

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

Action: Out-of-Scope Modification to Contract W912PL-19-C-0014, El Centro 1 and Yuma 1 Vehicle Barrier Replacement Project

Authority: FAR 6.302-1, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements 10 U.S.C.2304(c)(1)

Amount: \$12,500,000.00

Prepared by:

[REDACTED]

Contracting Officer:

[REDACTED]

Technical Representative:

Name:

[REDACTED]

Title:

Requirements Representative:

Name:

[REDACTED]

Title:

I have reviewed this J&A and find the justification adequate to support other than full and open competition.

Program Manager:

Name:

[REDACTED]

[REDACTED]

Signature:

[REDACTED]

Date: _____

Small Business Specialist

[REDACTED]

[REDACTED]

Signature:

[REDACTED]

Date: _____

Assistant District Counsel

[REDACTED]

Signature: [REDACTED] [REDACTED] Date: _____

Deputy District Engineer for Programs and Project Management

[REDACTED]

Signature: [REDACTED] [REDACTED] Date: _____

JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION

1. CONTRACTING ACTIVITY: U.S. Army Corps of Engineers (USACE), South Pacific Border District (SPB), Contracting Division, Phoenix, AZ 85012. The USACE, Los Angeles District (SPL), Contracting Division, Los Angeles, California 90017 issued the initial contract on 15 May 2019. The contract was then transferred to the USACE, SPB, for all post award activities.

2. DESCRIPTION OF ACTION: Approval is requested to award a follow-on modification to BFBC, LLC (BFBC), 701 Gold Avenue, Bozeman, Montana 59715, for work considered to be out-of-scope of existing contract W912PL-19-C-0014 for the EI Centro 1 and Yuma 1 Vehicle Barrier Replacement Project awarded on 15 May 2019.

Background Information. This action will be awarded as a bilateral modification against the existing EI Centro 1 and Yuma 1 Vehicle Barrier Replacement Project, Contract W912PL-19-C-0014, which was issued under the DoD 284 Program in support of the Presidential National Emergency Declaration Concerning the Southern Border of the United States issued 15 February 2019, and the urgent and compelling directive received from the Secretary of Defense on 03 May 2019. This modification will incorporate work, which was originally included in the awarded contract, but later descoped in contract modification P00019 on 28 September 2020. A scope, schedule, and cost change request, dated 26 August 2020, was received by SPB requesting the work be descoped because the Request for Assistance (RFA) from the Department of Homeland Security (DHS) and subsequent authorization from the Secretary of Defense did not authorize construction West of the Andrade Port of Entry (POE). As a result, it was determined the requirement for replacement of vehicle barrier with primary pedestrian barrier (approximately 0.46 miles) with attributes on the West end of Yuma 23-2 (West of the Andrade POE) would require DHS funding. The intent was to reallocate funds for this portion of work using the appropriate DHS funding; however, DHS funding was not available at the time and the decision was made to descope the work with the intention to add the descoped work back into the contract in a subsequent modification once DHS funding became available.

The type of funds utilized will be DHS construction funds, which will be deposited in the USACE Civil Works account pursuant to an Economy Act agreement between DHS and USACE. The estimated total value of the contract modification is \$12,500,000.00.

It is anticipated that the existing period of performance will be extended for an additional 150 calendar days.

3. DESCRIPTION OF SUPPLIES/SERVICES: The purpose of this modification is to design and construct approximately 0.46 miles of primary barrier with attributes on the West end of Yuma 23-2 (West of the Andrade POE). Construction of the fence is along the international boundary, approximately three feet into United States territory. All work

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for this modification will be located within the Customs Border Patrol (CBP) Yuma Sector in Andrade, California west of the Andrade Port of Entry and continuing east into Imperial County, California on the Quechan Reservation, across the Colorado River from Yuma, Arizona.

4. AUTHORITY CITED: The statutory authority permitting other than full and open competition for the proposed follow-on modification is 10 U.S.C. 2304(c)(1), as implemented by FAR 6.302-1 -- Only one responsible source and no other supplies or services will satisfy agency requirements. 10 U.S.C.2304(d)(1)(B), as implemented by FAR 6.302-1(a)(2)(iii)(A), provides that full and open competition need not be provided in instances when services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition.

