

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOFOC)
INCORPORATION OF TRANSPORTATION AND MECHANICAL SERVICES
SCOPE OF WORK INTO THE SAVANNAH RIVER SITE
MANAGEMENT & OPERATING CONTRACT

Office of Acquisition Management
Savannah River Operations Office

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1. Identification of Agency and Contracting Activity: The United States Department of Energy (DOE), Savannah River Operations Office (DOE-SR), Office of Acquisition Management (OAM).

2. Nature and Description of Action Being Approved: By contract modification, OAM intends to non-competitively incorporate the Transportation and Mechanical Services scope of work into its recently awarded Management and Operating (M&O) contract with Savannah River Nuclear Solutions, LLC (SRNS). In 2006, the Transportation and Mechanical Services support function, historically performed by the M&O contractor, was excluded from the Department's M&O contract solicitation in support of a DOE Complex-wide effort to increase the number of prime contracts awarded to small businesses. DOE's intent was to award this scope of work to a small business. For reasons cited later in this justification, it is no longer possible to set aside this scope of work for consideration of small business contract awards. The action represents a continuing service requirement for the entire aggregate performance term of the M&O contract with SRNS, which has a base period of five (5) years and includes an option to extend the contract for up to five (5) additional years.

3. Description of Services Required to Meet Agency Needs: The description of the scope of work needed to meet the Agency's needs is listed below:

Transportation and Mechanical Services, which includes emergency specialty equipment services, transportation services on site and off site (non-nuclear), fuel management (all types), fire protection engineering, and fire test and maintenance (outside the nuclear fence). The estimated annual value of this service requirement is approximately \$5 million.

4. Statutory Authority Permitting Other Than Full and Open Competition: The statutory authority to noncompetitively incorporate the Transportation and Mechanical Services scope of work listed in paragraph 3 above is found in 41 U.S.C. § 253(c)(1); only one responsible source and no other supplies or services will satisfy the Agency's requirements.

5. Nature of the Acquisition Requiring Use of Authority Cited: The nature of this acquisition requires use of the authority cited. In 2006, in support of a DOE Complex-wide effort to increase small business participation with its prime contracts, DOE-SR undertook a new approach to developing small business opportunities by attempting to remove various scopes of work from the M&O contract for direct award in order to: (1) increase small business participation in DOE contracting; and (2) to deliver innovation and enhanced performance. DOE-SR endeavored to complete these small business awards for over two years; however, after an extensive technical and legal review, efforts to break out the Transportation and Mechanical Services scope of work from the M&O contract were unsuccessful due to issues related to the Site pension plan, referred to as a Multiple Employer Pension Plan.

The Transportation and Mechanical Services scope of work is presently being performed by the former SRS M&O contractor, Washington Savannah River Company, LLC, (WSRC), under a contract extension to provide liquid waste cleanup operations until the award of the new SRS Liquid Waste contract. The WSRC contract expires in March 2009.

WSRC, SRNS and three other contractors who perform work at SRS are sponsors of a Multiple Employer Pension Plan (SRS MEPP), which is a tax-qualified defined-benefit pension plan. The SRS MEPP has approximately 8,000 active participants. The active participants in the SRS MEPP include all of the current WSRC employees and SRNS employees who are considered to be incumbent employees under the terms of the SRNS M&O contract.

DOE practice is for incumbent employees of DOE contractors who participate in contractor-sponsored defined benefit pension plans at a given DOE site to be able to continue to participate in those plans if they are hired by a successor DOE contractor at that site, subject to applicable contract and benefit plan terms and conditions and legal requirements. In this regard, new DOE contractors at a given site are required to sponsor an entire existing defined benefit pension plan or a new segment of an existing defined benefit pension plan. This is so that incumbent employees hired by the new employer are able to continue to participate in their existing defined benefit pension plans in accordance with the terms of those plans. Any new Transportation and Mechanical Services contractor would have to become a sponsor of the SRS MEPP so that WSRC employees hired by the Transportation and Mechanical Services contractor could continue to participate in the SRS MEPP.

To become a sponsor of a MEPP, any individual employer must meet rigorous Internal Revenue Service (IRS) testing requirements on an individual employer basis. This is because if *only one* employer/contractor sponsoring a segment of the MEPP cannot meet the IRS testing requirements, the *entire* MEPP will be disqualified. If a MEPP is disqualified, all of the employer sponsors may lose the tax-deductibility of their contributions and, in addition, certain plan earnings may become taxable income for all of the plan participants.

The IRS rules regarding minimum participation for a segment of a MEPP are set forth at 26 U.S.C § 401(a)(26). These rules require that a segment of a MEPP must benefit at least the lesser of 50 employees of the employer, or the greater of 40 percent of all employees of the employer, or two employees (or if there is only one employee, such employee). Less than 50 WSRC employees currently perform the work encompassed by the Transportation and Mechanical Services work scope. Based on these facts, DOE is not aware of any responsible source, other than the M&O contractor, that could satisfy the IRS' minimum participation requirements for a stand-alone Transportation and Mechanical Services segment of the SRS MEPP.

