

U.S. Department of Navy
Naval Research Laboratory - Small Purchase Branch

Purchase Request No.
PR# 1301028223 - (Div. Transaction # 35-3005-22)

USE OF OTHER THAN FULL AND OPEN COMPETITION FOR AN ACQUISITION UNDER
THE SIMPLIFIED ACQUISITION THRESHOLD – (exceeding \$10,000 - \$250,000)

Estimated Cost (including options, if any)

FAR 13.106-1(b)(1)(i) states for purchases not exceeding the simplified acquisition threshold, Contracting Officers may solicit from one source if the Contracting Officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, brand-name or industrial mobilization).

As required by FAR 13.106-3(b)(3)(i), this justification explains the absence of competition for this acquisition, as only one source will be solicited for this requirement (or for a portion of the requirement) and the requirement is not expected to exceed the simplified acquisition threshold.

DESCRIPTION OF ITEM OR SERVICE: (Provide a description of the item or service required, to include its intended use, the name of the required source or brand name, and the required delivery date/period of performance.)

Description of Service: **Contractor shall provide all labor, materials, and equipment to tune or adjust the combustion process of three (3) steam boilers at Building 149 in compliance with NRL Title V Air Quality Operating Permit # 005 and new Title 20 District of Columbia Municipal Regulations (DCMR) Sections 805.9 (a) and 805.9 (c). Contractor shall provide NRL's Technical Point of Contact (TPOC) with a draft and final Boiler tuning reports. Final boiler tuning report will be included in NRL's 2022 Title V Compliance Certification Report to the District's Department of Energy and Environment that is due on March 1st, 2023. NRL boilers are two 80.5 million British Thermal Unit (BTU) per hour dual fired Nebraska boilers on natural gas and fuel oil and one 56.7 million BTU per dual fire Nebraska boiler on natural gas and fuel oil.**

Name of the Required Source: **American Combustion Industries (ACI); 7100 Holladay Tyler Road, Ste 333, Glenn Dale, MD 20769;**

Period of performance: **November 30th, 2022 to February 3rd, 2023**

Required delivery date(s): **Complete Tuning/Combustion Adjustments of NRL boilers at B149 before December 31st, 2022.**

Submit Draft Tuning Report to TPOC no later than January 20th, 2023

Submit Final Tuning Report to TPOC no later than February 3rd, 2023 or five working days after receiving comments from TPOC.

THE DETERMINATION FOR USE OF OTHER THAN FULL AND OPEN COMPETITION IS BASED ON THE FOLLOWING (select all that apply):

A. ___ ONLY ONE RESPONSIBLE SOURCE (select all that apply):

1. ___ **RESTRICTIVE RIGHTS.** The source has established proprietary rights, limited rights in data, patent rights, copyrights or secret processes in the item or service required. (Explain what rights are restricted, why the restrictive rights make the required item or service available from only one source, and why another company could not satisfy the Government's need.)

2. ___ **EXCLUSIVE LICENSING AGREEMENTS.** The item or service is only available from the Original Equipment Manufacturer (OEM), or there is only one authorized distributor or technical representative for the OEM. (Identify the OEM and explain the circumstances surrounding why the item or service is only available from the OEM).

OR

Identify the distributor(s)/authorized technical representative(s) for the item or service. Provide evidence of the exclusive licensing agreement as an attachment to this document. NOTE: If there is more than one distributor/authorized technical representative for an OEM part, then Part B, BRAND NAME SOLE SOURCE, is applicable, and Part A, ONLY ONE RESPONSIBLE SOURCE, should be left blank).

3. X **OTHER REASONS.** Other reason not identified above. Provide details on mission impact if requirement is not solicited from only one source.

NRL Title V permit condition B.1.(d) requires NRL to perform combustion adjustments annually on each boiler at building B-149. The boiler combustion processes will be adjusted to minimize the formation of the oxides of nitrogen (NOx) and carbon monoxide (CO). Boiler emissions will be measured with a portable emissions analyzer acceptable to Environmental Protection Agency (EPA) protocol CTM022, Section 1.2 with a calibration certification not more than twelve (12) months old. Before testing each boiler, the emission analyzer shall be calibrated for oxygen with two (2) test gases valued at approximately 1% and 8% oxygen in nitrogen. The emissions test will be made at a minimum of high fire and typical operating load firing rate on both fuels. The Contractor must have knowledge and experience with the District's combustion adjustment requirements for Title V permitted facilities.

ACI has unique knowledge and experience with the District's boiler tuning requirements for Title V permitted facilities. No other local company is known to have this capability. Other local companies provide services to the residential market and other markets not subject to the Title V permit requirements. A deficient field work and test report performed by an inexperienced company may result in the issuance of a permit violation to NRL. If the boiler plant does not meet Title V requirements, it will be shut down, thus interrupting critical mission, as all temperature/humidity requirements in laboratories are served by the boiler plant's steam production.

