

**Department of the Interior
Minerals Management Service**

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
(JOFOC for Acquisitions > SAT)
(Optional for Acqs. ≤ SAT)

I recommend that the **MINERALS MANAGEMENT SERVICE** use other than full and open competition for the acquisition of the following supplies or services. If this acquisition is to be made with only one source or a limited number of sources, negotiations will be conducted with the indicated proposed supplier(s).

1. Nature/Description of the Acquisition [FAR 6.303-2(a)(2)]

This requirement will be accomplished by a Sole Source, Cost Reimbursement contract to Centro de Investigación Científica y Educación Superior de Ensenada (CICESE) Ensenada, México, and Dr. Julio Sheinbaum. This 42 month project will be incrementally funded over two years with no-year funds. CICESE will contribute ship time and data and analyses from their larger oceanographic study which is going on at the same time.

2. Description of Supplies or Services [FAR 6.303-2(a)(3)]

MMS requires the deployment of oceanographic instrumentation in the Mexican waters of the Gulf of Mexico over a 24 month period to collect a long term data set of ocean current and circulation. These observations and data are needed to provide a more complete picture, and data for analysis of the dynamics of the Gulf Loop Current. This information is needed by MMS for oil spill modeling and to develop a better description of the environment for environmental analyses in Environmental Impact Statements prepared for Oil and Gas Leasing in the Gulf of Mexico. The anticipated period of performance is 42 months.

3. Requisition No. 0010005798	5. Name of Proposed Source(s) Centro de Investigación Científica y Educación Superior de Ensenada (CICESE)
4. Cost Estimate (including options)[FAR 6-303-2(a)(3)] \$1,200,000.00	

6. REQUESTING OFFICE CERTIFICATION

I certify that this recommendation contains the information required by FAR 6.303-2 and its contents are accurate. I request the Contracting Officer's (CO's) assistance in conducting market research to identify potential sources.

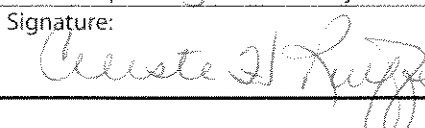
Requesting Office Rep. (Name & Title) James Cimato, Chief, ESB	Signature: 	Phone No: 703-787-1721	Date: 2-5-09
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7. PROCUREMENT OFFICE CERTIFICATION

I certify that this justification is accurate and complete to the best of my knowledge and belief.

Contracting Officer (Name) OLIVIA F. ADRIAN	Signature: 	Phone No: 703-787-1151	Date: 5 Feb 2009
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I certify that this justification is accurate and complete to the best of my knowledge and belief.

Chief of the Contracting Office (Name) Celeste H. Rueffert	Signature: 	Phone No: 703-787-1324	Date: 2/5/09
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Identify one statutory authority for this acquisition to be conducted under "other than full and open competition" procedures [FAR 6.303-2(a)(4)]. Provide narrative justification associated with the respective stated authority in block number 15.

THE COMPETITION IN CONTRACTING ACT OF 1984 (P.L.98-369)

8. **41 USC 253(c)(1) – Only one responsible source**

This authority shall be used in preference to the Public Interest justification. It shall not be used when any of the other circumstances are applicable. (Explain what makes this contractor the only responsible source: i.e., does this proposed contractor have facilities or equipment that is specialized and vital to the effort? Is the proposed contractor the only one that can meet critical schedules? Does the proposed contractor have prior experience of a highly specialized nature vital to the effort? Why won't any other product or service satisfy the need? Is the acquisition the result of an unsolicited research proposal [see FAR 6.302-1(a)(2)(i)]? Describe market survey and analysis efforts leading to this conclusion.)

9. **41 USC 253(c)(2) – Unusual and compelling urgency**

This authority applies in those situations where (1) an unusual and compelling urgency precludes full an open competition and (2) delay in award of contract would result in serious injury, financial or other, to the Government. (Explain why 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 it limited the number of sources. Solicitation from as many potential sources as is practicable under the circumstances is required.)

