

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOFOC) IN
ACCORDANCE WITH 41 U.S.C. §3304(a)(3)
AND FEDERAL ACQUISITION REGULATION (FAR) 6.302-3(a)(2)(ii)**

1. Identification of the Agency and the Contracting Activity.

Agency: U.S. Department of Energy.

Contracting Activity: Office of Science.

The Department of Energy (DOE) Office of Science (SC) intends for the Oak Ridge National Laboratory Site Office (OSO) to conduct negotiations with UT -Battelle, LLC (UT-Battelle) for a five-year extension of DOE prime contract DE-AC05-00OR22725 for the management and operation of the Oak Ridge National Laboratory (ORNL). This document sets forth the justification for the use of other than full and open competition in awarding the extension allowed under the Competition in Contracting Act of 1984, Title VII of Public Law 98-369. The exercise of this exception is necessary to maintain an essential research capability provided by a nonprofit institution operating a Federally Funded Research and Development Center (FFRDC).

2. Nature and/or description of the action being approved.

The action to be approved is for the April 1, 2020 through March 31, 2025 non-competitive extension of the ORNL management and operating (M&O) contract DE-AC05-00OR22725 with UT-Battelle, LLC, a nonprofit entity.

ORNL is a FFRDC. An M&O contract is an agreement under which the Department contracts for the operation, management, or support, on its behalf, of a Government-owned or controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of DOE.

On April 10, 2019 the Secretary of Energy approved the non-competitive extension as the preferred acquisition alternative provided SC could obtain its acquisition objectives through negotiation.

3. A description of the supplies or services required to meet the agency's needs (including the estimated value).

ORNL is a multi-program, government-owned, contractor-operated national laboratory which develops and maintains diverse and in some cases unique research and development (R&D) capabilities.

ORNL conducts R&D missions in the areas of neutron science, energy, high-performance computing, systems biology, materials science, environmental management, and national security. ORNL is actively engaged in a variety of national and international partnerships with industry and educational institutions as a world leader in a range of scientific areas supporting DOE's scientific discovery and innovation, energy, nuclear security, and environmental missions.

Twenty-three of the Department's twenty-four core capabilities are currently delivered by ORNL for SC. ORNL maintains facilities for scientific research in, as examples, neutron science, nuclear energy research, and high performance computing. ORNL also manages the Exascale Computing and U.S. ITER projects.

The current contract value is approximately \$25 billion with an annual operating budget exceeding \$1.5 billion per year. The total value of the five-year extension is estimated between \$7.5 – 8.0 billion.

4. Identification of the statutory authority permitting other than full and open competition.

The Competition in Contracting Act includes an exception to competition requirements where “it is necessary to award the contract to a particular source...in order...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” (41 U.S.C. §3304(a)(3)(B)).

5. Demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

The contemplated contract extension is based upon the continuing need for ORNL as an FFRDC and thus the authority cited is applicable given the nature of this acquisition. ORNL provides extensive capabilities in both world-class research expertise and unique facilities that do not exist elsewhere and are generally beyond the capacity of non-governmental institutions to construct or operate. Using its resources at ORNL, DOE advances the energy, environmental, and nuclear security of the nation, and makes unique user facilities available to researchers from universities, industry, and other government agencies. Without the continued operation of ORNL as an FFRDC, DOE's mission accomplishment would suffer. The Department requires a long-term, stable relationship that will provide continuity and attract high-quality scientific and management personnel to its government-owned, contractor-operated facility. Only an FFRDC can provide the long-term stable relationship that is necessary for the U.S. Science and Technology mission to succeed.

ORNL is engaged in a wide range of research and development activities that support DOE's mission focus in ensuring America's security and prosperity by addressing energy, environmental, and nuclear challenges through transformative science and technology solutions. ORNL supports all of DOE's strategic goals, but particularly those in Science and Energy and National Security.

To manage the ORNL FFRDC, DOE requires a contractor that possesses exceptional and extensive capabilities in the management and operation of both world-class scientific research and unique user facilities.

The recommendation to extend the contract with UT-Battelle, a nonprofit contractor, is based upon the continuing need for the DOE mission-critical capabilities unique to ORNL in order to ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science, computational, and technology solutions.

UT -Battelle, as the incumbent contractor, possesses the necessary resources through its scientific, technical, and managerial staff; research and development experience; business relationships; established partnerships; and corporate experience to provide the required capabilities to support DOE's mission objectives.

SC performed a robust analysis of the contractor's performance to assess whether DOE's requirements and expectations were successfully achieved, and to project whether meaningful improvement in performance or cost might reasonably be achieved as a result of contract competition. Considering the overall exceptional performance of UT-Battelle in science and technology, management and operations,

and in managing costs, it is highly unlikely that significant improvements in performance would be achieved by a new contractor during the proposed five-year extension. DOE has no expectation of meaningful improvement in technical or cost performance as a result of competition at this time. A competition for the management and operation of the Laboratory was conducted in 1999, and UT-Battelle, as the successful contractor has performed in an exemplary manner.

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

Based on its analysis of historical data and facts, DOE has not solicited offers from other sources for this five-year extension. FAR Section 5.202 (a)(10) provides that the Contracting Officer need not submit the notice required by FAR Section 5.201 when the Contracting Officer determines, as here, that the action is made under conditions described in FAR Section 6.302-3. This justification will be made publicly available pursuant to FAR Section 6.305.

7. A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

The Department's budget process, performance-based contract requirements, and active DOE oversight and audit provide adequate controls to ensure that expenditures (costs) to support the required levels of authorized activity are fair and reasonable and that contractor performance remains at an acceptable level. In addition, negotiated performance fees are established in accordance with the Department of Energy Acquisition Regulation and Office of Science policy.

