



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND, MID-ATLANTIC
9324 VIRGINIA AVENUE
NORFOLK, VIRGINIA 23511-3095

J&A No. ML-23-15

**JUSTIFICATION AND APPROVAL
FOR USE OF OTHER THAN FULL AND OPEN COMPETITION**

1. Contracting Activity.

The contracting activity is Naval Facilities Engineering Systems Command, Mid-Atlantic (NAVFAC MIDLANT).

2. Description of the Action Being Approved.

This Justification and Approval (J&A) authorizes the use of “brand name or equal” references in construction solicitations where it is necessary to effectively communicate interior color and finish selections. Specific brand name finish and description are listed in Attachment 1 below and are specific to solicitation N40085-22-R-2527 and the resulting contract.

3. Description of Supplies/Services.

The intent of solicitation N40085-23-R-2527 for NOAA OMAO Ship & Support Facility Relocation located at Naval Station Newport, Rhode Island is to complete the construction of a 4 ship pier, associated utilities and a supporting land based warehouse/administration building, with associated parking, exterior storage and adjacent loading and laydown area. The intent of this J&A is to approve the use of brand name or equal purchase descriptions in accordance with FAR 11.104, identifying paint colors and interior finishes by brand names and proprietary descriptions from specific manufacturers. The solicitation is not intended to limit competition, however, and this justification does not seek approval to limit competition in this regard.

This acquisition will solicit proposals using full and open competition, as authorized by the approved DD2579 on 1 December 2022. The estimated value of the work included in this construction solicitation is [REDACTED] and the estimated value of the brand name or equal specifications that are the subject of this J&A is [REDACTED]. The project will be funded by FY23 Procurement Acquisition and Construction (PAC) funds for construction and equipment. The work under this contract is required to be completed within 730 calendar days after award.

In order to sufficiently define the scope of work to be performed by a construction contractor, a Basis of Design (BOD) is prepared to document the principles, assumptions, rationale, criteria, and considerations used for calculations and decisions required during design. When preparing a BOD for a construction project, it is not practicable to convey the required finishes to potential offerors using mere descriptions. For example, it is not feasible to adequately describe a particular shade of brick color that must be used in order to provide aesthetic compatibility with other buildings within a complex; however, the intended hue can be conveyed by referencing a particular manufacturer’s proprietary color, and that color can then be replicated in any brand of paint. Therefore, the use of brand name references is necessary to convey requirements, but is

not intended to restrict competition. The identified brand name items or proprietary specifications are intended to solely relay the BOD for the interior finishes. The specification for a certain interior finish will include the manufacturer's name, product line, model number, etc. along with all salient characteristics necessary for "equal" products to meet contract performance requirements. While it is possible for many manufacturers to produce finishes that are functionally equivalent to these designated finishes, the finish descriptions themselves are nonetheless proprietary specifications unique to particular manufacturers. The contract performance requirements are not proprietary, and can be met by many established manufacturers. Manufacturer(s) and product line(s) are identified only to establish a color and aesthetic BOD.

4. Statutory Authority Permitting Other Than Full and Open Competition.

The National Defense Authorization Act for Fiscal Year 2017, 114 P.L. 328 (December 23, 2016) states under Section 888, "[t]he Secretary of Defense shall ensure that competition in Department of Defense contracts is not limited through the use of specifying brand names or brand-name or equivalent descriptions, or proprietary specifications or standards, in solicitations unless a justification for such specification is provided and approved in accordance with section 2304(f) of title 10, United States Code. Title 10, Section 2304 has been repealed, modified, and recodified at 10 U.S.C. § 3204 (effective January 1, 2022, amended by Pub. L. No. 117-81, 135 Stat. 154), and implemented by FAR 6.302-1(c), and DFARS 206.302-1(c)(2) and (S-70) (Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements).

