

**JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION  
Under Authority of 41 U.S.C. 253(c)(2) and FAR 6.302-2  
“Unusual and Compelling Urgency”**

**1. Contracting Organization**

U.S. Environmental Protection Agency, Region 2  
Office of Policy and Management  
Grants & Contracts Management Branch

**2. Description of Action:**

Region 2 is requesting authorization to execute a sole source supplemental agreement to its Emergency and Rapid Response Services (ERRS) (Contract No. EP-W-04-055) to extend the period of performance for a three month base period and three one-month option periods, for a potential additional six months. The three month base-period would cover March 27, 2010 – June 26, 2010, and the potential three one-month option periods would extend the contract to an ultimate date of September 26, 2010. The name and address of the contractor is as follows:

AECOM Technical Services, Inc.  
4840 Cox Road  
Glen Allen, VA 23060

The period of performance for this ERRS contract will expire on March 26, 2010. This authorization is being sought due to Region 2’s need of unusual and compelling urgency, to continue ongoing environmental cleanup services and to ensure the ability to respond to an emergency environmental cleanup in order to mitigate threats to human health and the environment caused by hazardous substance contamination in New York and New Jersey.

The United States Environmental Protection Agency (EPA), Region 2 is currently reviewing and plans to award new competitive ERRS contracts for New York and New Jersey. Multiple protests at the Competitive Range stage and the continuing need for multiple rounds of discussions due to unforeseen changes in final proposal revisions have significantly delayed the anticipated award schedule. The delay in the follow-on awards past the March 26, 2010 expiration date of the current ERRS contract will jeopardize Region 2’s ability to continue ongoing environmental cleanup actions to address and reduce immediate risks to human health and the environment.

**3. Description of Services Required:**

The Environmental Protection Agency is required to carry out multiple authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or

Superfund) of 1980, as amended by the Superfund Amendments and Reorganization Act of 1986 (SARA) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, pursuant to the Federal Response Plan (FRP) and other laws to help address and/or mitigate endangerment to the public health, welfare and environment. The Agency established the Emergency and Rapid Responses Services (ERRS) contracts to provide fast, responsive environmental cleanup and emergency environmental response services in support of the EPA's response and/or oversight at sites of release or threatened release of hazardous substances, in order to meet its responsibilities under these statutes.

Region 2's ERRS contractors provide a high level of technical support to the Region 2 Superfund program, including taking any actions required to mitigate or eliminate any hazard or damage to the environment resulting from a release or threat of a release of oil, petroleum products, hazardous substances, pollutants or contaminants into the environment; the threat of fire and explosion and incidents involving terrorist acts, weapons of mass destruction, and nuclear, biological, or chemical incidents; or natural or man-made disasters. Without this support, Region 2 will not be able to fulfill its responsibilities under the above-cited statutes in a timely manner in order to ensure continued protection of public health and the environment.

At present, AECOM is conducting critical environmental cleanup activities under 20 task orders. A partial list of sites where AECOM is performing major projects includes Diaz Chemical, Genzale Plating, Cayuga County, Curtis Farms, Hudson River, NL Industries, Weston Lot #7 Oil Wells, Schatz Plant, and Barry Bronze Bearings. The cleanup activities at many of these sites have been underway for over a year and the removal activities have reached critical stages. Sixteen (16) of these projects require uninterrupted support in order to ensure that their requirements are completed on schedule to meet EPA's commitment to mitigate the risks posed to human health and the environment and that no delays or other circumstances occur which would result in unnecessary duplication of effort and additional costs. The attached table provides a more detailed picture of the current requirement under the AECOM contract.

Region 2 has estimated that the total value of the support to be provided under this requested contract extensions is approximately \$1,500,000 if all 6 months of the extension are exercised. This estimate is based on the level of funding required under the current six month extension to the contract issued in accordance with the Option to Extend Services clause in the contract. The contract extension will cover a reduced level of support, as Region 2 expects to order only time critical or emergency response services and additional technical services necessary to perform current ongoing critical environmental cleanup activities.

