

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. Agency and Contracting Activity.

The U. S. Customs and Border Protection (CBP), Border Patrol Air and Marine (BPAM). The contracting activity, CBP, Procurement Directorate, proposes to enter into a contract on a basis of other than full and open competition.

Requesting Office:

U.S. Customs and Border Protection (CBP)
Border Patrol Air and Marine Program Management Office (BPAM)
1331 Pennsylvania Ave NW, 1220 N
Washington, DC 20004

Contracting Office:

US Customs and Border Protection (CBP)
Procurement Directorate
1331 Pennsylvania Ave, N.W.
NP 1355N
Washington, DC 20229

2. Nature and/or Description of the Action Being Approved.

This Justification and Approval (J&A) has been prepared by the CBP, BPAM Program Management Office (PMO) to request the award of a sole source extension cost plus fixed fee type contract to DEL-JEN, Inc. (dba Fluor Federal Solutions, LLC) to continue critical maintenance and repair (M&R) support within the Work Area 3 (El Paso and Big Bend Sectors). This acquisition will have a two-month period of performance from **February 04, 2018 to April 03, 2018.**

The need for this effort is to mitigate a break in service on the existing Comprehensive Tactical Infrastructure Maintenance and Repair (CTIMR) contract HSBP1013C00012 awarded by CBP to Fluor Federal Solutions, LLC which expires **February 03, 2018**, and to provide transition services between vendors. The follow on contract (HSBP1017C00026/ RFP No. HSBP1015R0040) was awarded on 05/02/2017 with a twelve (12) month base period and four (4) additional twelve (12) month option periods. CBP received three protests. Resolution of the protests was first projected to culminate in October 2017, then moved to December 2017 and is now targeted for the end of **January 2018**. The current contract is in its final option period and no further extensions are permitted under contract HSBP1013C00012 without approval of this J&A action.

3. Description of Supplies/Services.

Contract Number HSBP1013C00012 (HSBP1209R2483) was awarded on November 30, 2012 (updated 04/12/2013) to Fluor Federal Solutions, LLC. as a 1-year contract, with 2 one-year options. M&R support provided for the Tactical Infrastructure (TI) along the Southern international border (consisting of five work categories: fence and gates; roads and bridges; drainage and grate systems; lighting and electrical systems; and vegetation control and debris removal) includes maintenance work activities that preserve or sustain the ability of the asset to continue to carry out its intended function or preserve its established level of performance, as well as making repairs to restore existing TI assets to pre-existing conditions, design standards, and level of performance so that it may be effectively utilized for its designated purpose. The M&R work required to support the TI varies based on the inventory quantities for each work category, the number and type of incidents, time of year (variances in illegal border traffic fluctuate with the time of year), economic conditions, weather events, and location.

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

41 U.S.C. 3304(a)(1), as implemented by FAR 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements.

5. Demonstration That the Nature of the Acquisition Requires Use of the Authority Cited.

Contract number HSBP1017C00026 (HSBP1015R00400) was awarded 05/02/2017 to PRE CON INDUSTRIES INC under full and open competition, and is now cancelled pending new base year award as a result of corrective actions resulting from the protests; award anticipated by end of January 2018. Contract number HSBP1013C00012 was awarded on November 30, 2012 (updated 04/12/2013) to Fluor Federal Solutions, LLC. The current two-month option period (issued December 04, 2017) of the contract expires on February 03, 2018. The requested extension will allow CBP to continue to receive M&R support in El Paso and Big Bend Sectors while it resolves the protest(s) of the follow on source selection as well as ensure a smooth transition between contractors during phase-in/phase-out.

Currently, Fluor Federal Solutions, LLC is performing under this contract ending on February 03, 2018 with a total contract ceiling of \$23,372,931.89.

