

American Recovery and Reinvestment Act (ARRA)

**Justification for Other Than Full and Open Competition
(Limited or Sole Source Justification)**

(Refer to FAR 6.303-2 for further guidance on information to be provided)

The Automatic Plugging Factor Monitor (APFM) instruments that currently are in use at YDP were developed in the early 1980's. They now have severe operational and costly maintenance problems. The units need to be replaced as soon as possible. A new APFM was purchased for YDP in September 2001, under Purchase Order 01PG810043. This APFM was a prototype that was developed and customized by Reclamation and a company called Chemetek, located in Portland Oregon, under a Science and Technology Maturation Process. The prototype was designed to meet the specific needs of the YDP and WQIC. It currently is operating at YDP and is performing better than any other SDI prototypes that YDP has purchased and tested.

Chemetek's SDI Analyzer has several technical features that are not found on any commercially available SDI Analyzers. Some of the features on Chemetek's prototype were designed and developed by Reclamation in the 1980's (DOI, U.S. Patent # 4,554,822) to address the unique problems and needs at YDP and WQIC. Chemetek's SDI Analyzer combines the designs and technical advances that Reclamation made in the 1980's with a water borne particulate-measuring apparatus that Chemetek developed and patented. On December 2, 1991, Chemetek filed with the United States Patent and Trademark Office, for a patent on the process components of their highly specialized water-borne particulate-measuring apparatus. U.S. Patent # 5253514 was granted to Chemetek on October 19, 1993. This patent grants Chemetek the right to exclude others from making, using, offering for sale, or selling their invention for 20 years from the date on which the application for the patent was filed in the United States. Chemetek's patent does not expire until December 2011.

Reclamation has access and certain limited rights to use and to even modify Chemetek's specifications and designs. However, Reclamation does not have the right to distribute this technical information and data to Chemetek's competitors and to ask them to produce this item. Soliciting this requirement on a full and open basis could possibly result in an infringement on Chemetek's patent. Patent infringement is the unauthorized making, using, offering for sale, or selling any patented invention within the United States during the term of the patent. Should a patent be infringed, the patentee may sue for relief in federal court. The patentee may ask the court for an injunction to prevent the continuation of the infringement and may also ask the court for an award of damages because of the infringement. Chemetek is the sole manufacturer of this item. Chemetek will not agree to let its' competitors make their patented item.

Reclamation's requirement can only be satisfied by purchasing an SDI Analyzer that legally can only be made by Chemetek. The only other option for obtaining an SDI Analyzer with the features needed by YDP and WQIC would be for Reclamation to manufacture the units. However, outside of performing small repairs and maintenance, Reclamation does not have the technical expertise and in-house resources to mass manufacture advanced water treatment monitoring technology. Based on the above Chemetek is the only manufacturer capable of satisfying this requirement.

6 – Describe efforts to ensure competition and if the acquisition will be publicized.

As required by FAR 5.2, this acquisition was publicized in the Federal Business Opportunities web page on July 13, 2009, affording a 15 day response period for any interested parties. Offerors were advised of the requirement and told that if interested, that they could submit a capability statement, proposal or quotation that would be considered on or before July 28, 2009. No capability statements, proposals, quotations or interest was received in response to the posting. Market Research via the internet was conducted to see if there were any commercial products that offered the same features and capabilities as Chemetek's SDI Analyzer. No comparable SDI Analyzers were found. Engineers at YDP have been working with various commercial SDI Analyzer

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suppliers since the 1980's and have not found any commercial products or modified commercial products that can meet all of their needs.

7. - Explain how we know or will be able to determine reasonableness of price/costs.

An IGCE was developed using in house knowledge and data that was attained when the Government was working with Chemetek to develop this item. The IGCE took into account the quantity being purchased, as well as the direct labor, travel expenses, Chemetek's direct costs for materials, subcontractor costs as well as overhead and profit. As this is not a commercial item, if necessary, Cost and Pricing Data may be required to assist in the determination of price reasonableness.

