

JUSTIFICATION AND APPROVAL

Justification for Other than Full and Open Competition under the Commercial Item Test Program

1. Contracting Agency and Activity.

The United States Department of the Transportation, Maritime Administration (MARAD), Office of Acquisition plans to issue a solicitation for recycling services in the San Francisco Bay area for two vessels located in the Suisun Bay Reserve Fleet (SBRF) in Benicia, California, on the basis of other than full and open competition.

2. Nature of Action Being Approved.

Approval is sought for issuance of a non-competitive solicitation to Allied Defense Recycling, LLC (ADR), a MARAD-qualified ship recycling facility operating at the former Mare Island Naval Shipyard in Vallejo, California. The procurement, for recycling services for two SBRF vessels, will be conducted using the simplified acquisition procedures in the FAR Part 13 under the authority of the test program for commercial items. See 41 U.S.C. §253(g)(1)(B) and section 4202 of the Clinger-Cohen Act of 1996. A written justification and approval is required when the government plans to award a commercial item contract under this test program non-competitively. The justification must be prepared in accordance with FAR 13.501(a) using the format at FAR 6.303-2 modified to reflect an acquisition under the Test Program and approved by the officials identified in FAR 13.501(a)(2).

3. Description of Supplies or Services.

The solicitation will be for the recycling of the SOLON TURMAN and PRESIDENT, two non-retention vessels located in the SBRF. The resultant service contract will require the contractor to tow the vessels to its facility, approximately 10 miles away from the Suisun Bay, remediate hazardous wastes, and dismantle the vessels. The program office requisitioning these services is the Office of Ship Disposal. The estimated and maximum dollar value of the contract for disposal services is [REDACTED] per vessel.

4. Statutory Authority.

The solicitation is being issued without full and open competition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996). Under that statute, procurements conducted under simplified acquisition procedures are exempt from the competition requirements of the Competition in Contracting Act, 41 U.S.C. §253(a)(1), provided there is a sufficient factual rationale supporting use of other than full and open competition.

5. Rationale Supporting Use of Other Than Full and Open Competition.

Under FAR Subpart 13.500(a), The [commercial item] test program vests in contracting officers additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).” Under the simplified acquisition procedures in the Federal Acquisition Regulations, contracting officers may solicit from a single source where the circumstances of the contract action “deem only one source reasonably available.” FAR 13.106-1(b)(1). For procurements conducted under the simplified acquisition procedures, the government is not restricted to the examples enumerated in this clause or limited by the statutory exemptions in CICA. 41 U.S.C. §253(a) and (g) and FAR 13.501(a)(1).

The circumstances set forth below justify issuance of a non-competitive solicitation to the newly qualified recycling facility, Allied Defense Recycling, LLC (ADR) in Vallejo, California. The General Technical Proposal of ADR has recently been found technically acceptable under the two-step simplified acquisition process MARAD utilizes to obtain ship recycling services. ADR is the only domestic, MARAD-qualified, ship recycling facility located on the West Coast of the United States.¹ The other technically acceptable domestic facilities are located on the Gulf Coast (one in New Orleans, Louisiana and four in Brownsville, Texas) and the East Coast (one in Chesapeake, Virginia).²

It is in the best interests of the Government and the Maritime Administration to support an increased industrial base of ship recycling facilities by issuing a non-competitive solicitation to the new, technically acceptable recycling facility in the San Francisco Bay area (“Bay area”) capable of, and interested in, recycling non-retention vessels from MARAD’s Suisun Bay Reserve Fleet (SBRF) in its two dry-docks.³ The presence of a recycling facility in the Bay area will help the agency meet its mission with regard to the safe and environmentally sound⁴ disposal of non-retention vessels in a manner that provides the best value to the government. 16 U.S.C. §5405. It will also help MARAD comply with a Consent Decree issued April 2010 by a federal court in California. That Consent Decree requires the removal another 17 vessels from

¹ ADR’s General Technical Proposal, including its facility at Mare Island, was found technically acceptable on September 23, 2010. The primary work to be completed before the facility becomes operational is the dredging for which ADR has already obtained the permit.

² Recycling at foreign facilities is not an option because of practical restrictions related to the Toxic Substances Control Act and legislative restrictions that prohibit the export of government owned vessels unless there is no available domestic ship recycling capacity.

³ Actually, since the Mare Island facility operated for years as a dry-dock, that facility is being re-established.