5. Rationale Justifying Use of Cited Statutory Authority.

As a preliminary matter, this justification is formatted in accordance with 10 U.S.C. § 3204, but the intent of the government is not to limit competition based on the use of brand names or equal purchase descriptions in the solicitation. This justification is merely meant to document compliance with section 888 of the 2017 NDAA. Section 888(a) of the FY17 NDAA requires that competition on Department of Defense (DoD) contracts not be limited through the use of brand name or equal descriptions or proprietary specifications or standards, in solicitations, unless a justification is approved in accordance with 10 USC 2304(f). In accordance with DFARS 206.302-1(c)(2), DFARS 211.104, and DFARS 213.501(a)(ii), use of Brand Name or Equal references requires a J&A for Other than Full and Open Competition.

To put things simply, paint colors and interior finishes of a building can easily be color-matched by a variety of manufacturers and suppliers. It is common in the industry for colors and finishes to be identified by a particular brand or manufacturer and that brand's name or identifier for the product. The government has a legitimate need in this case for specific interior paint colors and building finishes, but does not seek to limit the source of those materials to a specific brand or manufacturer.

In accordance with Unified Facilities Criteria (UFC) 1-200-01 DOD Building Code, Chapter 1 paragraph 1-3.1 Implantation, Administration, and Enforcement, UFC 3-120-10 Interior Design is a requirement for this project design.

Although UFC 3-120-10 Interior Design, with Change 1, was released on 16 May 2018 and stated, *“The interior designer must provide all finish and color selections including finish code, manufacturer’s materials, textures, patterns, color names and numbers for all interior finishes and specialties which will be exposed to view in the finished construction.”*, it was updated on 15 June 2021 with Change 2 to align with the amended DFARS which removed the direction to call out manufactures and brand names.

UFC are effective upon issuance for projects as follows:

- *Design-Bid-Build projects that have not proceeded beyond 35% design completion.*
- *Design-Build projects that have not proceeded beyond date of Request for Proposal (RFP) issuance. When an RFP is issued in multiple phases or steps use the date of the last phase of the RFP issuance.*
- *Projects that have a delay, either planned or unintentional, of more than 18 months between design completion and the solicitation of offers for construction must be re-evaluated to determine if any design revision is necessary due to changes in criteria (including codes and standards) or site infrastructure (for example, water supply for fixed fire suppression systems, water for hose stream allowances, or fire department vehicle access). Note: The evaluation must also include retroactive requirements that have been included in the new editions of the criteria.*

This project was designed using UFC 3-120-10, Change 1.

The Structural Interior Design (SID) of a facility includes building-related design elements and components as part of the building construction, such as wall paint or coverings, ceiling paint or finish, floor coverings (e.g. tile, carpet, etc.), primary window treatments (e.g. blinds, shades and drapery hardware, etc.), signage and built-in casework. The interior designer must determine the desired interior finish materials based on the respective aesthetic, durability and maintenance qualities, and characteristics applicable to each space within the facility. The SID is designed by a qualified interior designer in accordance with Unified Facilities Criteria (UFC) 3-120-10 Interior Design, Chapter 2 paragraph “Interior Designer Qualifications.”

It is necessary for the government to include brand names or proprietary specifications for finishes to have a complete design that can be properly conveyed to the construction contractor. UFC Requirements: (reference UFC 3-120-10 with Change 1, paragraph 4-5.1).

The interior designer must provide all finish and color selections including finish code, manufacturer’s materials, textures, patterns, color names and numbers for all interior finishes and specialties which will be exposed to view in the finished construction. The Government will direct which of the following methods to use.

It is noted that the UFC stipulates use of the following disclaimer: (reference paragraph 4-5.1.2):

The Government prohibits the use of proprietary materials, finishes and colors. A disclaimer must be used on the drawings or in the specifications indicating materials and colors are shown for reference only. However, it is important to use specific manufacturer, finish and color information to establish a frame of reference in the development of the [Structural Interior

Design] SID. Reference UFGS 09 06 00 Schedules for Finishes for the appropriate disclaimer to use that addresses this issue when developing the SID.

UFGS 09 06 00 Schedule for Finishes, Paragraph 2.1 states:

“The color schedule information provided in the following paragraphs lists the colors, patterns and textures required for exterior and interior finishes, including both factory applied and field applied colors. Where color is shown as being specific to one manufacturer, an equivalent color by another manufacturer may be submitted for approval. Manufacturers and materials specified are not intended to limit the selection of equal colors from other manufacturers.”

