



DEPARTMENT OF THE NAVY  
NAVSUP FLEET LOGISTICS CENTER SAN DIEGO  
REGIONAL CONTRACTS DEPARTMENT  
3985 CUMMINGS ROAD  
SAN DIEGO CA 92136-4200

IN REPLY REFER TO  
J&A 15/200-231

## **JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION**

Upon the basis of the following justification, I as Contracting Officer hereby approve use of other than Full and Open competition for the proposed contractual action pursuant to the authority of 10 USC 2304(c)(1), only one responsible source and no other supplier or servicing activity will satisfy agency requirements, as implemented by FAR 6.302-1.

### **1. Contracting Activity**

NAVSUP Fleet Logistics Center  
3985 Cummings Road  
San Diego, CA 92136

### **2. Description of the Action Being Approved**

To enter into a Firm Fixed Price (FFP) contract for maintenance of FEI Osiris Transmission Electron Microscope (TEM) equipped with Gatan Imaging Filter (GIF), Quantum SE/963 P 200kV. This equipment is fully computer-controlled and runs on the software which is proprietary to FEI, the Original Equipment Manufacturer (OEM). This justification and approval covers the procurement of research-equipment maintenance for the Naval Postgraduate School (NPS) Mechanical and Aerospace Engineering (MAE) department by Other Than Full and Open Competition from FEI Company, Hillsboro, OR.

This justification covers the procurement of a base year of annual maintenance (payable in twelve one-month unit prices – one month in arrears) and three (3) additional option years from the FEI Company. The total government estimate for both a base year and three option years is \$660,124.08. This justification for other than full and open competition will be posted at the Government wide Point of Entry.

### **3. Description of Supplies/Services**

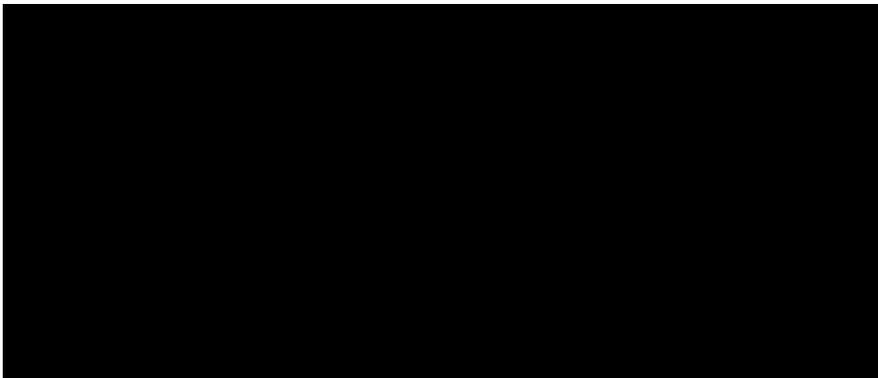
The Osiris TEM manufactured by FEI is equipment that was procured by NPS and installed at the NPS MAE, Watkins Hall 232 during the period of May -September 2014. The instrument is equipped with a Gatan Imaging Filter (Gatan Quantum SE/963 P 200kV and Gatan Orius SC1000B camera) also procured through FEI. The maintenance contract will include maintenance for the base tool (TEM including the On-axis BF-DF detector) and additional components (Gatan Quantum SE/963 P 200kV and Gatan Orius SC1000B 200kV camera). As part of the annual maintenance contract, a qualified engineer will address all operational issues, replacing all hardware/software with OEM hardware/software components. During the 12-

month maintenance period, the contractor will provide not only routine maintenance and equipment calibration, but replace, as needed, the electron source.

During the maintenance period, OEM will perform calibration, oiling, and minor repairs to the equipment on a monthly basis. As required, during the maintenance period, contractor will replace all electronic components, mechanical components, vacuum components, high voltage tank components, power cabinet, EMI cancellation system, and associated parts with the basic microscope including EDS detectors and STEM detectors.

OEM will repair and/or replace all components associated with the Gatan Quantum SE/963 P 200kV and Gatan Orius SC1000B 200kV camera in order to provide -be maintained as required to- optimum performance standards documented in OEM-developed installation manuals and related literature.

The annual maintenance shall include all parts, labor, travel, and expenses – and will be, as indicated, paid on a monthly basis, in arrears, using “Operation and Maintenance” funding, current to the fiscal year.



