

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
FAR 6.302-1 ONLY ONE RESPONSIBLE SOURCE AND NO OTHER SUPPLIES OR
SERVICES WILL SATISFY AGENCY REQUIREMENTS

BACKGROUND

Date: August 18, 2010

Program Office: Superfund Program

Project Officer: Jan Rogers, Remedial Program Manager
Address: US EPA – South Florida Office
400 N. Congress Ave., STE 120
West Palm Beach, FL 33401

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Project Identification: Contract No. EP-R4-10-01, Modification No. 0018, Recovery Act Tower Chemical Soil Remediation, Transportation and Disposal of Unknown Drums and Contaminated Soil to a Hazardous Waste Facility.

Description of Supplies and Services Required:

a. Background Information: The Recovery Act Tower Chemical Soil Remediation Project was estimated at [REDACTED] and was issued under a competitive 8(a) IFB solicitation. Twenty Three (23) bids were submitted ranging from \$2.8 million to \$7.9 million. Contract No: EP-R4-10-01 was awarded to the lowest responsive and responsible bidder, Polu Kai Services, LLC (PKS) on 10/28/09. The services required were CLIN 0001 - Soil remediation including transportation and disposal of 49,850 Cubic Yards (CY); CLIN 0002 - Wetlands Monitoring for one year after wetlands restoration; CLIN 0003 - an optional quantity of “not to exceed” 50 increments of 100 CY soil remediation beyond the 49,850 CY; and CLIN 0004 – Incentive for successful implementation of approach with no business disruptions. The total contract value was \$2,899,810. On 5/21/10, Modification no. 0009 added CLIN 0005 – an optional quantity of “not-to-exceed” 100 CY of soil remediation beyond 54,850 CY in CLIN 001 and 0003. These additional quantities were in accordance with FAR 6.302-1 as stated in the Justification for Other than Full and Open Competition document approved on 5/12/10. As a result, the contract value was increased to \$3,714,010.00.

To date, fifty of the fifty option quantity increments in CLIN 0003 have been exercised for a total of \$260,750 and eighty of the one hundred option quantity increments in CLIN 0005 have been exercised for a total of \$651,360. In addition, on 7/26/10, Modification no. 0013 approved two change orders due to differing site conditions for the additional handling of soil containing Chlordane and the excavation, handling, storage and staging of unknown drums and

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contaminated subsurface soil and debris as directed by Modification no. 7 dated 4/20/10. The total amount for both of these change orders was \$72,125.00. As a result, the total contract value is \$3,786,135.00 and the amount obligated (of award CLINs) to date is \$3,623,295.00.

b. Transportation of Unknown Drums and Contaminated Soil to a Hazardous Waste Facility: On April 19, 2010, during routine excavation in area 0-2 C, subsurface debris consisting of crushed 55-gallon drums, tires, plastic, wood, miscellaneous items and discolored soils (unknown drums and contaminated soil) were discovered. The contaminant analysis performed by PKS showed pesticides and Tentatively Identified Compounds (TICs) in the Semi-Volatile range totaling 31 and 36 parts per million (ppm). The contaminants include DDT, DDD, DDE, parathion, ethion, and other partial breakdown compounds of site contaminants. Typical site soil contamination has ranged from 10 – 100's of parts per billion (ppb). Analytical results were made available to the Subtitle D facility currently being used, as well as another Subtitle D facility which handles much of the non-hazardous contaminated soil generated in south Florida. Both facilities have declined to accept the waste. Therefore, the waste is being shipped to a hazardous waste disposal facility (RCRA Subtitle C) for final disposition. The unknown drums and contaminated soil resulted in a changed site condition because the performance work statement was based on all soil being classified as non-hazardous which is suitable to be disposed in a RCRA Subtitle D landfill. The performance work statement did not include options for soil to be disposed at other types of facilities because historical investigation data during the Superfund Remedial process produced no conclusive data to indicate there was RCRA hazardous waste present at the site. Thus, there was neither a way to scope a specific option requirement to handle hazardous waste of a known characteristic nor was there enough specific criteria for contractor's to bid on this type of speculative requirement. The Subtitle D landfill facility the contractor is currently utilizing, as well as a second Subtitle D facility in south Florida will not accept this waste at their facility. As a result, the unknown drums and contaminated soil that is currently being stored in PKS' roll-off containers and a segregated soil pile is being shipped to a RCRA hazardous waste disposal facility.

Period of Performance: The contract performance period is October 28, 2009 to October 30, 2011. This period of performance included time for soil remediation, tree replanting (re-vegetation) under Task 7 in the Fall of 2010 and one year of wetlands monitoring (CLIN 0002). The transportation and disposal of the unknown drums and contaminated soil to a hazardous waste disposal facility would be performed during the soil excavation phase and would not impact the overall contract period of performance.

