



# U.S. Immigration and Customs Enforcement

## Justification and Approval (J&A) for Other than Full & Open Competition

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Pursuant to the requirements of 41 U.S.C. §3304(a)(1) Competition in Contracting Act of 1984 (CICA) as implemented by FAR Subpart 6.302-1 and in accordance with the requirements of FAR Subpart 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR Subpart 6.303-2:

### 1. Agency and Contracting Activity.

The requiring activity is the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI).

The contracting activity is:

U.S. Department of Homeland Security (DHS)  
U.S. Immigration and Customs Enforcement (ICE)  
Office of Acquisition Management (OAQ)  
Information Technology Division  
801 I Street, NW  
Washington, DC 20536

### 2. Nature and/or Description of the Action being Approved.

The name of the proposed vendor is:

Palantir Technologies  
100 Hamilton Avenue, Suite 300  
Palo Alto, CA 94301

This procurement will acquire a Gotham Unlimited perpetual license and operation and maintenance support from Palantir Technologies. The license and services will be firm fixed price. The base term is 12 months; however, ICE will include options for two additional 12-month terms as well as FAR 52.217-8 term under this procurement. The Palantir Gotham Unlimited License includes a \$400,000.00 yearly allowance for hardware necessary for server core additions, a perpetual license for Gotham software, unlimited operations and maintenance support of the FALCON system, and development of five new features and/or data set additions annually, as the parties may negotiate. (Hardware will be provided up to the allowance as necessary to maintain current benchmarks of system performance as FALCON is expanded with new users, new functionalities, and new data sets.)

### **3. Description of Supplies/Services.**

The license acquired under this procurement pertains to Palantir's proprietary Gotham software suite, customized for ICE and referred to hereinafter as FALCON. FALCON provides HSI's agents and analysts a wholly integrated, consolidated platform for performing federated search, analytics, and geospatial referencing and provides reporting and situational awareness capabilities across a diverse universe of structured and unstructured law enforcement data residing in numerous, disparate source environments.

Since its inception in 2011, FALCON has served as ICE HSI's primary, unified data analysis system, providing data search, data deconfliction, intelligence analysis, charting and graphing, geospatial tracking, and field operation support services. FALCON replaced the pre-existing, non-optimal situation of data sets separated in their own data silos, each having its own analytic front end, with a fully integrated system. Prior to FALCON, HSI Special Agents and intelligence analysts needed to log onto multiple incompatible systems to do searches on separate data sets and analysis of interrelated records from these separate data sets had to laboriously be performed manually. FALCON, as a unified analytic platform, greatly increases the efficiency and effectiveness of law enforcement-related data analysis in HSI. The value of FALCON to HSI increases with each new data set that is made available to the FALCON user base.

The key capabilities/features of FALCON are listed below:

Integrate data from multiple law enforcement databases. Perform a federated search from multiple law enforcement databases. Create a chart showing link and network relationships between entities from multiple law enforcement databases. Create a histogram (time-delineated chart) tracking a type of incident over user-customizable time period. Create a heat map charting the geospatial locations of a particular type of incident within a given state, municipality, or HSI office jurisdiction. Ad-hoc uploads of user-created data into fully searchable format, compatible with fully defined data sets. Entity resolution of subject persons having identical or similar names. Electronically transmit documents, filled-in forms, and photographs taken with an iPhone camera from a Special Agent's iPhone to a mobile command center via a mobile application. Perform a federated search from multiple law enforcement databases on an iPhone via a mobile application. Real-time geospatial tracking of Special Agents in the field by Supervisory Special Agent and mobile command center via a mobile application. Workflow application for HSI Tip Line Unit, which collects phone and email tips from members of the public and distributes those tips to the appropriate SAC Offices. Workflow applications for specified law enforcement operational units. Create visualizations/ work products showing patterns of financial and or trade irregularities and money laundering activity within large quantities of financial and trade data. Rigorous user access controls. Rigorous usage auditing features. System backup and disaster recovery features. Provide contextual help functions and ease of use. Help Desk to resolve end users' problems within specified time parameters. Resolve Tier 2 Software Support issues within the specified time parameters. Resolve Tier 3 Software Support issues within the specified time parameters.