10. **41 USC 253(c)(3) – Industrial mobilization; engineering, developmental, or research capability; or expert services**

This authority applies when it is necessary to award the contract to a particular source or sources in order (1) to establish or maintain an essential capacity for theoretical analyses, exploratory studies, or experiments in any field of science or technology, or (2) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (3) to acquire the services of an expert for any current or anticipated litigation or dispute. (Does the proposed contractor have facilities and equipment that are vital in the event of a national emergency? Is the proposed contract to maintain properly balanced sources of supply for meeting the requirements of acquisition of programs in the interest of industrial mobilization? Is the proposed contract to create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or Canada?)

11. **41 USC 253(c)(4) – International agreement**

This authority may be used when the acquisition is to be reimbursed by a foreign country that requires the product to be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or, when services are to be performed, or supplies are to be used in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited. (Cite the international agreement or treaty between the United States and the foreign government or international organization that precludes full and open competition. Provide the written directions of the foreign government reimbursing the agency for the cost of the acquisition, which precludes full and open competition.)

12. **41 USC 253(c)(5) – Authorized or required by statute**

This authority may be used when a statute expressly authorizes that the acquisition be made through another agency or from a specified source.(Cite the authority that expressly authorizes that the acquisition be made through another agency or from a specified source, and attach a copy of the statute.) Note: While this statutory exception includes the small disadvantaged business 8(a) set-aside program, a JOFOC is not required for this type of procurement.

13. **41 USC 253(c)(6) – National Security**

This authority may be used for any acquisition when disclosure of the Government's needs would compromise national security. It will not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract. (Explain why the disclosure of the Government's needs would compromise the national security or violate security requirements.)

14. **41 USC 253(c)(7) – Public Interest**

This authority may be used when none of the other authorities above apply. Individual justification, Secretarial approval, and Congressional notification 30 days before award of contract are required.

15. JUSTIFICATION (Attach additional pages if needed)

(a) Demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited **[FAR 6.303-2(a)(5)]**. [Prepared by Program Office]

Cicese was established by the government of Mexico in 1973 as a public research center funded through the Mexico National Council for Science and Technology. As such it is a public agency. It is the only known institution in Mexico with the oceanographic expertise and experience to design the oceanographic arrays, construct the moorings, deploy, maintain, and recover deepwater moorings after an extended period of time, and perform the subsequent data analysis. Funded by the Mexican government, CICESE has the permission to conduct research in Mexican waters. In considering other options, a non government entity or US entity would need permission from the Mexican government which takes a very long time (years) and those delays would make it impossible to coordinate with key ongoing research activities critical to the success of the overall study. In addition, the Mexican government would still require the participation of Mexican scientists resulting in increased costs. If not approved, the MMS will have incomplete data for developing coherent models of the Loop Current Dynamics in the Gulf of Mexico. This will have a significant impact on the safe management of offshore oil and gas operations in the Gulf of Mexico.

(b) Describe the efforts taken to ensure offers were solicited from as many potential sources as is practicable, including whether a Government-wide point of entry (GPE) notice was or will be published as required by FAR 5.2 and, if not, which exception under FAR 5.202 applies. **[FAR 6.303-2(a)(6)]**. [Prepared by Program Office]

MMS personnel spent a significant amount of time researching possible sources for providing this service in the time frame required by MMS, and has been unable to locate any provider with similar experience that can study the Loop Current in Mexican waters. The only known source to meet MMS requirements is CICESE. MMS conducted a joint US-Mexican workshop to determine interest and capabilities for such work, and MMS also discusses general program interests at national and international conferences, utilizes web searching techniques, and professional journals to determine capabilities that might be available.

(c) Demonstration that the anticipated cost to the Government will be fair and reasonable **[FAR 6.303-2(a)(7)]**.
[Prepared by Contracting Officer]

The Contracting Officer will examine the budget to be submitted by CICESE to conduct a cost analyses. The budget to be submitted will provide for purchasing the expendable materials. In addition to renting of equipment for proposed eight (8) moorings, CICESE will contribute ship time and analysis efforts plus data from these moorings. MMS has extensive experience with conducting the required activity and knowledge of costs for such efforts. Importantly, CICESE is contributing about \$1M in ship time and analytical effort to the overall project, making this an extremely cost effective advantageous acquisition.