5. REASON FOR AUTHORITY CITED: The DHS requested USACE's immediate full engagement on all planning and preparation necessary to physically secure the southern border as required. This mission requires an urgent and sustained response including the application of significant resources to ensure the numerous complex issues and challenges involved in the rapid planning, design and contract procurement. Issuance of a follow-on contract action (i.e. out-of-scope modification) of the existing contract W912PL-19-C-0014 is the most expedient and cost-effective alternative to meeting the agency's immediate need for the construction of the barrier infrastructure. USACE need not engage in full and open competition for this requirement because the criteria in FAR 6.302-1(a)(2)(iii) are met, as indicated below.

A. Original Source. BFBC is the original source of the work described in paragraph 3, which was initially included in awarded contract W912PL-19-C-0014 for the El Centro 1 and Yuma 1 Vehicle Barrier Replacement Project. This project was initially solicited on a competitive basis among the nine firms established on the Prequalified Sources List - 2 (PQSL 2). BFBC was determined to be the highest qualified offeror in Phase I of the evaluation; however, due to the urgent need to expedite award, the Government conducted its Phase II evaluation as a sole source acquisition with the highest qualified single firm, BFBC, under the statutory authority 10 U.S.C.2304(c)(2), as implemented by FAR 6.302-2, Unusual and Compelling Urgency. As discussed in paragraph 2, the work described in paragraph 3 was later descoped from the contract due to a funding issue with the intention to add the descoped work back into the contract in a subsequent contract action once additional DHS funding became available.

B. Follow-On Contract. Adding the work described in paragraph 3 as a follow-on contract action (i.e. modification to contract W912PL-19-C-0014) is the most expedient and cost-effective means to meet DHS' requirements. The SPB examined several alternatives for fulfilling this requirement: 1) use of full and open competitive procedures, 2) use of the existing Western Horizontal Construction

Multiple Award Task Order Contract (MATOC) and 3) a follow-on contract action (i.e. out-of-scope modification) in accordance with FAR 6.302. The first and second alternative would not allow for performance to begin immediately and would result in a substantial duplication of cost to the Government. The only viable alternative is to select a single responsible contractor in close proximity to the work required. The responsible contractor, BFBC, is currently constructing the new replacement vehicle barrier (W912PL-19-C-0014) within approximately 740 linear feet from the starting point on the westside of the Andrade POE. The 740 linear foot gap will remain as the POE already has a secure perimeter in place that the USACE will tie into on either side to form a continuous barrier.

C. Highly Specialized Services. The construction and design services provided by BFBC are considered to be highly specialized as BFBC is the only vetted design-build contractor with the capacity to perform a project of this magnitude, with relevant experience in the design and construction of the complex barrier infrastructure requirements, and that is currently performing work in this remote location. BFBC has personnel, established subcontractors, and a design team currently mobilized at the site who are familiar with the area and terrain, which will enable them to respond quickly and efficiently to this scope change. BFBC has established land agreements with surrounding landowners (the project borders the Quechan Indian Reservation) necessary to access this site and is constructing the single access road leading to and from the site. BFBC has also acquired all required work permits, both on the Quechan Nation and at the POE and have already performed extensive investigation on the utilities.

It is critical to the POE that disruption to their operations is minimal. The 3-phase power, Linear Ground Detection System (LGDS), lighting, and Closed-Circuit Television (CCTV) requirement for this work will require extensive coordination with the items designed and being installed on the eastside of the POE. All attributes on the westside will be required to tie into the attributes on the eastside to ensure a fully integrated system is provided. BFBC will also relocate an electrical switchgear per their current contract. The relocation of the switchgear will be coordinated to ensure future connections will not further disrupt the POE operations. Use of BFBC for this work will provide continuity that will ensure that this critical aspect of the infrastructure work will be fully integrated as intended and with minimal POE disruption.

