

Department of
Veterans Affairs

Memorandum

Date: January 15, 2015


From: Executive Director, Office of Construction and Facilities Management, Head of Contracting Activity (003C)

Subj: Justification and Approval (J&A) for Other than Full and Open Award of a Contract to Kiewit Turner a Joint Venture (KT) for Continued Construction of the East Colorado Health Care System (ECHCS) Replacement Medical Center in Aurora, Colorado (VAIQ 7565379)

To: Deputy Assistant Secretary, Office of Acquisitions and Logistics, Senior Procurement Executive (003A)

Thru: Associate Executive Director, Office of Facilities Acquisition (003C4)

1. The Office of Construction and Facilities Management requests Department of Veterans Affairs' (VA) Senior Procurement Executive approval of the attached justification to issue a contract to KT using other than full and open competition.
2. As a result of the Civilian Board of Contract Appeals 3450 decision released on December 9, 2014, KT, the construction contractor for the ECHCS replacement medical center in Aurora, CO elected to stop work. However, during an August 2014 communication with the VA Secretary, KT indicated willingness to performance without disruption under specified conditions, including continued performance under a cost reimbursable basis.
3. The proposed sole source action is a Cost plus Fixed Fee (CPFF) contract for continued construction of the project to allow DT to resume construction on the project until the U.S. Army Corps of Engineers assumes control of the project and a new contract is executed.
4. The CPFF contract will be funded with project funds.
5. I request your approval of the attached J&A.


Stella S. Fiotes

Attachment: J&A

Concur:


George Szwarcman

Date:

1/15/15

Justification for Other than Full and Open Competition

Upon the basis of the following justification, I hereby approve the issuance of the contractual action described below using other than full and open competition, pursuant to the authority cited herein.

1. Contracting Activity:

Department of Veterans Affairs
Construction and Facilities Management (National Region)
13611 East Colfax Ave.
Aurora, CO 80045

2. **Nature and/or Description of Action Being Approved:** As a result of the CBCA 3450 decision released December 9, 2014, the construction contractor, Kiewit Turner A Joint Venture (KT), elected to stop performance on Contract No VA101CFM-C-0100 for the construction of the Eastern Colorado Healthcare System (ECHCS) Replacement Medical Center, Aurora, CO (the project). Following the issuance of that decision, KT submitted a letter to Secretary McDonald on December 9, 2014, ceasing all work on the ECHCS Replacement VA Medical Center Project and is currently demobilizing from the site and shutting down the project. However, in their August 2014 communication to the Secretary, KT preliminarily indicated a willingness to continue performance without disruption under specified conditions, including continued performance under a cost reimbursable basis.

The proposed sole source action is a Cost-Plus Fixed-Fee (CPFF) contract for the continued construction of the project to allow KT to resume construction on the project until such time as the United States Army Corps of Engineers (USACE) assumes control of the project and a new contract is executed.

The CPFF contract will be funded with project funds.

3. **Description of Supplies or Services Required to Meet the Agency's Needs (including the estimated value):** The proposed action is to provide continued construction of the ECHCS Replacement Medical Center in Aurora, Colorado which is currently approximately 50% complete. The contractor is to resume construction on the project until such time as the USACE assumes control of the project and a new contract is executed. The contractor shall provide all labor, materials, equipment, and facilities to continue construction pending a final completion contract by the USACE. Work under this contract shall be performed in accordance with the most recent specifications and drawings. Construction documents shall include all CDI packages to date and all issued JSIs issued under Contract No. VA101CFM-C-0100. The contractor shall execute the work associated with the Progress Schedule Submission VAB2.1.41.1 submitted to the VA on 10 December 2014 within the available funds. The VA and KT will negotiate a detailed construction schedule using this Progress Schedule Submission VAB2.1.41.1, adjusted to the contractor's

current production schedule. The estimated value to complete is as identified by the Progress Schedule Submission to be negotiated and will include remobilization actions taken as a result of the CBCA decision.

4. **The Statutory Authority:** The statutory authority permitting other than full and open competition is 41 U.S.C.3304(a)(2) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-2 entitled, "Unusual and Compelling Urgency."
5. **A Demonstration that the Proposed Contractor's Unique Qualifications or the Nature of the Acquisition Requires Use of the Authority Cited.** The construction services portion of Contract No. VA101CFM-C-0100, was exercised as an option on November 11, 2011. The use of KT as the interim site contractor until a contract is awarded by USACE mitigates issues with moth-balling the partially completed facility, time associated with the transfer of permits, subcontract novations, and disruption of manufacturing and fabrication schedules.
6. **Description of the 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.** For the reasons specified throughout this justification, an offer will only be solicited from KT. Bringing another contractor on board to provide the services requested under this justification would be both cost and time prohibitive. IAW FAR 5.202(2), this contract action is being made under the conditions described by 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203. A notice for this sole source award and the associated J&A will be publicized within 10 days of award.
7. **A Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable.** The Contracting Officer hereby determines that the anticipated cost of the resulting CPFF will be fair and reasonable. The Contracting Officer hereby determines that the resulting CPFF contract represents the best value to the Government and that the government will only pay the costs that are reasonable, allowable, and allocable. The fixed fee included in the contract was presented to the VA's Deputy Secretary, Sloan Gibson, on December 17, 2014, and has been determined to be fair and reasonable by this Contracting Officer. All subcontracts may remain in place IAW FAR 52.244-2(j) under Contract No. VA101CFM-C-0100.
8. **Description of the Market Research Conducted and the Results or a Statement of the Reasons a Market Research Was Not Conducted:** Market research was not conducted due to the urgency of this action. This CPFF contract is an interim measure to allow for continued construction while a contract is prepared and awarded with USACE oversight. Market research will be performed as part of that effort.