Provide training services to support all system features, including enhancements, for a target audience of approximately 7,000 Special Agents and 1,000 Intelligence Analysts, to include more limited user groups for specialized workflows. Executive Dashboard which allows either a Headquarters, SAC Office, DSAC Office, ASAC Office, or RAC Office summary view of HSI arrests, seizures, convictions, incidents, and resources (staff, staff skills, and equipment). Application authentication via Public Key Infrastructure (PKI)

certificates through an existing Personal Identification Verification (PIV) Card. Enterprise-wide collaboration capabilities. Data sharing capabilities and data export/ conversion capabilities. Optimize the analytical capabilities of Human Smuggling/ Human Trafficking investigations. Modernize the Telecommunications Linking System (TLS) in order to achieve mainframe TECS independence and enhance the analytics of telecommunication data at HSI. Migration of current TECS pipeline from Electronic Data Warehouse (EDW) to new location. Enhance the financial work flow investigative capabilities. Optimize illicit finance and trade enforcement workflows by enhancing the capability to find patterns across the data. Optimize ability to close both cold and current child exploitation cases. Utilize flexible contract model.

The base period of performance for this acquisition is from May 28, 2015 through May 27, 2016 with two (2) option periods of 12 months each. The option for a six (6) month term, per FAR 52.217-8, will be evaluated at time of award.

The estimated price of the award is \$34,500,000.00.

#### **4. Identification of Statutory Authority Permitting Other Than Full and Open Competition.**

*The statutory authority permitting other than full and open completion is 41 U.S.C 3304(a)(1) implemented by Federal Acquisition Regulation (FAR subpart 6.302-1 entitled "Only One Responsible source and no other supplies or services will satisfy agency requirements. ICE intends to enter into this contract with Palantir Technologies.*

#### **5. Demonstration that the Nature of the Acquisition Requires Use of the Authority Cited.**

The FALCON system is based upon proprietary software developed by Palantir Technologies. Palantir Technologies does not license or authorize any third-party vendors to offer operations and maintenance or support or development of its products. Because of these facts, the Government has no choice but to award a contract under the sole source authority to Palantir. The requisite services cannot be acquired from another source in time to meet the Government's Roll-Out Schedule for the FALCON Mobile Module.

FALCON is based upon Palantir Gotham, a proprietary Commercially Available, Off-the-Shelf (COTS) software product produced and sold solely by Palantir Technologies. Palantir's Gotham software has been modified for ICE's specific requirements and has been internally renamed as FALCON.

Palantir is the only source for the proposed license to use and support the FALCON system. FALCON is based on Palantir's proprietary Gotham software suite. Only Palantir has access to the system's source components and underlying software. Currently ICE has licenses that are issued on a server core basis. Given the nature of ICE's requirements and the expansion of FALCON, ICE will exceed its license. In order to account for the expansion and ingestion of additional datasets, ICE wishes to convert its existing server core licenses to an unlimited license. This will ensure that in the future all of FALCON's requirements will be taken into account and will not be limited or hampered by license limitations. In addition to the license expansion, ICE requires continuing operation and maintenance support of FALCON. The Palantir Gotham Unlimited License (which includes operation and maintenance support) will allow ICE to maintain and update current databases with the most accurate information for the additional end users. Since the Palantir software products are proprietary, Palantir has stated that Palantir is the only authorized seller and distributor

of its software products and provider of any required maintenance services for its software. Palantir is unwilling to license other sources to support the FALCON system at the present time.

Market research has shown that no other vendors offer an immediately available, fully integrated solution to HSI's enterprise-wide analytical and operational support requirements summarized in part 3 above (Description of Supplies/Services). Other vendors' products meet some of these requirements; some vendors offer a suite of products to provide a wider range of services than any single product of theirs can provide, but this represents a step backward from a fully integrated solution resting on a single platform. No other vendors contacted during market research efforts have prior experience with ICE's mobile application architecture, and none can currently provide a unitary mobile application having the same range of functionality as FALCON Mobile. No other vendors have demonstrated past performance deploying a fully integrated analytical and operational support solution to an enterprise of comparable purpose and size to ICE HSI.

