



# Industry Day Forum

October 30, 2017

## Abraham Lincoln National Cemetery





# Opening Remarks

Mr. Zebulon Fox  
Contracting Officer  
Office of Construction & Facilities Management  
U.S. Department of Veterans Affairs  
Washington, DC



# Agenda

Welcome To Industry Day at

## Introduction of VA Personnel and Contractors

- **Opening Remarks Department of Veterans Affairs**
  - Zebulon Fox, VA Office of Construction & Facilities Management
- **Introduction of Project Personnel/Contracting & Acquisition Overview**
  - Zebulon Fox, Contracting Officer, VA Office of Construction & Facilities Management
  - Mark Eney, Project Manager, VA Office of Construction & Facilities Management
- **Project Scope and Overview**
  - Mark Eney, Project Manager, VA Office of Construction & Facilities Management
  - Kevin Dix, Project Manager – VA Office of Construction & Facilities Management
- **Small Business Participation**
  - Zebulon Fox, Contracting Officer, VA Office of Construction & Facilities Management
- **Question & Answer Session**



# Project Milestones

## Project Schedule

- Sources Sought – November 9, 2017
- Industry Day ----- October 30, 2017
- Issue Solicitation (Est) – 1st Qtr. FY18
- Award Construction Contract (Est) – 4<sup>th</sup> Qtr. FY18
- Project Completion (Est) – 1264 Calendar days from NTP  
(includes Design)



# Project Team

## Project Team Organization

- Office of Construction and Facilities Management, Washington, DC
  - Zebulon Fox, Contracting Officer
  - Mark Eney, Project Manager
  - Kevin Dix, Project Manager
- Abraham Lincoln National Cemetery



# Project Overview

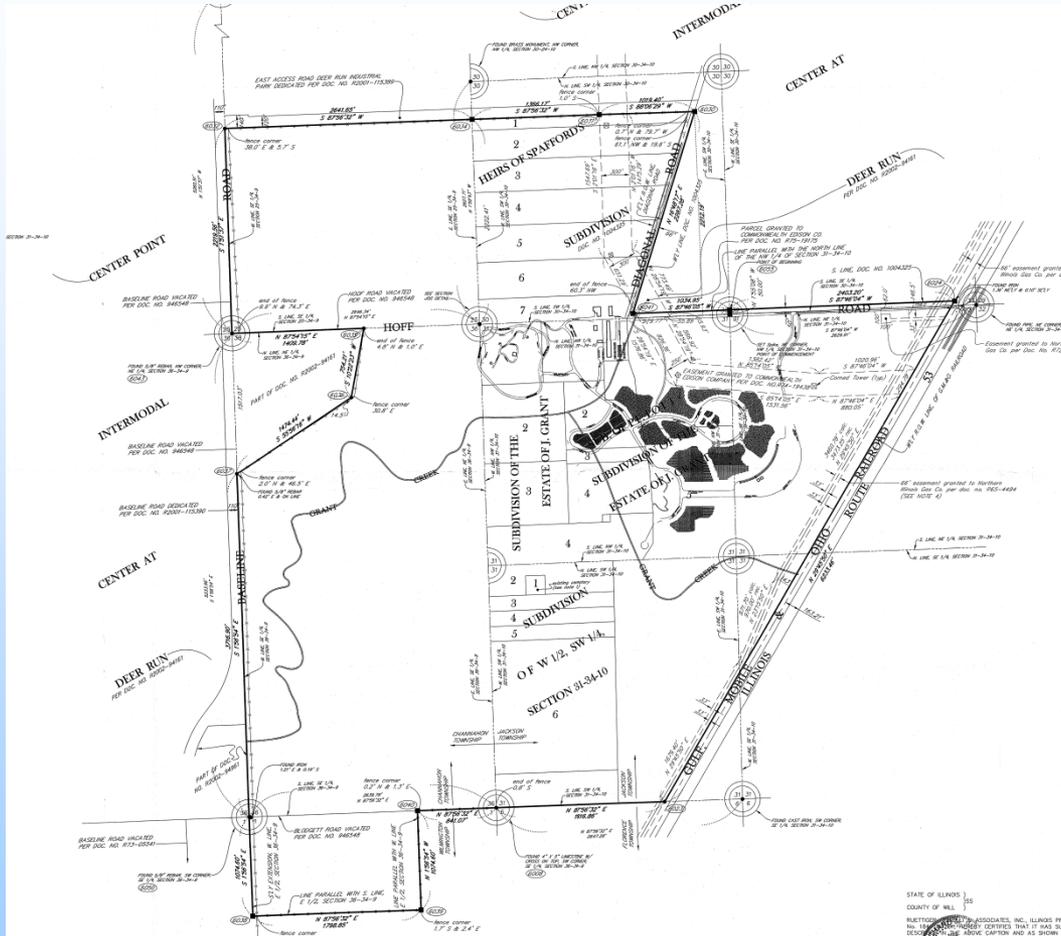
This project will develop approximately 30 acres of the 825 undeveloped acres remaining at Abraham Lincoln National Cemetery.

