

MEMORANDUM TO THE FILE

Subj: USE OF OTHER THAN FULL AND OPEN COMPETITION FOR AN ACQUISITION UNDER THE SIMPLIFIED ACQUISITION THRESHOLD

I. BACKGROUND:

1. 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).

2. As required by FAR 13.106-3(b)(3)(i), this memorandum 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.

II. DESCRIPTION OF ITEM OR SERVICE:

The Navy Legacy Flight Foundation supports the U.S. Navy outreach programs by providing historic, vintage war-birds for public and military events, including airshows, flyovers, and ceremonial flights. These aircraft are flown in conjunction and formation with modern naval aircraft, symbolizing the legacy of naval aviation. The foundation operates a specialized fleet of rare aircraft, which are maintained and flown by the highly experienced Navy Legacy Flight Foundation pilots certified to handle these vintage aircraft under stringent safety protocols.

The Contractor shall support and fly in demonstrations at fifty (50) Navy Legacy Flight Program (NFLP) open houses, airshows, and other events per year as directed/scheduled by Commander Naval Air Forces (CNAF) and Chief of Naval Air Training (CNATRA). Events include but are not limited to airshows, open house, parades, sporting events, veteran observations, and memorial services. The Contractor shall provide at least two (2) sufficient Navy/Marine Corps vintage aircraft (war-birds) per event. The Contractor shall provide at least two (2) pilots per event. The contractor shall maintain seven (7) pilots and ten (10) aircraft as qualified to fly, and be prepared to fly an estimated 60 hours per year for these events.

III. 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.

N/A

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).

N/A

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

The war-birds operated by the Navy Legacy Flight Foundation (NLFF) are unique, historical aircraft that are not available from other sources. These vintage planes are the only operational examples of their kind and are maintained to original specifications. No other organization or contractor can provide the same aircraft in flyable condition for the events described above. Below are the aircraft operated by the Navy Legacy Flight Foundation:

Five (5) F4U Corsair
One (1) F8F Bearcat
One (1) F7F Tigercat
One (1) FG1-D Corsair
One (1) FM-2 Wildcat
One (1) F6F Hellcat

The foundation has a long-standing relationship with the U.S. Navy and has demonstrated expertise in the safe operation and maintenance of these war-birds. They have a proven track record of meeting the Navy's specific requirements for heritage flight operations, including compliance with all Federal Aviation Administration (FAA) regulations, Department of Defense (DoD) guidelines, and operational safety standards. No other provider possesses the same level of experience and certification in this niche field. The foundation's war-birds are of significant historical value, and their participation in outreach events directly supports the Navy's mission of preserving its heritage and educating the public. The specific aircraft required for this project are irreplaceable, and the foundation is the sole custodian of these aircraft in pristine operational condition.

Due to the rare nature of the aircraft and the limited number of qualified pilots, scheduling and availability are critical factors. The Navy Legacy Flight Foundation has already demonstrated reliability in providing their aircraft and pilots for outreach events. Failure to procure the services of the Navy Legacy Flight Foundation would result in the inability to secure these historic aircraft, significantly reducing the effectiveness of Navy recruitment efforts in showcasing the history of naval aviation, which is a Chief of Naval Air Forces priority. A loss of this capability would detract from the mission to honor past and present naval aviators and thus diminish the public outreach and educational components of the events.

An award to any other source would result in substantial costs to the Government that is not expected to be recovered through competition and which could potentially impact the demonstration flight schedule, pilot per diem and aircraft ferrying. Ultimately, a halt in this program could hinder Navy recruitment efforts. Navy Legacy Flight Foundation is critical as they acquaint the naval aviators and civilian pilots with flying in the airshows environment in different formations with much slower and dissimilar aircraft. Based on the lack of responses indicated in Market Research and the capability demonstrated by the NLFF, an award to the NLFF is the only means to provide this capability within the Navy's limited budget for these services.

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.

N/A

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.

