

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
BRIAN L. SCHWALB

November 1, 2023

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is proposed emergency legislation, the “Contract No. DCCB-2023-F-0043 with Edelson PC Approval and Payment Authorization Emergency Act of 2024,” and an accompanying emergency declaration resolution to approve the award of the proposed definitive multiyear Contract Number DCCB-2023-F-0043 to Edelson PC.

From time to time, the Office of the Attorney General (OAG) requires the assistance of outside counsel to carry out its mission. Drawing on the resources of specialized outside counsel allows OAG to vastly expand the types of cases it can bring and the rights it can enforce. Outside counsel services are especially helpful in matters involving complex facts and legal theories, often with national or multi-national targets. This contract arranges for Edelson PC to provide OAG with outside legal services to pursue Consumer Protection Procedures Act claims against Meta Platforms, Inc. and Instagram, LLC related to their use of deceptive and unfair trade practices that target and harm children.

The contract is a definitive multi-year, contingency-fee contract. With contingency-fee contracts, the amount the contractor will receive depends on if and when the District realizes a monetary recovery; the contractor will not receive any compensation for the costs it incurs or for the services it provides if the District never realizes a monetary recovery. The not-to-exceed amount of this contract is \$55 million, and the base period of performance is from the date of award through five years thereafter. This contract will definitize a letter contract awarded on August 17, 2023.

If you have any questions, please contact Deputy Attorney General Candyce Phoenix at (202) 788-2066 or Candyce.Phoenix@dc.gov. I look forward to favorable consideration of this contract.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Schwalb", written in a cursive style.

Brian L. Schwalb
Attorney General

Enclosures

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Pursuant to section 202(c) of the Procurement Practices Reform Act of 2010, as amended, D.C. Official Code § 2-352.02(c), the following contract summary is provided:

COUNCIL CONTRACT SUMMARY
(Letter Contract)

(A) **Contract Number:** DCCB-2023-F-0043

Proposed Contractor: Edelson PC

Contract Amount: \$55,000,000 Not-to-Exceed (5-Year) Total

Unit and Method of Compensation: Percentage of net recovery

Term of Contract: August 17, 2023 through five (5) years thereafter with two (2) two-year option periods

Type of Contract: Contingency Fee

Source Selection Method: Exempt from Competition

(B) **For a contract containing option periods, the contract amount for the base period and for each option period. If the contract amount for one or more of the option periods differs from the amount for the base period, provide an explanation of the reason for the difference:**

Base Period Amount: Not-to-Exceed \$55,000,000.00

Option Period 1 Amount: Not-to-Exceed \$55,000,000.00

Option Period 2 Amount: Not-to-Exceed \$55,000,000.00

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

(C) The date on which the letter contract or emergency contract was executed:

The letter contract was executed on August 17, 2023.

(D) The number of times the letter contract or emergency contract has been extended:

The letter contract has not been extended.

(E) The value of the goods and services provided to date under the letter contract or emergency contract, including under each extension of the letter contractor emergency contract:

No recovery has been obtained yet, therefore there is no obligation to the contractor.

(F) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract:

The contractor will provide outside legal counsel to assist the Public Advocacy Division (PAD) with an investigation and potential litigation against identified social media targets for violations of the Consumer Protection Procedures Act.

This contract represents the exercise of authority granted to the Attorney General to award contracts on a contingency fee basis by D.C. Law 19-168, § 3012, 59 DCR 8025, as added September. 20, 2012.

(G) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price, technical or quality, and past performance components:

Under D.C. Code §2-354.13(3), the procurement of legal services is exempt from the competitive procurement process. Edelson PC was selected considering its qualifications and demonstrated experience.

(H) A description of any bid protest related to the award of the contract, including whether the protest was resolved through litigation, withdrawal of the protest by the protestor, or voluntary corrective action by the District. Include the identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the District as a result of the protest:

No protest was filed.

- (I) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and performance on past or current government or private sector contracts with requirements similar to those of the proposed contract:**

Edelson PC is a nationally recognized leader in plaintiffs' class, mass and government enforcement actions. The firm has deep experience investigating and litigating a wide range of high impact matters, representing government clients, including state Attorneys General, and a depth of experience litigating (and negotiating settlements) in complex and multiparty matters. The Office of the Attorney General has engaged Edelson PC in other matters, including litigation against Facebook.

- (J) A summary of the subcontracting plan required under section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 *et seq.* ("Act"), including a certification that the subcontracting plan meets the minimum requirements of the Act and the dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars and as a percentage of the total contract amount:**

A subcontracting plan was not required for this competition-exempt procurement.

- (K) Performance standards and the expected outcome of the proposed contract:**

The contractor is required to perform legal services, advice, and consultation to OAG in a manner consistent with accepted standards of practice in the legal profession.

- (L) The amount and date of any expenditure of funds by the District pursuant to the contract prior to its submission to the Council for approval:**

No District funds have been expended or will be expended since this is a contingency fee contract – the contractor will be paid only from the proceeds of any recovery won by the contractor according to the contingency fee agreement.

- (M) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02:**

The certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year(s) is not applicable since funding will come from the proceeds of any recovery won by the contractor according to the contingency fee agreement as authorized by D.C. Law 18-160, § 106a; as amended September 20, 2012 by D.C. Law 19-168, § 3012, 59 DCR 8025, Contingency fee contracts.

- (N) A certification that the contract is legally sufficient, including whether the proposed contractor has any pending legal claims against the District:**

Legal Sufficiency Memo is attached.

- (O) A certification that Citywide Clean Hands database indicates that the proposed contractor is current with its District taxes.**

Citywide clean hands certificates dated September 22, 2023 indicates that Edelson PC is current with District taxes.

- (P) A certification from the proposed contractor that it is current with its federal taxes, or has worked out and is current with a payment schedule approved by the federal government:**

The proposed contractor certified that it is current with its federal taxes.

- (Q) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise as defined in the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 et seq.:**

The proposed contractor is not certified by DSLBD as a local business enterprise.

- (R) Other aspects of the proposed contract that the Chief Procurement Officer considers significant:**

None.

- (S) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment:**

The proposed contractor is not currently debarred from providing services or goods to the District or federal government.

- (T) Any determination and findings issues relating to the contract's formation, including any determination and findings made under D.C. Official Code § 2-352.05 (privatization contracts):**

There are no issues relating to the contract's formation.

- (U) Where the contract, and any amendments or modifications, if executed, will be made available online:**

The contract award, if executed, will be made available on the Office of Attorney General website, <https://oag.dc.gov/notice-contract-awards-over-100000>.

- (V) Where the original solicitation, and any amendments or modifications, will be made available online:**

Not applicable.