B. ___ BRAND NAME. Item required must be a brand name product, or feature of a product, particular to one manufacturer. *(Discuss why you are precluding consideration of a product manufactured by another company. Describe how the particular brand name, product, or feature is essential to the Government's requirements and why a "brand name or equal" purchase description cannot be used (see FAR 11.104). Describe how market research indicates other companies' similar products or products lacking the particular feature do not meet, or cannot be modified to meet, the agency's needs.)*

C. ___ UNUSUAL AND COMPELLING URGENCY. The supplies or services are of such unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. Urgent requirements are supplies or services that will result in a work stoppage, or are mission critical and the routine processing time would result in injury to the Government. The determination that the procurement for the above item/service is an urgent and compelling requirement is based on the following:

1. Date on which the requirement was first identified:
2. Required delivery date/period of performance:
3. Explanation of why delivery/commencement of services by the date mentioned above is required: *(Explain the impact to the mission if the date above is not met, any special circumstances or conditions that exist which validate the requirement as "urgent," estimated production lead time for the item, etc.).*
4. If appropriate, include any additional pertinent information.

ACQUISITION INITIATOR - Technical / Requirements Certification: I certify that the facts and representation under my cognizance which are included in this justification are complete and accurate to the best of my knowledge and belief.

SIGNATURE(<i>Requestor</i>) (<i>Print name/title</i>)	CODE	PHONE	DATE
			

CONTRACTING OFFICER (*Procurement Office use Only*)

On the basis of the justification, I hereby approve the use of an other than full and open competition proposed contractual action in accordance with FAR 13.106-1(b)(1) Soliciting Competition from a Single Source.

SIGNATURE (<i>Print name/title</i>)	CODE	PHONE	DATE
			

GUIDELINES FOR OTHER THAN FULL AND OPEN COMPETITION

Requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition. The justification must; 1) demonstrate that only one company can perform, 2) State clearly the Government's requirements, and 3) Explain clearly why the contractor is the only company that can meet the Government's requirement. The justification cannot be price-based alone and incumbency does not justify other than full and open competition.

1. The following are examples of bases for other than full and open acquisitions:
 - a. The supplies or services to be acquired are unique to a supplier for which there is no comparable competitive product.
 - b. A component or replacement part for which there is no commercially available substitute, and which can be obtained only from the manufacturer and/or a manufacturer's distributor.
 - c. An item where compatibility is the overriding consideration, such as computer operating software enhancements for an existing system.
 - d. A supply, equipment, part, service or supplier that, due to technically constraining factors associated with scientific research, are needed to ensure the fairness and validity of the underlying research.
 - e. Repair/replacement parts for non-competitive equipment.
 - f. Continuation of an existing contract when work is so closely related to that of the uncompleted basic contract that it would not be feasible to consider another potential contractor.
2. The two most often cited bases for other than full and open competition are uniqueness and timeframe. These are often confused and inappropriately interchanged.
 - a. If the contractor has a unique capability, whether it be an item or service, it is insufficient to simply say that the supplier is unique. If the item is unique to the supplier, the unique characteristics must be set forth. If the supplier has unique expertise, that expertise must be described. If the supplier has unique equipment or facilities or he/she has proprietary data, it must be explained.
 - b. If only one supplier can perform within the required timeframe, the timeframe must be explained. Administrative delay or lack of adequate advanced planning does not create an urgency that justifies other than full and open competition. It is not enough that timeliness is "of utmost importance," as is often stated. The requestor must show that proceeding with a competitive process would cause the Government serious harm.
 - c. If the justification includes a timeliness reason, the requestor must give an explanation of why timeliness was not addressed through better planning, and what steps will be taken to try to prevent a non-competitive process in the future.
 - i. Provide the date by which the supplies or services must be delivered.
 - ii. Indicate how that date was determined and its significance.
 - iii. Indicate the impact of delay beyond that date in terms of program schedules, milestones, etc.
 - iv. State how long it would take another contractor to acquire the capability to perform (learning period), how much it would cost another contractor to get up to speed, and if appropriate, what it would cost the Government in terms of dollars and man-hours to get another contractor up to speed.
 - v. State the bases for the above estimates.
3. State how the decision to go sole source was reached, (i.e. technical personnel's knowledge and experience, market research, etc.). The following are examples of documentation supporting this element:
 - a. Technical Personnel's Knowledge:
 - vi. Explain requisition originator's experience that would indicate that he/she knows that only one source can perform.
 - vii. Explain what technical publications, symposiums, or conferences clearly indicate that only one company can perform. List publications read and symposiums and conferences attended.
 - b. Market Research.
 - viii. State who conducted the survey.
 - ix. State when it was performed.
 - x. State what companies are in the industry, if feasible.
 - xi. State how the companies were contacted.
 - xii. State what questions were asked, and how the companies responded.
 - xiii. Name the companies that were contacted. Were all contractors in the relevant industry contacted? If not, why?
 - xiv. Provide each response from those companies surveyed.
 - xv. If any company stated that it could meet the requirements, give a justification for excluding that company, if it was not chosen.
 - xvi. State how it was determined that the contractor was the only one qualified.
 - xvii. State how requestor will plan better to ensure a full and competitive process the next time
4. In cases where an unsolicited proposal for R&D has been received, the justification limiting acquisition to a single source must verify that the proposal represents the product of original thinking by the submitting contractor and could not be obtained competitively without revealing the original thinking.