#### **4. Authority:**

41 U.S.C. 253(c)(2), as implemented by FAR 6.302-2, "Unusual and Compelling Urgency," when the agency's need for the supplies of services is of such an unusual or compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

## **5. Applicability of Authority:**

If these services cannot be provided without interruption after Region 2's existing ERRS contract expires on March 26, 2010, the nature and extent of harm to Region 2's environmental cleanup efforts and the public would be extensive. The ability to have contractor support within six (6) hours of an environmental emergency has enabled the EPA, Region 2 to carry out its mission to protect the human health of the citizens in Brooklyn, NY after anthrax contaminated a vehicle and work area; in New York City after a steam explosion released asbestos into the street; and in Broome County and Delaware County in New York after floods exposed them to floating household hazardous wastes. The authorization to extend the current contract with AECOM is sought due to the necessity for this ability to respond to an emergency environmental cleanup. If the EPA was unable to respond in this time frame the potential extent of harm to human and environmental health in Region 2 is incalculable. Further, EPA does not have sufficient resources in house to continue ongoing cleanup services without the technical services currently provided by the Region 2 ERRS contracts. Thus, the resultant disruption and delay in execution of the cleanup efforts currently underway will cause a substantial increase in expense for shutdown and restarting projects and exacerbate the effects of continued exposure to existing site contaminants on both public health and the environment. In addition to these increased expenses, the effects of these delays will also result in damage to the credibility of EPA's emergency cleanup efforts in the affected communities and demoralization of the public. These reasons represent urgent and compelling circumstances, within the meaning of the above-cited statutory and regulatory authorities, which will result in serious injury to the Government if the requested contract extension is not authorized.

## **6. Efforts to Obtain Competition:**

Region 2 does not plan to seek competition prior to negotiating and executing the supplemental agreement to extend the existing ERRS contract. As discussed above, this is a short-term effort intended only to cover the gap between the scheduled expiration date of this contract and the award date of the follow-on ERRS contracts for the Region. These follow-on ERRS contracts will be awarded based on full and open competition, after exclusion of sources, in accordance with the procedures called for in FAR 6.203 and FAR 6.206.

The unforeseen need to reopen discussions on March 2, 2010 under the current ongoing solicitation, has prohibited the award of the follow-on ERRS contracts prior to the expiration of the current ERRS contract on March 26, 2010. No source, other than the existing contractor, has the familiarity with these current ongoing cleanup efforts needed to complete these actions without substantial time, effort, and expense for startup and mobilization. Attempting to compete these ongoing cleanup efforts in the three week period before expiration of the existing Region 2 ERRS contract, either through full and open competition or crossover work to existing ERRS contractors in the EPA would result in unacceptable delays in meeting project deadlines and fulfilling Agency requirements, and would also result in substantial additional costs for a minimal period of performance. A full and open competition, requiring the submission and evaluation of technical and cost proposals, could not be completed within the 24 days that was

available under the current ERRS contract once discussions were reopened under the follow-on contract.. The other alternative, of implementing such a large number of crossover projects for this limited period of time would result in a substantially increased workload for each “crossover contract,” with significant additional resources needed to fund, place, and administer these tasks by contract and program personnel.

In accordance with FAR 5.203(a), the Contracting Officer intends to issue a synopsis on March 12, 2010, describing Region 2’s intent to issue a modification to extend the above-described contract on a sole source basis, in order to continue critical activities as outlined in Section 3 above and the attachments to this document.

#### **7. Fair and Reasonable Pricing:**

Region 2’s current ERRS contracts were awarded in 2005 based on full and open competition, and the maximum potential value for the five years of services contained in these contracts were determined to be fair and reasonable prior to award. The fixed rates for the final option period provide a reliable baseline for the evaluation and negotiation of a fair and reasonable price for the contract extension. The total amount for the contract extension will be evaluated and determined to be fair and reasonable, in accordance with the requirements of FAR Subpart 15.4, prior to the execution of this supplemental agreement.

#### **8. Review of Other Prospective Resources:**

The alternatives to continuation of this contract with the existing contractor, pending award of the follow-on ERRS contract, are not feasible. A competitive process for this requirement is ongoing and it is anticipated that the follow-on contract awards will be made by mid-April 2010. The preparation and posting of the solicitation in FEDBIZOPPS and the subsequent submittal and evaluation of proposals for continuation of the existing cleanup activities would take longer than the projected award of the follow-on ERRS contracts, thereby negating the need for the short term competition. Should the EPA pursue competition for this short term requirement and then cancel the solicitation because the requirement no longer exists, prospective offerors would incur unnecessary bid and proposal costs and EPA’s credibility and integrity in the competitive procurement process would be irreparably harmed.

