

JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

Solicitation No.: N/A (PR #40339973)
Project Name: Technical Design and Environmental Compliance Support for Longley Meadows Fish Habitat Enhancement Project, Grande Ronde Sub-basin, Oregon

In accordance with FAR 16.505(b)(2), the proposed contractual action is pursuant to the statutory authority of 41 U.S.C. 253(c).

1. **Agency and Contracting Activity.** U.S. Bureau of Reclamation, Pacific Northwest Regional Office, Contracts Group.
2. **Nature/Description of Action.** This is a follow-on noncompetitive firm-fixed price task order for Architect-Engineering Services, using no-year water and related resources funding.
3. **Description of Supplies/Services.** This requirement is for engineering and related services for an anadromous fish habitat improvement project in the Grande Ronde River Sub-basin in Oregon. This Task Order includes: (1) completing the 30% designs for the project based on the previously-completed 15% designs; (2) 30% to 80 % design; (3) 80% to final design; and (4) construction support/observation. The estimated Task Order value is \$X,XXX,XXX.XX. The period of performance is anticipated to begin October 1, 2017 with a target completion date of December 2021 which includes pre-award construction contract support and post-award construction observation.
4. **Identification of the exception to fair opportunity and the supporting rationale**
 - a. **The following fair opportunity exception applies to this acquisition.** FAR 16.505(b)(2)(i)(C). The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
 - b. **Supporting Rationale.** The preceding task order, INR15PD00842, was for development of this project from concept to 15% design, and was subjected to fair opportunity. This follow-on task order builds upon the initial 15% design, and carries the design through to final completion.

Since basic designs for this requirement have already been completed, contracting this requirement to a different engineer of record would require complete duplication of the original design effort, valued at \$XXX,XXX.XX. In addition, substantial time from multiple agencies and stakeholders would also be required

to perform re-work. The pricing of the original design work was previously determined to be fair and reasonable, and is representative of the financial cost of potential duplicated effort.

The time delay associated with re-competing the initial effort represents an unacceptable risk to the Government and other project stakeholders. The Columbia-Snake River Salmon Recovery Office coordinates with both governmental and private stakeholders to perform fish habitat restoration. Coordination of project schedule and funding is very complex, and affects all stakeholders. Delay of this project due to re-competition would reasonably result in withdrawal of critical support for this project from one or more stakeholders.

5. **Determination of Fair and Reasonable Cost.** Pricing of the resulting task order will be determined to be fair and reasonable by utilizing the procedures at FAR 15.4, as required by FAR 16.505(b)(3). The principal methods of analysis will be comparison to an Independent Government Cost Estimate (FAR 15.404-1(b)(2)(v)), and by comparison of the proposed prices to prices received in response to a competitive solicitation, where the base IDIQ contains competed pricing (FAR 15.404-1(b)(2)(i)). The IGCE will be used to analyze the level of effort proposed by the Contractor, while the IDIQ pricing will be used to analyze unit pricing proposed by the Contractor.
6. **Any Other Supporting Facts.** The initial task order for the Pacific Northwest Regional Office's (PNRO) Longley Meadow Fish Habitat Enhancement project was contracted using a phased approach in order to overcome barriers related to the price estimating process. The level of effort required to be expended by the contractors was difficult to forecast, which provided what the previous Contracting Officer felt was a reasonable basis to divide work among discrete task orders.

The standard practice in A-E contracting is for one engineering firm to design all project phases. This practice is in place due to the level of institutional knowledge the firm retains on a particular project, and due to the fact that liability for errors in a designed project rests with the engineer of record. A-E firms would not otherwise be able to secure liability insurance, nor would damages be easily allocated due to errors in design. The A-E firms for these projects knew prior to submitting proposals that there was a significant likelihood these projects would extend beyond their initial task orders and that follow-on task orders would be awarded.

The PNRO has since changed course on this practice, and has started developing all of its Architect-Engineering requirements to facilitate the purchase of all phases of design in a single task order. This referenced task order reflects the PNRO's attempt at taking corrective action without unnecessarily delaying the projects they support or duplicating work that has already been performed.

7. **Actions Taken to Remove Barriers to Competition.** There are no reasonable actions the agency could have taken to remove barriers to competition. The initial task order was awarded on the basis of fair opportunity, and work was anticipated to be awarded in phases at the time of initial task order award. The complexity of the project, combined with the background knowledge gained from developing the initial phase and inability to transfer liability among different engineers of record, necessitate the use of this separate, non-competitive follow-on task order.

REQUESTING OFFICE REPRESENTATIVE CERTIFICATION: *All supporting data provided and the contents of this justification are complete and accurate to the best of my knowledge and belief. (FAR 6.303-2(c)) (All Values)*

Dorothy Finaldi, Program Analyst

Date

CONTRACTING OFFICER (CO) CERTIFICATION: (≤ \$25K)

Michael S. Stanard

Date

CHIEF of the CONTRACTING OFFICE CONCURRENCE (CCO): (> \$25K)

Jericho E. Lewis

Date

BUREAU COMPETITION ADVOCATE: (> \$650K)

Diana M. Terrell

Date