyance.
3. OPC represents two consumers who have challenged their water bills as excessive in proceedings before D.C. Water Hearing Examiner. OPC petitioned DC Court of Appeals to review its June 2022 decision in these consumer complaints. In August 2022, D.C. Water asked the Court to dismiss the appeals on standing grounds. Spiegel & McDiarmid, LLP prepared a memo laying out the basis for OPC’s standing to bring the appeals, OPC subsequently responded in opposition to D.C. Water’s motion. The motion and response have been referred to the merits panel, which means that it will be briefed alongside the other issues in the case.
4. Spiegel & McDiarmid, LLP., will assess: (1) whether OPC has standing to appeal a D.C. Water Board determination in its own name; (2) whether the Court's Gatewood decision applies when the D.C. Water Board files a motion to dismiss an untimely challenge to a water bill; (3) whether the Hearing Officer acted arbitrarily and capriciously when the court determined that OPC's expert Jason Cumberbatch is a fact witness rather than an expert witness and therefore acted arbitrarily in concluding that OPC had not made a sufficient evidentiary showing; and (4) whether the Hearing Officer acted arbitrarily and capriciously when the court determined that Mr. Melham had not presented a prima facie case that he did not use 168,480 gallons of water in a one-week period.
5. Given this background, Spiegel & McDiarmid, LLP is specifically being retained to perform the following tasks:
	1. reviewing the record;
	2. drafting an initial brief;
	3. reviewing the responsive brief; and
	4. drafting a reply brief.

The appellate record is roughly 1,000 pages. Spiegel & McDiarmid, LLP’s immediate, near-term need is to review the record and develop the arguments that OPC will advance on appeal.

1. Spiegel & McDiarmid, LLP has extensive experience addressing the interests of the Office of the People’s Counsel at the Federal level.  Spiegel & McDiarmid, LLP., has successfully represented OPC in litigating, writing briefs and reply briefs in utility-related issues. Furthermore, this appeal is the first case in which OPC is representing water consumers before the D.C. Court of Appeals. Given the matters at issue, the outcome may have an impact on the extent to which the Office is able to defend the interests of District water consumers.  Based on the nature of this proceeding as well as the scope and complexity of the issues at hand and considering the timeframe for which services are needed, the Office feels it is more than justified in awarding a sole source contract amendment to the legal consultant currently under contract. It is the Office’s belief that Spiegel & McDiarmid, LLP  is uniquely qualified and positioned to be awarded a sole source contract as it is imperative that OPC retain their services for quality assurance purposes and successfully represent OPC in this legal proceeding.

1. It is for the reasons outlined herein that it is recommended that a sole source contract amendment be exclusively awarded to Spiegel & McDiarmid, LLP.

5. **Certification by the Contracting Officer**

I hereby certify that the above facts are accurate and complete.

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Yohannes K.G. Mariam, Ph.D. Date

Contracting Officer

**DETERMINATION**

Based on the above findings and in accordance with the District of Columbia procurement regulations: *DC Law: 34-804; DC Law: 34-801;* and *15 D.C.M.R. §3700,*

I hereby determine that the award of a sole source contract for the services described herein is in the best interest of the Office of the People’s Counsel.

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Eric B. Scott, Esq. Date

Chief Operating Officer