



**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
41 U.S.C. 3304**

J&A-21-00378

Pursuant to the requirements of the Competition in Contracting Act (CICA) as implemented by the Federal Acquisition Regulation (FAR) in accordance with the requirements of FAR 6.303-1. The justification for the use of the statutory authority under FAR Subpart 6.3 is based on the following facts and rationale required under FAR 6.302-2 as follows:

1. Agency and Contracting Activity.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Office of Acquisition Management (OAQ), proposes to enter into a firm-fixed price contract on behalf of the Enforcement, Removals, and Operations Division (ERO) on a basis of other than full and open competition.

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

- (a) Type of action: Firm-fixed price contract
- (b) Amount of the current J&A: \$15,758,960.00 (if all options are exercised)
- (c) Brief Description: OAQ intends to procure on a sole source basis 44 charter flights over a two-week period with an option for an additional 44 charter flights over a second two-week period. The service provider is:

The GEO Group, Inc.
4955 Technology Way
Boca Raton, Florida 33431-3367

3. Description of Supplies/Services.

The U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations Division (ERO) has an urgent need to procure emergency flights to remove approximately 15,000 Haitian migrants who have converged near a bridge in Del Rio, Texas along the Southwestern border of the United States and Mexico. President Biden's administration prioritized the deportation via air transport back to Haiti for all Haitian migrants gathered at the location, including single adults and families. The migrant surge was unforeseen and presents numerous substantial risks to human, health, life, and safety, as detailed below.

This contract is to provide charter flights in support of DHS' urgent need to return these thousands of migrants safely and quickly to Haiti. All available ICE and DHS-wide resources are currently devoted to this effort, but additional support is required. The contract is expected to provide 44 flights between Texas and Haiti in a two-week period, with an option for an additional 44 flights for a second two-week period. The contract shall provide all aircraft and labor required to complete the missions in accordance with ICE requirements and applicable Federal Aviation Regulations



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This Period of Performance for this contract will be two weeks, September 21, 2021 through October 5, 2021 with a two-week option period that could extend performance to October 20, 2021. Each two-week, 44-flight period is priced at \$7,879,480.00 for a total of \$15,758,960.00.

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

The statutory authority permitting other than full and open competition is 41 U.S.C. §3304 as implemented by:

- FAR Subsection 6.302-1: Only one responsible source and no other supplies or services will satisfy agency requirements.
- 6.302-2: Unusual and compelling urgency (not a response to a natural disaster, act of terrorism, or other man-made disaster; one-year limitation of FAR 6.302-2(d))
- 6.302-3: Industrial mobilization; engineering, development, or research capability; or expert services.
- 6.302-4: International agreement.
- 6.302-5: Authorized or required by statute.
- 6.302-6: National security.
- 6.302-7: Public interest.

5. Demonstration that the nature of the acquisition requires use of the authority cited.

On or about September 18-19, 2021, over 15,000 Haitian migrants converged near a bridge seeking passage into the Southwest border of the United States at Del Rio, Texas. This migrant surge was unforeseen and presents numerous substantial risks to the health and safety of these migrants. President Biden's administration prioritized the expulsion, pursuant to Title 42, via air transport back to Haiti for all Haitian migrants gathered at the location, including single adults and families. Assets and resources throughout DHS and the U.S. Government are currently being redirected to support this effort including the existing ICE Daily Charter Flights Services contract.

The sudden and unexpected convergence of this large number of migrants presents an especially high risk to the health and safety to the migrants and all DHS employees involved due to the current state of the COVID-19 pandemic. Typically, ICE tests all migrants for COVID-19 before deportation, but the immediate need to lessen the growing crowd makes the logistics for setting up testing impossible. The risks for spreading COVID-19 compound the health and safety risks imposed when makeshift migrant camps like these emerge in areas where there is no shelter, running water, access to food, toilets, or medical care, or protection



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from environmental and criminal elements, among other risks. Reports of migrant women going into labor under the bridge presents one example of the urgent need for DHS intervention to clear the migrants from the area and ensure that more migrants do not attempt the dangerous journey to the border.

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

OAQ intends to award a firm-fixed price contract and does not intend to publicize this requirement, prior to award, based on the exception of FAR 5.202(a)(2) (“unusual and compelling urgency”). The Government believes these flights provided by GEO will not by themselves satisfy the great need for flights in the coming weeks. Existing ICE contracts that provide similar services have already been modified to support this urgent need and the Government is continuing to seek additional sources to support this mission. Where time allows and the opportunity presents itself, the Government will pursue synopsized solicitations to increase the level of competition.

OAQ does not intend to publicize this requirement, prior to award, based on the following FAR 5.202(a) exception: 5.202(a)(2) - The proposed contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203.

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

GEO’s proposed price of \$7,879,480.00 for 44 flights over a two-week period was determined by the Government to be fair and reasonable. The Government evaluated this price by comparing it to pricing paid on existing ICE charter flights contracts. Using this prior acquisition history, the Government determined that the anticipated price is fair and reasonable.

8. Description of market research.

In the short timeframe ICE has had to respond to the emergency situation described herein, the Agency has actively engaged in market research utilizing the techniques set forth in FAR 10.002(b)(2)(i) and (vii)—contacting knowledgeable individuals within Government and industry and conducting interchange meetings with potential offerors. If the need for more emergency flights continues, the Government will continue to engage in these market research techniques and others as needed.

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

None



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

Not applicable.

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.

This action is required due to the urgency and time sensitivity of the situation coupled with the complexity of the services required. The ability to identify capable and experienced service providers is of utmost importance. The market for contractors that are able to respond quickly and appropriately to the Government's needs is not a large one and the Government will continue to rely on knowledgeable Government and industry personnel to identify the best sources. If the future circumstances allow for competition, the Government will pursue it.

After award of this action, DHS intends to post the approved/signed justification pursuant to 6.305.

After award of this action, DHS does not intend to post the approved/signed justification in accordance with 6.305(f).

12. Contracting Officer's Certification.

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.

E. J. Jeraldo
Contracting Officer

September 27, 2021
Date

13. Technical/Requirements Personnel Certification.

I certify this requirement meets the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.

Karl V Kirk
Technical Representative/COR

September 27, 2021
Date



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14. Approval.

Over \$700,000 but not exceeding \$13.5 million
Procuring Activity Advocate for Competition

Date

Over \$13.5 million but not exceeding \$68 million
Head of Contracting Activity

Date