

Justification & Approval For Other than Full and Open Competition

As a legislative branch agency, the Library is subject to the competition and advertising requirements of 41 U.S.C. § 6101. Like the Competition in Contracting Act and the FAR, 41 U.S.C. § 6101 does not require competition when a contracting officer certifies that only one source or brand-name item is available, when dictated by public exigency, or when otherwise authorized by law.

This document sets forth the justification and approval for award of a contract or order by means providing for other than full and open competition per 41 U.S.C. § 6101, LCR 7-210, and, as applicable, FAR 6.302, FAR 13.106-1, FAR 8.405, and FAR 16.505. Contracting without competition shall not be justified on the basis of a lack of advance planning or concerns related to availability of funds.

This form shall be used to support instances where competition will be limited to a single source, a limited number of sources, including where a brand name product is required.

Part 1 – Identification

1. Contracting Agency and Activity:

Library of Congress
Integrated Support Services Directorate
Space Utilization Planning and Design Office

2. Nature of Action Being Approved

- Contract (or modification)
- LoC or Leg Branch Order (or modification)
- GSA Schedule or GWAC:
- Other:

Plan ID Number: ISS23PL0066
Contractor (or Brand Name): Bergmann Associates
Estimated Value (Base and all options) [REDACTED]
Period of Performance: 05/08/2023 – 08/07/2024

3. Description of Supplies or Services Required to Meet Library Needs

Describe the supplies or services that are required to meet the Library's minimum needs and the delivery schedule required to meet those needs. Do not focus on a description of the program.

The Library requires the following supplies or services: The Library of Congress (LOC) requires contractor support for Architecture, Engineering and Quality Assurance services in relation to the preparation, fabrication and installation (PFI) of the Library's new Retail Shop. This is a part of the Library's efforts to refurbish and re-envision various spaces in the Thomas Jefferson Building as part of Librarian of Congress Dr. Carla Hayden's Visitor Experience Master Plan (VEMP).

The contractor shall provide the following services:

- Issuance of Architect's Supplemental Instructions (ASI)
- Site visits for quality assurance
- Review of submittals, shop drawings, and inspection reports by the PFI vendor
- Participate in weekly meetings and punch list walkthroughs with the PFI vendor
- Facilitate quality assurance meetings and minutes
- Review change orders and changes to Construction Documents (CDs)
- Complete set of "As-built" drawings

This requirement is not for the PFI of the Shop, but for collaboration with a PFI vendor to ensure material integrity, design concept accuracy and adherence to Architect of the Capitol (AOC) and the District of Columbia engineering and safety standards. This award will not be for the conceptual or aesthetic redesign of the Retail Shop, but for the oversight and implementation of the already approved concept and construction documents (CDs). It is imperative to the success of the project that the vendor for these services be the architect of record for the design, Bergmann Associates, as they retain a knowledge of the project, design intent and CDs that cannot be completely and effectively disseminated to a new vendor without significant delays to implementation or possible gaps in understanding.

Part 2 – Program Office Justification & Approval

4. Authority for Contracting Without Competition

Over \$250,000

For this requirement over \$250,000, under FAR part 6, the basis for contracting without providing for full and open competition is:

- There is only one responsible source and no other supplies or services will satisfy Library requirements. 41 U.S.C. § 6101(b)(2)(C); FAR 6.302-1.
 - Library's minimum needs can only be satisfied by contractor's unique capabilities or products. FAR 6.302-1(b)(1).
 - Source controls copyrights, patents, raw materials, or secret processes cannot be acquired otherwise, or similar circumstances. FAR 6.302-1(b)(2).
 - Other exception identified in FAR 6.302-1:
- There is such unusual & compelling urgency that the Government would be seriously injured if competition is not limited. 41 U.S.C. § 6101(b)(2)(B); FAR 6.302-2. Option years are not permitted.
- Source is expressly authorized or required by statute (e.g., AbilityOne, UNICOR, GPO, GSA Public Buildings Service, Appropriations Act, etc.) per 41 U.S.C. § 6101(b)(1) and FAR 6.302-5:
- Other basis authorized in 41 U.S.C. § 6101(b) or FAR part 6.302:

- Library's needs can only be satisfied by a brand-name product or item which is essential to the Government's requirement. FAR 6.302-1(c).
- The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

Up to and including \$250,000

For this requirement up to \$250,000, using simplified acquisition procedures under FAR part 13, the basis for contracting without providing for full and open competition is:

- Only one responsible source is reasonably available to meet Library requirements. 41 U.S.C. § 6101(b); FAR 13.106-1.
 - Product or service is reasonably available from only one source.
 - Source controls copyrights, patents or other exclusive licensing arrangements.
 - Urgent circumstances; only one source can reasonably deliver by required date. Option years are not permitted.
 - Source is expressly authorized or required by statute:

