

U.S. Environmental Protection Agency, Region 4 Justification for Other Than Full and Open Competition

FAR 6.302-2 – Unusual and Compelling Urgency

FAR 6.302-1 – Only One Responsible Source

Part I – BACKGROUND

Date: July 1, 2011

Program Office: Region 4 Superfund Division

Project Officer: Darryl Walker

U.S. EPA Region 4, Superfund Division

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Project Identification: Region 4 Regional Oversight Contract (ROC) 3

Contract No. EP-W-05-040

Description of Services Required:

On July 8, 2005, EPA initiated a new contract with TechLaw, Inc., for services in support of oversight of Federal Facility environmental cleanup in Region 4 under the Comprehensive Environmental Response, Compensation and Recovery Act (CERCLA), the National Contingency Plan (NCP) and the Resource Conservation and Recovery Act (ACT): Regional Oversight Contract (ROC) 3, Contract No. EP-W-05-040. The period of performance consists of a four year base period from July 8, 2005 through July 7, 2009, and two one year award terms extending the performance period to July 7, 2011. A new competitive contract solicitation and award process is in progress, but has been significantly delayed. The new ROC contract will not be awarded by the current contract expiration date of July 7, 2011. Therefore, an extension of the contract (per FAR clause 52.217-8, *Option to Extend Services*) has been initiated by Region 4 to allow for continued performance within the limits and rates specified in the contract for a period of 6 months (January 6, 2012).

The original ROC 3 contract states that the amount of all orders shall not exceed \$8,000,000 in the base period and \$1,000,000 in each award term (if awarded). **The purpose of this Justification for Other Than Full and Open Competition (JOFOC) is to establish the need for increased ordering capacity under the current (second) award term from \$1 million to \$1.5 million.** This \$500,000 increase in ordering capacity would be used to continue Contractor support to program activities and deadlines until such time as the pending ROC 4 is

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awarded, but not later than January 6, 2012, to allow the various Program functions to continue within the limits and rates specified in the contract.

The Region 4 Superfund Division relies on this contract to provide oversight of environmental cleanup activities at Federal Facility Superfund sites across the eight states that comprise the Region. The Superfund Program provides this cleanup oversight within legally enforceable agreements with Department of Energy, Department of Defense, and NASA facilities. Any interruption in Contractor support poses a significant risk of EPA missing negotiated, enforceable, deadlines that will occur in fiscal year 2011, and delaying milestones that extend into fiscal year 2012, while the new contract solicitation and award process is completed. TechLaw, Inc., has been providing support for this Program and Program deadlines since the contract was awarded in 2005.

Estimated Amount of Increase: \$500,000 (ceiling of \$1.5 million in the 2nd award term)

Period of Performance: The period of performance for award term 2 is July 8, 2010 through July 7, 2011. The performance period was extended through January 6, 2012 by issuance of modification number 032 to the contract, dated /11.

Proposed Contractor:

TechLaw, Inc.
310 Maxwell Road, Suite #500
Alpharetta, GA 30004-2066
(770) 752-7585

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PART II – JUSTIFICATION

1. Identification of the agency, and the contracting activity, and specific identification of the document as a “Justification for Other than Full and Open Competition”.

The Environmental Protection Agency, Region 4 Superfund Division, proposes a justification for other than full and open competition (JOFOC). The Region 4 Acquisition Management Section (AMS) is the contracting activity issuing the action.

2. Nature and/or description of the action being approved.

The action to be approved is a modification of Contract No. EP-W-05-040 (TechLaw, Inc.) to increase the ordering capacity of the current (second) award term by \$500,000. The action to be approved changes the ordering ceiling during the second award term from \$1 million to \$1.5 million due to the period of performance extension to January 6, 2012.

3. A description of the supplies or services required to meet the Agency’s needs (including the estimated dollar value).

Under the action to be approved, support from TechLaw is essential to the completion of ongoing EPA Region 4 Superfund Program environmental cleanup oversight activities at twelve (12) Federal Facility Superfund sites under thirteen (13) separate task orders through the extended performance period (January 6, 2012). The Contractor support will facilitate the Program’s achievement of multiple enforceable deadlines under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Continued support is needed for ongoing projects with milestones set by the Superfund Division in Fiscal Year 2011 which extend into Fiscal Year 2012. Accomplishments of these deadlines and milestones will directly lead to a cleaner environment and protection of human health, including the health of children (a priority of the EPA Administrator).