#### **4. Statutory Authority Permitting Sole Source**

Title 10 U.S.C. 2304 (c) (1) – Only one responsible source and no other supplies or services will satisfy agency requirements; Federal Acquisition Regulations (FAR) 6.302-1

#### **5. Rational Justifying Use of Cited Statutory Authority**

OEM, FEI, owns the drawings and processes related to the research equipment operation, calibration, and maintenance. Although the product itself is commercial, no other vendor has the rights, and capability, to properly tear down and replace component parts. No other vendor has the data and proprietary processes, closely held by FEI, to ensure that hardware, and software are properly integrated; and, no other vendors can calibrate this equipment, either as part of routine maintenance, or after repairs.

FEI has been responsible for all system upgrades and auxiliary equipment. FEI maintains not only the drawings; it is the only company that can properly calibrate the equipment – monthly or after repairing and/or installing component hardware and software. It has not sold any technical information, drawings or processes, that would permit any other manufacturer to install hardware and software; and, it has not published its methodology for equipment calibration – either as routine maintenance or after repairs/installation of components. This has been confirmed through the Government research via the internet. No other entity can provide the required maintenance and calibration of the sensitive research equipment.

FEI has not exported any training to other than FEI engineers – and there are no distributors of FEI components and software. Only FEI can train and certify engineers to work on the TEM.

Research tools, if not properly maintained – using OEM-trained engineers, drawings, components, software, will not meet mission needs. The instrument itself, if not properly calibrated, will not meet mission requirements.

This equipment is used in laboratory classes for several Materials Science courses offered in MAE. Microstructural data collected using this equipment will provide the basis for mandatory student thesis research. The NPS Engineering Program will fail without the capability afforded by properly maintained and calibrated sophisticated research tools. It is imperative that equipment maintenance and calibration be done properly by OEM engineers, and that the OEM provide the components, tools, and processes to ensure that NPS accomplishes necessary research and graduates properly trained Naval-Officer engineers.

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

The proposed contract award intent notice and justification for other than full and open competition will be posted at the Government wide Point of Entry.

## **7. Determination of Fair and Reasonable Cost**

An Independent Government Estimate (IGE) has been provided and the Contract Specialist will use this to determine price reasonableness. The IGE was developed based on our current contract (N00244-14-C-0003) and it is not anticipated that cost of the services will increase. In addition, an analysis of pricing information will be performed which will consider Commerciality, procurement history, GSA schedules, and other available pricing information in determining that the price is fair and reasonable.

## **8. Market Research**

NPS is an accredited degree granting institution that offers Master's and Doctoral degrees in Engineering. It is important, therefore, that all NPS equipment be properly maintained and calibrated. Extensive market research was conducted including internet searches of similar type maintenance services, conversations with other universities and government organizations that have the same equipment, and discussions with FEI Company regarding warranty terms.

Recent market research in May 2015, revealed FEI Company was the only vendor capable of providing the maintenance and repair services to meet the Government's requirements. The Department of Health and Human Services was contacted by NPS as they currently have the highly specialized TEM instrument. The subject expert at the department confirmed that the only authorized service provider for the TEM instrument was FEI Company. The Department of Health and Human Services procures the maintenance and repair services through a sole source procurement to FEI Company. In addition, the Department of Energy was also contacted as they own a TEM instrument and confirmed that the maintenance and repair parts must be obtained from the original equipment manufacturer (OEM), FEI Company, to ensure continued reliable operation of the instrument.

The FEI Company stated in writing that it is the only authorized service provider for the TEM. FEI Company is the only capable vendor that can offer engineers trained by the manufacturer to provide service, parts and maintenance on this equipment. Subcontracting possibilities are not available because FEI's equipment is highly specialized and technical; therefore, it requires specially trained personnel to manufacturer, install, and maintain it. Market research revealed that FEI employs the said specially trained personnel.

The OEM is FEI Company and all processes and systems are proprietary to FEI Company. There is a high risk that any changes or deviations introduced to the TEM instrument during maintenance would greatly reduce the operating capabilities, reducing the maximum reliability and availability for NPS research and operations.

It was determined through this market research that no known potential alternate sources exist which could satisfy the government's requirement.

#### **9. Other Facts Supporting Use of Other Than Full and Open Competition**

This is a specialized item of research and educational equipment in a rapidly evolving technology area. Repairing/replacement service is required for proper operation of the FEI Osiris TEM which is regularly used for lecture classes, laboratory exercise for various courses offered at NPS and thesis research. Only FEI Company has the skill and knowledge to repair and perform calibration of the equipment.

#### **10. Actions to Remove Barriers to Future Competition**

Competition may drive FEI to share training and technology with potential third-party vendors. NPS will continue to canvass the trade journals and internet to determine if third-parties become capable of providing services required. But to date, there is no other source other than FEI for the equipment maintenance, calibration services identified.

## 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.

