

**UNITED STATES (U.S.) DEPARTMENT OF ENERGY (DOE)
OFFICE OF ENVIRONMENTAL MANAGEMENT
LOS ALAMOS FIELD SITE (EM-LA)**

**JUSTIFICATION FOR AN EXCEPTION TO FULL AND OPEN COMPETITION
FOR ACQUISITION FOR NATURAL RESOURCE DAMAGE ASSESSMENT
(NRDA) SUPPORT**

ACROYNMS AND ABBREVIATIONS

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CO	Contracting Officer
DOE	Department of Energy
EMCBC	Environmental Management Consolidated Business Center
EM-LA	Environmental Management – Los Alamos
FAR	Federal Acquisition Regulation
GSA	General Services Administration
ID/IQ	Indefinite Delivery/Indefinite Quantity
IEc	Industrial Economics, Incorporated
LANLTC	Los Alamos Natural Resource Trustee Council
MAS	Multiple Award Schedule
NRDA	Natural Resource Damage Assessment
POP	Period of Performance
T&M	Time and Materials

HISTORICAL CONTRACTUAL ACTIONS

GS10F0224J DE-DT0002152 NRDA for Release of Hazardous Substances
DE-EM0003939 DE-DT0010335 Damage Assessment and Restoration Plan
DE-EM0003939 DE-DT0011312 NRDA Non-Detects
DE-EM0003939 DE-DT0011011 Soils, Sediment, Surface Water, Air, Biota
DE-EM0003939 DE-DT0011621 Groundwater
DE-EM0003939 DE-DT0013783 Pueblo Lost Services

CONTEMPLATED CONTRACTUAL ACTIONS

MAS 47QRAA20D0044 Task Order 1 Administrative Support
MAS 47QRAA20D0044 Task Order 2 Groundwater Assessment
MAS 47QRAA20D0044 Task Order 3 Cultural Assessment

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1. AGENCY IDENTIFICATION AND CONTRACTING ACTIVITY

This acquisition is conducted under the authority of the General Services Administration (GSA) Multiple Award Schedule (MAS) Program. The Department of Energy (DOE) Environmental Management – Los Alamos (EM-LA) Field Office (Contracting Activity) proposes to contract directly with Industrial Economics Incorporated (IEc) for Natural Resource Disaster Assessment (NRDA) support in accordance with the fair opportunity exemption at 48 Code of Federal Regulations (CFR) 8.405-6(a)(1)(i)(C) – In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

2. NATURE AND/OR DESCRIPTION OF THE ACQUISITION BEING APPROVED

This action is for approval of a limited source procurement to IEc to assist the Los Alamos National Laboratory Trustee Council (LANLTC) with continuing their NRDA. The EM-LA Field Office intends to issue three NRDA support task orders in an effort to continue work based on the historical contract actions listed in this Justification for Other than Full and Open Competition (JOFOC). Specific functions under these actions will include assisting the LANLTC with providing administrative support and restoration planning (Task Order 1), an ecological and groundwater assessment (Task Order 2), and a cultural assessment (Task Order 3). The contemplated awards are Time and Material (T&M) task orders based on GSA contract 47QRAA20D0044. The Government's liability will be limited by the task order value ceiling of \$1,000,000. The combined total value of these three task orders will be \$3,000,000.

IEc was also the awardee for a competitively awarded Phase 1 NRDA action. DE-DT0002152 was a task order issued off of GSA contract GS10F0224J. DE-DT0002152 expired on 2/28/2014. IEc currently holds a competitively awarded Phase 2 NRDA, Indefinite Delivery/ Indefinite Quantity (ID/IQ) contract administered by EM-LA. The contract number is DE-EM0003939. The ordering period for this base contract is from 9/24/2015 to 9/23/2020. Task orders may extend up to two years beyond the last day of the contract term. The period of performance (POP) for DE-DT0011312 ended on 9/23/2022. Due to delays resulting from the Coronavirus Disease 2019 (COVID-19) pandemic, POP extensions until 3/23/2023 were granted in accordance with 48 CFR 52.249-14 – Excusable Delays (April 1984) for task orders DE-DT0010335, DE-DT0011011, DE-DT0011621, and DE-DT0013783.

3. DESCRIPTION OF SERVICES REQUIRED TO MEET AGENCY NEED

NRDA is a four phase, statutory process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC §§ 9601 et seq. and U.S. Department of the Interior NRDA regulations (43 Code of Federal Regulations (CFR) Part 11).