Estimated Amount of Increase: XXXXXXXXXX

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Proposed Contractor: Polu Kai Services, LLC (PKS)
Address: 115 Hillwood Ave., Ste 106
Falls Church, VA 22046
Telephone No.: (703) 533-0039

JUSTIFICATION

1. Identification of the agency, and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition”

The Environmental Protection Agency, Region 4 Superfund Division, proposes a justification for other than full and open competition (JOFOC). The Region 4 Acquisition Management Section (AMS) would be the contracting activity issuing the action.

2. Nature and/or description of the action being approved.

The action to be approved is a contract modification to increase the scope of work to include transportation and disposal of 700 CY of unknown crushed drums and contaminated soil to a RCRA Subtitle C disposal facility to Contract No. EP-R4-10-01 with Polu Kai Services, LLC (PKS). This contract was funded with American Recovery and Reinvestment Act (ARRA) funds. The transportation and disposal costs of the unknown drums and contaminated soil will also be funded with ARRA funds.

3. A description of the supplies or services required to meet the agency’s needs (including the estimated dollar value).

EPA requires an estimated 700 CY of unknown drums and contaminated soil (in 9 roll-offs) and a soil pile estimated at 560 CY to be transported and disposed at a RCRA Subtitle C facility. The material is currently stored in the contractor’s roll-offs and a segregated soil pile staged in the contractor’s soil shipping staging cells. The roll-offs will be transported by transport truck and the soil pile will be loaded onto transport trucks to be hauled to a rail shipping facility in south Georgia where it will be transferred to rail cars for shipment to the disposal facility for final processing and disposal. On 4/19/10, PKS discovered subsurface debris consisting of crushed 55-gallon drums, tires, plastic, wood, miscellaneous items and discolored soils (unknown drums and contaminated soil). On 4/20/10 PKS was directed by Modification No. 0007 how to handle, excavate, stage, store and sample this material to identify the nature of contamination for disposition decisions. The analytical results indicated a total of 31 ppm and 35 ppm of tentatively identified compounds (TICs) including known pesticide compounds and what

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appear to be partial breakdown compounds of site contaminants. As a result, the local subtitle D landfill PKS was utilizing to dispose of the non-hazardous soil would not accept this material. A RCRA Subtitle C facility in Alabama was contacted and initially indicated they would accept the material after reviewing analytical data. The State of Alabama has raised questions as to why the material is not being disposed as a listed hazardous waste based on previous removal actions at the site in 1983. Resolving this issue would take a lengthy dissertation from the EPA Remedial Program Manager (RPM) and numerous discussions with the facility. Until that issue is resolved the waste cannot go to the Alabama facility. An additional facility in Michigan was contacted concurrently and has indicated it can accept the material. The facility has pre-treatment operations that allow it to address any RCRA requirements before the waste is land filled. The Alabama facility does not offer these same pre-treatment options, thus requiring the pre-treatment to be conducted at the site before shipment. EPA RPM inquiries of both the Region 4 Removal Program and the Florida Department of Environmental Protection cleanup program have identified these two facilities as the primary RCRA facilities available for the disposal of hazardous waste contaminated soils.

The transportation and disposal of the unknown drums and contaminated soil has hindered the completion of contaminated soil excavation work due to the need to work around the staged material or re-stage it around the site as needed to access contaminated areas for excavation, but will not impact the overall contract completion date of October 30, 2011. The unknown drums and contaminated soil do need to be taken off-site as soon as possible because it will impact PKS' ability to complete the remaining soil excavation. The roll-off containers containing some of the material have already been moved once and will need to be moved in the near future to allow PKS to complete soil remediation activities. Delay of the PKS completion of excavation work also directly impacts the duration of EPA oversight contractor (RACS Task Order under Contract EP-S4-09-02, Black & Veatch Special Projects Corporation) on-site presence and therefore the cost to EPA.

