

**JUSTIFICATION REVIEW DOCUMENT
FOR OTHER THAN FULL AND OPEN COMPETITION**

Program/Equipment: Repair Aircraft Maintenance B1455 for MH-139 Bed-Down, Maxwell AFB, AL
Authority: 10 U.S.C. 2304(c)(1) [REDACTED]

Prepared by: [REDACTED] [REDACTED]

Contracting Officer: [REDACTED] [REDACTED]

Technical Representative: [REDACTED] [REDACTED]

Requirements Representative: [REDACTED] [REDACTED]

JUSTIFICATION AND APPROVAL (J&A)
FOR OTHER THAN FULL AND OPEN COMPETITION

1. Contracting Agency: USACE Louisville District

2. Description of the Action: Section 888(a) of the Fiscal Year 2017 (FY17) National Defense Authorization Act (NDAA) (Pub. L. 114-328) requires competition on Department of Defense 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 DASA(P) Alert 19-108, Brand Name or Equal requires justification for "or equal" descriptions. Approval is requested to indicate that the brand-name or equal products identified in the solicitation W912QR-496395 for furniture, fixtures and equipment (FF&E) used as the basis of design as part of the renovation of the Maxwell Air Force Base existing B1455 Hangar facility to house the MH-139 simulator mission and includes two (2) operational flight trainers (OFTs), one Integrated Aircrew Systems Trainer (IAST), one Alternate Insertion Extraction Part-Task Trainer (AIE-PTT), one Cockpit Procedural Trainer (CPT), one Weapons Procedural Trainer (WPT) as well as associate planning rooms, classrooms and administrative spaces. This project will facilitate critical training needed to fly the projected aircraft and programmed flight training. The firm-fixed-price construction project is funded with Air Force Reserve Military Construction (MILCON) funds. The plans and specifications indicate the standard of quality required and the make and model used as basis of design and are only listed because it is necessary to complete a 100% construction design necessary for a Design-Bid-Build solicitation.

3. Description of Supplies/Services or Nature of Construction: The construction contract requires the construction of a new one-story, 18,170 sf, steel structure to house two, new flight simulators and associated devices for the training of US Air Force flight crews. The contract will also include associated site work and utility infrastructure upgrades to support the new facility. Substantial completion of the construction is expected by May 2023. The construction contract estimate is approximately [REDACTED]. The estimated value of FF&E with basis of design indicated is approximately [REDACTED]. This contract action is to be solicited using a Request for Proposal (Federal Acquisition Regulation ((FAR)) Part 15), awarded on the basis of a Lowest Price Technically Acceptable source selection process (FAR 15.101). The design includes thirty-one (31) separate instances where Brand-Name or Equal identification is made for FF&E materials, with an aggregate value of approximately [REDACTED]. In each case, a minimum of three products by three manufacturers are cited. See Attachment 1 for a complete list of items, manufacturer, and estimated cost of all items which have a Brand Name indicated to provide offerors insight to the quality of product expected for the design and to aid in understanding the features included for estimating cost bid items.

4. Authority Cited: The statutory authority permitting sole sourcing for this acquisition is 10 United States Code 2304(c)(1) as implemented by FAR 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements. In accordance with Defense Federal Acquisition Regulation (DFARS) 206.302-1(c)(2) and section 888(a) of the NDAA for FY17 (Pub. L. 114-328), this J&A is required in order to use brand name or equal descriptions.

5. Reason for Authority Cited:

a. Background. The renovation Hangar 1455 to house the MH-139 simulator facility requires an extensive FF&E package to ensure all simulator operators, maintainers and support staff are equipped with the proper workstations and furniture to effectively complete their mission. In addition, the FF&E package for this facility is designed to comply with both the

AFRC guidance documents and the previously completed Interior Designs for the 908th PIO as directed.

