

DEPARTMENT OF VETERANS AFFAIRS

**Justification and Approval (J&A)
For
Other Than Full and Open Competition (>\$150K)**

1. Contracting Activity:

Department of Veterans Affairs, Program Contracting Activity Central (PCAC), 6150 Oak Tree Boulevard, Suite 300, Independence, Ohio 44131.

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

Request is for approval to use other than full and open competition (Sole Source) to award a firm fixed price contract to Doosan Fuel Cell America, Inc. to provide a one year service contract for two PureCell System Model 400 fuel cells, which were previously installed at the Loma Linda VAMC as part of a design-build CHP project previously awarded by this office. The value of this contract, expected to be [REDACTED].

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

SERVICE PLAN: COMPREHENSIVE

This Service Plan includes Preventive Maintenance as well as Unscheduled Maintenance, as more specifically described below.

PREVENTIVE MAINTENANCE:

- **REMOTE MONITORING/TECHNICAL SUPPORT**

Remotely monitor key performance parameters of each PureCell® System Model 400 Power Plant. Performance data which includes kilowatt hours, operational hours and availability.

Provide the Customer with 24/7 off-site operational and technical support associated with Power Plant operation, including troubleshooting of operational issues, providing technical information related to the operation of the Power Plant, and performing remote diagnostics.

- **MANUALS**

Provide the Government with all updates to the PureCell® System Model 400 Owner's Manual and Customer advisory information as needed.

- **PREVENTIVE MAINTENANCE ACTIVITIES**

Performing "Preventive Maintenance" of the Power Plant. Preventive Maintenance activities are per the Owner's Manual. All Preventive Maintenance performed under this Agreement will be performed during regular weekday work hours.

UNSCHEDULED MAINTENANCE:

Chapter VI: Other Than Full and Open Competition (OFOC) SOP
Attachment 3: Request for Sole Source Justification Format >\$150K

- "Unscheduled Maintenance" is the repair or replacement of parts of the Power Plant or the Cooling Module (and the associated labor) required to return the Power Plant to a condition capable of Commercial Operation in the event of an unscheduled shutdown. This Agreement covers Unscheduled Maintenance, subject to the terms and conditions herein.
- "Unscheduled Maintenance" specifically excludes repair or replacement of any equipment (and the associated labor) other than the parts of the Power Plant and the Cooling Module as set forth in the Bill of Material attached to the Agreement as Appendix B.

UNSCHEDULED MAINTENANCE UNDER THIS AGREEMENT **INCLUDES** ANY COMPONENT OF THE POWER PLANT OR THE COOLING MODULE, INCLUDING BUT NOT LIMITED TO, THE CELL STACK ASSEMBLY AND THE FUEL PROCESSING SYSTEM (WHICH INCLUDES THE REFORMER AND THE INTEGRATED LOWTEMPERATURE SHIFT CONVERTER).

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

- (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- () (2) Unusual and Compelling Urgency per FAR 6.302-2;
- () (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- () (4) International Agreement per FAR 6.302-4
- () (5) Authorized or Required by Statute FAR 6.302-5;
- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

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

Doosan Fuel Cell America, Inc., formerly UTC Power Corporation, is the Original Equipment Manufacturer (OEM) of the PureCell System Model 400 Fuel Cells installed at the VAMC Loma Linda, CA as part of a previously awarded Combined Heat and Power Renewable Energy Project. All service work on the fuel cells must be provided by factory trained and OEM certified technicians only. UTC Power Corporation has previously provided warranty services for the fuel cells and filed bankruptcy in 2014. Doosan Fuel Cell America, Inc. is the company which has taken over the maintenance services contracts. The OEM is the only source capable of fulfilling this contract without voiding the warranty and any performance guarantees of the fuel cells. [REDACTED]

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

An intent to Sole Source Special Notice was posted to FedBizOpps. This notice informed potential vendors of the Government's intent and allowed them to provide a statement of capability to provide the required services. The notice was open for 15 calendar days. No responses were received from any other potential vendors that asserted capability to perform the required services.

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

Assurance that the cost to the Government is fair and reasonable will be obtained through comparison of the proposed price with the Independent Government Cost Estimate, which was prepared by Larry Barrett – Engineer at the Loma Linda VAMC, in accordance with FAR 12.209, and to the extent deemed necessary by the Contracting Officer, using price analysis techniques. [REDACTED]

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

An Intent to Sole Source Special Notice was posted to FedBizOpps. This notice informed potential vendors of the Government's intent and allowed them to provide a statement of capability to provide the required services. The notice was open for 15 calendar days. No responses were received from any other potential vendors that asserted the capability to perform the required services. The PureCell Fuel Cell system may only be serviced by the OEM; otherwise, the warranty will be voided. Doosan Fuel Cell America, Inc. is the only vendor capable of completing this requirement.

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

The Original Equipment Manufacturer (OEM) Doosan Fuel Cell America, Inc. (Formerly UTC) is the only source capable of fulfilling this contract without voiding the warranty and any performance guarantees of the fuel cells.

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

An Intent to Sole Source Special Notice was posted to FedBizOpps. This notice informed potential vendors of the Government's intent and allowed them to provide a statement of capability to provide the required services. The notice was open for 15 calendar days. No responses were received from any other potential vendors that asserted capability to perform the required services.

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:

Additional market research will be completed as required by FAR part 7.102(a)(2) to continue the effort to remove competition barriers prior to a new contract being awarded in the future. Posting of the Justification and Approval Document will also allow additional vendors to be aware of the current needs of the Government, which could provide future competition in the market place.

[REDACTED]

[REDACTED]