⁴ As both of these vessels contain significant amounts of fuel, disposal of them within the geographic Bay area without a long tow is also environmentally prudent.

the SBRF by the end of 2012.⁵ Due to this litigation the vast majority of vessels awaiting disposal are located in the SBRF. Currently the SBRF has 46 vessels awaiting disposal.

Numerous environmental laws govern the disposal of obsolete vessels. One of these laws, the National Invasive Species Act (NISA), compels the removal of marine growth from the hulls of vessels being moved for recycling in another bio-geographic area. While other jurisdictions with Reserve Fleets have allowed in-water removal of this growth, California has mandated the removal of the marine growth occur only on dry-dock. Since that mandate, the State of Texas and the State of Louisiana now both require marine growth on SBRF vessels to be cleaned in dry-dock.⁶ Five of MARAD's six qualified recycling facilities are located in those two states.

Currently, there is only one dry-docking facility in the Bay area large enough to clean most of the MARAD vessels in the SBRF.⁷ MARAD has entered into a sole source IDIQ contract with that facility to clean the vessels before their removal from the Bay area. MARAD's ability to recycle vessels outside the Bay area is wholly dependent upon this sole source contractor's willingness to schedule dry-docking dates and provide reasonable prices. To date, it has cost an average of \$620,000 per vessel to clean vessels from the SBRF in dry-dock. In some cases this cost exceeds the cost of recycling the vessels.

MARAD has struggled to obtain adequate and reliable dry-docking dates from this sole source contractor since the contract was awarded in 2009. Now, even though the amount of clean-up work required in the dry-dock has substantially decreased due to MARAD's shipboard clean-up of the loose paint aboard its vessels and the comparatively better condition of these vessels, the contractor's already high prices are rising to levels that the Contracting Officer is unable to determine are fair and reasonable. As a consequence, MARAD, as yet, has been unable to award any task orders to dry-dock four vessels for which recycling contracts are pending because of an inability to obtain firm dates and reach agreement with the sole source contractor on reasonable prices. The Announcement for those four vessels was issued May 11, 2010, and prices were received June 22, 1010. MARAD has had to hold off on awarding those contracts until prices and dry-dock dates for cleaning the vessel are finalized with the sole source. Meanwhile the performance on a fifth recycling contract, awarded in July 2010 is held up until the dry-dock situation can be resolved.

Under the law, MARAD is not able to enter into a contract unless the proposed price can be determined fair and reasonable. Consequently, this impasse with the sole source contractor threatens to create a situation where MARAD is unable to clean SBRF vessels in dry-dock which ultimately endangers the Agency's ability to comply with the Consent Decree.

The presence of a Bay area recycling facility, where recycling can occur on a dry-dock, without the need for a separate dry-docking to remove marine growth, will: (1) decrease the cost to the

⁵ All 57 non-retention vessels in the SBRF, as addressed in the April 2010 Consent Decree, are to be removed by September 30, 2017.

⁶ The specification requires removal of marine growth and exfoliating and exfoliated paint.

⁷ While there is another dry-dock facility in the Bay area, it is relatively small and only five of the remaining 46 vessels in the SBRF are small enough to fit in that facility. To date, only one vessel has been cleaned at this facility, at a much more competitive price.

government for the recycling of at least some of the vessels; (2) eliminate, for some of the ships, the delay caused by the need to dry-docking and clean the vessels before removal from the Bay area; (3) reduce the time for disposal of those vessels by eliminating the lengthy tow to the other qualified domestic facilities; and (4) provide a way to continue recycling some vessels even if the other dry-docking efforts with the sole source contractor continue to falter.

The final phase of ADR's facility preparation requires dredging around the facility's piers and graving drydocks. While ADR has obtained the permit, it must complete the dredging by December 31, 2010. Given the economic climate and tight credit market, a swift award is necessary for ADR to finance and complete the dredging. However, given the impasse with the current sole source drydock contractor, a competitive announcement for more SBRF vessels is premature. Five vessels are already waiting to be cleaned in dry-dock before being towed from the Bay area for recycling in the Gulf. Only three of the five vessels currently have tentative drydocking dates in November and December 2010 and these dates are subject to further slippage if reasonable prices cannot be agreed to in a timely manner. Indeed possible drydocking dates for cleaning two of these ships have now slipped into January 2011 or beyond. Given this backlog, and the uncertainty of obtaining future dry-docking dates from the sole source contractor, additional SBRF ships are unlikely to be available for removal from the Bay area before February or March 2011.

