

## **Justification for other than full and open competition**

**Project Title:** HHS Unaccompanied Children Transportation and Logistics (UCTL) - Bridge Contract

**Date:** March 6, 2023

### **(1) Identification of the agency and the contracting activity.**

Pursuant to the Federal Acquisition Regulation (FAR) 6.302-2(b)(1) and (2), the General Services Administration (GSA), Office of Acquisition Operations (QMA), Office of Travel, Transportation and Logistics (QM), 47QMCH, has determined this requirement meets the criteria established for other than full and open competition. This limitation of competition is justified in accordance with FAR 6.303-2.

### **(2) Nature and/or description of the action being approved.**

DESCRIPTION: Under the Homeland Security Act of 2002, Congress transferred the care and custody of unaccompanied children (UC) to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) from the former Immigration and Naturalization Service (INS). ORR has provided care for and found suitable sponsors for more than 450,000 UC and has seen dramatic increases in the number of UC year over year, requiring contractor support to transport UC from approximately 200 state-licensed facilities in 22 states to family or sponsors as quickly as possible.

In February 2021, ORR sought transportation services at a national level to support UC in HHS facilities with plans to issue a solicitation in the 3rd quarter of calendar year 2021. HHS initially reached out to the Federal Emergency Management Agency (FEMA) in March 2021 to provide support as well as to GSA--initially for UC lodging, then for travel arrangement services, and finally transportation. Between March and June 2021, ORR sought different solutions for moving UC from facilities to family/sponsors including use of GSA's travel management and travel service contracts to make arrangements for air, rail, and ground transportation. In the meantime, ORR planned to issue a short-term contract with MVM Inc. to provide UC transportation services that would provide needed services through March of 2022.

In July 2021, GSA presented several options for ORR's consideration, including the option to provide assisted acquisition services for the effort. In August 2021, HHS elected to have GSA provide UC transportation support through an assisted service, and GSA/QMA began drafting the Interagency Agreement (IAA) necessary to formalize the agreement. GSA issued a Request for Information (RFI) notice through SAM.gov (RFQ1517802) on August 26, 2021 to identify potential interested parties for the future competitive acquisition and worked with ORR to review responses to the RFI. GSA continued to follow up with ORR on getting an executed IAA from August 2021 through January 2022--ORR and HHS had significant resource challenges given the border crisis (this was during the time when all of government was asked to lend HHS a hand through inter/intra-governmental details) to support the crush of UC that hit the system at

once, and they triaged as best they could. On January 13, 2022, GSA finally had a signed, funded IAA to provide assisted acquisition support for UCTL which includes booking itineraries for all UC transportation requirements; providing escort services for UC movement to sponsors or between ORR facilities (as needed); and providing transportation services (for example, drivers and vans for ground transport) for UCTL movement (as needed).

Should GSA have chosen to pursue a competitive acquisition process at that time, below represents the most rapid timeline GSA could have achieved an award (assuming all reviews waived):

- Issue Solicitation / Receive Offers: 45 Days (15 pre-solicitation notice & 30-day response time) - January 13, 2022 to March 1, 2022
- Evaluate Proposals and Make Award: 14 business/working days to contract expiration date of March 18, 2022

This timeline left little to no time for acquisition planning, reviews, negotiations, or contractor onboarding/transition. It would have also severely limited GSA's ability to engage with industry to refine the requirement and leverage industry expertise to achieve a successful acquisition outcome.

A 12-month bridge contract (47QMCH22C0001) was awarded on March 18, 2022, with a Period of Performance (PoP) of March 19, 2022 through March 18, 2023 in order to allow QMA adequate time to execute a competitive, long term contract for this UCTL requirement. Health & Human Services (HHS) Office of Refugee Resettlement (ORR) and GSA QMA entered into an IAA which allowed GSA to provide contracting support in establishing multiple separate contract actions. The first of those actions was the bridge contract discussed above, which was a sole source contract issued to the incumbent who was currently performing the services. This provided GSA additional time to perform the entire array of acquisition lifecycle activities in establishing a competitively awarded multiple year contract for UCTL services.

GSA worked with ORR to revise their work statement to account for changing policies and fluctuations in the number of UC entering the United States, develop an acquisition strategy, and to determine the appropriate contract type throughout 2022. GSA issued Request for Proposal (RFP) 47QMCH23R0001 on November 22, 2022 and responses were initially due on January 27, 2023. Multiple amendments were published to address industry questions and further refine the Performance Work Statement (PWS) based on industry feedback and changing government policies. Ultimately, the RFP closing date was extended to February 21, 2023, and the government is currently undergoing source selection with an expected award date in the middle of March 2023. In an effort to ensure these essential services continue - regardless of any protests received, delays in the evaluation and award of the new contract, or any transition time needed for a new contractor to take over this work should the incumbent not be selected for award – GSA intends to award a non-competitive bridge contract to the incumbent to continue performing the same services for an initial period of 120 days. This bridge contract will also

contain two additional, 4-month option periods which, if exercised, would extend services for a maximum of 12 months.

NATURE: ORR is responsible for providing UC that are in the custody of HHS with a safe and appropriate environment until they are released to sponsors while their immigration cases proceed. ORR accomplishes this mission with the assistance of a contractor that is responsible for purchasing transportation and providing escorts for the UC during their travel, as well as ensuring the UC's health and welfare needs are provided for while managing a system that accounts for their status and location. This is a critical contract, humanitarian in nature, involving the care and transportation of children that are in the custody of the United States Government. The contemplated bridge contract, if awarded, will continue for 4 months (March 19, 2023 through July 17, 2023), the services currently being performed under contract 47QMCH22C0001 held by MVM, Inc. Two additional, 4-month option periods will be included in the bridge contract allowing services to be extended for a maximum of 12 months.

