

DEPARTMENT OF VETERANS AFFAIRS

**Justification and Approval
(J&A) For
Other Than Full and Open Competition (>SAT)**

Acquisition Plan Action ID: 36C263-19-AP-4212

1. **Contracting Activity:** Department of Veterans Affairs, NCO 23, 316 Robert Street N, Ste 506 St. Paul, Minnesota for Fargo VA Health Care System. Purchase Request #437-19-4-6626-0014
2. **Nature and/or Description of the Action Being Processed:** A firm fixed price contract with JLG Architects is needed to provide Construction Period Services (CPS) for Fargo VA project 437-14-112, Replace Boiler Plant.
3. **Description of Supplies/Services Required to Meet the Agency's Needs:**
Provide CPS for Fargo VA project 437-14-112 Replace Boiler Plant which includes the following:

The contractor shall provide Construction Period Services (CPS)

Interpretations of design intent, phasing and staff requests

The AE shall produce their own set of bid documents/contract documents from the sets available at the FedBizOpps (FBO) site

Assist VA with responses to questions or inquiries and Independent Government Cost Estimates (IGCE)

Attend pre-construction conference with sub-consultants as required

Provide VA with requested amendment(s) and related information/documents as needed to be issued during the bid period that provide additional information requested or found to be missing from the bid documents/contract documents

AE and subconsultants shall provide all submittal review for the referenced project, submittals and shop drawings shall be checked for compliance with contract document requirements and actions noted on the Return of Submittal

Site visits shall be required for partial or intermediate inspections, final inspection(s), as required for issues found, for the AE hired Industrial Hygienist serving as the VACIH/VAIH

Answer ASIs, RFIs Change Order Requests (VA or Construction Contractor)

Provide AutoCAD and Adobe electronic as-built files on a compact disk or DVD and provide MYLAR hardcopy drawings

The Independent Government Cost Estimate for CPS Services is

The period of performance is 750 days and is planned to start on 9/9/2019

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

41, U.S.C. 3304(a) (1) as implemented by FAR 6.302-1, Only One Responsible Source and No Other Supplies or Services will Satisfy Agency Requirements.

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

JLG Architects was originally issued a task order for the design of Fargo VA project 437-14-112 Replace Boiler Plant under Contract VA263-P-1218, Task Order VA263-15-J-0883 awarded on 9/15/2015. The bid documents were completed by JLG Architects and their consultants for the original project design. It is typical industry practice and standard that CPS are performed by the A/E design firm of record who performed the design work and is intimately familiar with the project and all requirements for construction. The A/E referenced is the A/E of record who stamped and signed the bid documents and they are familiar with site conditions, project intricacies, decisions made during the design process and all construction project requirements. Continuing to utilize the A/E referenced and of record will help minimize CPS costs and allow for efficiencies other A/E firms would not be able to achieve. It is expected that hiring a different A/E firm for CPS would be risky and costly since they would be taking on liability for a project designed by the referenced A/E firm. There would likely be differences in design philosophy and opinion which could result in conflicts for the construction project resulting from RFI responses and ASIs issued by hiring a design team not familiar with the project.

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

A notice of intent was published to FBO on 7/3/2019, solicitation number 36C26319R0146, to advise that the Government intends to sole source a contractual action via a firm-fixed price contract to JLG Architects to provide construction period services for Project 437-14-112 Replace Boiler Plant at the Fargo VA Health Care System located in Fargo, North Dakota. No responses were received from the notice of intent.

It is expected that if the CPS contract was awarded to a different A/E design firm that the CPS costs would be excessive to the government due to costly design reviews by a firm and staff unfamiliar with the project and site creating increased design labor hours creating unwarranted and unnecessary costs and time delays. Awarding to another design firm would also cause the government to incur additional liability insurance costs from the design firm thereby increasing the added and unnecessary costs to the government.

7. **Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:** To ensure the referenced design team fees are fair and reasonable, a technical review will be performed with the new CPS fee compared to the firm's previously negotiated CPS fees accounting for inflationary costs and other factors that may have changed since the previous CPS fee was removed from the firms design contract.
8. **Description of the Market Research Conducted and the Results. or a Statement of the Reasons Market Research Was Not Conducted:** Per PPM 2016-05, Implementation of the Veterans First Contracting Program as a Result of the U.S. Supreme Court Decision §8127 is mandatory, not discretionary and its text requires the Department to apply the Rule of Two to all contracting determinations. In order to meet the VA Rule of Two, market research was conducted via a VIP search for the states of Iowa, North Dakota, South Dakota, Minnesota and Wisconsin using NAICS code 541310. The search identified 12 SDVOSB firms in the states searched. For reasons detailed in section five above competition will not be sought.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** Construction Period Services were originally included with the design on the original task order at time of award to JLG but were removed as a supplemental agreement modification on 3/24/2017, due to a bona-fide need violation. It was the intent to sole source the Construction Period Services to JLG when the need exists using the correct fiscal year appropriations.
10. **Listing of Sources that Expressed. in Writing, an Interest in the Acquisition:** The referenced A/E firm is the only firm that has expressed interest in performing the referenced project CPS work.
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 A/E design contract for the referenced project was solicited on the previous VISN 23 A/E IDIQ contract. The original A/E contract for the referenced project design included CPS. Contracting requested CPS be removed from the A/E design contract due to Bona Fide Need and fiscal appropriation requirements or issues they indicated applied to the acquisition. The referenced project is a critical infrastructure project that will affect the entire medical center campus (where steam and condensate systems are turned off for scheduled work) and requires a design team who understands the requirements and intricacies

of the project and would be able to help the VA through any issues which may arise.
The Government does and will continue to provide for competition with all new A/E requirements.

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.



Shawn Bergan
Chief Engineer
Fargo VA Health Care System, Fargo, ND

4 JUN 2019

Date

13. Approvals in accordance with the VHAPM Part 806.3 OFOC SOP:

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

Angelique D. Mabley
306316
Digitally signed by
Angelique D. Mabley
306316
Date: 2019.07.22
12:12:42 -05'00'

Angelique Mabley
Contracting Officer NCO 23

6/22/19

Date

- b. One Level Above the Contracting Officer: I certify the justification meets requirements for other than full and open competition.

Michael D. Casper 574272
Digitally signed by Michael
D. Casper 574272
Date: 2019.07.22 13:00:21
-05'00'

Michael Casper
Branch Chief NCO 23

6/22/19

Date