The estimated value for this proposed extension is as follows:

<u>Period</u>	<u>POP</u>	<u>Unit Price</u>	<u>Total</u>
2mos EXT	02/04/18-04/03/18	\$866,959.53	\$866,959.53
		Total	\$ 866,959.53

CTIMR support services are essential to CBP due to the critical need to maintain continuity of operations along our borders in the execution of CBP's national security mission. The absence of these services would jeopardize the safety of Border Patrol agents who monitor illegal activities along the border. Required M&R activities such as the repair of potential fence breaches, road outages, lighting issues, and other natural impediments would place the agents in harms way and increase the potential for illegal entries, drug smuggling and terrorist activities in those locations containing inadequately maintained Tactical Infrastructure.

The Government will sustain serious injuries unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. In addition, a delay in the award of a contract would result in serious injury, financial or other, to the Government.

The current contractor has the knowledge base and experience to provide continuity to the effort. Based on CBP's experience with CTIMR protest resolutions and phasing-in new contractors under other CTIMR contracts, a two-month period minimum is average to fully transition and start execution under a new contract. The gap in services caused by the protest(s), expiration of current contract February 03, 2018 and phase-in time is detrimental to the CBP mission. Such delays would impact and jeopardize the safety of Border Patrol agents who monitor fence breaches by causing added distance driving to avoid road wash outs or limited visibility due to uncontrolled vegetation or debris accumulation along the fence line. These conditions put the Border Patrol agents in harm's way as illegal activities are more likely to occur at places where border security can be easily breached.

The estimated cost for the extension effort inclusive of labor and travel is \$ 866,959.53, which encompasses a two-month period of performance from February 04, 2018 to April 03, 2018, and is based on the burn rate under the current bridge contract.

Awarding a two-month extension contract will allow services to continue during phase-in of the new contractor (anticipated new award by end of January 2018).

6. Description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.

On July 29, 2015, CBP posted RFP HSBP1015R0040 to Federal Business Opportunities (FBO) to communicate this requirement to industry and to solicit offers from as many potential sources as possible. On September 23, 2015, five proposals were received in response to this RFP. The Government conducted a source selection for the follow-on 5-year CTIMR Work Area 3 contract, issuing an award notice May 03, 2017. Immediately upon conducting debriefs of unsuccessful offerors the week of May 22, 2017 three protests were received by CBP. Final resolution of all protests is anticipated by end of January 2018.

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

The costs of this sole source initiative are expected to be comparable to the costs/rates under the current Fluor Federal Solutions, LLC contract. No changes to labor categories, types of activities, or staffing are expected during the bridge contract's period of performance. Therefore, actual past costs will act as the inhibitor to significant increases in labor rates/costs. In addition, CBP will perform a cost/price realism analysis pursuant to FAR 15.402 to compare the proposed rates, labor hours, material and equipment to the labor rates, hours, material, and equipment under the current contract HSBP1013C00012, as well as the Government's IGCE, and request DCAA assistance if needed

8. Description of Market Research.

A separate market research effort was not conducted for this contractual action in support of contract number HSBP1013C00012. The Government is currently in the source selection process for the follow-on CTIMR Work Area 3 contract solicited under solicitation HSBP1015R0040, which closed on September 23, 2015. In support of this solicitation, the Government performed market research (at the end of 2014), which helped in the decision-making process for a sole source extension.

Although there are other sources capable of providing these services for the three-month performance period, it is not in CBP's best interest to award a competitive contract to bridge the period between the expiration of these services and the award of a new CTIMR contract due to the length of time required to solicit, procure and transition-in a new contractor.

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

If the contract extension is not awarded, CBP will not have the services needed to maintain continuity of operations and national security along our borders in the execution of CBP's mission. The absence of these services would jeopardize the safety of Border Patrol agents who monitor illegal activities along the border, as potential fence breaches, road outages, lighting issues, and other natural impediments would place the Border Patrol agents in harm's way and increase the potential for illegal entries, drug smuggling and terrorist activities, and other disasters in those locations with Tactical Infrastructure that are not properly maintained.