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Natural Resource Trustees undertake NRDA's to assess natural resource injuries and service losses that result from the release of hazardous substances and determine appropriate ways of restoring and compensating for damage to the environment. Damages to natural resources are evaluated by identifying the functions provided by the resources, determining the baseline level of the functions provided by the injured resource(s), and quantifying the reduction in service levels because of contamination. Natural resources include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, any foreign government, or any Indian tribe..." [43 CFR § 11.14(z)]. Natural resources are categorized into five groups: surface water resources, groundwater resources, air resources, geologic resources, and biological resources.

The LANLTC Members include the following:

- State of New Mexico, acting through the Natural Resources Trustee of the Office of Natural Resources Trustee
- Pueblo de San Ildefonso
- Pueblo of Santa Clara
- Pueblo of Jemez
- Pueblo de Cochiti
- U.S. Department of Agriculture, acting through the Forest Service
- U.S. Department of Energy, Environmental Management Los Alamos Field Site
- U.S. Department of Energy, National Nuclear Security Administration Los Alamos Field Site

The four phases of NRDA are:

Phase 1: Pre-assessment Screen

Trustees must determine whether an injury has occurred, and if a pathway of exposure exists. The pre-assessment screen is a prerequisite to conducting a formal NRDA.

Phase 2: Assessment Plan

Trustees must confirm the exposure of Trust Resources and develop an Assessment Plan to identify how the potential damages will be evaluated. Draft Assessment Plans must be available for public review and comment.

Phase 3: Assessment Implementation

Trustees gather data necessary to quantify the injuries and determine damages. The work consists of three steps: injury determination, quantification, and damage determination. During the injury determination step, Trustees identify the measurable adverse change(s), either long-term or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from

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the discharge of oil or release of a hazardous substance. The quantification step involves identifying the functions provided by the resource, determining the baseline level of such services, and quantifying the reduction in service levels that result from the impacts. The damage determination step involves determining the amount of money sought by the natural resource trustee as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) (42 USC § 9607(a)) or 111(b) (42 USC § 9611(b)) of CERCLA.

The contemplated task orders would provide support associated with Phases 2, 3, and 4. Examples of significant work completed under the current task orders associated with Phases 2 and 3 includes the following:

- NRDA administrative support was provided to the LANLTC under DE-DT0010335.
- Characterization of contaminants of ecological concern was conducted under DE-DT0011312.
- Compilation, review, and characterization of existing LANL information relevant to NRDA was completed under DE-DT0011011.
- Tasks associated with the quantification of injured groundwater and developing a damages determination were completed under DE-DT0011621.
- Tasks associated with the monitoring and characterization of contaminant information for use by the LANLTC were conducted under DE-DT0013783

Examples of significant work which will be completed under the contemplated task orders includes the following:

- NRDA administrative support will need to resume (contemplated under Task Order 1).
- Facilitate LANLTC and technical peer review of draft groundwater injury quantification and damages report (contemplated under Task Order 2).
- Conduct an assessment of cultural use/perception of natural resources and finalize the resource characterization for the assessment and restoration of Pueblo lost services (contemplated under Task Order 3).

Phase 4: Post-Assessment

Trustees prepare a Report of Assessment detailing Phase 3 results, and a Restoration Plan that describes how natural resources and the functions they serve will be restored.

4. EXCEPTION TO FULL AND OPEN COMPETITION STATUTORY AUTHORITY

The statutory authority that permits other than full and open competition is 48 CFR § 8.405-6(a)(1)(i)(C): In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

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The LANLTC has agreed to follow a cooperative NRDA process, as recommended by the Department of the Interior NRDA regulations. This means the Trustees are jointly and collaboratively conducting the assessment. It is an alternative dispute resolution process which utilizes highly specialized services provided by IEC. IEC's first NRDA task order (GS-10F-0224J DE-DT0002152) was issued on 9/30/2010. This task order was for work associated with NRDA Phase 1. Subsequently, EM-LA's current ID/IQ contract (DE-EM0003939) and its associated task orders were issued to continue work associated with the NRDA. An advantage of utilizing an ID/IQ contract with T&M task orders is that it is most appropriate for work in which the extent or duration cannot be estimated accurately. Furthermore, it is also appropriate for work in which cost cannot be anticipated with any reasonable degree of confidence. This is the case with the work associated with this NRDA. Ultimately, the work associated with the contemplated task orders is follow-on work to the original Federal Supply Schedule order (DE-DT0002152). Furthermore, DE-DT0002152 was not issued under sole-source or limited-source conditions.