It was anticipated that the Region 2 ERRS contract for Puerto Rico and the Virgin Islands held by NEIE, Inc. could be utilized to perform ERRS cross-over work in New York and New Jersey during the timeframe between the expiration of the existing contracts and the award of the new contracts. Unfortunately, ongoing work due to a large fire at an oil refinery in Puerto Rico in December 2009 will utilize the existing capacity under the NEIE contract. Therefore, this contract is no longer an option for Region 2.

Potential crossovers of ongoing Region 2 work to existing ERRS contracts within the Agency has been explored and utilized for the past six months. Region 2 has taken certain precautions

with initiating crossover work, in order to mitigate any perceived threat to the impartiality and integrity of the ongoing procurement. The on-going ERRS solicitation in Region 2 is restricted to Small Businesses and Service-Disabled Veteran-Owned Small Businesses. To avoid any perceived threat of impartiality and to maintain the integrity of the ongoing procurement, Region 2 is limiting crossovers to Large Business ERRS contractors. Two Large Business ERRS contractors currently exist in Regions 3 and 6. Region 3 has already accepted 10 crossovers from Region 2 totaling \$13,699,953.00. Region 3 does not have contract capacity to accept any further crossovers from Region 2. Region 6 has accepted six (6) crossovers from Region 2, totaling \$2,821,000. These task orders represent long term environmental cleanup services that are projected to go well beyond the current contract expiration date and required a continuity of subcontractor services, mostly involving transportation and disposal of hazardous materials. The Region 6 task orders are expected to be transferred back to Region 2 at the end of the Region 6 option period. Region 6 does have additional capacity under their Large Business ERRS contract.

Sixteen existing task orders under the ACEOM contract are expected to be completed shortly or can more readily be transferred to the Region 2 follow-on ERRS contractors. Closing out these task orders by having the incumbent contractor demobilize from the site, decontaminate the equipment and administratively close out each task order by March 26, 2010 while a new contractor mobilizes staff and equipment and establishes required subcontracts during this same period, only to potentially reverse this process again in one month, would not be advantageous to the Government. Implementing such a large number of crossover projects for this limited period of time would result in a substantially increased workload for each "crossover contract," with significant additional resources needed to fund, place, and administer these tasks. Thus, the administrative costs associated with the effort of both Regions' Contract Administrators, in addition to the resources diverted from ongoing work to coordinate this effort, makes this prohibitive as an efficient and effective alternative.

Pursuit of any of the above noted alternatives will result in a failure to be able to continue meaningful cleanup activities at existing sites, delays in progress and exacerbation of existing threats to public health and the environment.

#### **9. Other Pertinent Facts:**

The Request for Proposals (RFP) for the follow-on small business and service-disabled, veteran-owned small business set-asides for the Region 2 ERRS contracts was released on April 15, 2009. The award of these contracts was originally scheduled for September 2009. However, protests from offerors excluded from the competitive range required a six month extension of the AECOM ERRS contract. Two additional rounds of discussions, necessitated by unexpected final revisions to proposals, have substantially impacted the timely award of these contracts. Region 2 currently anticipates awarding these contracts by mid-April 2010. Since Region 2's current ERRS contracts will expire on March 26, 2010, well before the follow-on contract awards can be made, an extension of the current contracts for up to six additional months is

needed to ensure continuity in performance of the region's environmental cleanup services and ability to respond to emergency cleanup responses pending award of the new contracts.

**10. Interested Sources:**

The follow-on Region 2 ERRS contracts are being competed under full and open competition after exclusion of sources, in accordance with the procedures called for in FAR 6.203 and 6.206.

**11. Steps to Foster Competition:**

No courses of action are currently available to remove or overcome barriers to competition for this contract extension, as only AECOM can fulfill Region 2's existing requirements for this six-month period effectively, and provide the technical support needed for Region 2 to continue to carry out its mandates for environmental cleanup of the sites in question. As discussed above, the follow-on ERRS contracts will be awarded based on full and open competition, after exclusion of sources.