N/A

IV. CERTIFICATIONS/APPROVALS:

A. 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.

SIDES.WESLEY
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Date: 2024.05.17 09:12:55 -05'00'

WR Sides / [REDACTED]

17 May 24

Technical POC

Name (Printed) / Phone #

Date

Signature

B. Certification/Approval. See FAR 13.501

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Jodi McCarty / [REDACTED]

17 DEC 2024

Contracting Officer

Name (Printed) / Phone #

Date

Signature

C. FLCJ Code 200 Approving Official GS-14 or Higher

Contracting Officer

Name (Printed) / Phone #

Date

Signature

D. FLCJ Code 200 Approving Competition Advocate

Contracting Officer

Name (Printed) / Phone #

Date

Signature

OTHER THAN FULL AND OPEN COMPETITION

Pursuant to Title 41 U.S.C. 3304 and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition.

Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded.

Contracting without providing for full and open competition shall not be justified on the basis of –

- a. A lack of advance planning by the requiring activity or
- b. Concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.
- c. The requirement came down last minute.
- d. Suggested vendor has done work for the Government in the past.
- e. The Government has a good working relationship with the suggested vendor.

It is the responsibility of each activity to provide and certify the data that will support contracting with other than full and open competition procedures. Each justification shall contain sufficient facts and rationale to justify the use of said procurement. It shall have a detailed explanation as to why an item or service can only be provided by one responsible source and no other supplies or services will satisfy agency requirements. Statements such as "only known source", "only source that can meet required delivery date" or "do not substitute" are not adequate. "Urgency" is not a justification. "Must be compatible with existing equipment" is not enough information to constitute a valid sole source justification. An adequate sole source justification shall include the following minimum information:

- a. The intended use of the item or service
- b. A description of the item to include the critical or unique characteristics of the material or service which are mandatory that limit the requested item to a sole source
- c. The reason why no other source can furnish the requested item (e.g. patents, copyrights or other proprietary data).

Sole Source

Sole Source purchases occur when the required supplies or services can be bought from only one source, thereby eliminating all competition.

Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, the acquisition team must –

- a. Conduct sole source acquisitions, as defined in 2.101, (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section;
- b. Prepare sole source (including brand name) justifications using the format at FAR Subpart 6.303-2, modified to reflect that the procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901 or the authority of 41 U.S.C. 1903.

Some valid reasons for a sole source are:

- a. Repair parts only available through equipment manufacturer (market survey has been conducted)
- b. Compatibility with existing equipment (requires documentation of existing equipment value and special features, which no other manufacturer can provide)
- c. The source can / has established proprietary rights in the item or service required
- d. The work is so closely related to that of an on-going contract that would not be feasible to consider another potential contractor
- e. Similar products lack features that are necessary to meet the Government's minimum needs or other contractors are not qualified to perform necessary services (specific, detailed features or qualifications must be provided in the purchase description or statement of work)
- f. Compliance with the agency's standardization program (e.g. Shipboard Copier Program (SCP))
- g. National security - disclosure of the agency's needs would compromise the national security

Brand Name

An acquisition or portion of an acquisition that uses a brand-name description or other purchase description to specify a particular brand-name, product, or feature of a product, peculiar to one manufacturer—

- a. Does not provide for full and open competition, regardless of the number of sources solicited; and
- b. Shall be justified and approved in accordance with FAR 6.303 and 6.304.

Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, the acquisition team must –

- a. Conduct sole source acquisitions, as defined in 2.101, (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section;
- b. Prepare sole source (including brand name) justifications using the format at FAR Subpart 6.303-2, modified to reflect that the procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901 or the authority of 41 U.S.C. 1903.

Unusual and Compelling Urgency

Unusual and Compelling Urgency is a serious situation that can lead to a cascading mission failure. Within their respective justifications, the Contracting Officer has to not only explain what the compelling urgency is, but also describe the irreparable damage the Government will endure if the award is either delayed or denied. This type of statutory authority is used by the Department of Defense (DoD) during international conflicts or natural disasters.

When the agency's need for the supplies or services is of such an 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, full and open competition need not be provided for.

This authority applies in those situations where –

- a. An unusual and compelling urgency precludes full and open competition, and
- b. Delay in award of a contract would result in serious injury, financial or other, to the Government.

Limitations –

- a. Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.
- b. This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

Some valid reasons for an Unusual and Compelling Urgency are:

- a. A crane rental to transport boats out of the water because a hurricane.
- b. An engine part of a ship that is broken down off the coast.
- c. New fall protection equipment to replace the damaged equipment.