Since at least two of the five ships would not be removed before 2011, a new, competitive announcement is unrealistic before the end of the year. Given the agency's inability to obtain reasonable dry-dock prices for the past four months for five vessels, the Agency has no confidence that it could receive reasonable prices from the sole source dry-dock for use in the evaluation of competitive proposals before the end of the year, even if a competitive announcement was issued now.

A competitive announcement, with the time to obtain a quote for cleaning, evaluation, selection and award, would jeopardize the opening of the ADR facility, even if ADR were to emerge as the successful offeror. Under its dredging permit, ADR must complete the dredging by December 31, 2010. As failure to meet the dredging date could result in the demise of the Bay area recycling facility before it even opens, it is in the government's interests to issue a solicitation on a non-competitive basis, and award a contract to ADR, provided the price is fair and reasonable.

In addition to the foregoing reasons, the action considered is consistent with MARAD's overall mission and purpose and consistent with the statutory policy to encourage and aid the maintenance of a merchant marine. 46 U.S.C. §50101. A key part of that objective is having ports and a sufficient industrial base to support the merchant marine of the United States. The presence of a San Francisco Bay area dry-docking facility capable of serving the needs of the maritime industry will expand the industrial base ensuring that the government's and industry's dry-docking needs can be met competitively, provide needed assets to support the merchant marine, and increase employment in the maritime industry.⁸

⁸ Indeed, another operational dry-dock on the West Coast will increase the dry-docking resources available to the government and industry in the event of industrial mobilization.

The overall experience of the agency has shown that, after the initial establishment of the pool, newly qualified facilities have had difficulty competing with the established qualified facilities, in large part due to the significant costs associated with start-up of a ship recycling facility. A non-competitive negotiation with ADR would address this issue and, in the end, the presence of a recycler on the West Coast will increase rather than decrease competition which is already limited to domestic recycling facilities. This justification only seeks approval of a non-competitive procurement with the newly qualified ADR facility for two vessels. Using the flexibility permitted by the Commercial Item Test Program MARAD considers a one-time sole source negotiation will lead to more competition on a full and open basis in future ship disposal solicitations. Due to economic and geographic realities, a competitive West Coast recycling facility is likely to improve MARAD's overall ability to obtain the best value for the government in the disposal of vessels from the SBRF.

6. Other Information.

The non-competitive solicitation, issued as a pricing request directed to ADR under Request for Quotation (RFQ) DTMA1Q09001 with which MARAD competitively obtains ship dismantling/recycling services for the disposal of its non-retention vessels from pre-qualified facilities. Award will not occur unless that Contracting Officer determines that the price is fair and reasonable and that the company is responsible under FAR Subpart 9.1. Performance bonds are required under the contract which mitigates risk and MARAD will include additional clauses to protect the government. In addition, no vessels will go to ADR until it completes dredging.

7. The Efforts to Identify Additional Sources Including the Market Research Conducted.

a. Market research was not necessary because MARAD is required by statute to dispose of its vessel only at technically acceptable facilities. The only additional sources able to provide these services are the other six MARAD qualified domestic recyclers located on the Gulf of Mexico and the East Coast.

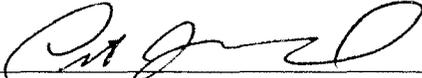
b. As the award is being made under MARAD's two-step, simplified acquisition for ship disposal under which only technically acceptable facilities are eligible for award, the acquisition will not be synopsisized in FedBizOpps. However, the agency will notify the other technically acceptable facilities of this non-competitive procurement and post this J&A on the Virtual Office of Acquisition website for Ship Disposal more than ten days before award of a contract to ADR under this announcement.

8. Future Plans to Permit Competition.

Except when circumstances such as these warrant other than full and open competition or when other than full and open competition is permitted and warranted under other laws, MARAD intends to compete contracts for the disposal of vessels via sale under the Vessel Sales Solicitation SDPEXC-08001 or to acquire disposal services competitively under Request for Quotation (RFQ) DTMA1Q09001.

9. Recommendations and Certification from Program Office

Based on the above, I recommend this acquisition be conducted on the basis of other than full and open competition. I certify that technical data which form a basis for this justification that are the responsibility of technical or requirements personnel are complete and accurate.