For construction contracts, FAR 52.236-5, Materials and Workmanship, addresses any potential competition concerns associated with including a basis of design on the plans or in the specifications and has been well defined and well-understood by the construction contracting community for decades. The contract that follows this solicitation will include this provision. In part, this clause states: “References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.”

The identified brand/manufacturer items or proprietary specifications are intended to be examples for the basis of interior design to help ensure visual integrity of the building’s interior finishes. Interior finishes will be procured and installed as part of firm-fixed-price, design-bid-build construction contracts and will be solicited in accordance with all applicable policies, procedures, guidance, and laws related to competition.

There is no alternative method to complete a 100% design suitable for those requirements that require a design-bid-build contract. Utilizing a basis of design is a critical component of designing complete and coordinated with the Installation Design Guide under the current UFC. It is impossible to fully design a system to meet requirements without assumptions of material specifications, especially given the numerous individual subcontractors supplying their respective items. The only potential alternative is to convert all solicitations into a design-build procurement without complete designs. This alternative does not meet the government’s interests in providing complete designs for facilities where the government has determined a design-bid-build procurement is in the best interests of the government pursuant to FAR Part 36 “Construction and Architect-Engineer Contracts” and Engineer Regulations (ER)1180-1-9.

6. Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable.

The government is not attempting to limit competition or the supply of these materials to one source. No efforts were made to identify multiple sources of paint or interior finishes, because the solicitation will not limit the ultimate contractor to providing materials from only one or a limited number of brands or manufacturers. Regarding the project overall, a sources sought notice to determine small business interest and capability was published to Contract

Opportunities via Sam.gov on 24 October 2022 with a closing date of 07 November 2022. The sources sought notice [REDACTED]. A separate notice of intent for interior finishes was published to Sam.gov on 08 November 2022 with a closing date of 23 November 2022. The intent for interior finishes yielded zero (0) responses. A pre-solicitation notice and solicitation will both be publicized on Contract Opportunities via Sam.gov, in accordance with the requirements of FAR Part 5. The approved J&A will also be made publicly available as required by FAR 6.305.

7. Determination of Fair and Reasonable Cost.

The Contracting Officer will determine that the price for this acquisition is fair and reasonable in accordance with FAR Part 15 prior to contract award. Analysis will be performed by one or more of the following techniques: (1) Comparison of proposed prices received in response to the RFP; (2) Comparison of proposed prices with the Independent Government Cost Estimate (IGCE); (3) Comparison of proposed prices with available historical information; and/or (4) Comparison of market survey results. The fair and reasonable determination will be made based on the total price of the project. These brand name or equal items are not individual line item prices in the solicitation.

8. Actions to Remove Barriers to Future Competition.

This solicitation does not limit competition. If it comes to NAVFAC MIDLANT's attention that the proposed language is having a limiting effect on competition or the selection of alternate sources of material within the scope of this justification, the contracting officer will seek counsel and make efforts to take remedial measures.