The scope of services that are required to meet the Program’s needs are described in the Performance Work Statement of the current ROC and includes: technical review of documents; technical team meeting support; support for negotiation activities; field oversight of the construction of engineered cleanup solutions; and community involvement planning and implementation. Specifically, the services provided by the Contractor to the Program are necessary to accomplish President Obama’s economic recovery goals for the nation under the American Recovery and Reinvestment Act of 2009 (ARRA) at three Department of Energy Superfund sites in Region 4: Savannah River Site, Oak Ridge Reservation, and the Paducah Gaseous Diffusion Plant. Support from the Contractor is essential to the Superfund Program’s community involvement activities, including Environmental Justice meetings in communities throughout Region 4, and Superfund Job Training planning. During the performance period, a nationally significant Record of Decision for cleanup of groundwater contamination in a

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complex geological setting will require continued expert technical review support from the Contractor in support of EPA approval and signature: this cleanup decision will address contamination from the Anniston Army Depot that is impacting a public water supply above EPA drinking water standards. Continued support from the Contractor is essential to the Region 4's implementation of the EPA National Enforcement Strategy to achieve CERCLA Federal Facility Agreements at the Redstone Army Arsenal and Tyndall Air Force Base Superfund sites. In addition, Contractor support is needed in Fiscal Year 2011 and Fiscal Year 2012 in support of resolving an informal dispute between the Air Force and the Program on three groundwater remedies.

The estimated dollar value of the work to be performed by the Contractor during the performance period (through January 7, 2012) is \$500,000 for continuation of work on the 12 Federal Facility sites under 13 Task Orders. The estimate is based on applying the current contract rates against the scope of the ongoing site work through January 6, 2012.

4. An identification of the statutory authority permitting other than full and open competition.

The statutory authority permitting other than full and open competition relative to this request is 41 U.S.C. 253 (c) (2), *Unusual and Compelling Urgency*, as implemented by paragraph 6.302-2 of the Federal Acquisition Regulation (FAR).

Also applicable to this request, is the statutory authority permitting other than full and open competition found at 41 U.S.C. 253 (c) (1), *Only One Responsible Source and No Other Suppliers Will Satisfy Agency Requirements*, as implemented by paragraph 6.302-1 of the Federal Acquisition Regulation (FAR).

5. A demonstration, based on the proposed contractor's qualifications or the nature of the acquisition, that use of the authority cited is required.

FAR 6-302-2, *Unusual and Compelling Urgency*, is the most appropriate citation permitting other than full and open competition to establish a one-time, short-term, \$500,000 increase in ordering capacity under the current ROC for technical support to the Region 4 Superfund Division for oversight of Federal Facility environmental cleanup activities. In summary:

- Competition and award of the new Region 4 ROC has been significantly delayed: the current ROC performance period expires on July 7, 2011, and the ROC 4 solicitation package is still under development.
- In response to the unusual delay in the ROC 4 solicitation and award, Region 4 AMS has proposed two (2) mitigating actions: (i) extension of the contract performance period by

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six (6) months to January 6, 2012, and (ii) increased ordering capacity to meet Program work load projections.

- Ordering capacity under the current ROC is not sufficient to support EPA's needs during the extended contract performance period.
- The Program estimates that current ordering capacity ceiling will be reached months in advance of award and funding of the new Region 4 Regional Oversight Contract (ROC) 4.
- If the requirement for Region 4 ROC technical support with sufficient ordering capacity was competed, there would be unacceptable delays in fulfilling Program requirements, including the failure to meet EPA deadlines under legally enforceable agreements with twelve (12) Federal Facility Superfund sites, including an EPA imminent and substantial endangerment Order and work under the American Recovery and Reinvestment Act of 2009.
- Award of oversight support services with sufficient ordering capacity to any source other than the current Contractor would result in significant disruption of the on-going environmental cleanup work at twelve (12) Federal Facility Superfund sites under the current contract. This disruption would cause harm to EPA by delaying or preventing the Agency from performing its statutory Federal Facility oversight responsibilities. This harm, in turn, may cause harm to the public and the environment by allowing conditions of uncontrolled hazardous substance release to continue without being sufficiently abated.

The factors listed above constitute an usual and compelling urgency to increase the ordering capacity under the current ROC, and are discussed in additional detail below.