Curt J. Michanczyk (MAR-640)
Director, Office of Ship Disposal

10/6/10
Date

10. Certifications and Justifications by the Contracting Officer:

- a. I hereby determine that issuance of a solicitation to ADR and award on a non-competitive basis is justified under the above-described circumstances.
- b. I hereby determine that the anticipated cost to the Government will be fair and reasonable. The Government has sufficient data from other recycling contracts and tows to determine whether the price negotiated with ADR is fair and reasonable. If a fair and reasonable price cannot be negotiated, and the government cannot determine that an award to ADR represents the best value to the government,⁹ a contract will not be awarded.
- c. I hereby certify that this justification was prepared in accordance with FAR 13.501 concerning the justification of other than full and open competition for simplified acquisitions under the authority of the test program for commercial items. I further certify that the requirements of FAR 13.502 were considered in preparing this justification.
- d. To comply with FAR 5.207(c)(14) a notice of MARAD's intent to negotiate non-competitively with ADR will be sent to all members of the pool of standing quotations at the time ADR is invited to submit a proposal.

This justification is accurate and complete to the best of my knowledge and belief.

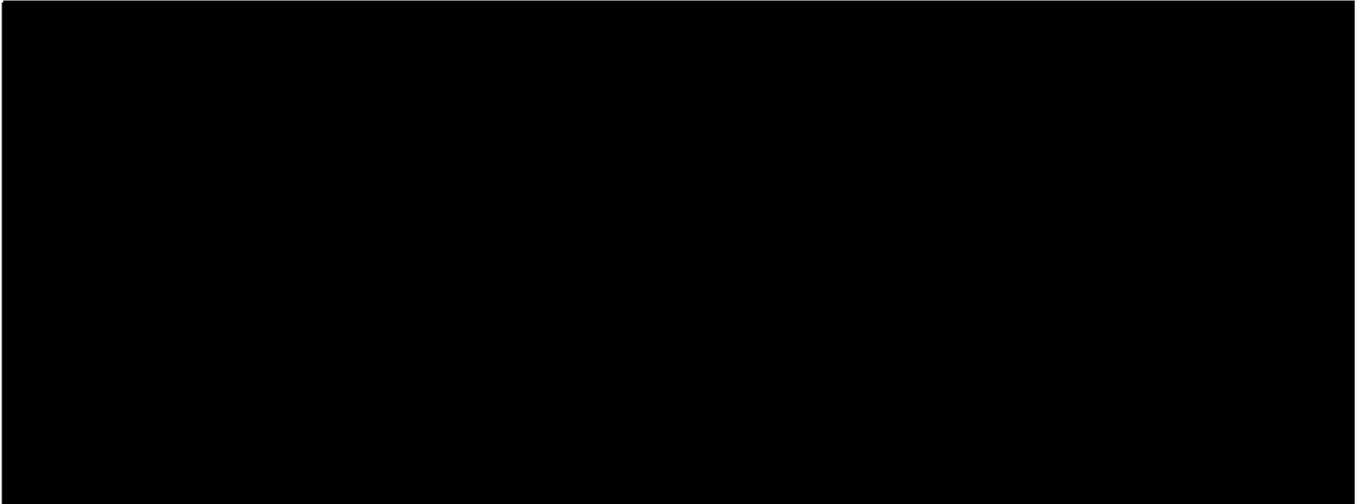


Benedict J. Burnowski
Contracting Officer

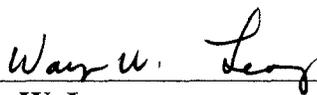
10/7/10
Date

⁹ Pub.L. 106-398, § 1, [Div. C, Title XXXV, § 3502(b) to (f)], Oct. 30, 2000, 114 Stat. 1654, 1654A-490, as amended Pub.L. 109-163, Div. C, Title XXXV, § 3505(a), Jan. 6, 2006, 119 Stat. 3551

11. Contract Review Team Action

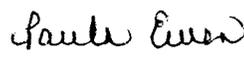


12. Approvals: Under FAR 13.501(a)(2)(ii), for a proposed contract exceeding \$550,000, but not exceeding \$11.5 million, the competition advocate for the procuring activity, designated pursuant to 6.501 must approve the justification and approval. As the contract may exceed \$550,000.00, the approval of the competition advocate is required. This authority is not delegable.



Wayne W. Leong
Director, Office of Acquisitions

10/7/10
Date



Paula Ewen
Competition Advocate
Head of the Contracting Activity
Associate Administrator for Administration

10/7/10
Date