ICE desires to move away from Palantir's GSA Schedule pricing, which prices annual operations and maintenance services per installed server core and prices additional processing power/data ingestion/feature enhancement per installed server core. Instead ICE wishes to convert its existing per server core licenses to an unlimited Gotham license, which is not available through Palantir's GSA Schedule but has been offered to ICE and a few other large governmental customers. ICE has determined that future system enhancements and growth of the FALCON user base can be more effectively managed and will cost less under the constraints of an unlimited Gotham license than under the constraints of Palantir's existing GSA Schedule pricing. Taking into consideration ICE's future growth and utilization of FALCON, this will save ICE approximately \$15M per year, as compared with GSA Schedule pricing for additional server cores/licenses and annual operations and maintenance costs for a growing installation.

Given that 2015 will be a year of major transitions in the key data sources which feed into FALCON, HSI would subject itself to unacceptable technical risk by switching from a contractor which has years of experience dealing with those data sets to a contractor which would likely need to begin learning the intricacies of those data sets and how they feed into FALCON. The largest data source which currently feeds into FALCON, the Treasury Enforcement Communications System (TECS) is being replaced this calendar year by a new, successor system, ICE Case Management (ICM). Similar changes occurring at our sister agency, Customs and Border Protection (CBP), will require the re-routing of data feeds from the Seized Asset and Case Tracking System (SEACATS) and other key data sources that originate at CBP. As there is no other vendor that can provide operation and maintenance to FALCON, there is no other responsible source than Palantir. No other company can provide the service. If the agency is not permitted to sole source this acquisition, obtain operation and maintenance service from Palantir, and is forced to go without, the failure to maintain the system would result in mission failure. Without regular security patching, ICE's Office of the Chief Information Security Officer (OCISO) would revoke permission for the system to continue operating (alternatively, a malicious virus could shut the system down). Hardware failures could not be responded to promptly, as ICE would no longer have Palantir engineers on ready availability to diagnose issues and fix them. Without FALCON availability, ICE's Special Agents and Intelligence Analysts would lose much of their capability to formulate intelligence products necessary for the conduct of investigations and to present those products to U.S. Attorneys' Offices, and Special Agents would lose the blue force tracking and secure communications functionality provided by FALCON Mobile, which would place those Agents at additional risk, including injury or death.

Given that no other vendor than Palantir can, at the present time, offer a fully integrated, enterprise-wide analytical and operational support platform which meets ICE's stated requirements, transitioning to an alternative system would impose heavy opportunity costs upon ICE and would require ICE to maintain two parallel contracts, in order to maintain current levels of end user functionality while an alternative system is being developed, reviewed, and deployed. ICE could not sever contractual ties with Palantir during the long transition period for the reasons listed in the preceding paragraph. An estimated timeline for the development, review, and deployment of an alternative replacement system, based upon our experiences to date with FALCON development and deployment is as follows:

- a) Acquisition process for a fully competed requirement/time to let a new contract:
- b) Contractor development work on combining currently separate software platforms, creating multiple workflow modules, creating a unified mobile platform, creating a financial big data analysis platform, setting up access controls, and testing the unified system:
- c) Ingesting data from 11 major law enforcement databases and more than 60 smaller databases comprising approximately 2 billion records and 65 billion searchable items:
- d) Privacy review and approval process, ICE and DHS, primary analytical platform:
- e) Privacy review and approval process, ICE and DHS, DARTTS module:
- f) Privacy review and approval process, ICE and DHS, mobile module:
- g) Privacy review and approval process, ICE and DHS, workflow modules:
- h) Security review and approval process, ICE and DHS, primary analytical platform:
- i) Security review and approval process, ICE and DHS, DARTTS module:
- j) Security review and approval process, ICE and DHS, mobile module:
- k) Security review and approval process, ICE and DHS, workflow modules:
- l) Writing Standard Operating Procedures; policy and legal review of SOPs:
- m) Training 10,000 HSI employees on replacement system:

An estimated timeline for 24 months will be needed to complete the tasks listed above. Some of these tasks will be performed concurrently during the 24 months.

