

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Other Than Full and Open Competition

11/03/15

1. **Contracting Activity:** The contracting activity is the Department of Veterans Affairs, VISN 16, Southeast Louisiana Veterans Health Care System (SLVHCS) Medical Center, Project Legacy. The organizational activity responsible is Facilities Management Service (FMS). The new medical center is located at 2400 Canal Street, New Orleans, LA. This is a Justification for Other Than Full and Open Competition. The 2237# associated with this procurement is 629-16-1-661-0003.

2. **Nature and/or Description of the Action Being Processed:**

We currently have a Construction Contract between the VA and Clark McCarthy for the new medical center. Construction of the Central Energy Plant (CEP) is near completion and turnover is expected late December 2015. The current construction contract includes a 4 week period of performance for 24/7 maintenance and operations of the CEP after turnover. Thereafter, Clark-McCarthy is contractually obligated to perform 8 hours daily maintenance and operation during normal business until completion of the medical center and balance of the campus is turned over to the owner. This includes but is not limited to the monitoring of all equipment (chillers, boilers, pumps, cooling towers, etc.) installed under the scope of work as documented in the Construction & Facilities Management (CFM) contract VA101CFM-C-0064. In addition, Clark McCarthy is responsible for the campus-wide commissioning requirements; training and tie-in of the controls systems prior to final project completion of the campus

However, the need is for 24-hours per day/7 days per week facility engineering services throughout the transition period until final campus turnover is accomplished which is estimated to occur in April of 2017. There is a void of 16 hours per day in which no facility engineering services will be provided by the CFM contract. The CFM contract under which the Contractor is currently acting as Facility Engineer for 8 hours per day cannot be modified to include an additional 16 hours per day of service due to a no-changes-allowed VA mandate. Therefore, a new contract is needed to acquire the additional 16 hours per day of service for a total of 24 hours every day of the year until turnover.

The Contracting Officer in the exercise of sound business judgement that safeguards the interests of the United States in its contractual relationships recommends that the services from both contracts be combined into one contract that will ensure performance of all necessary actions. The CFM contract will be de-scoped to remove the 8 hours per day of service and the new contract will cover the requirement of 24-hours per day/7 days per week of facility engineering services throughout the transition period and until final turnover of the campus.

Additionally, Facilities Management Service is not operationally prepared to fully staff the CEP upon turnover.

We propose Firm-Fixed Price Contract.

3. **Description of Services Required to Meet the Agency's Needs:**

The requirement is for operation and maintenance of the Central Energy Plant 24 hours per day seven days a week. This is to include all labor, management, supervision, tools, material, and equipment to continuously operate, maintain and repair the Chiller System and Distribution System, the Steam and Hot Water Generation System, the Steam and Hot Water Distribution Systems, the Condensate Return System, and the Compressed Air System for

Control Air and Medical Air and Medical Vacuum Systems located at the Central Energy Plant. The Contractor will be responsible for all equipment, controls and piping systems located inside the facility.

Services to be provided include but are not limited to:

- Monitor all the equipment (boilers, chillers, pumps, cooling towers, etc.) installed under the construction contract and currently being monitored by the "Facility Engineer".
- Monitoring of chemicals and providing any adjustments to chemical levels as necessary throughout the CEP.
- Coordinating and providing cooling and heating distribution.
- Training of government personnel

The IGCE for this effort is currently \$4,759,390.

The anticipated period of performance is January 26, 2016 through July 25, 2016 with three (3) -six (6) month options through January 25, 2018.

4. Statutory Authority Permitting Other than Full and Open Competition:

Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1.

The Contracting Officer has in accordance with FAR 1.102-4(e) and 1.602-2 taken the lead in ensuring business decisions are sound and that performance of all necessary actions for effective contracting are in compliance with the terms of the contract safeguarding the interests of the United States in its contractual relationships.

