**DETERMINATION AND FINDINGS**

**FOR**

**SOLE SOURCE PROCUREMENT**

1. **Authorization[[1]](#endnote-1)**

* 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 in FERC Docket No. AD24-6-000 for Fiscal Year 2024. Spiegel & McDiarmid will assist OPC in filing initial and reply comments in a “Notice of Inquiry” (NOI) proceeding initiated by the Federal Energy Regulatory Commission (“FERC”) concerning its policy of granting blanket authorizations for investment company transactions subject to Federal Power Act (FPA) section 203(a)(2). The second task or track involves projects specifically requested by OPC, as needed.

3. **Estimated Fair and Reasonable Price**

The total contract not–to–exceed price is **$60,000**. This contract price is allocated for filing comments jointly on behalf of OPC, the New Jersey Rate Counsel and the Maryland Office of the People’s Counsel, each entity will be charged $20,000.

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

A. The Office of the People’s Counsel for the District of Columbia is an independent agency of the District of Columbia government. By law, it is the advocate for consumers of natural gas, electric and telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the Public Service 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.

Spiegel & McDiarmid LLP represents the public side of our nation’s critical

infrastructure industries. They also represent numerous clients in energy matters,

including (but not limited to) clients who are likewise involved in FERC

proceedings concerning the PJM Interconnection region.

The Commission’s NOI raises far-ranging questions concerning three related areas:

1. FERC’s current, blanket authorization policy under which exempts certain acquisitions of utility (or utility holding company) stock from obtaining Commission approval under FPA section 203 that the acquisition is in the public interest;
2. the role of large investment companies in utilities, are whether these investors in fact exercise control over these utilities – and their FERC jurisdictional transactions – due to their enormous financial power; and
3. whether and how the Commission’s current understanding of investor “control” may not fully capture all of the ways in which investors holding voting securities in a large number of public utilities may be able to exert influence.

The NOI is grounded in the Commission’s recognition of significant changes in public utility, finance, and banking industries over the last decade, and the concern that these changes may have rendered the Commission’s blanket authorization policies insufficient to prevent market power abuses and protect the public interest. The NOI notes (at P 11) that “[t]he three largest index fund investment companies currently vote over 20% of the stock in the largest U.S. public companies, a number that may soon rise to 40%.

The specific technical tasks covered in this procurement will include:

* + Drafting initial comments, receiving feedback, and filing with FERC;
  + Reviewing the initial submissions of others (we anticipate significant participation across a broad range of industry participants), reporting to/meeting with OPC to develop a set of issues to address in reply comments;
  + Reporting to/meeting with OPC to develop a set of issues to address in reply comments;
* Drafting reply comments, again receiving feedback and filing with FERC;
* Possibly meeting with FERC Commissioners/staff to discuss OPC’s concerns.

B. Given Spiegel & McDiarmid's expertise in PJM and FERC electric matters, this consultant is uniquely qualified to assist the Office of the People’s Counsel with representation in Federal Power Act Section 203 Blanket Authorizations for Investment Companies, FERC Docket No. AD24-6-000.

C. It is for the reasons outlined herein that it is recommended that a sole source contract be awarded to Spiegel & McDiarmid.

5. **Certification by the Contracting Officer**

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

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Cherry Belle 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 DCMR §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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Michael Smalls Date

Chief Operating Officer

1. 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. [↑](#endnote-ref-1)