Reference Drawing Sheet A-601

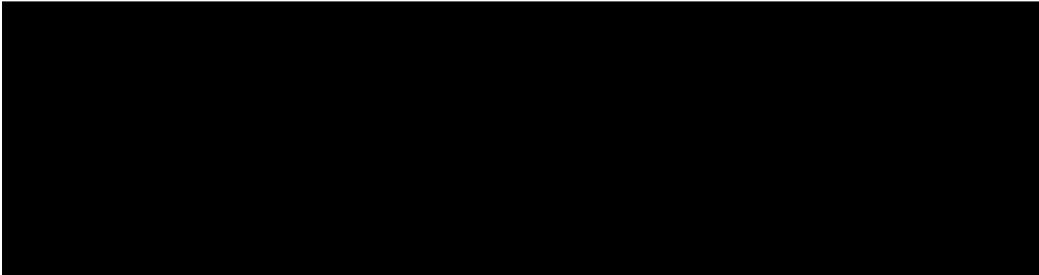
COST/QUANTITY SUMMARY OF INTERIOR FINISHES							TOTAL MATERIAL COST	
MATERIAL	DESCRIPTION	MANUFACTURER	COLLECTION NAME	STYLE NAME / NUMBER	COLOR / NUMBER	SIZE	ADMIN/WAREHOUSE	BOAT REPAIR
AC-1	ACOUSTICAL CEILING TILE, 9x9, BEVELED, REGULAR	ARMSTRONG	ULTIMA	1822	WHITE	24" x 24"		
AC-2	ACOUSTICAL CEILING TILE, SCORED, REGULAR, 9x9, SUPRAPHINE SUSPENSION SYSTEM	ARMSTRONG	CIRIUS SECOND LOOK III	551	WHITE	24" x 48" x 3/8"		
AC-3	CHANNELS	ARMSTRONG	ULTIMA / TECHONE	1829	WHITE	30" x 54"		
PA-5	ACRILIC LATEX FLAT FINISH	SHERWIN WILLIAMS						
PE-2	EPoxy PAINT	SHERWIN WILLIAMS						
WD-1	WOOD SLATTED CEILING, 1" SLAT WIDTH, PRELUDE w/ MAIN BEAM/SUSPENSION - BLACK, INELL PANEL 2823, BLACK MARTE	ARMSTRONG	WOODWORK'S GRILLE	7084		22" x 96" x 3/4"		
CPT-1	CARPET TILE	ARTIFACT	ARTIFACT	0511 ETCHED		12" x 48"		
CPT-2	CARPET TILE	ARTIFACT	ARTIFACT	0511 PATINA		12" x 48"		
CPT-3	CARPET TILE	MANNINGTON COMMERCIAL	THE HOCUS	TRANSFER		18" x 36"		
CPT-4	CARPET TILE	MANNINGTON COMMERCIAL	THE HOCUS	TRANSFER		18" x 36"		
EF-1	EPoxy FLOORING, 1/8" DECORATIVE FLAKE - RESTROOMS / INCLUDES INT-2, INTEGRAL BASE	STONHARD	STONCLAD	GS WITH TEXTURE	PEWTER			
EF-2	INTEGRAL BASE	STONHARD	STONCLAD	GS WITH TEXTURE	PEWTER			
EF-3	INTEGRAL BASE	STONHARD	STONCLAD	GS WITH TEXTURE	PEWTER			
RF-1	RESILIENT FLOORING	ARTIFACT	ARTIFACT	0511 ETCHED		12" x 48"		
RF-2	RESILIENT FLOORING, RUBBER TILE, HAMMERED FINISH, STAIR LANDINGS	ARTIFACT	ARTIFACT	0511 PATINA		12" x 48"		
RF-3	RESILIENT FLOORING, RUBBER TILE, HAMMERED FINISH, STAIR LANDINGS	ARTIFACT	ARTIFACT	0511 PATINA		12" x 48"		
WM-1	WALK-OFF MAT, SURFACE MOUNTED, 1/4"	CONSTRUCTION SPECIALTIES	FLOORMATIONS	PIR WHEEL		8" x 20 Approx		
BH-1	BENCH	SPRANTON PRODUCTS	TUFFTEC	SOLID PLASTIC (HDP)	CHARCOAL GREY	20" D x 48" W x 18" H MOUNT TO 4'-0" H		
CG-1	CORNER GUARD, RECESSED MOUNTED	CONSTRUCTION SPECIALTIES	ACROVYN 4000	PE-20N	927 FOLSTONE	MOUNT TO 6'-0" H		
CG-2	CORNER GUARD, SURFACE MOUNTED	CONSTRUCTION SPECIALTIES	ACROVYN 4000	PE-20N	927 FOLSTONE	MOUNT TO 6'-0" H		
MT-1	METAL TRANSITION FULL HEIGHT	SCHULTZ-INDUS. LD.-3/8	ACROVYN 4000	PE-20N	927 FOLSTONE	MOUNT TO 6'-0" H		
MS-1	MULLER SHADE, 3% OPENNESS, MANUAL	SCHULTZ-INDUS. LD.-3/8	ACROVYN 4000	PE-20N	927 FOLSTONE	MOUNT TO 6'-0" H		
SS-1	SHOWER SYSTEM	SCHULTZ-INDUS. LD.-3/8	ACROVYN 4000	PE-20N	927 FOLSTONE	MOUNT TO 6'-0" H		