9. Any other Facts Supporting the Justification (when 6.302-2 is cited, data, estimated, cost, or other rationale as to the extent and the nature of the harm to the government): Award of this contract to KT is necessary to prevent both substantial financial and non-financial harm to the VA. This action will result in substantial cost avoidance related to shutting down of the project and re-procurement. It will also avert unacceptable delays associated with getting a new contractor on board and functioning at a high level, and will thereby avoid unacceptable disruption to VA/CFM and its customers.

1. The CBCA's decision that the VA was in breach of the Contract No. VA101CFM-C-0100, prompted an unusual condition which resulted in the compelling urgency for a continuity of construction contract award. A delay in award of this contract would result in serious financial harm to the Government. This can be quantified in part as follows:

KT identified demobilization costs ¹	\$20M
Remobilization costs	\$35M
Mothballing Site	\$2.5M
VA efforts to secure, assess, protect, and maintain the project site ²	\$18M
Cost associated with loss of production of major components	\$38.5M
Immediate "make safe" in progress	\$2.3M
Which entails:	

Work requirements to "make safe":

- o ENC Water tank – complete in progress concrete placement and post tensioning
- o Complete structural repairs to corners of IB connections
- o Complete repairs to precast panels are connected to roof (Request for Information RFI 5320 addresses this issue).
- o Concrete cracks by the elevator.
- o Fill in trenches
- o Backfill trench at COA water main
- o Roof drain CBS connection to storm sewer

Work Requirements to "Preserve and Protect"

- o Temporary exterior skin Clinic Building Center
- o Temporary exterior skin Concourse
- o Temporary exterior skin Research
- o Onsite materials inventoried and stored (protected from elements)
- o Complete inspection of welds
- o Complete production run of curtain wall sections (and analyze other material procurements "in production")
- o Continue temp heating or cap and drain utilities

¹ Make Safe List, a partial list of tasks, but the minimum needed to ensure the project is left in a safe conditions as KT demobilizes, 12/16/14.

² Programmatic Risk Assessment Report prepared by Vail Cooper International (VCI), 10/28/14.

- ii. A delay in award of this contract will seriously harm the Government in other ways as well. KT has stopped work and has begun demobilization efforts. The agency's need to immediately reverse the demobilization and to ensure resumption of work 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. The institutional knowledge of the project and its status mid-construction would be lost and would cause project delays of at least 2 years as the contract is recomputed and a new contractor gets up to speed. This knowledge is not transferable without considerable time and expense which will result in unacceptable delays.
 - iii. Follow-on costs using full and open competitive procurement would severely impact the manpower and resources of the VA/CFM. The limited sources approval will result in cost avoidances of over \$200,000 for an 18-month recompletion duration, and resumption of the construction services immediately. This includes the labor hours of one contracting officer, one contract specialist, one procurement analyst, supervisory contracting officer, and legal counsel, for an 18-month acquisition period.
10. A listing of the sources, if any that expressed, in writing, an interest in the acquisition. There has been no interest expressed to this contracting office by a major construction contractor that is capable of assuming the construction and providing the services requested under this justification.
11. A Statement of Actions the Agency may Take to Remove or Overcome Future Barriers to Competition before any Subsequent Acquisition for the Supplies or Services is Required: This contract is an interim contract only in place until the USACE assumes control of the project and a new contract is executed.

12. **CONTRACTING OFFICER CERTIFICATION**

a. Technical and Requirements Certification: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

Date: 28 Dec 2014

Signature: _____

Kevin A. Lindsey
Project Executive

b. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable based on cost analyst and a Should-Cost review.

Date: 28 Dec 2014

Signature: _____

George W. Williams
Contracting Officer

c. Legal Sufficiency Certification: I have reviewed this justification and find it adequate to support other than full and open competition and deem it legally sufficient.

Date: 28 Dec 2014

Signature: _____

Phillips L. Anderson
Assistant General Counsel
(OGC Staff Group 5)

d. Based on the foregoing justification, I hereby approve the acquisition of continued construction services, on an other than full and open competition basis pursuant to the statutory authority cited in paragraph 4 above, subject to availability of funds, and provided that the property and services herein described have otherwise been authorized for acquisition.

Date: 1-30-15

Signature: _____

Jan R. Frye
Senior Procurement Executive