



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND, ATLANTIC
6506 HAMPTON BLVD
NORFOLK, VA 23508-1278

IN REPLY REFER TO:

N62470-08-D-1007
ACQ21:CFB
11 August 2011

J&A No. NA11-06

**JUSTIFICATION AND APPROVAL
FOR USE OF OTHER THAN FULL AND OPEN COMPETITION**

**INCREASED CAPACITY FOR CONTRACT N62470-08-D-1007, UNRESTRICTED
ENVIRONMENTAL REMEDIAL ACTION CONTRACT FROM \$150M TO \$162.5M**

1. Contracting Activity.

Department of the Navy, Naval Facilities Engineering Command, Atlantic, Norfolk, Virginia.

2. Description of the Action Being Approved.

Request approval to issue a contract modification to increase capacity under contract N62470-08-D-1007 Cost Plus Award Fee, Indefinite Delivery/Indefinite Quantity, Unrestricted Environmental Remedial Action Contract (RAC) from \$150,000,000.00 to \$162,500,000.00, an increase of \$12,500,000.00. This contract was awarded on 01 May 2008 to Shaw Environmental and Infrastructure, Inc. for a base plus four option years. The Government has exercised and is currently in option year three. To date, a total of [REDACTED] Contract Task Orders (CTOs) have been awarded with a dollar value of approximately [REDACTED]. Pending awards of approximately [REDACTED] have been submitted to the Contractor for proposals and there are anticipated modifications of approximately [REDACTED] which would leave a balance of approximately [REDACTED]. In view of the foregoing, the remaining capacity will be mostly depleted by the end of September 2011. The increase in capacity is based on historical usage and estimates of what will be needed for continued services while the source selection process for the follow-on version of this contract, which is already underway, is completed. The follow-on contract has a planned award date of [REDACTED].

3. Description of Supplies/Services.

The subject contract provides environmental remediation services at environmentally contaminated sites, predominately at Navy and Marine Corps installations and other Government agencies. The sites also consist of those ranked on the Superfund National Priority List (NPL), as well as non NPL sites regulated under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) sites, Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST) and other sites, which might require remedial actions. The contaminants included are predominately solvents, petroleum, oils and lubricants (POLs), metals, acids, bases, reactives, non-explosive ordnance residues or compounds, polychlorinated biphenyls (PCB), ordnance explosives, military munitions or unexploded ordnance and pesticides. These contaminants may be present in soils, sediments, groundwater, air sludge, surface water or man-made structures. The contaminated sites may be landfills, hazardous waste treatment storage and disposal facilities, tanks, lagoons, fire fighting training

areas or other Department of Defense (DoD) facilities. The work under this contract will be performed at various locations in the geographic regions under the cognizance of the NAVFAC Atlantic, predominately: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, the areas of the District of Columbia, Africa, Europe, Southwest Asia, and Vieques. The Contractor may also be required to perform work at any Naval or Marine Corps activity in the area of responsibility covered by NAVFAC Atlantic. The Contractor also, on occasion, may be tasked to provide the services described herein to any Department of Defense or other Federal agency activities.

4. Statutory Authority Permitting Other Than Full and Open Competition.

The authority permitting other than full and open competition is Title 10 U.S.C. 2304 (c)(1), as implemented by Federal Acquisition Regulation (FAR) 6.302-1: only one responsible source and no other supplies or services will satisfy agency requirements. Competitive source selection is underway for a follow-on contract, with an expected award date of [REDACTED]. Procurement is for continued provision of services until award of the follow on contract, which, if subject to full and open competition, would result in substantial duplication of cost to the Government that is not expected to be recovered through competition and would also result in unacceptable delays in fulfilling the agency's requirements. The time constraints and the follow-on nature of the continuing work under the RAC program renders Shaw Environmental and Infrastructure, Inc. as the only responsible source capable of performing this work in a timely and cost-efficient manner during the interim months until the award of the new contract.

It is in the Government's best interest to increase the capacity of this contract to avoid unworkable delays and significant costs that would be incurred if there were a lapse in services. The existing contractor is already mobilized, which will allow for uninterrupted services for the continued, follow-on efforts until the new contract can be awarded.