It will comprise the third construction phase of cemetery development, and will primarily include the construction of additional burial facilities intended to provide 10 years of service on existing, undeveloped land. Included in this development are approximately 19,200 gravesites, including both casket and cremation sites in new burial sections.

This project will provide necessary renovations and upgrades to the existing PIC-Administration and Maintenance facilities, repairs and sealing of the existing road system, and necessary repairs to the Committal Shelters.



# Project Site

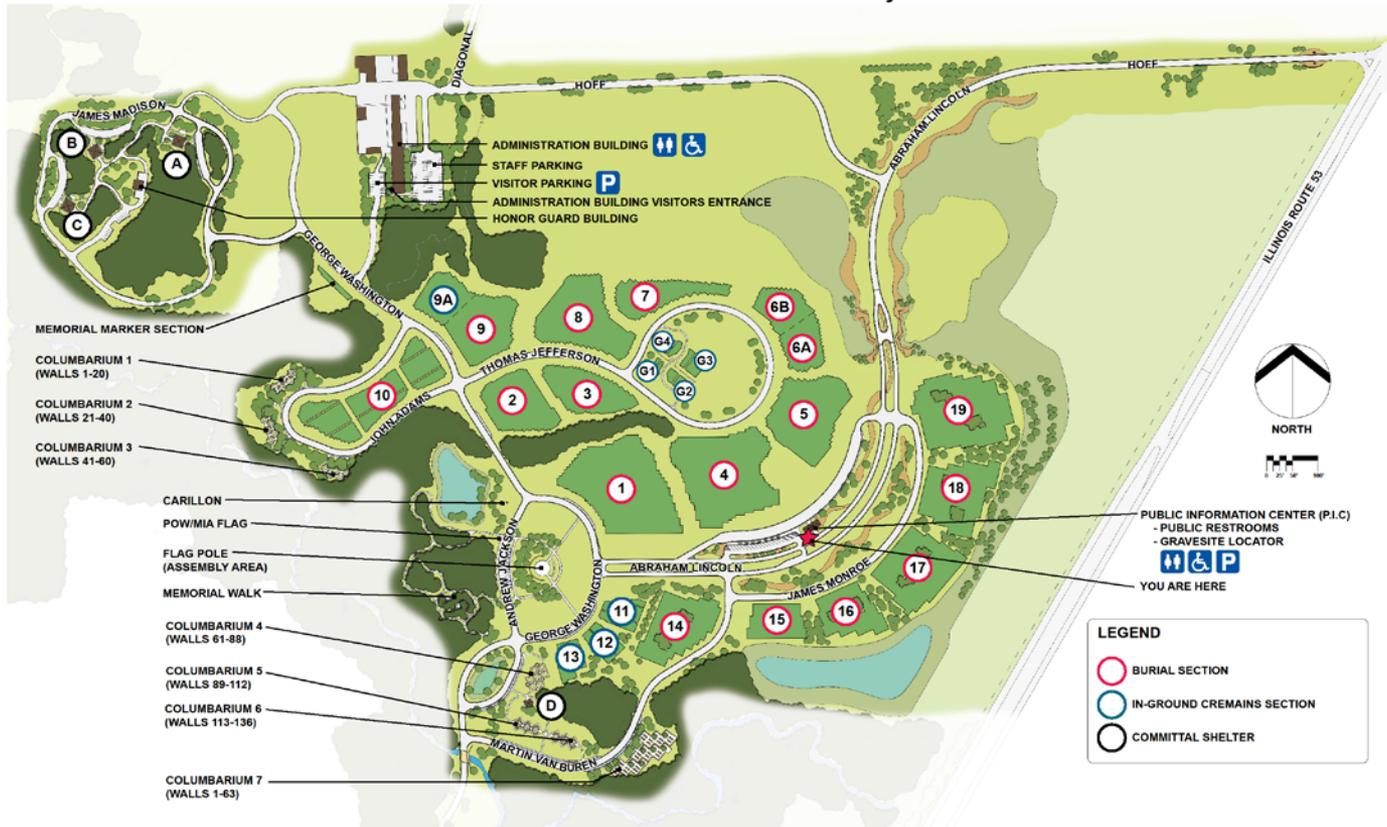




# Site Conditions

## SITE DIRECTORY

Department of Veterans Affairs  
Abraham Lincoln National Cemetery





# Acquisition & Contracting

- Market Research
  - Looking for industry input that will assist VA in choosing the best method of procuring the project within the current acquisition regulations.
  - 38 USC 8127 considerations
- FedBiz Opps-<http://www.fedbizopps.gov>
  - Sources Sought currently on FBO; Sources Sought No: 36C10F18R0452
  - Pre-solicitation Notice; Solicitation; Amendments and Contract Award
- System Award Management (SAM) <http://www.sam.gov>
  - Recommend all Offeror are registered prior to submitting offer
  - Offeror shall be registered prior to award
- Annual Representation and Certification to be completed electronically at <http://orca.bpn.gov>
- VETS 4212 – <https://www.dol.gov/vets/vets4212.htm>
- VetBiz – <http://www.vetbiz.gov>