15. JUSTIFICATION CONTINUED (Attach additional pages if needed)

(d) Describe the market research that was conducted and the results of that survey. If actions were taken by procurement personnel to satisfy this requirement such as a GPE sources sought synopsis, please specify. **[FAR 6.303-2(a)(8)]**. [Initiated by the Program Office and finalized in collaboration with the Contracting Officer]

MMS conducted a joint US-Mexican workshop to determine interest and capabilities for such work, and MMS also discusses general program interests at national and international conferences, utilizes web searching techniques, and professional journals to determine capabilities that might be available. Discussion with several expert researchers from various institutions and government bureaus pointed to CICESE as the only and best provider of the service that is required by MMS.

(e) Describe any other documentation to support the JOFOC. **[FAR 6.303-2(a)(9)]**. [Prepared by Program Office]

The Program Office has worked with CICESE in two previous successful contracts and they have performed in an outstanding manner to meet MMS requirements. CICESE is the only group in Mexico currently carrying out deepwater measurements and they are the group most familiar with the area, and with knowledge of flow dynamics and current circulation in the study area which they have been measuring since early 1990's. Additionally, if needed, CICESE can work in Cuban waters, an activity which the US cannot do. CICESE and the Mexican government has expressed a strong desire to collaborate with MMS to conduct scientific studies of the Loop Current because it is such a dominant physical phenomena affecting circulation in the Gulf and part of the north Atlantic. To reiterate, CICESE is significantly engaged in deepwater research and the combined programs and leveraging this particular activity represents an estimated contribution of about \$1 million.

(f) List sources, if any, that expressed, in writing, an interest in the acquisition. **[FAR 6.303-2(a)(10)]**.
[Prepared by Program Office]

(No other group or company have expressed an interest in working with MMS to measure such deepwater currents in Mexican water.)

(g) List the actions the Bureau will take to promote competition on any subsequent acquisitions for similar supplies or services. **[FAR 6.303-2(a)(11)]**. [Prepared by Contracting Officer]

The Bureau, through the Environmental Studies Program, will incorporate any subsequent and/or related services needs into the annual studies development process, which includes public meetings, a federal advisory committee, and opportunity for stakeholder input. Through the public planning process others with capabilities will have the opportunity to learn about and discuss capabilities with MMS.

APPROVALS (FAR 6.304)

Over \$500,000	16. Competition Advocate (Name & Title)	<input checked="" type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature) <i>Mark Gell</i>	(Phone No.) 713-787-1020
				(Date) 2/6/09
Over \$10 million	17. Head of the Contracting Activity (Name & Title)	<input type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature)	(Phone No.)
				(Date)
Over \$50 million	18. Departmental Senior Procurement Executive (Name & Title)	<input type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature)	(Phone No.)
				(Date)