For example, a fence breach means that unauthorized individuals (to include drug smugglers, human traffickers or terrorists) can penetrate into the United States, and a road outage (washed away or damaged) means that Border Patrol Agents may be unable to physically patrol a section of the border, respond to unauthorized entries or respond to emergency situations in that area, or provide timely backup to other agents in need, thereby severely impacting CBP's mission.

Decision to use only one source for this extension stems from protest(s) received under the new contract, and the parallel expiration of the current contract on **February 03, 2018**. The incumbent contractor is the only known company with the ability to immediately support this requirement with limited risks to the Government and safety of the Border Patrol Agents. Currently, Fluor Federal Solutions, LLC has competent, knowledgeable, and stable program management and M&R staff performing all CTIMR work requirements in Work Area 3 (both urgent and routine) and has the ability to continue providing this uninterrupted support for CBP. The magnitude of the level of effort required to award a new competitive contract vehicle cannot be accomplished before **February 3, 2018**.

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

Although no offerors provided a written interest in proposing to this specific requirement, the following offerors expressed an interest by submitting proposals under the current re-compete contract awarded **05/02/2017** under HSBP1017C00026 (HSBP1015R00400):

- a) PreCon Industries, Inc.
- b) UCC, Inc.
- c) Native Energy & Technology, Inc.
- d) ASRC Gulf State Contractors
- e) Tikigaq, LLC

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.

Awarding the extension due to the nature of the operation and maintenance requirements for CTIMR Work Area 3 will allow sufficient time for CBP to phase-in the new contractor under the follow-on contract. The estimated timeframe to complete phase-in of the new contractor (award projected by end of January 2018) is April 2018.

12. Planning and Funding Statement.

The current contract will expire on **February 03, 2018**, and a 2-month extension will be required no later than **February 02, 2018** to allow the continuation of critical M&R activities under the contract. This acquisition is not a result of lack of planning or expiration of funds. It is a result of protest resolution activities taking longer than anticipated.

► J&A CERTIFICATIONS

13. Requisition/Program Office Certification

I certify that the foregoing justification is accurate, meets the Government's minimum needs and contains complete information necessary to support the action described in this document and the authority cited.

Office: BPAM Program Management Office
Name: (Print):
Title: Program Manager, TI/Tower Acquisition Program

Signature: _____ Date: 13JAN2018

14. Contracting Officer Certification/Approval*

I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

Name (Print):
Contracting Officer

Signature: _____ Date: _____

* In accordance with FAR 6.304(a)(1), CO certification of a J&A for a requirement not exceeding \$700,000 shall constitute approval of the J&A.

15. Small Business Specialist Certification (per HSAM 3019.501-Above the SAT)

I certify that I have conducted a search for small businesses and other socio-economic concerns capable of participating in this acquisition.

If any were found, a list is attached.

Name (Print):
CBP Small Business Specialist

Signature: _____ Date: 01.18/18

16. Chief Counsel Review (per HSAM 3006.304-70 - Above the SAT)

Name (Print):
Signature: _____ Date: 1.22.18

► **J&A APPROVAL**

17. Competition Advocate (per FAR 6.304(a)(2) - Above \$700,000)

Approved Disapproved

Name (Print): _____
Competition Advocate

Signature: _____ Date: _____

18. Head of Contracting Activity (per FAR 6.304(a)(3) - \$13.5M to \$68M)

Approved Disapproved

Name (Print): _____
Head of the Contracting Activity

Signature: _____ Date: _____

19. DHS Chief Procurement Officer (per FAR 6.304(a)(4) - Above \$68M)

Approved Disapproved

Name (Print): _____
DHS Chief Procurement Officer

Signature: _____ Date: _____

20. DHS Secretary (any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount)

Approved Disapproved

Name (Print): _____
DHS Secretary

Signature: _____ Date: _____