

**JUSTIFICATION AND APPROVAL  
FOR OTHER THAN FULL AND OPEN COMPETITION**

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

**1. Agency and Contracting Activity:**

U.S. Department of Homeland Security (DHS)  
Immigration and Customs Enforcement (ICE)  
Office of Acquisition Management (OAQ)

**2. Nature and Description of Action:**

ICE has a sole source requirement to procure software licenses, maintenance and support, and training classes for a proprietary telecommunications analysis and intercept software suite: Pen-Link Professional Edition; Pen-Link Intercept Edition; Pen-Link PLX; Lincoln Administrator; Pen-Link X-Net, Pen-Proxy, and Pen-Link License Manager from Pen-Link Ltd. as the single available source. Pen-Link Ltd. is located at 5936 VanDervoort Drive, Lincoln, NE 68516. This requirement is proposed as a one year Firm Fixed Price (FFP) contract with four option periods. Pen-Link, Ltd. is a small business that develops proprietary software applications for the interception and analysis of telecommunications and Internet Protocol (IP) information. Pen-Link, Ltd. offers software licenses for their proprietary Pen-Link and Lincoln software application under the North American Industry Classification System code 511210, Software Publishers. The total estimated cost of this requirement is \$ [REDACTED] with a one year base period of performance plus four additional option years.

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

This requirement is to provide software licenses, maintenance and support, and training classes for a proprietary telecommunications analysis and intercept software suite. The period of performance is a 12-month Base Year and four (4) one year options.

ICE is preparing this follow-on contract that will include:

- a. 300 user licenses of Pen-Link Professional Edition software with the DHS/ICE-TLS Agency module, GIS maps and the Cell Phone Forensics module.
- b. 300 user licenses of the Pen-Proxy Client software module for Pen-Link 8 Professional Edition.

- c. 100 user licenses of Pen-Link Intercept Edition software with the DHS/ICE-TLS Agency module, GIS maps, and the Cell Phone Forensics module.
- d. 100 user licenses of the Pen-Proxy Client software module for Pen-Link 8 Intercept.
- e. 2 licenses of Pen-Proxy Server software.
- f. 15 licenses of Pen-Link Lincoln Administrator server software.
- g. 40 user licenses of Pen-Link X-Net IP Intercept client software with the Decoding Library.
- h. 2 licenses of Pen-Link X-Net IP Database Server software.
- i. 2 licenses of Pen-Link License Management server software.
- j. 2 10-user packs of Pen-Link Lincoln Content software.
- k. 3 10-user packs of Lincoln T1.678 Content Pass Through software.
- l. 1 10-user pack of Pen-Link Live Content Target software.
- m. 300 Seats for 2-day Pen-Link Training Classes (CATS, PAC, LAT, CSI, XNet, PLX 101) minimum of 10 students per class at ICE locations.
- n. 1 to 200 Seats of 2-day Pen-Link Training Classes (CATS, PAC, LAT, CSI, XNet, PLX 101) minimum of 10 students per class at ICE locations.
- o. Up to 3 Virtual Training Environments.
- p. 4 Annual Maintenance and Support for 4-Six Line Lincoln Content Collection Systems.
- q. System Engineering and Development Cost

Total estimated cost for this entire requirement:

Total Period of Performance: one base period plus four option periods

Period	Dates	Estimated Cost
Base Period	July 1, 2017-June 30, 2018	\$ 991,558.00
Option Period One	July 1, 2018-June 30, 2019	\$ 146,526.00
Option Period Two	July 1, 2019-June 30, 2020	\$ 103,109.00
Option Period Three	July 1, 2020-June 30, 2021	\$ 161,057.00
Option Period Four	July 1, 2021-June 30, 2022	\$ 20,682.00
Total		\$ 1,422,932.00

**4. Identification of Statutory Authority Permitting Other than Full and Open Competition:**

ICE requires software licenses from Pen-Link IAW 41 U.S.C. 3304(a)(1) as implemented in FAR Subpart 6.302-1 only one responsible source and no other supplies or services will satisfy agency requirements.

**5. Demonstration that the Contractor's Unique Qualification or the Nature of the Acquisition Required the Use of the Authority Cited:**

During the course of conducting criminal investigations, ICE Special Agents gather evidentiary documents and electronic data containing transactional and non-transactional telecommunications and Internet Protocol (IP) records. The exploitation, analysis, linking, mapping and charting of these records is a key component of a successful criminal investigation.