b. Justification. It is industry standard practice, while designing FF&E, to base the design around products that meet the needs of the project, the existing, typical FF&E base standards, and the client regulatory guidance. In addition, it is important to identify items as BOD so that the end user can determine if the materials/design comply with their expectations. As the general note that is prominently displayed on the schedule sheets indicates, the contractor is free to use any product which meets the government's minimum requirements and are not in conflict with other contract provisions, and that other manufacturers may be substituted as long as the standard of quality and characteristics of the substituted manufacturer meet or exceed the standard of quality and characteristics of the basis of design. Because each manufacturer's product has slightly different characteristics (e.g. dimensions), to achieve a 100% design within a reasonable amount of time it is necessary to use one product as the basis of design. To not do this would leave such ambiguity in the design that it would not have sufficient detail necessary to complete the contract. The Government is not attempting to limit competition, but is rather simply being "up front" about this essential facet of the design process.

c. As all the components of a system must work together and function as a system, the basis of design of each individual component may change based on substitution. The standard of quality must remain the same as the USACE design.

In addition to a functional system, the products used as the basis of design for the subject project also fit within a specific footprint.

Competition is only limited to the extent necessary to meet the government legitimate needs of this project. Contractors are free to use any product which meets the government's minimum needs. As indicated on the plans and specifications "all listed manufacturers are the basis of design. Other manufacturers may be substituted as long as the standard of quality and characteristics of the substituted manufacturer meet or exceed the standard of quality and characteristics of the basis of design. Reference FAR clause 52.236-5, Material and Workmanship."

The Materials and Workmanship clause reiterates this point: "References in the drawings and 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 determined to be equal through formal evaluation comparison against the specified salient characteristics as provided by the written specifications for each piece of equipment, material, article or process.

d. Alternatives. The only potential alternative would be to convert the procurement into a design-build procurement without complete designs. Utilizing a basis of design as assumptions is a critical component of designing complete, functional mechanical and electrical systems. It is impossible to fully design a system to meet requirements without assumptions of specific equipment specifications. The alternative to providing assumptions of equipment and the make and model of the basis of design is to solely list the standard of quality and all characteristics whereby the Contractor can design their own system.

e. Impact. Providing the make and model of equipment used as the basis of design, is an industry standard necessary to complete a 100% design needed for a Design-Bid-Build procurement. Design-Bid-Build procurements ensure that the government has maximum control over the design of the requirement and maximize competition amongst offerors. If the basis of design elements here were not permitted to be used, it would effectively limit the ability of the

government to control the design and impact competition. UFC 3-120-10 requires that FF&E packages include documentation listing three or more vendors considered for each furniture items. (See paragraph 5-4.6 of the UFC) It also requires data sheets to be provided for each product, including manufacturer names, product specifications, and finish and fabric information (See paragraph 5-4.7 of the UFC), but requires that systems furniture must be designed using product and features available from three or more manufacturers to ensure open competition (See paragraph 5-4.10.1 of the UFC).

6. Efforts to Obtain Competition. Competition is obtained to the maximum extent practical while meeting the agency's requirements by utilizing a specific product only to the extent it is necessary to complete the 100% design, while allowing contractors to use the brand-named or any other product which meets the government's minimum characteristics and standards of quality.

7. Actions to Increase Competition: This J&A supports a discrete requirement that will end when the project is complete. Therefore, there are no planned actions to increase competition for the requirement covered by this J&A.

8. Market Research: A Notice of Intent (NOI) to Sole Source was posted to FBO by the District on 31 August 2022. No responses were received. Based on involvement of experts in the field, knowledge of the market, review of product availability, and discussion with multiple manufacturers, there is more than sufficient products available to meet project needs. Items listed in the project plans and specs are provided solely as the necessary basis of design.

9. Interested Sources: There were no responses to the NOI posting. The solicitation will be synopsisized in accordance with FAR 5.201, and responses will be evaluated per FAR Part 15. Based on involvement of experts in the field, knowledge of the market, review of product availability, and discussion with multiple manufacturers, there is more than sufficient products available to meet project needs. Items listed in the project plans and specifications are provided as the basis of design.

10. Other Factors: None.

11. Technical Certification

I certify 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.

12. Requirements Certification

13. Contracting Officer Certification and Fair and Reasonable Price Determination:



14. Legal Review and Concurrence:

