

OFFICE OF ACQUISITION MANAGEMENT  
Justification for Exception to Fair Opportunity  
Exceeding the SAT  
FAR 16.505(b)(2)(ii)(B)

J&A-19-0052

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**1. Agency and Contracting Activity.**

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Office of Acquisition Management (OAQ), prepared this justification for an exception to fair opportunity on behalf of ICE/Homeland Security Investigations (HSI)/Worksite Enforcement Unit (WSEU).

**2. Nature and/or description of the item/service being procured and anticipated cost:**

- (a) Type of action: Labor Hour Task Order 70CMSD18FR0000069 modification
- (b) Amount the current J&A is justifying:  
\$ 6,567,928.51 (with FAR 52.217-8 included) 46% increase to total contract value.
- (c) Brief Description: OAQ intends to modify an existing order, on a sole source basis for I-9 Support Services. The vendor listed below is currently performing the work under this contract and has in depth knowledge of the unique mission of the WSEU which is required to fill the position with the appropriate personnel.

Hamilton Enterprises, LLC.  
1629 K Street NW Suite 300  
Washington, DC 20006-1631

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

WSEU requires additional I-9 Support Services. Twenty-seven (27) additional Junior Compliance Officers (JCOs) to audit employers' I-9 records to detect hiring of illegal immigrants. Findings from data collected and analyzed is used for investigative purposes and possible prosecutions. These auditing support services assist HSI's worksite enforcement strategy of removing the magnet of illegal employment by targeting egregious employer violations and abuses in both critical infrastructure protection (CIP) business sectors and non-CIP business sectors. The WSEU also seeks to identify cases of identity theft and other criminal violations committed by those who knowingly and willfully violate our nation's immigration laws, to include employers who are engaged in wide-spread violations of the laws designed to ensure the employment eligibility of our nation's workforce. The cost to provide 27 additional JCOs is estimated at \$6,567,928.51 (including FAR 52.217-8).

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Table 1: Estimated Total Value of Contract with FAR 52.217-8

Period	Time	Current Value	Dollar Value increase for P00005	Total Value after P00005
Base Period				
Option Period One				
Option Period Two				
Option to Extend Services (52.217-8)				
		\$14,389,738.86	\$6,567,928.51	
<b>Total Contract Value</b>				<b>\$20,957,667.37</b>

\*17-month base period is due to a POP extension this modification will include due to Government delay of 120 calendar days for PSU clearance process and 33 day Government Shutdown. for a total of 153 day POP extension on the base period of performance. Although the Government is extending the period of performance on the base period; any labor hours worked beyond the 12-month period of the base period (FY18 funding), will be paid for with FY19 funding. In order to ensure compliance with fiscal law, the contracting officer will include an additional CLIN in this modification that will separate FY19 funding and all labor hours expended as of September 2, 2019 will be paid for with FY19 funding, which will be added with this modification.

**4. Statutory Exception and rationale for its use:**

Exception:

- FAR 16.505(b)(2)(i)(A). The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- FAR 16.505(b)(2)(i)(B). Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized. *[Explain why supplies or services are unique].*
- FAR 16.505(b)(2)(i)(C). The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order. *[For logical follow-on, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value)]:*
- FAR 16.505(b)(2)(i)(D). It is necessary to place an order to satisfy a minimum guarantee.

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- FAR 16.505(b)(2)(i)(E). For orders exceeding the simplified acquisition threshold, a statute expressly authorizes that the purchase be made from a specific source.

Rationale:

The initial order was competed among OASIS Small Business (SB) Pool 2 vendors. All contractors proposed fixed labor rates for a labor category entitled, "Junior Compliance Officer." OAQ made a single award to staff contractor employees at all existing HSI Special Agent in Charge (SAC) offices to assist with the ongoing audits of employer records. After award, four new HSI SAC offices were opened, including: Charlotte/Charleston, Kansas City, Las Vegas, and Nashville/Louisville. HSI could not reasonably forecast when the additional SAC offices would be open or be prepared to house and support additional contractors working on-site prior to award. Had these offices been in existence at time of award, OAQ would have included them in the initial award.

The new work is a logical follow on to the original order in that the contractor already has junior compliance officers in the current locations and is successfully performing the work; training classes for the contractor have already taken place and the contractor is abreast of the workload and the skills needed to successfully complete it. The benefit and value the Government will receive by modifying the original order is significant. The re-compete costs and procurement lead times would render HSI unable to accomplish its mission during a critical time where the United States is experiencing an immigration crisis. The original order took 3.5 months to award. This work was already delayed during the Jan 2019 shutdown; therefore another 3.5 month delay would be unacceptable.