- Library's needs can only be satisfied by a brand-name product
- The Product is listed the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

GSA Schedule Order

For this GSA schedule order under FAR part 8, the basis for not competing among GSA schedule-holders and/or specifying a brand name product or item is:

- An urgent and compelling need exists, and following GSA procedures would result in unacceptable delays. FAR 8.405-6(a)(1)(i)(A).
- Only one GSA source is capable of fulfilling the requirement at the level of quality required because the supplies or services are unique or highly specialized. FAR 8.405-6(a)(1)(i)(B).
- In the interest of economy and efficiency, the new work is a logical follow-on to an original order that was placed competitively among GSA schedule-holders (i.e., the original order was not sole-source or limited-source.) FAR 8.405-6(a)(1)(i)(C).

- Library's needs can only be satisfied by a brand-name product
- The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

Order Under Multiple Award Indefinite-Delivery Contract or GWAC

For this order under FAR subpart 16.5, the basis for contracting without providing for full and open competition is:

- The need is so urgent fair opportunity would result in unacceptable delays. 41 U.S.C. § 6101(b)(2)(C) and FAR 16.505(b)(2)(i)(A).
- The Library's minimum needs can only be satisfied by contractor's unique capabilities or products. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(i)(B).
- A logical follow-on order in the interest of economy and efficiency. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(i)(2)(C).
- To satisfy a minimum guarantee. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(D).
- Authorized or required by statute. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(E).

- The Library's minimum needs can only be satisfied by a brand-name product or item which is essential to the Government's requirement. 41 U.S.C. § 6101(b)(2)(B) and FAR 16.505(a)(4)(i).
- The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

5. Rationale for Contracting Without Competition

In supporting an action not providing for full and open competition, it is not sufficient to demonstrate that the contractor is exceptionally well qualified or even the best qualified, or that the required brand name product is well suited to the Library's needs. The rationale must demonstrate that no one else, or no other competing product, can satisfactorily fulfill the Library's requirement. Do not focus on the importance of the requirement; the issue is the rationale for not competing.

In supporting urgency, address the following: What are the unexpected facts or the unpredictable events that led to this situation? When is the required delivery or performance start date? Why this date? What specific harm to the Government will occur if the delivery is not made or performance not begun as scheduled? (Note that expiration of funds is not sufficient harm to justify not competing.) Demonstrate that the contract is only for items and quantities urgently needed until a competitive procurement action can be developed, or that a separate competitive follow-on is not practical.

In supporting a brand name justification, the brand name or feature must be essential to the Library's requirements, and market research indicates that other company's similar products or products with similar features cannot meet or be modified to meet the Library's needs.

We are authorized to limit competition on the basis of the citation in section 4 because: As the result of an FY22 award, Bergmann Associates provided the concept, design and construction documents for the Library's Retail Shop to be relocated to the West Main Pavilion North and South Corridors of the first floor of the Thomas Jefferson Building. Successful completion of these deliverables required extensive collaboration with LOC and AOC stakeholders and several review, comment and revision periods to ensure the design met the needs of the LOC while complying with AOC preservation standards and the safety, engineering and electrical regulations of the District of Columbia.

The Architectural, Engineering and Quality Assurance oversight of this requirement needs complete knowledge of the project to this point and a level of expertise that can only be granted by a familiarity to all versions of the project and the intricacies of stakeholder feedback. Bergmann Associates is the only available source capable of fulfilling the critical components of this requirement, such as the Architects Supplemental Instructions (ASI), responses to Requests for Information (RFI) from the COR, and completing the final as-built drawings, as their original concept and design development involved discussion and trial of multiple plans and materials.

In order to deliver the approved 100% Construction Drawings, Bergmann Associates conducted bi-weekly meetings with the LOC design team from March 2022 to April 2023 to include design development, material selections, incorporating comments from the AOC, LOC, and AOC Architectural Review Board (ARB). These meetings were followed by two page-turn meetings, at the 50% CDs and 100% CDs review with AOC, and one schematic design presentation to the ARB in March 2022 to outline the design intent and concept and one 100% design presentation to the ARB in April 2023, to prove the design intent is feasible to construct, is structurally sound, and preserves the historical fabric of the Thomas Jefferson Building. These sessions and presentations establishing aesthetic and structural merit were deeply discursive and the existing vendor retains privileged knowledge and can deftly interpret the original design documents and efficiently process any request or need for change in materials that may occur as preparation and installation are underway.