5. Rationale Justifying Use of Cited Statutory Authority.

Due to the nature of environmental remediation work, this J&A allows an increase in capacity to support critical and additional follow-on work. There was a recent increase in work load ([REDACTED]) that was not anticipated or planned for under the contract, leaving insufficient capacity to provide required coverage until the new contract is in place.

Much of the work performed under this contract is in support of the Navy's Environmental Restoration Program (ERP) in compliance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 and the Resource Conservation and Recovery Act (RCRA) of 1976. Other services include Munitions Response Program (MRP) support, support of Navy and Marine Corps Base Realignment and Closure (BRAC) efforts, and R.S.E.P.A (Range Sustainability Environmental Program Assessment) program support. The schedules for these efforts are driven by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or the Superfund Law), the regulatory interactions CERCLA requires, and the fact that cleanups place enforceable legal requirements, including time requirements, on the Navy. The Navy is required to conduct its cleanups in accordance with CERCLA and its implementing regulations and guidance. Regulatory time constraints drive the Government's restoration efforts. CERCLA requires that "Substantial continuous physical onsite remedial action shall be

commenced at each facility not later than 15 months after completion of the investigation and study..." by the Navy. Furthermore, for facilities on the National Priorities List, Federal Facilities Agreements, (signed agreements that provide the governing administrative framework by which the U.S. EPA, State, and Navy abide when conducting environmental restoration programs for specific installations) are required by statute. These agreements specifically provide for what is required and when in the way of studies, work plans, responses to comments, proposed remedial action plans, proposed records of decision, and remedial design and implementation plans. This work must continue uninterrupted, as any delays in these schedules could potentially subject the Navy to significant fines and/or penalties.

In addition to the regulatory continuity vital to the ERP's success, there is also a need for technical continuity to complete existing environmental restoration task orders at contaminated sites. A typical remediation project is undertaken according to a long-term plan and encompasses many months or years of effort.

Several ongoing projects could provide critically needed protection of human health and the environment. The Contracting Officer's Representative (COR) is currently monitoring all work being ordered under this contract to ensure that it is of an urgent nature. Any requirements that have flexibility in schedule or are determined to be noncritical are being postponed until award of the follow on contract. The increase in capacity is required to continue the vital work being performed under the RAC and avoid costly delays that would occur should this work be halted. While many of the contract actions that will be issued using this capacity increase will be modifications to current CTOs, it will be necessary to issue some new CTOs in order to continue work in accordance with regulatory schedules and perform essential projects in support of the Navy's Environmental Restoration Program until award of the new contract is made.

6. Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable.

In accordance with FAR 6.302-1, a notice of intent to issue a sole source increase in capacity under Contract N62470-08-D-1007 will be publicized in NECO/ FedBizOpps. Additionally, in accordance with 6.305(a), the J&A will be posted within 14 days after the execution of the modification.

7. Determination of Fair and Reasonable Cost.

The Contracting Officer has determined the anticipated cost to the Government of the supplies/services covered by this J&A will be fair and reasonable. The basic contract was procured competitively. Rates established in the contract were determined fair and reasonable based on cost and price analysis. The Contracting Officer will determine that costs for future contract actions are fair and reasonable by comparing cost proposals with the established contract rates under the basic contract, Government Estimates (GEs), and historical expenses incurred for similar tasks.

8. Actions to Remove Barriers to Future Competition.

Competition is already underway for a follow-on contract, with a planned award date of [REDACTED]. Market research was conducted to ensure that adequate competition existed for the follow-on contract. The increase in capacity will be established only to provide services while the competitive source selection process is being conducted.

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein, are complete and accurate to the best of my knowledge and belief.

Byron Brant, P.E.
Division Manager EV3

Phone No.

Date

11 Aug 11

LEGAL SUFFICIENCY REVIEW

I have determined that this Justification is legally sufficient.

Sandra Simmons
Assistant Counsel

Phone No.

Date

23 Aug 11

CONTRACTING OFFICE CERTIFICATION

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

Patricia S. Kellihan
Acquisition Director

Phone No.

Date

8/21/11

APPROVING OFFICIAL (NFAS 6.304)

Upon the basis of the above justification, I hereby approve the award of the proposed procurement action described herein using other than full and open competition, pursuant to the authority of 10 U.S.C. 2304 (c)(1).

RDML Kevin S. Slates
Commander, NAVFAC Atlantic

Phone No.

Date

31 AUG 2011