Pen-Link, Ltd. is the proprietary developer and distributor for their software products. Pen-Link systems are able to automatically process, load, store, and analyze proprietary communications data files from hundreds of U.S. and international communications service providers containing records of electronic communications for toll records; call detail records; cell site usage; precision location pings; cell tower dumps; SMS/text messaging; subscribers; email account search warrant data from online service providers; social networking search warrant from online service providers; IP account logins; smartphone messaging (e.g., WhatsApp, Kik Messenger). Pen-Link systems are also able to automatically collect, process, load, store, and analyze real-time proprietary communications data files from U.S. and international communications service providers and is compliant with pen register, trap and trace, and wiretap interception (18 U.S.C. 3121-3127 and 18 U.S.C. 2510-2522).

**6. Efforts to Obtain Competition:**

IAW FAR 6.302-1(a)(ii)(B), supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in unacceptable delays in fulfilling the agency's requirements (10 U.S.C. 3304 (b)(2)) or 41 U.S.C.). This requirement is a follow-on contract for Pen-Link services. The Pen-Link proprietary software and services are only available through Pen-Link Limited. There are no authorized resellers. An interruption of the usage of the software currently being provided and the re-engineering of the entire ICE CALEA infrastructure developed over the last 15 years would have a serious detrimental effect on ongoing investigations. IAW FAR 6.302-1(a)(ii)(A), award to another source would also result in substantial duplication of cost to the Government that is not expected to be recovered through competition. In order to allow another contractor to meet this requirement, the ICE CALEA infrastructure would have to be re-engineered at an estimated cost of [REDACTED]. It would cost the government approximately \$[REDACTED] to customize a new software product from another contractor. The estimate for the re-engineering was derived based on a one time replacement of the system. The [REDACTED] was derived based on a one time software customization a new contractor would charge in addition to the amount of approximately \$[REDACTED] a year cost of the software and maintenance (total estimated cost of [REDACTED] for a base plus four option periods). The estimated total cost of implementing a new contract with a contractor other than Pen-Link is estimated to be approximately [REDACTED] over five years. A

notification will be publicized and synopsised in accordance with FAR 5.201 and in compliance with FAR 5.207.

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

The contracting officer anticipates the price for the supplies and services outlined in Section 3 above to be fair and reasonable based on historical information of previous procurements and the comparison to the Independent Government Cost Estimate (IGCE).

**8. Description of Market Research:**

Market research was conducted for telecommunications analysis software applications as potential alternatives to Pen-Link. No other products in the market researched meet the government needs.

**9. Other Facts Supporting the Use of Other than Full and Open Competition:**

Because of the existence of limited rights data the services is only available from one source (FAR 6.302-1(b)(2)). Pen-Link, Ltd. is the proprietary developer and distributor for their software products. Pen-Link, Ltd. provides state-of-the-art software and systems for the collection, storage, and analysis of live and historical telephonic- and IP/packet-based communications, including but not limited to 3G and 4G cellular calls; Code Division Multiple Access (CDMA); Global System for Mobile (GSM); Universal Mobile Telecommunications System (UMTS); General Packet Radio Service (GPRS); Long Term Evolution (LTE); Integrated Digital Enhanced Network (iDEN); landline POTS and PBX; Voice over Long Term Evolution 4G (VoLTE); Voice over Internet Protocol (VoIP); Push-to-Talk (PTT, SMR Radio, QChat, etc.); Paging; FAX and FAX/Modem; Short Message Service (SMS) text messaging; Multimedia Message Service (MMS) messaging; instant messaging (computer and smartphone based); emails (computer and phone based); web surfing; web account logins; social networking usage (e.g., Facebook wall posts, Twitter messaging, etc.).

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

None.

**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:**

ICE will review the market before exercising the options to see if there are any competing products in the future that would meet ICE's needs. Additional market research and a Sources Sought synopsis will be issued on subsequent acquisitions for Pen-Link. In order for ICE to remove or overcome barriers to compete this acquisition in the future it would have to be prepared to accept the risks outlined in Sections 5 and 9. ICE is unable to risk officer safety, loss of life or the potential for collected evidence to be corrupted or lost making it inadmissible for use in federal or state proceedings.

12. Certifications

Requirements/Technical Personnel:

I hereby certify that the supporting data, which forms the basis for this justification, are accurate and complete to the best of my knowledge and belief.

[Redacted Signature]

[Redacted Name]

[Redacted Title]

Date \_\_\_\_\_

13. Concurrence:

Contracting Officer:  
I hereby certify, in accordance with FAR 6.303-1(a)(2) as the Contracting Officer that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

[Redacted Signature]

[Redacted Name]

[Redacted Title]

Date \_\_\_\_\_

It is determined that the basis for use of other than full and open competition procedures is:

APPROVAL?

This justification is hereby approved.

[Redacted Signature]

[Redacted Name]

[Redacted Title]

[Redacted Signature]

Date \_\_\_\_\_