The Department, with the cooperation of the M&O contractor, submits an annual operating and capital expenditure budget request for performance at a prescribed level of activity to fulfill its mission requirements. Contractor obligations, commitments, and expenditures are limited to the specific funding levels established by the Department and are controlled through issuance of approved funding plans and work authorizations to the Contractor.

Performance and expenditures are monitored by the Department using several parallel systems. Reviews and evaluations are performed in accordance with contractual requirements.

DOE M&O contractors maintain DOE-approved employee compensation and benefit systems. Changes to employee compensation are subject to an annual Compensation Increase Plan, which is subject to limitations in the contract. The value derived from compensation and benefits provided is reviewed periodically by DOE and benefits may be adjusted if necessary. As the contractor re-negotiates bargaining unit contracts, negotiation parameters are also subject to DOE approval. Similarly, the timing and amount of contractor contributions to the defined benefit pension plan for ORNL are also subject to DOE approval.

In addition to costs of compensation and benefits, the contractor maintains an approved purchasing system which DOE considers adequate to enter into subcontracts for commodities, including services, at reasonable prices. Real estate transactions are made in accordance with DOE rules, regulations, and guidance with the involvement of a DOE Real Estate Contracting Officer. The contractor has established DOE-approved systems that ensure reasonableness of costs for travel, conferences, training, intellectual property management, and several other areas. Utilities are provided under a separate prime contract.

The contractor's financial management system is an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts. This arrangement allows programmatic flexibility and oversight. After an internal audit, each M&O contractor submits an annual Statement of Costs Incurred and Claimed for the total of net expenditures accrued, subject to penalty provisions for unallowable costs, which DOE audits and approves after the contractor makes appropriate adjustments. DOE's approval constitutes an acknowledgement by DOE that the net costs incurred are allowable under the contract and that they have been duly recorded. However, DOE's approval does not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors that are later discovered. The Statements are audited using DOE's Cooperative Audit Strategy, in the same way as DOE's other major facility contracts.

Based on the cost controls discussed above, the Contracting Officer has determined that the costs which the Government will incur during the extension period will be fair and reasonable. The total value of the five-year extension is estimated at \$7.5 - \$8.0 billion.

8. A description of the market research conducted and the results or a statement of the reason market research was not conducted.

In FY 1999, DOE issued a competitive solicitation for the management and operation of the ORNL and the contract was awarded to a team comprised of Battelle Memorial Institute and the University of Tennessee. Two proposals were submitted in response to that solicitation, one of which included the incumbent. However, circumstances for competing the ORNL M&O contract were significantly different in the late 1990's. During that time, DOE performed a review of the incumbent contractor's experience and determined there was a reasonable expectation that meaningful improvement could be achieved. By contrast, UT-Battelle consistently has performed at a high level. UT-Battelle's performance record is published by the agency, and well known to other potential contractors. Consequently, SC considers it highly unlikely that other contractors would incur the costs of submitting a competitive bid, or that a competition would result in improved performance.

Recent competitive trends indicate that the research and development business of SC national laboratories is a more specialized area for contractors to pursue than other government research and development contracts which have more competitive sources and higher performance risk. Competitions at Brookhaven National Laboratory (2015), Princeton Plasma Physics Laboratory (2009), Ames Laboratory and Fermi National Accelerator Laboratory (2007), and the Thomas Jefferson National Accelerator Facility (2006) all yielded just one offeror each. Accordingly, the Contracting Officer has determined that formal market research is unnecessary and would not be productive.

9. Any other facts supporting the use of other than full and open competition.

As set forth in FAR 17.605 (c), replacement of an incumbent M&O contractor is based largely upon an expectation of meaningful improvement in performance or cost. Over the last five years, the incumbent has been among the most highly-rated contractors within the SC National Laboratory system. The incumbent is recognized within the complex as an outstanding contractor, particularly in the areas of partnerships, project management, and contractor assurance programs.

The incumbent contractor's overall performance meets the FAR criteria for an extension of the current contract. SC does not anticipate an improvement in performance or cost as a result of competition, nor does SC expect that more than one offeror would compete for the contract.

Consistent with statute, regulation, and DOE policy, SC conducted a disciplined process to determine the relevant near-term acquisition options for the mission needs met by the management and operation of ORNL. The Secretary's April 10, 2019 approval to extend the contract is contingent on SC's ability to achieve its acquisition objectives related to appropriate costs and fee, an updated performance work statement and contract terms, retention of contractor resources, and other objectives. This contingent approval, in accordance with DEAR 970.1706-1, puts the Department in the best possible position to negotiate a contract action that is fair and reasonable to all parties and facilitates mission accomplishment.

10. A listing of the sources, if any, that expressed in writing, an interest in the acquisition.

Although some business information clearinghouses have requested source selection information, these requests are routine information gathering techniques and do not indicate genuine interest from responsible offerors capable of performing the contract. Subsequent to the Department's decision to extend the contract but prior to the release of this notice, the CO did receive a written inquiry from a source that performs government facility management contracts. Ultimately, this inquiry did not alter the results of the analysis required by FAR 17.605 in that the government does not expect meaningful improvement in performance or cost from replacing the incumbent contractor.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

The most recent SC laboratory contract competition at Brookhaven National Laboratory yielded only one proposal. SC's efforts at encouraging competition in these cases included issuing draft solicitations, holding pre-proposal conferences, hosting one-on-one meetings with potential bidders, and maintaining public websites to provide information to interested parties. This record of lack of competition indicates the research and development business of the SC national laboratories is a more specialized area for contractors to pursue than other government contracts which are attractive to a wider range of prospective offerors.

The Department will continue to assess what actions, if any, may be taken to remove or overcome the barriers to competition associated with SC National Laboratories.