8- Description of market research performed

An internet search found numerous manufacturers and companies that furnish water treatment instruments that measure silt density variables. However, none of the companies found made a SDI Analyzer that was automated and that had all of the specialized features that Chemetek's analyzer has. Two manufacturers were found, that had equipment that had a few of the required features, but one was located in Germany, and the other in England. Market research found that most of the commercially available SDI Analyzers are not automated nor do they have the specific design features and the performance capabilities that Chemetek's product offers. Given that there are no commercial units comparable and the fact that Chemetek has a patent on the process components in their SDI Analyzer, it has been determined that there are no other available sources that can satisfy YDP's requirement at this time other than Chemetek.

9- Other facts supporting use of other than full and open competition

As there are no commercial equivalents to Chemetek's SDI Analyzer, to acquire an SDI Analyzer item with the same capabilities and features on a full and open basis, the Government would need to do a full blown Research and Development solicitation. This would not only be time consuming but there would be a substantial duplication of efforts and costs to the Government.

10- List any sources that have expressed interest in the proposed acquisition

The SDI Analyzer's being purchased have unique features and patented components that legally can not be reproduced by other manufacturer's. There are no comparable products on the commercial market. Accordingly, no supply sources expressed interest in this acquisition after the pre-solicitation notice was posted.

11- Effort to overcome barriers to competition for future acquisition

Explain what can and will be done to improve our ability to obtain competition for these services or supplies when next required.

Efforts are ongoing to get Chemetek's owner to release or even sell his rights on the process components of his SDI Analyzer so that it could be further developed and refined and ultimately manufactured on the open market. Although this particular acquisition cannot be competed, Chemetek's patent will expire in December 2011. Once the patent expires the door for competition will be open for future requirements.

12- Certification

Preparer's name
Liz Bailey

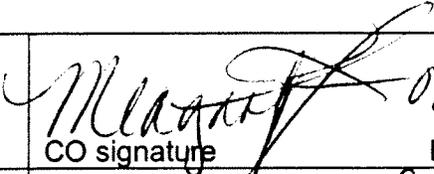
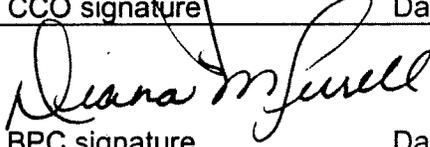
Preparer's title
Contract Specialist LCR

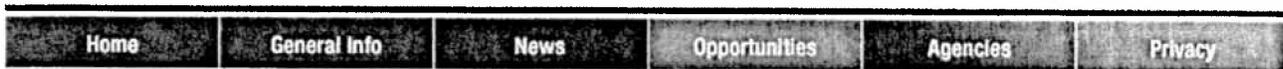
I certify that the information and documentation provided with this requested justification are accurate and believe they form a valid basis to proceed with the requested acquisition without full and open competition.

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Preparer's signature <i>(Proposed actions \$100k or less, do not require original signature. The request can be transmitted electronically.)</i>	Date <i>7/28/09</i>
Approval Requirements <i>(refer to ET ARRA 09-01, Implementation of the American Recovery and Reinvestment Act of 2009, dated June 18, 2009):</i>	
Mark one. <input type="checkbox"/> The requested action is APPROVED : <input type="checkbox"/> The requested action is DENIED <i>(Explanation is provide below.)</i>	
I certify that this justification is accurate and complete to the best of my knowledge and belief and hereby approve this justification and authorize the action to proceed.	
Contracting Officer Meagan R. Fyffe	 CO signature <i>08/16/09</i> Date
Chief of the Contracting Office Beverly K. Nelson	 CCO signature <i>8/24/09</i> Date
Bureau Procurement Chief	 BPC signature <i>9/24/09</i> Date
Head of the Contracting Activity (name)	HCA signature Date
DOI Senior Procurement Executive (name)	SPE signature Date
Explanation of denial:	



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RECOVERY - Install Silt Density Index Equipment - Replacement and Installation of 24 units, Yuma Desalting Plant, CRBSP, Title I, PROJECT - LC12926YDP002

RECOVERY

Solicitation Number: R09PS34R04
Agency: Department of the Interior
Office: Bureau of Reclamation
Location: BCR - All Offices

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Keywords

No items found

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