

**DETERMINATION AND FINDINGS  
FOR  
SOLE SOURCE PROCUREMENT**

1. **Authorization<sup>i</sup>**

- 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”) requests the services of Spiegel & McDiarmid, LLP for the purpose of providing expert legal assistance to consult OPC on general utility matters.

3. **Estimated Fair and Reasonable Price**

The total contract (“not –to-exceed”) price is \$37,500.

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

- A. 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, such as the Federal Energy Regulatory Commission (“FERC”). The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceedings.
- B. The Office of the People’s Counsel already has an established executed general contract in place with Spiegel & McDiarmid, LLP to retain their services in providing OPC with expert legal services on a variety of utility-related matters involving the DC PSC, FERC and PJM Interconnection LLC (“PJM”) related issues. In assisting OPC with legal representation before these regulatory authorities, Spiegel & McDiarmid, LLP has provided invaluable assistance in providing prompt response to inquiries from critical stakeholders. At this time, OPC needs to execute an additional separate contract to further extend the scope of Spiegel & McDiarmid, LLP’s legal services to specifically include additional representation in the participation of pending appeals of two orders before FERC. These Orders concern the scope of PJM’s minimum offer price rule (“MOPR”). Multiple petitions for review have been filed in the D.C. Circuit Court and one petition for review has been filed in the Seventh Circuit. If FERC’s Orders are affirmed, it is anticipated that PJM consumers could face billions in annual increased payments to the region’s generators. At this time, many different parties have already filed petitions seeking review of the FERC Orders.

- C. Spiegel & McDiarmid, LLP has a longstanding working relationship with OPC and has familiarized itself with the tasks at hand currently facing OPC within the regulated utility landscape. Their assistance is crucial in providing legal representation during this appeal process on behalf of OPC and other consumer advocate stakeholders in Delaware, the District of Columbia, New Jersey and Maryland. Their work will specifically involve the preparation of an initial and reply brief, as well as a presentation on behalf of the aforementioned consumer advocates at oral argument.
  
- D. Spiegel & McDiarmid, LLP has extensive experience assisting OPC in offering legal services regarding public utility regulation. In addition, Spiegel & McDiarmid, LLP has substantial experience concerning the FERC-regulated capacity markets, including the PJM market and FERC's MOPR. Furthermore, their experience includes having recently represented the New Jersey Division of Rate Counsel on its joint rehearing request (on behalf of a group that included OPC) of FERC's December 19<sup>th</sup> Order. Due to the complexity of issues at hand involving the representation of other various stakeholders in other utility-regulated jurisdictions and because the case is of great significance; OPC believes it is justified in awarding a sole source contract at this time to Spiegel & McDiarmid, LLP.
  
- E. It is for the reasons outlined herein that it is recommended that a sole source contract be awarded to Spiegel & McDiarmid, LLP.

5. **Certification by the Contracting Officer**

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

\_\_\_\_\_  
 Christopher K. Sellers  
 Contracting Officer

\_\_\_\_\_  
 Date

**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.  
 Chief Operating Office

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 Date

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<sup>i</sup> Procurement authority is vested in the Commission pursuant to § 13(c) (2) of the Residential Real Property Seller Disclosure, Funeral Services Date Charge, and Public Service Commission Independent Procurement Authority Act of 1998 (D.C. Law 12-263). The Commission is statutorily exempt from the D.C. procurement rules as set forth in D.C. Official Code § 1-1181 et seq.

D.C. Code § 34-804, hereby established within the Public Service Commission of the District of Columbia, as established by D.C. Code § 34-801, as Office to be known as the “Office of the People’s Counsel.” The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning a public utility operating in the District of Columbia.

15 D.C.M.R. § 3700: Public Utilities and Cable Television – Public Service Commission Rules of Practice and Procedure.