The approximate cost of a new system is unknown at this time because there is no other software that provides the same functionalities that FALCON currently provides. A new software vendor would need time to familiarize themselves with FALCON's various data feeds and ingestions, review ICE's requirements, develop the necessary interfaces, data modeling structures, programs, and system enhancements into its existing system and test the new system. If a new vendor were to replace Palantir in 2015, a strong possibility exists that the current data feeds from TECS, SEACATS, and other legacy mainframe databases shared by ICE and CBP would go offline with the shutdown of the mainframes during the first quarter of 2016 before the new vendor could engineer a switch-over to feeds and ingestion from the successor systems, without data from TECS and SEACATS, FALCON would be rendered ineffectual as ICE's primary analytical tool. Even performing the tasks concurrently, it is unrealistic to expect a new vendor to be able to perform all of the above tasks and meet the mandated government roll out schedule. The estimated time for competition does not account for the additional system enhancements currently required by ICE. The requirement may take more than 2015 to complete, in which case the options would have to be exercised. However, at that time if there is another viable solution, ICE intends to explore that avenue.

## **6. Description of Efforts Made to Ensure that Offers are Solicited from as Many Potential Sources as is Practicable.**

The Contracting Officer (CO) in 2011 issued sources sought notices that detailed program requirements for a comprehensive software solution and related support, and requested that interested vendors submit technical capability documentation in response. No vendors responded to the notification. As a result of these sources sought notices, Palantir software was procured under a fixed price award HSCETE-11-F-00125 for the period September 14, 2011-March 13, 2013, which was followed by a maintenance support bridge contract award number HSCETC-13-F-00010 for the period March 14, 2013-June 13, 2013.

On June 14, 2013, ICE issued a task order, HSCETC-13-F-00030, off of Palantir's GSA schedule for operations and maintenance services for the existing system. Market research conducted prior to award revealed that Palantir, Inc., was the sole source of Palantir Gotham software and did not authorize, license, or certify any third-party vendors to provide support services for their software. Less than three months after award, ICE determined that it needed additional processing power to allow for the ingestion of the Data Analysis and Research for Trade Transparency System (DARTTS) and the Enforcement Integrated Database (EID) into FALCON. ICE issued a Sources Sought notice on FedBizOpps, with responses due to the Contracting Officer by August 12, 2013. Three companies responded: Palantir Technologies; Visionary Integration Professionals, LLC (VIP); and SRA International, Inc. (SRA). The government's evaluation of these three responses showed that only the first was fully responsive to the stated requirements; the latter two responses received grades of either Non-Responsive or Technically Non-Responsive on key requirements, meaning that the documents they supplied did not address key requirements at all or merely stated an ability to meet the requirement without providing any evidence of said ability or explanation of technical approach. Contract HSCETC-13-F-00030 was amended on September 27, 2013.

On September 22, 2014, task order HSCETC-13-F-00030 was amended for the period September 30, 2014-March 13, 2015 for the purpose of converting contract pricing from Palantir's GSA Schedule server core-based pricing to a non-GSA Schedule unlimited Gotham license which would allow for more cost-effective data source additions and enhancements of feature sets. In conjunction with this task order amendment, a Limited Source Justification memo was posted, resulting in no letters of response from vendors. Because Palantir's GSA schedule did not contain an unlimited license, ICE determined that the unlimited license should be procured under a separate contract. ICE posted a JOFOC on FedBizOpps on December 31, 2014 indicating the agency's decision to award a sole source contract to Palantir for operations and maintenance services and system enhancements under an unlimited Gotham license for the remaining period of performance of contract HSCETC-13-F-00030, which would extend from March 14, 2015- September 13, 2018. Three companies responded to the JOFOC notice with letters stating they believed they could meet ICE's requirements and requesting meetings with ICE HSI: Carahsoft Technology, Thetus Corporation, and IBM. The three companies had established a teaming arrangement and Carasoft filed an Agency Protest in lieu of accepting a meeting with the HSI/CIO. In an attempt to resolve the protest, ICE personnel met with the entire team on multiple occasions. Despite their best efforts, the ICE Technical Team determined that neither the team nor IBM individually could meet the requirements. The Agency Protest was denied on May 04, 2015.

Currently Palantir's FALCON system can meet all of ICE's requirements. No known vendor can provide operations and maintenance services to Palantir Gotham (they are not authorized to do so), nor can they

provide a fully compatible, integrated, enterprise-level system to replace FALCON that can meet ICE's operations and maintenance service requirements at the present time. Carahsoft's agency-level protest was denied.