TC-1	TOILET COMPARTMENT	SPRANTON PRODUCTS	HINEX HIDERS	GRAINED	CHARCOAL GREY			
WF-1	WINDOW FILM, DECORATIVE / PRIVACY, CENTER GRADATION DESIGN	3M	GLASS FINISHES - FASAFA	CLOUD GRADIENT-SP2FACL				
PA-1	ACRILIC LATEX - EGGSHELL SATIN FINISH - FELD	SHERWIN WILLIAMS			2V7064 PASSIVE			
PA-2	ACRILIC LATEX - EGGSHELL SATIN FINISH - FELD	SHERWIN WILLIAMS			2V7669 JAWAMIT GRAY			
PA-3	ACRILIC LATEX - EGGSHELL SATIN FINISH - ACCENT	SHERWIN WILLIAMS			2V6659 BLUE CHIP			
PA-4	ACRILIC LATEX - EGGSHELL SATIN FINISH - ACCENT	SHERWIN WILLIAMS			2V6654 EIGHT BLUE			
PA-6	ACRILIC LATEX - SEMI-GLOSS FINISH	SHERWIN WILLIAMS			2V6233 TRIDOWN BLACK			
PE-1	EPoxy	SHERWIN WILLIAMS			2V7064 PASSIVE			
PE-3	EPoxy	SHERWIN WILLIAMS			2V6804 DIGNITY BLUE			
FLAM-1	HIGH PRESSURE LAMINATE, MILLWORK, CABINETS, & DISPLAY CABINET	WILSONART			PHANTOM COCOA B23K-2B			
FLAM-2	HIGH PRESSURE LAMINATE, WALL PANELS, ELEVATOR	WILSONART			PHANTOM COCOA B23K-2B			
SEP-1	SOLID SURFACE COUNTER TOP	COPIAN			ARROWROOT	1/2" THICK		
RB-1	RUBBER BASE	TABRETT	TRADITIONAL		20 CHARCOAL	4" HIGH		
AWP-1	ACOUSTICAL WALL PANEL, 45 DEGREE ANGLE, LARGE CONFERENCE ROOM	TURF	WALL	TANGRAM CARVED WALL TILE	54 LIGHT GREY	24.75" W x 11.75" H x 3/8"		
EW-1	EPoxy WALL SYSTEM, SHOWER SURROUND	STONHARD	STONGLAZE	USE	ASH GRAY	3MM		
FRP-1	FIBERGLASS REINFORCED PLASTIC	MARITE	FRP	P430N	MEDIUM GREY			
SR-1	TILE GROUT, EPoxy	MAPEI			27 SILVER	3/8" GROUT JOINT		
SR-2	TILE GROUT, EPoxy	MAPEI			93 WARM GRAY	3/8" GROUT JOINT		
SR-3	TILE GROUT, EPoxy	MAPEI			55 NAVY & BROWN	3/8" GROUT JOINT		
SR-4	TILE GROUT, EPoxy	MAPEI			10 BLACK	3/8" GROUT JOINT		
TCU-1	CERAMIC TILE, 610551	ARCHITESSA	METAL MATRIX	PF603 J1234UP5	COBALT	12" x 12"		
TUP-1	PORCELAIN TILE, MOSAIC	CROSSVILLE	PORTUGAL	PF603 J1234UP5	VEIHO VERDE	12" x 12"		
TUP-2	PORCELAIN TILE, MATTE FINISH	CROSSVILLE	PORTUGAL	PF603 J1234UP5	VEIHO WHITE	12" x 12"		
TUP-3	PORCELAIN TILE, MATTE FINISH	ARCHITESSA	TONE WOOD	DIGITAL SOLUTIONS	HONEY	6" x 26"		
WG-1	WALL GRAPHIC - BREAK ROOM, FIRST FLOOR	ARC-COM	DIGITAL SOLUTIONS	MAGE - 2104 OCTOAL		36" x 3/2" W x 8'-6" H		
WG-2	WALL GRAPHIC - US CONF ROOM, FIRST FLOOR	ARC-COM	DIGITAL SOLUTIONS	MAGE - SHARIS - FISH		35-2" W x 8'-0" H		
WG-3	WALL GRAPHIC - SMALL CONF ROOM, SECOND FLOOR	ARC-COM	DIGITAL SOLUTIONS	MAGE - JRO7 LAUNCH		35-2 1/2" W x 8'-6" H		