5. UNIQUE QUALIFICATIONS

The proposed contractor for the contemplated task order awards herein is IEC. IEC is the current and past incumbent for EM-LA's competitively awarded LANLTC NRDA Phase 1 and Phase 2 ID/IQ contracts. IEC provides expert NRDA services to the DOE, the Department of the Interior, the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. IEC has also been the successful offeror for Phase 1 and 2 of the LANLTC NRDA assessment. Consequently, IEC now has thirteen years of institutional knowledge at the Los Alamos site. IEC has proven itself to be trusted by the LANLTC. The work associated with the contemplated task orders is a logical follow-on to work originally commenced by the FSS order DE-DT0002152. Per 47QRAA20D0044, IEC is classified as "other than small business."

IEC's Contractor Performance Assessment Ratings during their performance of contract DE-EM0003939 for the LANLTC NRDA have consistently been "very good" and "exceptional." IEC has completed a number of work plans and reports that have been met with high satisfaction from the LANLTC. Examples include the characterization of contaminants of ecological concern, draft reports associated with the characterization of existing LANL information relevant to NRDA, the groundwater baseline report, and the workplan associated with the evaluation of the impact of wildland fires on pathway, injury, and restoration.

Phases 1 and 2 of the NRDA process involve information gathering and planning. The forthcoming task orders associated with this justification provide support for Phase 2, 3 and 4. Awarding the three task orders to IEC on a limited source basis will ensure consistency in the NRDA approach. Further discussion on why IEC should not be replaced at this juncture is discussed further in Section 7 of this JOFOC.

6. DETERMINATION OF FAIR AND REASONABLE COST

This action is contemplated as a limited sources task order awards under a MAS. Thus, IEC will be required to submit a proposal for all three task orders with pricing that conforms to, or

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is discounted from their MAS contract, 47QRAA20D0044. The proposal will undergo price and technical evaluation. Labor category pricing associated with 47QRAA20D0044 has already been deemed fair and reasonable. However, the CO, along with the appropriate DOE staff, will still evaluate the level of effort and mix of labor proposed in order to ensure that the proposed resources are realistic for the work to be performed. The dollar value of this requirement does not breach the value threshold for an audit of the proposal to occur. The expectation is that the costs would be similar to costs incurred to date for the current NRDA task orders and, therefore, will assist with a fair and reasonable determination. The contemplated task order ceilings will be established at one million dollars each. This amounts to three million dollars in-total. The contractor will be afforded the opportunity to propose a period of performance that does not exceed three years.

7. OTHER FACTS SUPPORTING THE JUSTIFICATION

These forthcoming task orders are a logical continuation of the NRDA support that has been previously provided to the LANLTC. Restoration planning directly builds upon previously completed assessment activities. As such, replacing Iec with another contractor after thirteen years of providing NRDA support presents the possibility of significant adverse consequences to schedule and cost as the new contractor attempts to build its understanding of previously completed work and determine how to best approach the way ahead. For example, the assessment of cultural use/perception of natural resources is dependent on previously completed work by Iec. A new contractor would need to invest significant amounts of time and resources to analyze previously completed work by Iec and develop a path forward that completes this deliverable to the satisfaction of the LANLTC. This will not only slow the momentum of a NRDA already in progress, but it will incur unforeseen costs as the new contractor re-visits previously completed actions and develops its own methodology for continuing the NRDA. The LANLTC is highly satisfied with Iec's work. If Iec is replaced, there exists a high possibility that relations could be impacted significantly between the Federal Government and the local New Mexican Native American Pueblos due to the importance the LANLTC places on NRDA support.

8. STEPS TO FOSTER COMPETITION

Within 14 days of issuing the task orders, the Contracting Officer (CO) will post this limited sources justification at the Governmentwide Point of Entry (GPE) at <https://www.sam.gov> and on the ordering activity (EM-LA) web site for a minimum of 30 days pursuant to FAR 8.405-6(a)(2)(i). Iec is contemplated as a limited sources contractor because of their past history, the legal nature of this requirement, and the importance of continuity of services as the NRDA approaches the end of Phase 2. The potential re-procurement costs that may arise if a new contractor is selected at this juncture combined with the trust Iec has built with the LANLTC over the past several years could result in significant complications in the conduct of the NRDA.

9. CERTIFICATION

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PROJECT OFFICE: I certify that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as accurate and complete.

Kara Hetrick
Director, Office of Business Operations
DOE EM-LA Field Office

CONTRACTING OFFICER: I certify that this Justification is accurate and complete to the best of my knowledge and belief, and my signature certifies that award of the contractual action contemplated herein is in the Government's best interest.

Aaron Romero
Contracting Officer
DOE EM-LA Field Office

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