#### **7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable.**

The Contracting Officer has determined that the anticipated price is fair and reasonable based on an evaluation of Palantir's commercial pricing data and the technical evaluation of the price conducted by the HSI Contracting Officer's Representative(COR). The COR provided a should cost estimate of what this effort would entail using GSA pricing and then compared it to the price of the unlimited perpetual license. In light of his evaluation, the price offered by Palantir for this special offer constitutes a great savings for the Government.

#### **8. Description of Market Research, as required by FAR Part 10.**

The market research techniques used included:

- Reviewed internal ICE documentation (previous contract, PWS, and market research)
- Researched to see if other Federal Agencies used the same system we did. It was determined that Customs and Border Protection (CBP) and the Federal Bureau of Investigations (FBI) use Palantir Gotham
- Internet research of products, standards, and industry practices
- O&M support for services to an installation of Palantir Government Licenses
- Researched the General Services Administration (GSA) e-Library
- Capability statements and demonstrations by interested parties

Market research initially conducted in December 2010 showed that Palantir Technology's Gotham software (then called Palantir Government) offered features not available from other software packages currently utilized by ICE or available on the commercial market, including i2Analyst's Notebook, ICEPIC/DPICS2 (developed by IBM for ICE), the Intelligence Fusion System (a GOTS product), Semantica, and Starlite. ICE-HSI identified Gotham as the one unique solution that could address all of its analytical needs.

On August 7, 2013, ICE placed a Sources Sought notice in FedBizOpps. Three companies responded: Palantir Technologies; Visionary Integration Professionals, LLC (VIP); and SRA International, Inc. (SRA). The latter two companies' responses were evaluated as Non-Responsive to ICE's requirements.

Internet-based research conducted in December 2014 indicated that the sole competitor to Palantir Gotham at that time was IBM's i2 Analyst Notebook product and the associated suite of i2 products. After reviewing IBM's i2 it was determined that it lacked many features essential to the HSI mission. Currently, HSI maintains approximately 30 licenses for i2 Analyst Notebook, which was the HSI Office of Intelligence's standard link charting and presentations tool prior to the adoption of Gotham/FALCON. HSI maintains these licenses for the benefit of those Intelligence Analysts who have found it impractical to port their i2-created link charts to FALCON or to recreate those link charts within FALCON.

ICE published a JOFOC on December 31, 2014. Three companies responded with letters stating they believed they could meet ICE's requirements and requesting meetings with ICE HSI: Carahsoft Technology,

Thetus Corporation, and IBM. Carahsoft Technology is a technology aggregator which partners with Thetus Corporation and IBM, among other technology companies. ICE shared a list of its requirements with these three vendors, along with instructions on providing capabilities demonstrations. ICE met with IBM on March 19, 2015 and with Carahsoft, Thetus, and IBM on March 24, 2015 and again on April 21, 2015. The results of these meetings are described in part 6 above.

**9. Any Other Facts Supporting the Use of Other Than Full and Open Competition.**

In order to meet the mission needs of HSI, ICE needs to retain the FALCON capabilities and expand the functionality and user base of the product.

**10. A Listing of the Sources, if any That Expressed in Writing an Interest in the Acquisition.**

Carahsoft Technology, Thetus Corporation, and IBM expressed interest in writing. Carahsoft Technology is a technology aggregator which partners with Thetus Corporation and IBM, among other technology companies. VIP and SRA did not respond to the original JOFOC published on December 31, 2014.

**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 Supplies or Services Required.**

Towards the end of each option period ICE will evaluate the present data analysis, operational support needs, and the market research to make a determination for this requirement. At which point, ICE will either exercise the next option, conduct a full and open competition for operations and maintenance support and system for FALCON or conduct a full and open competition for a new system.

ICE/HSI Information Sharing and Infrastructure Management's (ISIM) will monitor available software products and review HSI operating procedures to determine if any additional software products become available that meet functional requirements. The structure of the current procurement with its three optional license terms, allows for multiple doorways into alternative procurements as FALCON ages and ICE HSI's analytics needs evolve. ICE's chosen architecture moving forward will allow open competition for an analytics platform if ICE management decides to replace or rework its existing analytics platform.