The estimated value of the proposed transportation and disposal of the unknown drums and contaminated soil is [REDACTED]. This estimate includes loading onto transport vehicles at the site, transportation to a rail transfer facility in South Georgia, transfer to rail cars, transport to Michigan, any required pre-treatment at the disposal facility, and final disposal in an approved hazardous waste landfill. An alternative disposal facility was pursued in Alabama which included loading trucks at the site, transportation to the facility, and final disposal in an approved hazardous waste landfill. Initial price quotes were similar in total cost but differed in cost of transportation versus disposal due, in part, to the significant difference in the distance from the site to the disposal facility. The transportation difference was offset by the difference in disposal fee at the two landfills. The Alabama Department of Environmental Management (ADEM) raised questions about the material being disposed and its RCRA classification which have not

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been resolved at this time. Due to the need to dispose of this material in a timely manner to avoid possible site work delays, and the fact that the Michigan facility can provide additional treatment at the end point if needed before landfill disposal, the Michigan facility is preferred for the final disposition of this material. Discussion among EPA Region 4 Removal personnel identified these two facilities as the primary sites currently available for disposal of soils contaminated with hazardous substances.

4. An identification of the statutory authority permitting other than full and open competition.

The statutory authority permitting other than full and open competition relative to this request is 41 U.S.C. 253 (c) (1), Only One Source and No Other Supplies or Services Will Satisfy Agency Requirements, as implemented by paragraph 6.302-1 of the Federal Acquisition Regulation (FAR).

The transportation and disposal of unknown drums and contaminated soil to a hazardous waste facility is inextricably intertwined with the work under the current contract. The roll-offs are staged in areas that are currently not involved in the cleanup action but will change in the near future. The staged pile of soil is temporarily stored in the contaminated storage area awaiting shipping. These two areas are intertwined with the on-going movement of PKS equipment that is completing the designed excavation and additional removal triggered by confirmation sampling. It is likely that award to any other source would result in (a) Substantial duplication of cost to the Government that is not expected to be recovered through competition and (b) Unacceptable delays in fulfilling the agency requirements.

Polu Kai Services, LLC is currently excavating and staging clean overburden and contaminated soil, characterizing for disposal purposes, backfilling with clean fill, scheduling and loading contaminated soil, and transporting and disposing the contaminated soil to an off-site disposal facility. Some overburden is failing confirmation sampling for site cleanup criteria and is being converted to an Optional Quantity line item and disposed off-site. Unknown drums and contaminated soil were encountered on 4/19/10 that resulted in a changed site condition. Due to the appearance of the material and the presence of corroded and crushed drum pieces, the Contracting Officer provided direction in accordance with the Changes Clause, FAR 52-243-1 for additional handling, excavation, storage and staging of the material. The material is currently being stored in 9 roll-off containers provided by PKS and a separate storage pile of discolored soil currently staged in the contained shipping staging cells. Award of disposal actions to any other source would require significant disruption of the on-going PKS action to enter the site operations area to load this material for off-site shipment. The site does not offer sufficient space to accommodate all of these duplicate activities. This effort would duplicate substantial costs

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that could not be recovered through competition. Due to the scope of this disposal action, any contractor receiving this work would subcontract the transportation and disposal portion of the work which is the majority of the cost involved. The subcontract costs are expected to be very similar for any contractor proposing to perform the work. Procurement of separate contract services would require significant time to award. Use of the current Region 4 ERRS contracts would also require some time to task and mobilize and would result in limited savings since most of the cost is in the subcontracted transportation and disposal. The ERRS contractor would also experience delays in obtaining competitive bids for transportation and disposal which would duplicate efforts PKS has already performed. In addition, there would be unacceptable delays to the on-going PKS work to complete the excavation action which would include costs to EPA for additional on-site oversight by Black & Veatch Special Projects Corporation. If the requirement for the transportation and disposal of the unknown drums and contaminated soil was competed, Polu Kai would not be able to complete their current work in an efficient manner since the staged soil pile is contained in their contaminated soil shipping area and is stored in PKS provided roll-off containers.

5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

PKS is currently implementing the scope of work for the Firm Fixed Price (FFP) contract to remediate shallow soil contamination (unsaturated zone) at the site. The soil is required to be staged while awaiting Toxicity Characteristic Leaching Procedure (TCLP) testing by PKS to determine if the soil has to be disposed at a category D Landfill or if it can be used as clean backfill. The timeline to issue a task order under the ERRS contracts would include tasking, confirmation of the sampling profile, separate negotiation with multiple transportation and disposal providers to provide competition, and the scheduling of the loading of trucks. A separate issue of handling the material in the roll-offs would have to be addressed and could result in duplicate handling of the material to transfer to other containers. The current PKS excavation at the site would probably be complete and the removal of the shipping staging cells would have been initiated or completed except for the staged soil pile which would be blocking PKS close-out of the staging area. This scenario would likely result in delay claims from PKS. The timeline to award an additional contract or ERRS Task Order would be two to three months at the earliest. The current contractor would not be able to complete the soil remedial activities until the material is moved off-site. This delay would result in substantial claims under the current contract for material, labor, equipment standby costs, and demobilization and remobilization costs. There is also an urgent need due to the continuing imminent and substantial threat to human health and the environment caused by the potential leaching of soil contaminants into the surficial aquifer during the on-going rainy season, as well as the disruption of on-going commercial storage activities located on-site. The transportation and disposal of this

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material needs to occur by mid-September when the current PKS excavation work is projected to be complete.