D. Substantial Duplication of Costs. FAR 6.302-1(a)(2)(iii) provides that full and open competition need not be provided in instances when services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition or unacceptable delays in fulfilling the agency's requirements. In this case, award to any other source would result in substantial duplication of costs that are not expected to be recovered through competition.

Awarding a follow-on contract action to BFBC to accomplish the work described in paragraph 3 will eliminate the duplication of costs associated with general conditions or fixed costs and will ensure continuity of existing operations. BFBC personnel, subcontractors, and design team are currently mobilized at the site. This includes field office staff who are familiar with the project area, security, designer of record (DOR) and other subcontractors. BFBC's familiarity with the project area and established relationship with landowners, local material suppliers and subcontractors will help facilitate and maintain the aggressive construction schedule, while another contractor would be required to incur these general conditions/ fixed costs over a longer period of time as necessary to mobilize.

Furthermore, equipment necessary for construction, such as watering systems and concrete batch plants are currently on-site. These costs have already been incurred under the existing contract. BFBC has also performed initial surveys and preparatory work necessary for construction, including a Light Detection and Ranging (LIDAR) flight, which is used to create a 3-D model of the geography of the site. With the initial LIDAR flight complete, the Government would only be required to pay for the compilation of the raw data.

BFBC has established relationships with the landowner to obtain the necessary authorization to construct access routes to the site which borders the Quechan Indian Reservation. The project site is remote and difficult to access with a single access road under construction. Having an additional contractor in close proximity would require additional coordination and delay time waiting for vehicles and equipment to move along the road and to access construction sites, which could increase costs. Additionally, BFBC has already obtained all required permits from both the Quechan Nation and the POE to work on this site. Obtaining these permits is a lengthy and time-consuming process, resulting in additional general condition costs. The Quechan Nation permitting process takes approximately 90 calendar days from start to finish.

The following table identifies costs the Government has paid under the existing contract W912PL-19-C-0014, which would be duplicated and not recovered through competition and the estimated amounts for these specific costs if awarded as a follow-on modification opposed to a competed action; both are based on historical pricing.

Table 1- Cost Benefit Analysis

Feature of Work			Duplicative Costs
Initial Site Survey			\$ 119,400.00
Mobilization and Demobilization			\$1,704,903.00
Geotechnical Investigation			\$ 252,475.00
Survey/Design all Project Features			\$1,239,153.00
Total			\$3,315,931.00

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Based on the analysis above, BFBC has a significant advantage over competitors considering that BFBC is currently mobilized, is performing the same requirements on a larger scale in the immediate area, has established access agreements with surrounding landowners and constructed the single access road to the site. It is anticipated that this advantage will be reflected in BFBC's proposal and schedule for the completion of this work. It is estimated that the Government would incur duplicative costs in the amount of approximately \$3,315,931.00 if this action were competed through full and open competition. The Government considers the duplication of costs to be substantial, as it is estimated that the Government would receive competitive pricing in the amount of \$18,423,583.00 compared to the anticipated \$12,500,000.00 if awarded to BFBC, which represents a 32% cost difference.

E. Use of Authority Justified. Authorization and funding have now been granted by DHS to pursue the work covered by this modification. The DHS requested USACE's immediate full engagement on all planning and preparation necessary to physically secure the southern border as required. The El Centro 1 and Yuma 1 Vehicle Barrier Project (W912PL-19-C-0014) was awarded in support of the President's declaration to secure the southern border and the need to secure the area described in paragraph 3 is essential to ensure a continuous barrier infrastructure required to adequately enforce the nation's immigration laws and provide the DHS operational controls necessary to prevent illegal activities occurring in the area.

BFBC is considered to have specialized experience considering they have been vetted under the PQSL- 2 and are the only qualified source capable to perform work of this magnitude and fulfill the Government's requirements in this remote location. BFBC is currently performing construction on the El Centro 1 and Yuma 1 Vehicle Barrier Project and has the capacity for the additional work required by this modification. BFBC's complete mobilization to a site in close proximity presents substantial cost savings to the Government that would not be realized if this requirement was issued using full and open competition.