Because of the nature of design development, another vendor completing the AEQA requirement would not have the documentation, history and information required to perform effectively. Selecting alternative materials, completing drawing updates, issuing ASIs, or reviewing and responding to RFIs and other submittals would likely require duplicating effort and deliverables already produced by Bergmann and be an ineffective use of Government resources. Additionally, issuance of ASIs on Bergmann's design by another vendor could lead to issues of liability or responsibility in the event there is a failure or problem with an aspect of the implemented design. For this reason, it is inadvisable to compete openly and award to another vendor that could risk being held liable for design implementation or integrity concerns they had no original responsibility for. Thus, Bergmann Associates is the only vendor capable of successfully fulfilling work under this requirement.

6. Actions to Overcome Barriers to Competition Before Subsequent Contract Is Required

State what actions, if any, the program office can take to overcome barriers to competition before a contracting for this requirement again, such as: using action to provide time to develop specifications for a competitive procurement by a certain date; licensing copyrights or patents so other contractors may use the works; or breaking the requirement into parts that may be purchased competitively. If this is a one-time requirement, explain that action to increase future competition is not needed. If the source is expressly required by statute, state "Source is statutory."

To increase competition, we will: The original award for the Retail Shop design services was fully and openly competed on SAM.gov in FY22. This requirement serves as a follow-on to that original award to ensure that the deliverables provided through it are properly executed in the preparation, fabrication and installation (PFI) phase of Retail Shop re-envisioning. Additionally, these required PFI services, and future requirements of the Visitor Experience Master Plan (VEMP), will be procured through a full and open

competition on SAM.gov as such services are readily available in the commercial marketplace. Future VEMP requirements will be publicized for full and open competition as they are needed.

7. Program Office Certification

I certify that the description of the Government's minimum needs, schedule requirements, and technical information that provide the basis for this justification are accurate and complete.

[REDACTED]

PART 3 – CONTRACTING OFFICER DETERMINATIONS & CERTIFICATION

8. Efforts to Solicit from As Many Potential Sources As Practicable

Unless a justification is based on FAR 6.302-2, Unusual and compelling urgency, contracting officers shall post justifications for other than full and open competition, including brand name justifications, to the Contract Opportunities website on sam.gov (or eBuy for Brand Name Justifications under FAR Part 8) prior to requesting a proposal or otherwise entering into negotiations.

- Advance notice will be published in sam.gov for 15 days before a contract is awarded. FAR 5.203(a).
- Advance or concurrent notice will be published in sam.gov for a reasonable time for commercial items FAR 5.203(a) and 12.204(b).
- Advance notice will not be published because the action meets the following FAR exception:
 - Notice would compromise national security. FAR 5.202(a)(1).
 - Unusual and compelling urgency; notice period would seriously injure Government. FAR 5.202(a)(2).
 - Expressly authorized or required to be made through another Government agency. FAR 5.202(a)(4).
 - Order will be placed against an IDIQ contract awarded under FAR 16.5. FAR 5.202(a)(6).
 - Order will be placed against GSA schedule or other competitively-awarded contract. FAR 5.202(a)(11).
 - Other:
- Advance notice will not be published per 41 U.S.C. § 6101; see attached deviation from the FAR per LCR 7-210 § 3.A.

We made the following efforts to interest potential sources in this award: Not applicable, as stated above.

9. Listing of Sources That Expressed Interest in Writing

The following sources expressed interest in this award: Not applicable.

10. Additional Information

The following additional information is relevant to this justification and approval: Not applicable.

11. Contracting Officer Determination that Price Is Fair and Reasonable

As explained in detail below, I have determined that the prices for this contracting action are fair and reasonable based on comparison of the prices to the following (see FAR 15.404-1(b)(2)):

- Historical prices paid by the Government
- Library's Independent Government Estimate
- Other:
- Published competitive price lists
- Prices obtained through market research
- Prices obtained through competitive proposals

The following analysis (based on attached pricing information) supports my determination: Fair and reasonable pricing shall be determined before an award is made.

12. Contracting Officer Determination of Responsibility

- Checked System for Award Management (or will check in the case of competitive proposals for a brand name product)

13. Contracting Officer Determination of Best Value

I have determined that this action represents the best value to the Government because: Bergmann Associates is the only vendor that can successfully fulfill the Library's needs at this time and their pricing was determined to be fair and reasonable in previous contracts for this work. Their current prices will be evaluated to ensure they remain fair and reasonable before award is made to determine that the Library is receiving the best value.

14. Contracting Officer Certification

I certify that, to the best of my knowledge and belief, this justification is accurate and complete. For those actions up to \$700,000, I approve contracting without competition for this requirement.

Michael Schuman

Name

Digitally signed by Michael Schuman
Date: 2023.04.13 18:02:31 -04'00'

Signature

Date