

DETERMINATION TO SOLICIT FROM A SINGLE SOURCE

Solicitation No.:

Project Name: Implementation of the Confederated Salish-Kootenai Tribes' Water Rights Settlement

Pursuant to Federal Acquisition Regulation (FAR) 13.106-1(b)(1), for purchases not exceeding the simplified acquisition threshold (SAT). Contracting Officers may solicit from only one source if the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, brand name, or industrial mobilization).

1. **Agency and Contracting Activity.**

Bureau of Reclamation
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

2. **Name and Address of Single Source.**

Edward W. Sheets
Ed Sheets Consulting
4545 Sand Point Way, NE, #801
Seattle, WA 98105

3. **Description of Supplies/Services and Estimated Cost.**

The action being approved is a sole-source acquisition for facilitation services for Implementation of the Confederated Salish-Kootenai Tribes' (CSKT) Water Rights Settlement. Ed Sheets Consulting will serve as the facilitator for Reclamation, Bureau of Indian Affairs, Nez US Fish and Wildlife, CSKT, and the State of Montana regarding the implantation of the Water Rights Settlement, and will perform the following services: schedule meetings, prepare agendas and meeting materials, facilitate meetings, prepare summaries, track implementation, and provide follow up. This statement of work includes eight meetings and monthly conference calls between August 2015 and July 2017. The meetings will be in Missoula and Polson, Montana.

4. **Description of Circumstances, including why only one source is reasonably available.**

Ed Sheets (dba Ed Sheets Consulting), is uniquely qualified to provide facilitation services for the implementation of the CSKT water rights settlement and its connections to Reclamation's activities. He is the most experienced and effective mediator and facilitator on Indian water right settlements in the Northwest. To cite just a couple examples, he was the lead facilitator for the Nez Perce water right settlement, completed in 2006. In this settlement, the Nez Perce Tribe, the State of Idaho and the federal government had a statutory deadline to complete implementation

of the settlement. Brought in to keep all of the parties on task, Mr. Sheets' facilitation enabled the three governments to complete over 30 sub-agreements and decrees on time. More recently, he facilitated the multi-state, multi-tribe, multi-federal agency agreements in the Klamath basin. Federal officials have confirmed that his efforts allowed the parties to reach consensus that may not have been reached without his assistance. Finally, Mr. Sheets has over the past year worked with CSKT, Montana and the federal team to help the parties reach agreement on the Compact. This has included careful attention to the issues unique to Reclamation. Through this process he has built important relationships and trust with the parties. His continued involvement, just as it was in the Nez Perce and Klamath settlements, will be critical to success. Due to his recent performance with CSKT during the past year, he is uniquely qualified for this requirement as the Government is against a deadline, and bringing a new facilitator into the mediations would require additional time to build the relationships and trust already garnered to Mr. Sheets by all three parties, as well as the additional time needed to bring a new facilitator up to speed on the current status of all three parties. Additionally, it would not be appropriate to disclose knowledge of the legal theories and supporting evidence before trial may begin.

5. Determination of Fair and Reasonable Cost.

Ed Sheets Consulting service costs were evaluated and determined fair and reasonable on past Reclamation contracts. Prices can be compared from historical prices, GSA hourly rates and US Institute for Environmental Conflict Resolutions to determine fair and reasonable costs. A cursory review of facilitation costs within this geographical region supports the reasonable costs of using Ed Sheets Consulting. The U.S. Institute for Environmental Conflict Resolutions maintains a roster of facilitation practitioners whose costs range between \$145 and \$360 per hour for the required high level of experience. Hourly rates for GSA vendors in the regional area are \$186.23, \$198.40, and \$210.96 per hour respectively. Per FAR 8.404(d), "GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable". The Government estimate for facilitation services is \$195 per hour which is between the reasonable range established by GSA for similar services.

6. Description of Market Research.

FAR Subpart 10.001, paragraph (a) (2) directs agencies to conduct market research that is appropriate to the circumstances. The circumstances surrounding the adjudication of Indian water rights are unique in each instance, as a result of many factors, including the geographical location of the reservation, the history of the tribe, and the legal venue in which the right is being adjudicated. A review of GSA Schedule holders for facilitation services has shown there are several vendors that can provide this service, however, Ed Sheets Consulting service has previous experience on this subject and procuring facilitation services from any other company would increase costs to the Government by the duplication of work needed to review and provide documents already produced.