6. EFFORTS TO OBTAIN COMPETITION: The SPB examined several alternatives for fulfilling this requirement: 1) use of full and open competitive procedures, 2) use of the existing Western Horizontal Construction Multiple Award Task Order Contract (MATOC) and 3) a follow-on contract action (i.e. out-of-scope modification) in accordance with FAR Part 6. The first and second alternatives would result in a substantial duplication of costs that are not expected to be recovered through competition. The only viable alternative is to select the single responsible contractor in close proximity to the work required, as specified in paragraph 3 above. The responsible contractor, BFBC, is currently constructing the new replacement vehicle barrier (W912PL-19-C-0014) within close proximity to this site.

7. ACTIONS TO INCREASE COMPETITION: A Notice of Intent (NOI) to Award Sole Source was posted to the Government Point of Entry (GPE), beta.SAM.gov, on 15 December 2020 and closed on 30 December 2020 in accordance with FAR 5.203(a).

Interested parties were invited to submit their intent and capabilities to satisfy the Government's requirement. The Government considered the one response to the NOI as mentioned in paragraph (9) below; however, a determination by the Government not to compete this proposed contract action based upon responses to this notice is solely within the discretion of the Government.

8. MARKET RESEARCH: Market research was prepared for the initial awarded contract W912PL-19-C-0014 and other vehicles were considered to fulfill this requirement (see paragraph 6). It was determined that it is in the best interest of the Government to award this requirement as a follow-on contract action (i.e. out-of-scope modification) to existing contract W912PL-19-C-0014, due to the close proximity to the West end of Yuma 23-2 (West of the Andrade POE), in which the contractor has fully mobilized and is currently performing design and construction activities that will be required for the work described in paragraph 3. Full and open competition or fair opportunity requirements under the Western Multiple Award Task Order Contracts (MATOC) or other vehicles would result in duplication of costs to the Government that is not expected to be recovered through competition.

9. INTERESTED SOURCES: The Government received one response to the NOI on 21 December 2020 from [REDACTED] and conducted a review of the capability statement provided. [REDACTED]

Based on the response to the NOI, BFBC is the only responsible source currently working in close proximity to the work described in paragraph 3 that has the capacity and experience to perform a project of this complexity and magnitude. Full and open competition would result in project delays due to access limitations and substantial duplication of costs that are not expected to be recovered through competition.

10. OTHER FACTS: None. Procurement history has been reflected previously in this document.

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.

Name: [REDACTED]
 Title: [REDACTED]
 Signature: [REDACTED] Date: [REDACTED]

12. REQUIREMENT 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.

Name: [REDACTED]
 Title: [REDACTED]
 Signature: [REDACTED] Date: [REDACTED]

13. FAIR AND REASONABLE COST DETERMINATION: I hereby determine that the anticipated cost or price to the Government for this contract action will be fair and reasonable. This will be determined by conducting a detailed cost/price analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories. The contractor will be required to submit their price/cost proposal IAW FAR Part 15, and Certified Cost or Pricing Data will be required IAW FAR 15.403-4.

Name: [REDACTED]
 Title: [REDACTED]
 Signature: [REDACTED] Date: [REDACTED]

14. CONTRACTING OFFICER CERTIFICATION: I certify that this justification is accurate and complete to the best of my knowledge and belief.

Name: [REDACTED]
 Title: [REDACTED]
 Signature: [REDACTED] Date: [REDACTED]

Concurred By:

[REDACTED]

[REDACTED]

APPROVAL

Based on the foregoing justification, I hereby approve this modification to provide Design-Build Construction in Support of the Southwestern Border Infrastructures effort for the CBP Yuma Sector on an other than full and open competition basis pursuant to the statutory authority of 10 U.S.C.2304(c)(1), as implemented by FAR 6.302-1 -- Only one responsible source and no other supplies or services will satisfy agency requirements, subject to the availability of funds, provided the work herein described has otherwise been authorized for acquisition and provided funds have otherwise been authorized for acquisition and in accordance with AFARS 5106.302-2(d)(1)(ii).

Signature: 