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION

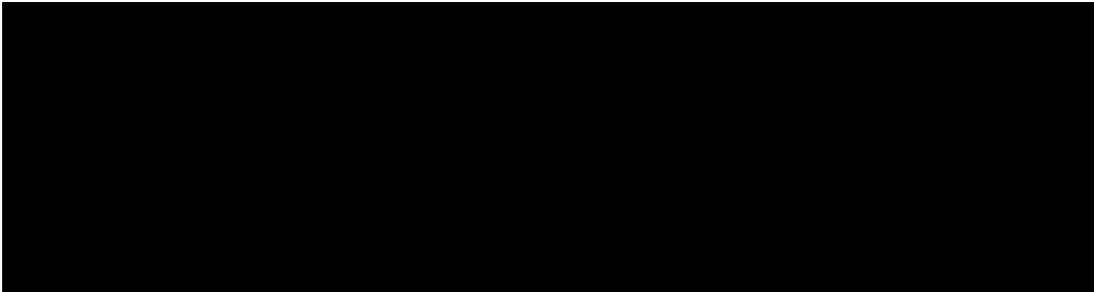
I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein, are complete and accurate to the best of my knowledge and belief.

Technical and Requirements Cognizance:



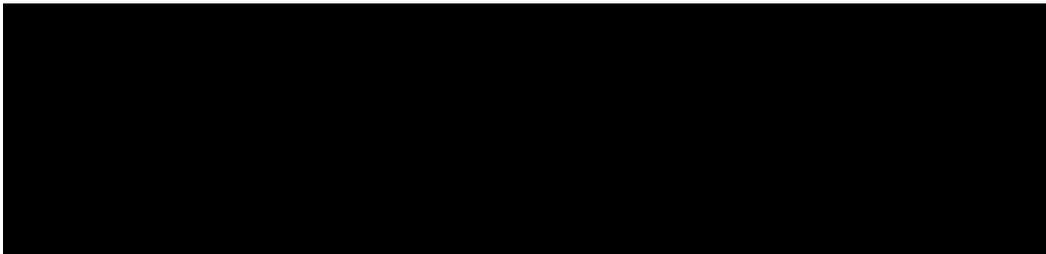
LEGAL SUFFICIENCY REVIEW

I have determined this Justification is legally sufficient.



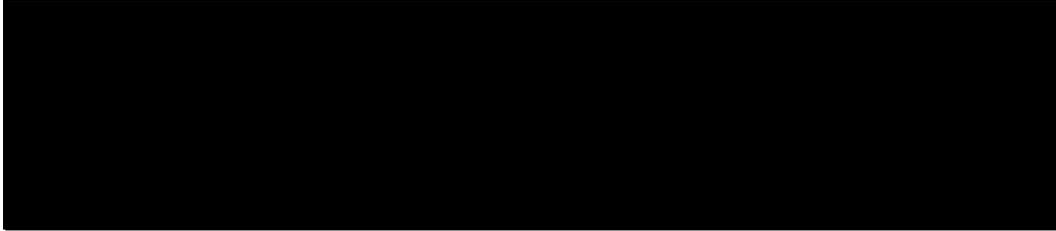
CONTRACTING OFFICER CERTIFICATION

I certify that this Justification is accurate and complete to the best of my knowledge and belief.



ECHELON IV CHIEF OF THE CONTRACTING OFFICE CERTIFICATION

I certify that this Justification is accurate and complete to the best of my knowledge and belief.



APPROVING OFFICIAL (NPGI 6.304) – ECHELON IV COMMANDING OFFICER

Upon the basis of the above justification, I hereby approve the brand name or equal specifications ~~described herein~~, pursuant to the authority of 10 U.S.C. 2304 (c)(1).