The non-competitive incorporation of the Transportation and Mechanical Services scope of work into the terms of the SRNS M&O Contract, DE-AC09-08SR22470, is necessary because of the risks of disqualification of the SRS MEPP. Furthermore, incorporating the Transportation and Mechanical Services scope of work into the SRNS M&O contract is necessary because the Site's

residual M&O contract with WSRC will end within one year. The WSRC M&O contract has recently been extended to accommodate the Liquid Waste portion of that scope as well as the continued performance of the Transportation and Mechanical Services scope of work.

Incorporation of the Transportation and Mechanical Services scope of work into the new M&O contract is appropriate because this scope of work is a Site support mission historically performed by the M&O contractor. In addition, the sole reason the Transportation and Mechanical Services scope of work was excluded from the solicitation for the new M&O contract was to support a DOE Complex-wide effort to increase small business participation with its prime contracts. Finally, in its review, the Department examined all options with the highest priority given to ensuring the equitable treatment of all incumbent M&O employees by honoring its commitment that these employees would remain in their existing pension plan. Taking this prudent action to incorporate the Transportation and Mechanical Services scope of work is necessary to avoid any negative impact to incumbent employee pensions and to continue to provide these necessary Site support functions. As a result, this work scope will be incorporated into the SRNS M&O contract. DOE will execute a bilateral modification with SRNS that incorporates the Transportation and Mechanical Services scope of work into the M&O contract.

6. Description of Efforts Made to Ensure that Offers are Solicited from As Many Potential Sources as is Practicable: No additional sources will be solicited for this contract modification. Due to extensive legal and technical analysis performed on the Transportation and Mechanical Services scope of work, the Agency is not aware of any responsible source, other than the M&O contractor, that could satisfy the IRS' minimum participation requirements for a stand-alone Transportation and Mechanical Services segment of the SRS MEPP. The Agency issued a public notice of this intended contract modification to incorporate this scope of work as described in FAR Subpart 5.2 and solicited capability statements from potential offerors. There were no expressions of interest received to the synopsis during the 15 day synopsis period. In addition, there is an Agency requirement for 72-hour notification to Congress.

7. Contracting Officer's Determination that the Anticipated Cost to the Government will be Fair and Reasonable: The annual value of the scope of work to be incorporated into the contract is estimated to be approximately \$5,000,000. The contract is for budget-based operations, under which only the funds allocated to the contract may be expended by the contractor. Based upon the budget-based operations and the fact the Agency is well aware of the past and current costs of operations, together with an Earned Value Management approach to measurement of project completions and fee determinations, the Contracting Officer determines that the Agency can ensure costs being expended are fair and reasonable.

8. Statement of Reason Why Market Research Was Not Conducted: There were no expressions of interest received to the synopsis during the synopsis period. Additional Market research was not conducted as part of this proposed modification to non-competitively incorporate the Transportation and Mechanical Services scope of work into the terms of the SRNS M&O Contract DE-AC09-08SR22470 because, as discussed above, the new M&O contractor is the only source capable of providing the incumbent employees the required benefits and pensions while

maintaining the qualified status of the SRS MEPP. Therefore, incorporating these scopes of work into the new SRNS M&O contract is in the best interest of the Agency.

9. Other Facts Supporting the Use of Other than Full and Open Competition: None.

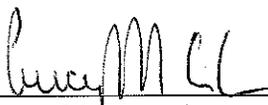
10. Sources that Expressed Interest in Acquisition: The Agency issued a public notice of this intended contract modification to incorporate this scope of work as described in FAR Subpart 5.2 and solicited capability statements from potential offerors. There were no expressions of interest received to the synopsis during the 15 day synopsis period

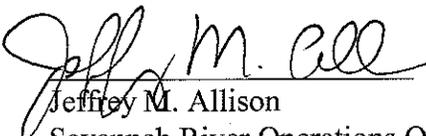
11. Actions that May Be Taken to Remove or Overcome Barriers to Competition: The IRS regulations controlling sponsor participation in an MEPP has created an insurmountable barrier to competition beyond the control of the Agency. A thorough explanation of the IRS regulations which created the barrier to competition exists in Paragraph 5 above.

12. Certifications and Approvals:

The information contained in this Justification for Other than Full and Open Competition is certified accurate and complete to the best of my knowledge and belief.

Contracting Officer  1/16/09
Angela S. Morton
Office of Acquisition Management Date

DOE-SR Counsel  1/16/09
Lucy M. Knowles
Office of the Chief Counsel Date

Site Manager  1/21/09
Jeffrey M. Allison
Savannah River Operations Office Date

EM Competition Advocate  2/10/09
Michael F. Howard
Office of Procurement Planning Date

Head of Contracting Activity  2/10/09
J. E. Surash
Deputy Assistant Secretary for
Acquisition and Project Management Date

APPROVAL:

Procurement Executive  2/20/09
Edward R. Simpson
Office of Procurement and
Assistance Management Date