The workload at the original locations has also increased. Based on the enforcement initiatives and the influx of illegal immigration, the required number of I-9 audits has grown exponentially to support investigation requirements. This additional work is within scope due to two facts (1) that it was known at time of award that the I-9 investigations were increasing, and (2) the Government awarded a contract to staff all HSI SAC offices, not merely some of them. The need to provide additional contractors to support the workload of the original HSI SAC office locations was due to the case backlog resulting from previous surges associated with the I-9 investigations. Specifically, the original HSI SAC offices that were identified as having an additional need were those offices that had a total of 2,174 cases backlogged, see below table 2 below for details. Due to the overall operational increase of audit requirement, Management for the HQ Work Site Enforcement (WSE) Center determined there is a work related need for approximately 5 additional contractors, for a total of 10,100 labor hours. This need increased to 14 contractors for a total of 28,280 labor hours based on the need to assist the HSI field offices for the upcoming audit surge operations.

To provide a bit of background information the prior fiscal year (FY) Form I-9 inspection requirements increased by 78% from 1,334 in FY 2017 to 5,981 in FY 2018. As a result of the enforcement initiatives the audits for FY 2019 will continue to increase by 5% for a total of 6,300 inspections.

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The increased workload is identical to that being currently performed, however, additional JCOs are required at both existing and the new locations. The total JCO enhancement is 27 JCOs. Original award was for 63 contractor employees, bringing the current total to 90 contractor employees. HSI has hosted JCO training for Hamilton Enterprises employees and has currently trained 42 contractor JCOs. This additional work is a logical follow on to the current order as Hamilton employees are currently providing this specialized work, have been trained on the Government procedures for processing data that will be utilized during investigations and possible prosecutions. Awarding this follow-on work to a new vendor would result in increased and duplicative training costs clearance costs and time, and administrative costs which are not expected to be offset through savings resulting from recompeting this new work.

Table 2: JCO Enhancements/office and related audit backlog

HSI Office	I-9 Audit Backlogged Cases	JCOs Enhancements
HQ WSE (supports all HSI offices nationwide)		5
HSI ATLANTA\MOBILE	127	1
HSI BOSTON	225	1
HSI BUFFALO\ALBANY	44	1
HSI CHARLOTTE\CHARLESTON	84	2
HSI CHICAGO	48	2
HSI DALLAS	226	1
HSI DC\NORFOLK	78	1
HSI DENVER\SALT LAKE CITY	105	1
HSI KANSAS CITY	71	1
HSI LAS VEGAS	30	2
HSI NASHVILLE\LOUUVILLE	29	2
HSI NEW ORLEANS\LITTLE ROCK	283	1
HSI NEW YORK	155	1
HSI NEWARK\CHERRY HILL	176	1
HSI PHILADELPHIA\PITTSBURGH	134	1
HSI SEATTLE	107	1
HSI ST PAUL	51	1
HSI TAMPA	201	1
<b>Total</b>	<b>2,174</b>	<b>27</b>

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

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The contracting officer determines that the anticipated cost will be fair and reasonable as the existing fixed labor rates will be utilized for the additional JCOs. The original rates were competed and the basis of award was lowest price technically acceptable. Therefore, no other contractor on OASIS SB. Pool 2 could provide a lower price for the same work.

**6. Any other facts supporting the justification.**

None.

**7. A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.**

If future needs occur for same or similar services, a new contract will be competitively awarded.

**8. DHS intends to post this requirement on FedBizOpps pursuant to FAR 16.505(b)(2)(ii)(D).**

**9. Technical/Requirements Personnel Certification.**

Pursuant to FAR 16.505(b)(2)(ii)(B)(9), I certify that this requirement meets the Government's minimum need and that the supporting data, which form a basis for the justification, are accurate and complete.

**CRYSTAL M  
CARDINALE**  
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CRYSTAL M CARDINALE  
Date: 2019.05.10  
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CRYSTAL M. CARDINALE  
Technical Representative/COR

5/10/2019  
Date

**10. Contracting Officer Certification and Approval \***

Pursuant to FAR 16.505(b)(2)(ii)(B)(8), I certify that this justification is accurate and complete to the best of my knowledge and belief and hereby determine that the circumstances for an exception to fair opportunity exist.

**TRACY D  
RILEY**  
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RILEY  
Date: 2019.05.10 13:41:58  
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TRACY D. RILEY  
Contracting Officer

5/10/2019  
Date

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**11. Approval.**



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SARAH J. TODD  
Competition Advocate  
Office of Acquisition Management  
US. Immigration and Customs Enforcement

14 May 2019  
Date