INSTRUCTIONS FOR COMPLETING FORM

Block No.	
1	Describe the nature of the contractual action for which approval is requested (i.e., new contract, modification). Include type of contract (i.e., FFP, CPFF, etc.)(discuss with CO); type and year of funding; and estimated share and ceiling arrangements, when applicable.
2	<ul style="list-style-type: none"> • Briefly describe product/service to be acquired; • Explain requirement in layman’s terms so it can be understood by a reviewer not familiar with the requiring activity; • Identify the requiring activity; • Include option quantities and performance periods; and • If the action described is a modification, distinguish between the work covered by the basic contract and the proposed modification.
4	Include all applicable option and system life-cycle costs.
5	Include more than one source as a proposed contractor, unless you are citing 41 USC 253(c)(1). For example, if the procurement is based on unusual and compelling urgency, you must still contact as many potential sources as is practicable unless the justification for urgency contains detailed documentation to show that it is not practicable under the circumstances to solicit additional sources (see FAR 6.302-2(c)(2)).
6 & 7	Obtain certification from the requesting office and contracting officer prior to submitting for approval.
8-14	Check the box next to the justifying statutory authority. Only one statutory authority can be cited. The justification on pages 3 to 5 must be clear and concise as to how the cited authority is related to the acquisition. For Information Technology acquisitions of specific make and model items, the statutory authority generally will be 41 USC 253(c)(1), only one responsible source.
15(a)	<ul style="list-style-type: none"> • Discuss the unique requirements of the product/service that necessitates a noncompetitive action. What are the minimum requirements of the product/service? For IT acquisitions, what are the unique specifications that only one source can meet? • Describe how the required delivery/performance date impacted the decision to restrict competition; • Identify the proposed sole source contractor, if applicable, and discuss its unique capabilities, experience, expertise, etc. that makes it the only one capable of performance; • When competition would have been feasible had more time been available, discuss factors such as cost/time to conduct a competitive procurement, time available versus time required, phase-in/phase-out time, and complexity of requirement; • When the requirement was “directed or mandated” at a higher level, identify who imposed the requirement and how the mandate was communicated. Provide a copy of applicable documentation. • Identify the constraints such as schedule requirements, unique features and mandatory requirements, or the existence of patent, proprietary data, copyright or other such limitations which restrict competition. • If the requirement is for an interim contract or contract extension with the incumbent, discuss why it would be neither cost effective nor realistic to expect another contractor to perform during the brief interim period. Some relevant items may be: start up costs; manning problems including recruitment and associated relocation fees; transfer and accountability of a large amount of GFP; variety and complexity of requirements; preparation of management plans. • Describe the detrimental effects to the mission of the requiring activity or to the government that would result if the JOFOC was not approved and product/service not acquired. A general statement of mission failure is not sufficient.

INSTRUCTIONS FOR COMPLETING FORM

Block No.	
15(b)	Describe efforts made to ensure that offers are solicited from as many potential sources as is practicable. Also describe the extent of effective competition anticipated for this acquisition.
15(c)	Describe action taken to ensure that the CO will determine a fair and reasonable price (e.g., obtain audit/field reports, perform cost and/or price analysis, perform cost realism, prepare independent government estimate, etc.)
15(d)	Describe the extent of the market research (FAR 10.002) conducted to identify all qualified sources and the results thereof. Researching the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcement in pertinent publications (e.g., technical/scientific journals, or the FedBizOpps), or solicitations for information or planning purposes. The Pipeline contains additional guidance at URL: http://pipeline.mms.gov/pages/topics/purchasing/purch_MarketResearch.asp
15(e)	Any other facts supporting the use of other than full and open competition, such as: <ul style="list-style-type: none"> • Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available; • When FAR 6.302-1(a)(2)(ii) is cited for a follow-on acquisition, include an estimate of the cost to the Government that would be duplicated and how the estimate was derived; and • When FAR 6.302-2 is cited, include data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.
15(f)	Include a listing of the sources that expressed written interest in the acquisition. If applicable, clearly state "To date, no other sources have expressed an interest in writing." [Also state that the notices required by FAR 5.201 shall be/have been published and any proposals received shall be considered. If a FedBizOpps notice will not be published, state which exception in FAR 5.202 applies.(coordinate with CO)]
15(g)	Describe action taken to ensure that future buys will be competed. Action taken to enhance competition might include challenging restrictive data markings, developing plans to acquire unlimited data rights, the development of a second source, develop segments of the requirement that can be competed, etc. If competition is planned, provide the estimated dates of the first competitive action. Provide an explanation if no competition is planned. When future competition is not anticipated because this JOFOC covers all known requirements, so state.
16-18	If any person required to sign-in these blocks does not approve, the procurement shall not proceed any further and the JOFOC shall be returned to the requisitioner through the CO. All signatures required on the form (as applicable to the particular acquisition) must appear in order for the procurement to proceed.