



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

LETTER CONTRACT FOR
LEGAL ADVISORY SERVICES

A letter contract is a written preliminary contractual document that authorizes the contractor to begin immediately manufacturing supplies or performing services.

CONTRACT NUMBER: 2032H320C00005

REQUISITION NUMBER: 20PR-TDP-0328

ISSUED AND ADMINISTERED BY:

Internal Revenue Service, Office of Procurement
Office of Business Solutions Acquisition, Treasury Operations Branch
5000 Ellin Road; Lanham, MD 20706

Point of Contact: Aleta Dust, aleta.dust@irs.gov, 202 317 4199

CONTRACTOR:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza; New York, NY 10006
DUNS: 0 7 1013270

Point of Contact: Steven L. Wilner, swilner@cgsh.com, 212 255 2672

SIGNATURES

CONTACTOR

Signature

MARCH 25, 2020
Date

Print NAME, TITLE: STEVEN L. WILNER, A PARTNER

UNITED STATES OF AMERICA

Steven C. Gordon, Contracting Officer

Date

SECTION B – LETTER CONTRACT TERMS AND CONDITIONS

B.1 FAR 52.216-23 – Execution and Commencement of Work (Apr 1984)

The Contractor shall indicate acceptance of this letter contract by signing the copy of the contract and returning it to the Contracting Officer not later than 3/25/2020. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

B.2 FAR 52.216-24 – Limitation of Government Liability (Apr 1984)

- (a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$650,000 dollars. The Contractor is required to notify the Contracting Officer in writing when they have incurred 75% of the total authorized amount.
- (b) The maximum amount for which the Government shall be liable if this contract is terminated is \$325,000 dollars.

(End of clause)

B.3 FAR 52.216-25 – Contract Definitization (Oct 2010)

- (a) A time and materials definitive or labor hour contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a time and materials/labor hour proposal.
- (b) The schedule for definitizing this contract is:

Submission of Offer	04/14/2020
Beginning of Negotiations	05/01/2020
Definitization of the Contract	06/26/2020

- (c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.
 - (1) After the Contracting Officer's determination of price or fee, the contract shall be governed by-

- (i) All clauses required by the FAR on the date of execution of this letter contract for either time and materials or labor hour contracts, as determined by the Contracting Officer under this paragraph (c);
 - (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
 - (iii) Any other clauses, terms, and conditions mutually agreed upon.
- (2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

B.4 52.216-26 Payments of Allowable Costs Before Definitization. (Dec 2002)

- (a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:
- (1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.
 - (2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.
 - (3) Eighty-five percent of all other approved costs.
- (b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.
- (c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.
- (d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes-
- (1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

- (2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-
 - (i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made-
 - (A) In accordance with the terms and conditions of a subcontract or invoice; and
 - (B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;
 - (ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;
 - (iii) Direct labor;
 - (iv) Direct travel;
 - (v) Other direct in-house costs; and
 - (vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
 - (3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.
- (e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.
- (f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be-
- (1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or
 - (2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

B.5 FAR 52.244-2 Subcontracts (Oct 2010)

- (a) *Definitions.* As used in this clause-

“Approved purchasing system” means a Contractor's purchasing system that has been reviewed and approved in accordance with [part 44](#) of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR [subpart 2.1](#), entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.
- (c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-
- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - (2) Is fixed-price and exceeds-
 - (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

- (e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of subcontract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (iv) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (v) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting-
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason certified cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

- (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR [subpart 44.3](#).
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

B.6 DTAR 1052.232-7003 Electronic Submission Of Payment Requests (Apr 2015)

- (a) *Definitions.* As used in this clause—
- (1) “*Payment request*” means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), “Content of Invoices” and the applicable Payment clause included in this contract.
- (b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding

IPP, including IPP Customer Support contact information, is available at www.ipp.gov or any successor site.

- (c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with Treasury procedures.
- (d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of clause)

SECTION C – CONTRACT ATTACHMENTS

Attachment 1 – Statement of Objectives

**Department of Treasury
Office of General Counsel (Banking & Finance)
Legal Advisory Services**

Statement of Objectives (SOO)

C.1 BACKGROUND

The spread of the coronavirus has disrupted activity throughout the United States and caused significant volatility in financial markets. In furtherance of its mission to ensure the safety and soundness of the U.S. financial system, the Treasury is considering the immediate implementation of a new federal financial assistance program for air carriers to respond to the economic risks.

This action is authorized pursuant to the President's declaration regarding a national emergency concerning the novel coronavirus disease (COVID-19) under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). As a result of this emergency declaration, the flexibilities identified in FAR 18.202, "Defense or recovery from certain events," are available for use in supporting response efforts to COVID-19. These flexibilities include increases to the micro-purchase threshold, the simplified acquisition threshold, and the threshold for using simplified procedures for certain commercial items

C.2 SCOPE OF WORK

Treasury seeks a contractor to provide legal expertise and advice in structuring and documenting transactions with air carriers involving a portfolio of assets that Treasury will acquire, invest in, or guarantee. Such assets may include secured or unsecured debt obligations, asset-backed securities, equity interests, or warrants, among others. Treasury seeks advice regarding the form, structure, and terms and conditions to be included in the transaction documentation. All such documentation must comply with applicable laws and regulations, including applicable Treasury regulations, and best practices.

The contractor may be tasked with providing expert advice and guidance with respect to loans, equity investments, and other direct or indirect investments; developing legal documentation with respect to loans, equity investments, and other direct or indirect investments; negotiating relevant transactions; and performing related legal services within the general contract scope.

Treasury's policy goals for the program are to (1) provide stability and prevent further disruption to the financial markets and financial system, (2) ensure the availability of credit and liquidity, and (3) protect the interests of taxpayers. The specific strategies may change over time but will be consistent with these policy goals. To the extent practicable, the program will be managed to limit the potential for losses.

Treasury may publicly publish the transaction documentation before or after consummation of the transactions.

Specific services may include, but not be limited to:

- Advising on transaction structuring, including for various types of financial interests and guarantees, and drafting transaction documents.

- Advising on compliance requirements for the program, including internal controls.
- Developing documentation. Preparing drafts of all transaction documentation.
- Responding to comments on the draft transaction documentation, including from Treasury, counterparties, other federal agencies, or members of the public.
- Helping identify conflicts of interest and providing advice on transparency, conflict mitigation, and disclosure.
- Assisting with the preparation of reports to oversight bodies.
- Providing other related legal advisory services identified by Treasury.
- Providing for all necessary information technology to support the services above.

Services must begin immediately upon selection and contract execution.

The contractor shall not perform any inherently governmental functions (e.g., approving or making decisions) associated with the requirement. In all activities where the Contractor may represent its government customer positions, the contractor shall make it clear that he or she is not a government employee.

C.3 GENERAL

On-site services in Washington, D.C. may be required. The government may require the contractor to conduct local travel supporting meetings within the DC/VA/MD area. Such travel is considered local and will not be separately reimbursed under the contract.

Circumstances may require the Contractor to provide services outside normal duty hours.

The firm will be required to complete deliverables in the form of written reports, program documents, options papers, face-to-face presentations, verbal recommendations, and implementation of approved recommendations, as directed by Treasury.

The firm will be required to provide transition services at the conclusion of the performance period and cooperate in good faith with Treasury to ensure an orderly transfer of knowledge, functions, records, and data to any successor.