

**U.S. ENVIRONMENTAL PROTECTION AGENCY
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
FAR 6.302-2 UNUSUAL & COMPELLING URGENCY**

BACKGROUND

Date: 07/10/2012

Program Office: Superfund Division

Project Officer: Gary Sink, PO;
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Project Identification: Contract #EP-R7-07-02; ERRS 3, Emergency & Rapid Response Contract for R10 (Alaska, Idaho, Oregon & Washington)

Description of Supplies/Services: On February 1, 2007, EPA R10 Superfund Division awarded an Emergency & Rapid Response Services (ERRS 3) contract to conduct removals (emergencies, time-critical and non-time critical) of oil, petroleum and hazardous substance releases. The current contract, #EP-R7-07-02 was awarded as a small business set-aside to Environmental Quality Management, Inc (EQM). A new contract for these services is in progress; however, award will not be made prior to the current contract's expiration. The procurement administrative lead time (PALT) for an ERRS contract is 12 months; the following circumstances have contributed to the delay in award of the follow-on contract:

1. 5/17/11 received PIN documents; revised documents submitted 8/4/11
2. 12/15/11 received revised evaluation criteria
3. Program requested 7 year contract; requested from HQ on 1/5/12 allowability of a 7 year contract & received response from HQ on 5/9/12;
4. Issues with generating solicitations in EAS; minimal training in this area

Period of Performance: 6 month extension – through January 31, 2013.

Estimated Contract Amount Increase: \$500,000.00

Proposed Contractor: Environmental Quality Management, Inc; 1800 Carillon Blvd; Cincinnati, Ohio 45240; (513) 825-7500

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JUSTIFICATION

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

The Environmental Protection Agency, Region 7 Acquisition & Contract Management Section, proposes a Justification for Other than Full and Open Competition (JOFOC).

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

This action is to extend the existing contract for six months with Environmental Quality Management (EQM) to conduct removals (emergencies, time-critical and non-time critical) of oil, petroleum and hazardous substance releases.

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

EQM is currently providing response support during incidents which present an immediate threat to human health and/or the environment, in both emergencies and time-critical situations. The contractor is required to be on-call 24-hours/day and on-site within a matter of hours. Without this support, the Region cannot meet its mandated requirements under the National Approach to Response and the National Contingency Plan. The current contract has active umbrella Task Orders for Emergency Response, Site Preparation, & Oil Spill Response which require on-call and quick-turnaround capabilities. There are also several ongoing Removal Actions at sites in Region 10 & 9, including Stubblefield Salvage, Orofino Asbestos, Avery Landing, North Ridge Estates, Grandview Mine, & CNMI Power Plants which, if shut down, would pose a threat to human health and/or the environment.

The region is requesting this extension to cover any emergencies or small task orders that may occur. The estimated value of this 6 month extension will not exceed \$500,000.00.

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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(a)(1) of the Federal Acquisition Regulation.

Use of this authority may be appropriate in situations such as the following as stated in FAR 6.302-2 - when the agency's need for the supplies or services is of such an unusual and 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, full and open competition need not be provided for.

5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

EQM is the only contractor who can satisfy all the requirements of this contract without a serious interruption in services or a need to become familiar with existing Superfund issues. EQM has been involved in providing the emergency response and removal actions at the R10 sites, having acquired vast knowledge and experience directly applicable to the projects. Even under the best of conditions, no other firm could acquire the knowledge and experience necessary to provide continued response services without experiencing substantial delays to the detriment of the projects and possibly the environment and public well being. Although other firms exist with the capability of providing comparable emergency response services and supplying the general type of services required for the projects in progress, they could not adequately provide these services in a timely manner.

There are no other contractual mechanisms currently in place available to provide the necessary services. Regional crossover capability is included in all ERRS contracts; however, regions have been plagued by a lack of contract capacity. In light of the fact that no other contract vehicles are available, without the continued support provided by EQM, the program will be unable to effectively accomplish its mission and continue to meet the obligations to the public and protection of the environment.

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- 6. A description of efforts made to ensure that offers are solicited from as many potential sources as is 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.**

As noted in Item 4 of the Justification, the statutory authority for issuing this action is 41 U.S.C. 253(c)(2), Unusual and Compelling Urgency as implemented by FAR 6.302-2. FAR 5.202(a)(2) exempts the contracting officer from advertising in the GPE when unusual and compelling emergency conditions exist and the Agency would be seriously damaged if it complies with the time period specified in FAR 5.203. In addition, Item 5 of this Justification provides the rationale for the continued use of the incumbent contractor for the performance of the additional requirements. This proposed action will allow for maintaining emergency response capability, and the continuation of ongoing projects.

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

The current contract was awarded as a small business set-aside and the fixed rates proposed were determined fair and reasonable during the negotiation of this contract. EQM will not increase the current rates during the extension of the contract. Therefore, it has been determined that the additional cost of \$500,000.00 for the 6 month extension is fair and reasonable based on past prices paid and known market value.

- 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.**

Due to the urgent need to obtain approval for other than full and open competition and to competitively solicit these services within the time period between expiration of the current ERRS contract and the award of the follow-on ERRS contract in order to preclude an interruption of contract support, no formal market survey will be conducted. In addition, EQM already holds contracts in Regions 6 and 9 and it is doubtful another contractor would be able to acquire the knowledge necessary to meet the emergency response needs without experiencing substantial delays.

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- 9. Any other facts supporting the use of other than full and open competition, as described in 6.303-1(a)(9)(iii) when 6.302-2 is cited, data, estimated cost or other rationale as to the extent & nature of the harm to the Government**

No other contract vehicles are available; without continued support from this contractor, the program will be unable to effectively accomplish its mission. EQM has the emergency response personnel & equipment in place, is successfully performing the services and is the only contractor who can satisfy all the contract requirements without an interruption in service or a need to become familiar with existing Superfund issues.

- 10. A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.**

No other sources expressed an interest in this requirement.

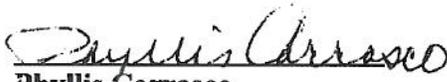
- 11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.**

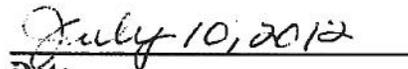
The follow-on contract ERRS 4 will be issued as a small business set-aside. It is anticipated that adequate competition will result from the solicitation.

- 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.


Phyllis Carrasco,
Contracting Officer, Region 7


Date

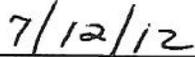
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REVIEWS/APPROVALS

Review & Approval One Level above CO:



Lee Thomas
Section Chief,
Acquisition & Contracts Management Section



Date

PROGRAM OFFICE CERTIFICATION

I certify that any supporting data which forms the basis for the Justification for Other than Full and Open Competition is complete and accurate.



Gary Sink, Project Officer



Date