

JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION

1. **Contracting Office** – Defense Commissary Agency, Enterprise Acquisition Division (LEAA), Fort Lee, VA 23801

2. **Type of Contract Action** – New contract for continuation of services, firm fixed price under DWCF funding. Contract base year period of performance to be March 1, 2014 through February 28, 2015 and includes four one-year options which could run through February 28, 2019.

3. **Description of Supplies/Services** – Trash removal services for the March ARB Commissary, located in Riverside County, California. Contract base year amount \$33,016.54; first option \$33,763.67; second option \$34,528.03; third option \$35,310.01; and fourth option \$36,110.21, resulting in a total five year cost of \$172,728.46.

4. **Authority Cited** – 10 U.S.C. 2304(c)(5), in accordance with FAR 6.302-5(a)(2)(i) Authorized or Required by Statute

5. **Reason for Authority Cited** – Riverside County Ordinance No. 657.6, Section 1.1.B implements California Public Resource Code Section 40059(a). Riverside County Board of Supervisors has the authority to grant franchises to solid waste companies to provide services in designated unincorporated sections of the County. This is further supported by the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6961(a), which requires any department of any branch of the Federal Government “..engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural...”

6. **Efforts to Obtain Competition** – Riverside County Board of Supervisors has designated Waste Management of Inland Valley, a division of Waste Management Collection & Recycling, Inc. (Waste Management) as the sole franchised company for the area where this commissary is located. Accordingly, no competition exists.

7. **Fair and Reasonable Cost Determination** – Rates charged by Waste Management are regulated by the Riverside County Board of Supervisors. Pricing submitted for this requirement matched the rates established by this Board. Since pricing is set and non-negotiable, a comparison was done between the Franchise Rate Agreement and commercial disposal rates within the city of Riverside. The rates under the Franchise Rate Agreement are approximately 10% higher than Riverside, which is attributed to the remote location and additional county fees. Future pricing will be IAW the Franchise Agreement and will not increase unless the Board of Supervisors approves a rate change.

8. **Market Research and Interested Sources** – Initial market research indicated the award would be a Sole Source as March ARB contracting division cited Riverside County solid waste regulation prohibited award of solid waste services (trash removal) to companies not awarded a franchise in unincorporated areas of the County. However, Riverside County Department of

Environmental Health supervisory employee, Mr. Greg Reyes, suggested that Ms. Alice Beasley - referenced on the March ARB Justification and Approval and no longer with the Department - was in error in this interpretation and would refer the matter to the County legal department. Response received on October 22, 2013 indicated the commissary was not bound to the Riverside County regulation and was free to use companies not franchised by the County. Additional market research was done and solicitation HDEC05-14-T-0009 was issued as a 100% small business set-aside. Presolicitation notice was posted on November 12, 2013. Waste Management Government Contracting Services sent the contract specialist an email pointing out that an exclusive franchise for that area was awarded to a Waste Management company. Contract specialist forwarded the email reply from Riverside County Department of Environmental Health to Waste Management Government Contracting Services. After the solicitation was posted, legal counsel for Waste Management sent an email, with a formal letter and backup legal documentation on November 21, 2013 (certified letter was received on November 27, 2013), citing State of California legal precedent, local Riverside County Code, and that DeCA was legally bound to use Waste Management as the franchise holder. That email was forwarded to DeCA General Counsel for review and General Counsel responded to Waste Management legal counsel via email that in light of the supporting documentation, if DeCA requires service for this location that the service would be ordered from the franchise holder (currently their client). Solicitation was then cancelled on November 25, 2013 and contracting proceeded to establish this J&A based on the sole source franchise agreement that Waste Management holds for this geographic area. On January 23, 2014 Contract Specialist received a letter from the Office of County Counsel, Riverside County, confirming that March ARB (and the commissary as part of the installation) is subject to exclusive franchise agreement holder for trash removal services for that area.

9. Actions to Increase/Foster Competition – As local Riverside County government statute forbids awarding to a company other than the exclusive franchised company for the commissary location, no actions to increase or foster competition will be taken.

10. Other Factors – Contract HDEC05-09-P-0029, was solicited as a total Small Business set-aside in October 2008 and was awarded to a small business, effective date of the contract January 1, 2009. As indicated in Paragraph 8, market research found State of California regulation allows localities in the State to limit competition by awarding an exclusive franchise to a company for a certain geographical area within their governmental boundaries.

Technical Certification:

N/A

Requirements Certification:

I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

Name: Mark Charpentier

Signature:

CHARPENTIER.MA
RK.D.1005493869

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Date: 2014.02.06 07:16:26 -0500

Title: Program Analyst, Env. Management Date:

02/06/2014

Fair and Reasonable Price Determination and Contracting Officer Certification:

I hereby determine that the price for this contract action will be fair and reasonable. I certify that this J & A is accurate and complete to the best of my knowledge and belief.

Name: Loria Samples Hile

Signature: SAMPLES
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Contracting Officer

Date: 2-5-14

APPROVAL

Based on the foregoing justification, I hereby approved the procurement of the trash removal services for the March ARB Commissary, on an other than full and open competition basis pursuant to the authority of 10 U.S.C. 2304(c)(5), provided funds are available, or will be available, and provided that the services and products herein described have otherwise been authorized for acquisition.

APPROVED:

Signature: SAMPLES
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Contracting Officer

Date: 2-5-14