Notwithstanding, FAR 6-302-1 is the most appropriate cite permitting other than full and open competition for the transportation and disposal of the unknown drums and contaminated soil. However, the facts included above regarding the on-going rainy season and the continuing imminent and substantial threat to human health and the environment also suggests an unusual and compelling urgency.

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

A notice will be publicized in Fed Biz Ops in accordance with FAR 5.201, 5.704 and 6.305.

7. A determination by the contracting officer that the anticipated cost to the government will be fair and reasonable.

The majority of the cost to transport and dispose of the unknown drums and contaminated soil is subcontract costs. The contractor will be required to furnish quotes from the subcontractors and hazardous waste facilities. EPA will review and confirm the subcontract pricing provided.

8. A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

Market research was conducted for this transportation and disposal of hazardous waste effort. Pricing from both the Alabama and Michigan facilities was obtained. EPA also obtained internal documents from Florida Department of Environmental Protection (FDEP) that contained line items for this type of transportation and disposal effort. Any contractor doing this work would typically use third party transportation. The disposal facilities are unique in that they are permitted to handle RCRA hazardous waste by land filling and are in limited numbers. However, specific market research for contractors to transport and dispose of the unknown drums and contaminated soil was not performed because this effort cannot be performed by another contractor without causing delays and claims from the current contractor for disruption of their contract work.

9. Any other facts supporting the use of other than full and open competition, such as: when 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

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The current contractor has the appropriate equipment, personnel, and supplies on-site, has performed competitive analysis of alternative disposal facilities, and can immediately implement the transportation and disposal action. The transportation and disposal of this contaminated material must be performed by mid-September so that PKS can complete the soil remediation activities within the current contract without delay. The on-site storage facility owners have indicated to EPA that their business has been picking up and they need to expand their commercial vehicle storage area, as soon as possible, to accommodate the increasing demand. There is a business disruption incentive in the PKS contract that could be triggered if these drums and discolored soils are not removed from the site in an expedient manner. The use of a second contractor for the transportation and disposal would likely result in additional cost as previously stated. The available working space on-site is not sufficient to accomplish this separation of individual contractor's work. In all likelihood, the second contractor would also cause potential delays and claims from the current contractor due to disruption of the continuous flow of the strategic excavation efforts that has been on-going since March 2010. The result would be the duplication of cost for loading, transfer of material from the current roll-offs, waste characterization and negotiation of transportation and disposal costs and the probable delay of two to three months in the on-going work including EPA's cost for the oversight contractor (Black & Veatch Special Projects Corporation).

10. A listing of the sources, if any, that express, in writing, an interest in the acquisition.

There was interest in the original competitive 8(a) solicitation. Once this Justification for Other than Full and Open Competition is publicized, in accordance with FAR 5.704 and FAR 6.305, a listing of interested sources will be added to the file for future reference.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

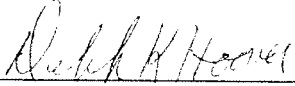
No subsequent acquisition for additional services under this current contract is contemplated at this time.

12. Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

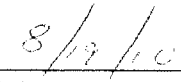
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CONTRACTING OFFICER CERTIFICATION

I certify that the above justification is accurate and complete to the best of my knowledge and belief.



Deborah K. Hoover, CPCM
Contracting Officer, Reg. 4



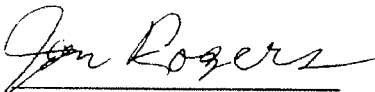
Date

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Technical/Requirements Personnel's Certification

As evidenced by their signatures on the signature page, the technical and/or requirements personnel have certified that any supporting data contained herein which is their responsibility is both accurate and complete.

I certify that the data supporting the recommended use of other than full and open competition for the acquisition of the additional option quantities is complete and accurate.

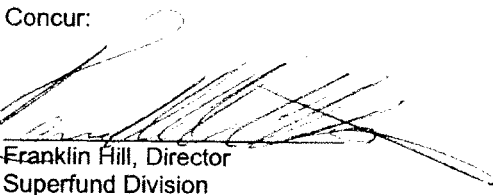


Jan Rogers
Remedial Program Manager
Superfund Branch

8-19-10

Date

Concur:


Franklin Hill, Director
Superfund Division

5/19/10
Date