**12. Contracting Officer's Certification:**

The undersigned Contracting Officer's signature on this document attests that he or she has determined that this document is accurate and complete, to the best of his or her knowledge and belief.

**13. Technical/Requirements Personnel's Certification:**

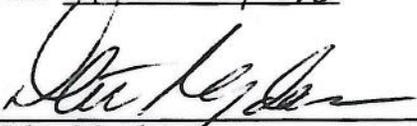
As evidenced by their signatures, the undersigned technical and requirements personnel have certified that the supporting information contained in this document, which is their responsibility, are both accurate and complete.

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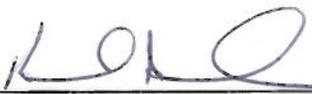
Contracting Activity: U.S. EPA, Region 2  
Contract No.: EP-W-04-055 - AECOM Technical Services, Inc.  
Title: Emergency and Rapid Response Services, Inc. (ERRS)  
Program Activity: Region 2, Emergency and Remedial Response Division  
Estimated Program Cost: \$1,500,000  
Authority: 41 U.S.C. 253(c)(2), as implemented by FAR 6.302-2  
Type: "Unusual and Compelling Urgency"

Certification of Contracting Officer:   
Karen Giacobbe

Date: March 25, 2010

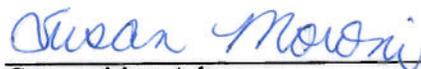
Certification of Program Office:   
Walter Mugdan  
Director, Emergency and Remedial Response Division

Date: 3/26/2010

Level Above Contracting Officer:   
Keith Stewart,  
Manager, Emergency Response Service Center

Date: 3/29/2010

Approval:



Competition Advocate

Date: 3/29/10

March 24, 2010

**AECOM REGION II TASK ORDERS EXTENSIONS**

CONTRACT NUMBER	REGION	CONTRACTOR	TASK ORDER NUMBER	SITE NAME	START DATE	EXPIRATION DATE WITH JOFOC	AMOUNT OBLIGATED
1 EP-W-04-055	2	ETI/AECOM	3	Diaz Chemical	September 30, 2004	June 26, 2010	\$5,608,800
2 EP-W-04-055	2	ETI/AECOM	4	Genzale Plating	September 30, 2004	June 26, 2010	\$3,869,500
3 EP-W-04-055	2	ETI/AECOM	9	Cayuga County	December 15, 2004	June 26, 2010	\$283,362
4 EP-W-04-055	2	ETI/AECOM	51	Curtis Farm	November 19, 2007	June 26, 2010	\$3,075,000
5 EP-W-04-055	2	ETI/AECOM	57	Hudson River	May 9, 2008	June 26, 2010	\$8,472,325
6 EP-W-04-055	2	ETI/AECOM	63	NL Industries Phase II	September 19, 2008	June 26, 2010	\$1,807,668
7 EP-W-04-055	2	ETI/AECOM	71	Diaz Chemical	December 11, 2008	June 26, 2010	\$20,000
8 EP-W-04-055	2	ETI/AECOM	75	Weston Lot #7	May 4, 2009	June 26, 2010	\$320,000
9 EP-W-04-055	2	ETI/AECOM	82	Winslow Burn Site	September 25, 2009	June 26, 2010	\$208,000
10 EP-W-04-055	2	ETI/AECOM	85	Schatz Plant	September 25, 2009	June 26, 2010	\$600,000
11 EP-W-04-055	2	ETI/AECOM	87	29 Riverside Ave	November 13, 2009	June 26, 2010	\$225,000
12 EP-W-04-055	2	ETI/AECOM	88	Ballord Oil Lease	February 4, 2010	June 26, 2010	\$50,000
13 EP-W-04-055	2	ETI/AECOM	89	Facet Enterprises	March 3, 2010	June 26, 2010	\$30,000
14 EP-W-04-055	2	ETI/AECOM	90	Truckers Warehouse	March 4, 2010	June 26, 2010	\$200,000
15 EP-W-04-055	2	ETI/AECOM	91	Barry Bronzse	March 4, 2010	June 26, 2010	\$60,000
16 EP-W-04-055	2	ETI/AECOM	92	Capecco	15-Mar-10	June 26, 2010	\$200,000

\$25,029,655