Although a competitive process for solicitation and award of a new ROC is ongoing, the process is significantly delayed. The type of contract (Subpart 16.2 of the FAR), incentives and disincentives, the Performance Work Statement, the Evaluation Criteria for the Technical and Cost Proposals, and the Contractor Performance Evaluation Criteria have not yet been finalized by the Region. It is not possible to complete the competitive award of the new ROC in the less than three months remaining until the current ROC expires on July 7, 2011. Accordingly, the Contracting Officer has initiated a modification to extend the Performance Period of the current (second) award term by six (6) months to January 6, 2012. The proposed action will increase ordering capacity during the extended contract performance period.

Significant harm will be realized by the Agency in the event that sufficient ordering capacity is not available during the extended performance period to ensure continued Program operations during award and transition to the new ROC. The ordering capacity for the current award term is capped at \$1 million in the current ROC. However, the cap established at contract award in 2005 did not contemplate that the ROC performance period would be extended by six months and was not informed by current Program work load estimates and Program priorities, including new requirements and deadlines imposed by the American Recovery and Reinvestment Act of 2009, four years after contract award. Work load estimates by the Program through January of 2012,

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and associated independent government cost estimates, project that it is necessary to increase the ordering capacity by an additional \$500,000 to ensure that the Program's environmental cleanup oversight work can continue uninterrupted at twelve (12) Federal Facility Superfund sites managed under thirteen (13) Task Orders during the six month extension of the current award term and transition to the new ROC.

The Superfund Program is responsible for meeting deadlines in legally enforceable agreements with the Department of Energy, the Department of Defense, and NASA, for Federal Facility Superfund sites throughout Region 4. These agreements include an EPA Region 4 imminent and substantial endangerment Order under Section 7003 of the Resource Conservation and Recovery Act at an Air Force Superfund site. The Program relies on the Contractor to ensure that these deadlines are met to ensure protection of human health and the environment. The Region 4 Program also relies on the Contractor to ensure that EPA and the Federal Facilities meet the requirements (including reporting requirements) and deadlines imposed by the American Recovery and Reinvestment Act of 2009 at three Department of Energy Superfund sites.

Critical work that would be negatively impacted if sufficient ordering capacity is not available includes, but is not limited to: the timely construction of engineered cleanup solutions; statutorily-required public involvement activities; the maintenance and monitoring of land use controls on contaminated lands; maintenance of engineered remedies to ensure that they remain protective of people, including children; and execution of multiple time-critical and non-time critical removal actions.

FAR 6-302-1, *Only One Responsible Source*, is also appropriate to justify other than full and open competition to establish a one-time, short-term, \$500,000 increase in ordering capacity under the current ROC for technical support to the Region 4 Superfund Division for oversight of Federal Facility environmental cleanup activities.

The following information demonstrates that the current contractor is the only source to satisfy the agency's requirement based on the need for continuity of services.

- The Government requires a continuity of operations at the Region 4 Federal Facility sites. Placement of the follow-on ROC4 contract is underway, but is not expected to be awarded until after December, 2011. The ROC3 contract expires in July, 2011, and has been extended to January 6, 2012. This extension, along with the necessary funding to continue operations, justified by the JOFOC will ensure adequate time for the ROC4 contractor to mobilize and gain the necessary site specific expertise to allow for the Region to continue its Federal Facility oversight responsibilities without preventable disruption.

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- Thirteen Task Orders are active on the ROC3 contract. All sites under these Task Orders have the typical high level of technical complexity and multiple types of ongoing investigations and remedy designs and implementations. Notably, two of the Region's Department of Energy sites are undergoing accelerated cleanups resulting from President Obama's economic recovery goals for the nation under the AMERICAN RECOVERY AND REINVESTMENT ACT. Loss of continuity of oversight of these important actions would occur if the additional contract capacity is not increased.
- The Program looked into contract cross over support from Regions 3, 5, and 9 where the ROC contractor is TechLaw. Region 5 indicated there was inadequate capacity to manage the Region 4 requirement, and the Region 3 and 9 contracts were not considered because of 10-15 % higher contract costs.

6. A description of efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

A notice will be publicized in Fedbizopps.gov in accordance with FAR 5.201, and 6.305.

7. A determination by the contracting officer that the anticipated cost will be fair and reasonable.

The ROC 3 requirement was processed as a competitive procurement. TechLaw's cost proposal was determined to be fair and reasonable at the time of the contract award. A cost proposal will be requested from the contractor for each task order under which additional work is required. The Contracting Officer will evaluate the proposals and negotiate a fair and reasonable price with the contractor. It is anticipated that the labor rates for the additional capacity will be the same or similar to those under the contract.