# Acquisition & Contracting

- Acquisition Strategy
- RFP Solicitation (FAR 36.214 and FAR part 15)
  - Not a public bid opening
- Joint Venture and Teaming Arrangements
  - VA's Information Letter 049-06-4/VetBiz Verification for VOSB/SDVOSB Lead Ventures
- Firm Fixed Price



# Acquisition & Contracting

- Contracting Approach
  - TVA plans to use the **Two-Phase Design-Build Selection Procedures** for this procurement (FAR 36.3)



# Two-Phase Design-Build Selection Procedures

- The two-phase design-build selection procedures used when the contracting officer determines the following:
  - (1) Three or more offers are anticipated.
  - (2) Technical approach work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.



# Two-Phase Design-Build Selection Procedures

- (3) The following criteria have been considered:
  - (i) The extent to which the project requirements have been adequately defined.
  - (ii) The time constraints for delivery of the project.
  - (iii) The capability and experience of potential contractors
  - (iv) The suitability of the project for use of the two-phase selection method.
  - (v) The capability of the agency to manage the two-phase selection process.
  - (vi) Other criteria



# Two-Phase Design-Build Selection Procedures

Phase One of the solicitation(s) includes

- (1) The scope of work;
- (2) The phase-one evaluation factors, including --
  - (i) Technical approach (but not detailed design or technical information);
  - (ii) Technical qualifications, such as --
    - (A) Specialized experience and technical competence;
    - (B) Capability to perform;
    - (C) Past performance of the offeror's team (including the architect-engineer and construction members); and



# Two-Phase Design-Build Selection Procedures

- (iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);
  - (3) Phase-two evaluation factors (see [36.303-2](#)); and
  - (4) Maximum number of offerors that will be selected to submit phase-two proposals not to exceed five.



# Two-Phase Design-Build Selection Procedures

- After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with [36.303-1\(a\)\(4\)](#)) and request that only those offerors submit phase-two proposals.



# Two-Phase Design-Build Selection Procedures

- Phase Two of the solicitation shall be in accordance with Part 15, and include phase-two evaluation factors, developed in accordance with [15.304](#). Examples include: design concepts, management approach, key personnel, and proposed technical solutions.
- Phase Two of the solicitation requires submission of technical and price proposals, which shall be evaluated separately, in accordance with Part 15.



# Acquisition & Contracting

- Proposal Submission Evaluation Criteria (examples)
  - Past Performance
  - Construction Management
  - Proposed Schedule
  - Project Management Plan
  - Small Business Participation
  - Subcontracting Plan (Large Businesses)
    - » Meeting VA's Socioeconomic Goals
- Cost Range – \$20,000,000.00 and \$50,000,000.00
- NAICS 237990 – Other heavy and civil engineering construction; \$36.5 Million



# Acquisition & Contracting

- Bid Guarantee
- Bonds-Required
  - Performance
  - Payment
- Funding
  - This project is fully funded



# ***VA'S VETERANS FIRST CONTRACTING AUTHORITY***

- **Veterans First Contracting Program Adjustments to Reflect the Supreme Court Kingdomware Decision**
- The Supreme Court held that the Department of Veterans Affairs' (VA) set-aside law was mandatory and must be applied to all competitive contract awards, including orders on the Federal Supply Schedules. Awards must also be made to Veteran-Owned Small Businesses (VOSBs) verified as such by VA.

<https://www.va.gov/oal/docs/business/pps/ppm201605.pdf>



***Office Of Small and Disadvantaged Business  
Utilization***

***<https://www.va.gov/osdbu/>***

***JOINT VENTURE AGREEMENTS  
FOR COMPLIANCE WITH FAR, VAAR, AND  
FEDERAL REGULATIONS***



## Joint Ventures VAAR 819.7003

A joint venture may be considered a SDVOSB or VOSB concern if:

- At least one member of the joint venture correctly represents itself at the time of offering or quoting as a SDVOSB or VOSB concern
- Each other concern is small under the size standard corresponding to the NAICS code assigned to the acquisition
- The joint venture meets the requirements of paragraph 7 of the size standard explanation of affiliates in Federal Acquisition Regulation (FAR)19.101



# Joint Ventures VAAR 819.7003

- The joint venture meets the requirements of 13 Code of Federal Regulations (CFR) 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns.
- Verified for eligibility in the VIP database.