5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):

Clark McCarthy is the constructor of the Central Energy Plant and will be the service provider during the transition and turnover to the VA. The Central Energy Plant is a highly specialized building containing major systems. The major systems and some of its components include but are not limited to the distribution of electricity, steam, domestic water, etc. to the entire medical campus. Due to the complexity of the CEP systems, the prime construction contractor Clark McCarthy is currently responsible for providing facility engineering services during the temporary operational phase of the CEP for 8 hours per day. However, the need is actually for 24-hours per day/7 days per week. Since the related tasks of construction completion, facility management, commissioning and training are non-severable, the current contractor is still currently responsible for the 8 hours per day of services. Additionally, there is a higher than usual likelihood that the construction contractor could claim construction delays secondary to difficulties that may occur because additional buildings will be brought online requiring frequent adjustments to the systems. Due to complexity of the CEP systems, being tied to ancillary buildings still under construction, and avoid any possibility of voiding certain warranties, it is not feasible to contract to an outside contractor.

If the Government were to solicit, compete and award a separate contract for the additional 16 hours, the Government would be in the untenable position of having to administer two contracts for the exact same task every day of the year for the remainder of the transition period. Due to complexity of the CEP systems, being tied to ancillary buildings still under construction, and avoid any possibility voiding certain warranties, it is not feasible to contract to an outside contractor.

It is therefore in the Government's best interest to combine all required hours into a single contract for 24-hours per day/7 days per week of facility engineering services. Accordingly, Clark McCarthy is the only firm capable of providing the supplies and services described above without the Veteran's Health Administration experiencing substantial duplication of cost that could not be expected to be recovered through competition and unacceptable delays in fulfilling its requirements.

The activation contracting officer is working closely with the construction contracting officer and CFM representatives on the process and items affecting both contracts. The construction contracting officer, Cynthia Nichols, will be available for review of the contractor proposal to ensure within construction contract guidelines. She

will negotiate a de-scope of the 8 hrs. of performance from the construction contract once the new contract is negotiated to ensure smooth transition of performance requirements from one contract to another.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

Discussions were entertained as to the feasibility of opening this solicitation for the CEP Operations and Maintenance contract. There many vendors available, however, we run the risk of voiding our warranties and breaching the current construction contract due to the fact the other buildings still under construction are ancillary to the CEP and receiving power, climatic controls, steam, etc. from it.

This contract will expire at time CEP is fully commissioned. Once fully commissioned, if the services are still required, the requirements will be solicited open market.

Contract will be a six (6) month base with three (3) – six (6) month options.

A Sources Sought Synopsis was not issued.

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:

We are basing our anticipated costs on the four week of full services and the 8 hours (during normal business hours) cost provided in the Construction contract. We are anticipating a price reduction due to the de-scope of the 8 hours per day from the Construction contract.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

Market Research was conducted on the feasibility to opening this solicitation for the CEP Operations and Maintenance contract. As such services are provided in the commercial market, the feasibility to contract partial day services was not within standard practices.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition:

Sole source is the best option as having multiple subcontractors working on complicated systems opens up many complications and may cause the voiding of the warranties of the systems in question. There is ongoing construction which connects the CEP to ancillary buildings.

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: None

11. A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:

The Construction Contract should be written and negotiated with more input from the Chief of Facilities at the local New Orleans office. Many items that affect Activation and consistency with construction turn over were deleted through Value Engineering. This has caused Activation to provide additional services originally in construction contract. It has caused the government to enter into several sole source contracts and severely hampers the Medical Center's ability to provide negotiation strategies when entering into supplemental agreements.

12. Requirements Certification:

I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

Nacelyn Lombard
Acting Chief, Facilities Management Service
Southeast Louisiana Veterans Health Care System

Date

13. Approvals in accordance with the VHAPM, Volume 6, Chapter VI: OFOC SOP

a. **Contracting Officer's Certification (required):** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

Roselyn N. Bailey
Branch Chief, Project Legacy
NCO 16

Date

b. **Director of Contracting /Designee (Required \$150K and above):** I certify the justification meets requirements for other than full and open competition.

Aaron Villalpando
NCO 16 Director of Contracting

Date

c. **SAO (If over 650K):** I certify the justification meets requirements for other than full and open competition.

Randy Hays
Acting Director, Service Area Office, Central

Date

d. **VHA HCA Review and Approval:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for other than full and open competition.

Randy Hays
Acting Director, Service Area Office, Central

Date