8. A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

Market Research was conducted for the ROC 3 solicitation. There were two (2) proposals submitted in response to the solicitation from small businesses.

Specific market research for the additional capacity to provide ongoing work was not performed because it is impractical for the proposed supplemental work to be performed by another contractor without causing significant delays in fulfilling the region's requirements. EPA will not meet the deadlines under legally enforceable agreements with twelve (12) Federal Facility Superfund Sites as previously discussed.

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Once this Justification for Other than Full and Open Competition is publicized, in accordance with FAR 5.201 and FAR 6.305, a listing of interested sources will be added to the file for the ROC 4 reprocurement.

9. Any other facts supporting the use of other than full and open competition, such as: when 6.302 is cited for follow-on acquisitions as described in 6.302(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

TechLaw is uniquely qualified to fulfill the requirements associated with the proposed action as this Contractor has been providing support to the Region 4 Superfund Program for Federal Facility environmental cleanup oversight since 2005. The current contractor has successfully earned each of the two performance-based award terms available in the current ROC. The Contractor has developed site-specific expertise in the human health and ecological risks and hazards posed by contamination at each of the twelve Department of Energy, Department of Defense, and NASA facilities covered under the proposed action. The contractor already has an appropriate staffing plan in place and equipment on hand to provide technical support, including field oversight of planned cleanup activities such as time-critical removal actions, and unplanned cleanup activities such as emergency removal actions, and can immediately respond to any site-specific technical issues that, if evaluation and response were delayed, might result in unacceptable exposures of people to contaminants, irreversible damage to critical environmental resources, or delays in meeting milestone dates in enforceable agreements between EPA and these federal facilities.

Procurement of a separate contract with adequate ordering capacity for these services would duplicate substantial costs realized during the original competition and award in 2005, as well as duplicate costs realized during TechLaw's service of the contract since July of 2005. These costs would not be recovered by the Government through competitive award of this requirement.

10. A listing of the sources, if any, that express, in writing, an interest in the application.

There was interest in the original competitive ROC 3 solicitation. The Pre-Solicitation Conference Registration Log for the ROC 3 solicitation indicates that the March 2004 conference was attended by 38 (non-EPA) individuals representing 18 interested firms. Two of those parties subsequently submitted technical and cost proposals in response to the Region 4 ROC 3 Request for Proposals.

No other sources were sought as this action to increase ordering capacity facilitates a short-term (six month), temporary, continuation for provision of services under an existing pricing schedule to facilitate transition to the new competitively awarded Regional Oversight Contract. Once this Justification for Other than Full and Open Competition is publicized, in accordance with FAR 5.201 and FAR 6.305, a listing of interested sources will be added to the file for future reference.

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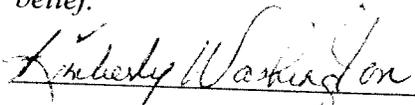
11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services is required.

No subsequent acquisition for additional services or supplies under this current contract is contemplated.

12. Contracting Officer Certification that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.

CONTRACTING OFFICER CERTIFICATION

I certify that the above justification is accurate and complete to the best of my knowledge and belief.



Kimberly Washington

Contracting Officer, Region 4

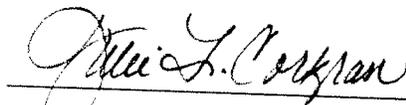


Date

Technical/Requirements Personnel's Certification

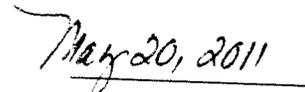
As evidenced by their signatures on the signature page, the technical and/or requirements personnel have certified that any supporting data contained herein which is their responsibility are both accurate and complete.

I certify that the data supporting the recommended use of other than full and open competition for the acquisition of additional ordering capacity are complete and accurate.

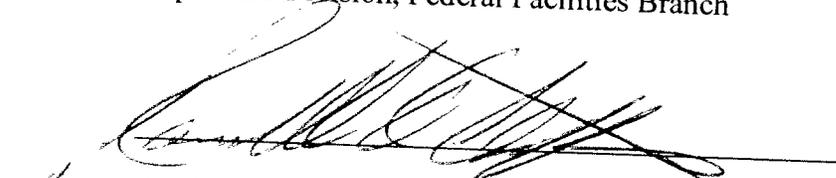


Julie L. Corkran, Ph.D., Remedial Project Manager,

Superfund Division, Federal Facilities Branch



Date



Franklin Hill, Director, Superfund Division



Date