## Joint Ventures

### A. Main Characteristics:

1. Co-management
2. Sharing profits and losses
3. Limited duration

### B. Competing as a joint venture:

1. Joint ventures must be formed before submitting offer
2. Agreement should provide for contract performance



# Joint Ventures

- C. Forms of Joint Venture:
  1. Partnership
  2. Limited Liability Company
  3. Corporation (more formalities)



# Joint Ventures - *Small Business Set-Aside* Rules

- a. All partners must be small businesses; and
- b. The contract must meet certain size requirements:
  1. Revenue-based size standard contract must exceed on-half of the size standard
  2. Employee-based size standard-contract must exceed \$10 million



## Joint Ventures - Small Business Set-Asides

- A. The Joint Venture may bid on up to three proposals within 2 years
- B. Government can award to JV if contract:
  1. Exceeds ½ of revenue-based size standard
  2. Exceeds \$10M (employee-based size standard)
  3. All partners must be small, except for SBA-approved Mentor-Protégé relationship

### AFFILIATION

*is a term used to define a business relationship a small business may have with other firms and the affect that relationship has on that firm's business size status.*

*It is not Limitation of subcontracting which places limitations on the amount of work that a small business prime contractor can subcontract out.*



## **Some Factors to Consider Regarding Affiliation – The Ostensible Subcontract Rule Unusual Reliance on a Subcontractor**

- 1. Which party will manage the contract?**
- 2. Are there discrete tasks to be performed by each party or is there commingling of personnel?**
- 3. What party performs the more complex and costly contract functions?**



## Ostensible Subcontracting -

4. Which party possesses the requisite background and experience to carry out contract?
5. What degree of collaboration was there on the bid or proposal preparation?
6. What is the amount of work to be performed by each party?
7. Which party chased the contract?



## Ostensible Subcontracting – “Other Factors”

- ✓ Incumbent as team member
- ✓ Identification of the concerns as a team
- ✓ Hiring of now-large incumbent’s project management team and subcontracting a significant portion of the contract to the incumbent
- ✓ Challenged concern’s lack (and subcontractor’s possession) of qualifications relevant to the contract requirements
- ✓ Challenged concern’s inexperience in the primary and vital requirements of the solicitation
- ✓ Challenged firm’s plan to hire a substantial number of the incumbent’s (and ostensible subcontractor’s) employees
- ✓ Sharing of profits/losses



## Ostensible Subcontracting –

The Contracting Officer after PERFORMING the a responsibility determination must:

- ✓ In determines that the prime contractor is not capable of doing the work independently, then an ostensible subcontractor arrangement exists.
- ✓ In looking at the “totality of circumstances” determine the subcontractor is performing a significant portion of the work
- ✓ If the CO considers the prime to be LB, the CO must refer the matter to the SBA for a formal size determination



## **Ostensible Subcontracting -**

**Upon reaching a determination that such an arrangement exists, then the contracting officer must:**

- ✓ **Consider the revenue of both firms in determining if they meet the size standard for the procurement**
- ✓ **If the combined revenue exceeds the standard, then the company would be considered large business for the purpose of the current procurement.**
- ✓ **If the CO considers the prime to be LB, they must refer the matter to the SBA for a formal size determination**



**Remember Size Matters in:**

- **Small Business Set-Asides (i.e. SDV, Women, HUBZONE, VOB) and 8(a) Procurements**
- **An unrestricted procurement where you are claiming a 10% SDB Price Evaluation Preference**
- **The size standard of the solicitation**

**A large business cannot be a JV participant on a Small Business/8(a) Set-aside Procurement**



## Definitions

### SDVOSB is eligible for award if...

- Disability is service-connected as defined in 38 U.S.C. 101(16)
- One or more Service-connected Veterans-
  - Own 51% or more of the firm
  - Manage and control the daily operations of the firm, or in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran
- Firm meets the small business size standard under relevant industry (NAICS) (237990) Code
- Listed in VIP

### VOSB is eligible for award if...

- One or more veterans—
  - Own 51% or more of the firm
  - Manage and control the daily operations of the firm
- Firm meets the small business size standard under relevant industry (NAICS) (237990) Code
- Listed in VIP



# OSDBU Point of Contact

TYRONE LASSITER

SR. SMALL BUSINESS SPECIALIST

OFFICE OF SMALL AND DISADVANTAGED  
BUSINESS

UTILIZATION (00SB)

810 VERMONT AVENUE NW

WASHINGTON, DC 20420

PHONE 202-632-5619



# Questions & Answers

