

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

ARP 53.6-2



DEPARTMENT OF THE NAVY
NAVAL SURFACE WARFARE CENTER
CRANE DIVISION
300 HIGHWAY 361
CRANE INDIANA 47522-5001

IN REPLY REFER TO:

J&A Number: CR-23128
Code: 0231
P.R. Number:

JUSTIFICATION AND APPROVAL
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JUSTIFICATION

1. Contracting Activity

The Naval Sea Systems Command, Naval Surface Warfare Center, Crane Division (NSWC-CR), Expeditionary Sensors Contracting Branch 0231.

2. Description of the Action Being Approved

Award of a an Indefinite Quantity, Indefinite Delivery (IDIQ) Firm, Fixed Price contract on a sole source basis to Rafael Advanced Defense Systems, Ltd., Derech Akko, P.O. Box 2250, Haifa, 000031021, Israel (CAGE 1931A), for the procurement of up to quantity 42 of the [REDACTED] EOS 2U Upgrade kits.

3. Description of Supplies/Services

The items being procured under this J&A are up to quantity 42 of part number [REDACTED], Upgrade Kit. The upgrade kits will include: [REDACTED]

[REDACTED];
the vendor owns the technical data package and is unwilling to sell it. The estimated value of this J&A is \$10,000,000. The Government's minimum needs have been verified by the certifying technical and requirements personnel. The acquisition will be fully funded with Fiscal Year 2023 [REDACTED] funding.

Estimated Dollar Value

Money Type	FY23
██████████	10M

4. Statutory Authority Permitting Other Than Full and Open Competition

10 U.S.C. 2304(c)(1), Only one responsible source and no other supplies or services will satisfy agency requirements.

5. Rationale Justifying Use of Cited Statutory Authority

The Government does not own or otherwise have access to the technical data package (TDP) for any of the Rafael Upgrade Kit parts needed to upgrade and support the ██████████ EOSs to allow for full and open competition. Only Rafael owns the technical data and has the knowledge and expertise to reproduce the upgrade kits for the ██████████ family of EOSs. Rafael has declined to sell the proprietary TDP required for full and open competition to the Government multiple times before. Rafael proprietary data includes but is not limited to: hardware design, upgrade specific specifications and requirements, and upgrade kit part install procedures.

Since the ██████████ family of EOSs upgrade kits are designed and built by Rafael, Rafael is the most viable option for contract award because they possess the knowledge and expertise necessary to produce these parts and kits. Additionally, since they possess the proprietary data and experience needed to repair these systems, no other company besides Rafael will be able to successfully perform upgrades. Rafael is the only viable design agent option to provide necessary relief for undue Government re-design constraints and financial burden that would be required to establish Government designed upgrade kits. Significant duplication of Government costs and design burden would be incurred if any other upgrade kits and material support services other than Rafael's proprietary services were procured under this requirement.

The following table shows the itemized duplication of costs to develop an alternate source.

Duplicate Costs to Develop Alternate Source

Description	Hours	Rate	Estimated Cost
Test Equipment Hardware Design	8,320	\$143	\$1,189,760
Test Equipment Software Design	10,400	\$143	\$1,487,200
Qualification of Test Equipment	2,080	\$143	\$297,440
Reverse Engineering Design for all Spare Parts	12,480	\$143	\$1,784,640
ECPs for Reverse Engineered Spare Parts	3,120	\$143	\$446,160
Reverse Engineering of Repair Capability	4,160	\$143	\$594,880
Training for New Test Equipment Use	1,040	\$143	\$148,720
Training for New Test Equipment Repair	2,080	\$143	\$297,440
Training for Depot Level [REDACTED] 2U upgrade	1,040	\$143	\$148,720
Documentation Updates	4,160	\$143	\$594,880
Total Duplication of Labor efforts	47,840	\$143	\$6,989,840
Test Equipment Hardware Costs	N/A	N/A	\$4,100,000
Total Duplication of Costs			\$11,089,840

Award to any source other than Rafael would result in substantial duplication of costs that are not expected to be recovered through competition, and unacceptable delays would occur in fulfilling the agency's requirements.

Based on current engineering estimates, the delay caused by reverse engineering a new EOS or the development and qualification of a new upgrade kit and awarding to an alternate source would take at least 5-1/2 years. This delay would negatively impact the Government's ability to meet requirements and maintain the [REDACTED] EOS for end users in theater.

The following table shows the itemized delays caused by reverse engineering a new EOS or the development and qualification of a new upgrade kit and awarding to an alternate source.

Time to Reverse Engineer a new EOS

Description	Hours	Months	Number of FTE
Test Equipment Hardware Design	17280	8.3	4
Test Equipment Software Design	31104	14.9	4
Qualification of Test Equipment	1728	3.3	1
Reverse Engineering Design for all Spare Parts	60480	19.4	6
ECP's for Reverse Engineered Spare Parts	3456	3.3	2
Reverse Engineering of Repair Capability	1728	3.3	1
Training for New Test Equipment Use	1728	3.3	1

Training for New Test Equipment Repair	1728	3.3	1
Training for Depot Level Repair	1728	3.3	1
Documentation Updates	10368	4.4	3
Total Reverse Engineering Timing Delay	131,328	66.8	23

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

Market research is conducted on a continuous basis by the requiring technical activity, including contacting knowledgeable individuals in the Government and industry, reviewing previous procurements and in-house contracts, product catalog and literature reviews, and Internet searches. The requiring technical activity representatives maintain a close working relationship with the electro-optics industry throughout the world. Based on this background and working relationship with industry, it is the technical representatives' judgment that there is no known source other than Rafael capable of satisfying the Government's current requirements.

For purposes of additional market research and in an effort to broaden competitive resources, a Request for Information (RFI) Sources Sought was posted on the SAM website on 31 January 2023, in accordance with (IAW) FAR 15.201, Exchanges with Industry Before Receipt of Proposals. No company responded to the RFI. The lack of any responses to the RFI announcement supports the Government's determination that Rafael is the only responsible source to satisfy our requirements under the current circumstances. Additionally, the proposed contract was posted on the SAM website on 07 February 2023. To date, no other companies have expressed interest in becoming qualified to compete for the items to be acquired under the proposed contract.

7. Determination of Fair and Reasonable Costs

The Contracting Officer has determined the anticipated cost to the Government of the supplies/services covered by this J&A will be fair and reasonable.

8. Actions to Remove Barriers to Competition

For the reasons set forth in Paragraph 5, NSWC-CR has no plans at this time to compete future contracts for the types

of supplies/services covered by this document. If another potential source emerges, NSWC-CR will assess whether competition for future requirements is feasible.

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION (FAR 6.303-2(c))

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

TECHNICAL COGNIZANCE:

Signature Name (Print) and Title (Code) Phone No. Date

REQUIREMENTS COGNIZANCE:

Signature Name (Print) and Title (Code) Phone No. Date

LEGAL SUFFICIENCY REVIEW (NMCARS 5206.303(90))

I have determined this justification is legally sufficient.

Signature Name (Print) and Title (Code) Phone No. Date

CONTRACTING OFFICER CERTIFICATION (FAR 6.303-2(b)(12))

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

Signature Name (Print) and Title (Code) Phone No. Date

APPROVAL BLOCK (FAR 6.304 for Approving Official)

Upon the basis of the above justification, I hereby approve, as Competition Advocate the solicitation of the proposed procurement(s) described herein using other than full and open competition, pursuant to the authority of 10 U.S.C. 2304(c)(1).

COMPETITION ADVOCATE APPROVAL

Rick McGarvey, Competition Advocate Date