The current UCTL contract will expire on March 18, 2023, and no extension to this PoP is available using FAR 52.217-8 - Option to Extend Services or a substantially similar agency clause. Any delays at this point with awarding the long-term competitive contract, time needed to resolve any protests received, or time needed for a new contractor to begin full performance under the new contract should the incumbent not be selected, could result in ORR not being able to execute their mission.

**(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).**

This contract action will provide transportation and logistics services for UCLT which includes: booking itineraries for all UC transportation requirements; providing escort services for UC movement to sponsors or between ORR facilities (as needed); and providing transportation services (for example drivers and vans for ground transport). The Statement of Work (SOW) for the current UCLT contract is provided as attachment 1 to this J&A. The anticipated bridge contract will be a continuation of the services currently being provided by MVM, Inc under the current contract.

Estimated value. The current contract consists of 3 fixed price elements, one that is constant and two that are variable with respect to the number of UC transported. A tabular summary of current pricing is shown below.

Price Description	Current Contract Price	Unit	QTY	Total Price
Operations & Infrastructure	\$3,705,256.00	MO	12	\$44,463,072.00
Escorted UC Transportation (price per 1,000 UC)	\$6,315,000.00	EA	20	\$126,300,000.00

Unescorted UC Transport	\$4,736.25	EA	20	\$94,725.00
<b>Total Price:</b>				<b>\$170,857,797.00</b>

The constant fixed price for the contemplated 4-month bridge contract is estimated to be \$3,705,256.00 monthly, and ORR estimates the need for approximately 16,000 UC transports over this 4-month period. This estimate assumes the frequency of UC requiring transport will remain at about 4,000 (the monthly average over the past several months) instead of the 8,000 UC per month requiring transportation as estimated in RFP 47QMCH23R0001. It also assumes contract pricing will remain the same. Should the incumbent be selected for award, no protests be submitted, or transition to a new contractor not take the entire 4-month period, this bridge contract would either not be awarded or be terminated either in part or in its entirety. A tabular summary of the contemplated bridge contract's pricing is provided below:

Price Description	Current Contract Price	Unit	QTY	Total Price
Operations & Infrastructure	\$3,705,256.00	MO	4	\$14,821,024.00
Escorted UC Transportation (price per 1,000 UC)	\$6,315,000.00	EA	16	\$101,040,000.00
Unescorted UC Transport	\$4,736.25	EA	20	\$94,725.00
<b>Total Price:</b>				<b>\$115,955,749.00</b>

Should an increase occur in pricing, the government expects those increases to be no more than 13% based on the CPI inflation calculator over the period of March 2021 to January of 2023 (no contract increase in pricing has occurred since 2021 for these services).

Price Description	Current Contract Price (+13%)	Unit	QTY	Total Price
Operations & Infrastructure	\$4,186,939.28	MO	4	\$16,747,757.12
Escorted UC Transportation (price per 1,000 UC)	\$7,135,950.00	EA	16	\$114,175,200.00
Unescorted UC Transport	\$5,351.96	EA	20	\$107,039.20

	<b>Total Price:</b> <b>\$131,029,996.32</b>
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The two option periods (4 months each) are estimated to include the same overall values as those shown above.

Current pricing: \$115,955,749.00 per period or \$347,867,247.00 should all options be exercised

Escalated pricing: \$131,029,996.32 per period or \$393,089,988.96 should all options be exercised

**(4) An identification of the statutory authority permitting other than full and open competition.**

Citation: 41 U.S.C.3304(a)(2)

**(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.**

MVM, Inc. (MVM) is the current incumbent performing these services for ORR. Pursuant to 41 U.S.C. 3304(a)(2), the services that MVM provides are of such a compelling urgency that continuation is vital, and failure to execute a bridge contract to allow GSA sufficient time to stand up a quality long term contract to provide these services will have catastrophic consequences with respect to ORR's mission in transporting UC and connecting them with their sponsors. The U.S. Government would have no choice but to either house UC in suboptimal living conditions for indefinite periods of time or turn UC away due to lack of adequate sheltering and resources should these services not be continued.

The incumbent contractor employs several hundred individuals that have undergone background checks and training, and they have also been satisfactorily performing these services under short term contracts since March of 2021. The government's requirement is unique in that it far exceeds any transportation and guardianship type requirement one would find in the private sector or at lower levels of government in terms of volume of children to be transported, broad variability in destinations and types of care required, and the added responsibilities endowed to track and care of these UC for unknown periods of time.

Although the government estimates it will make an award of the competitive, long-term contract prior to the current contract's expiration, it is uncertain whether protests will be received, or how much time will be needed for potentially a new contractor to transition into providing these services independently after award. Onboarding and background checks of a new contractor and its employees/subcontractors would take at least 30 days, resulting in a 1-to-2-month gap in services and catastrophic consequences to ORR's ability to execute its mission.

**(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by subpart 5.2 and, if not, which exception under 5.202 applies.**

The bridge contract will not be awarded competitively, and no synopsis will be posted. In accordance with FAR 5.202(a)(2), the Contracting Officer (CO) need not submit the notice required by FAR 5.201 when the proposed contract action is made under the conditions described in FAR 6.302-2. This Justification and Approval will be posted to the Governmentwide point of entry in accordance with FAR 6.305(b) within 30 days of contract award and will remain available for a minimum of 30 days.

As stated above, the government is currently undergoing source selection for the long-term contract, which was solicited as full and open competition in November of 2022. This bridge contract shall only be awarded if needed and for a maximum of 120 days initially. Should additional time be needed for the reasons specified above, 120-day option periods will be exercised accordingly.

**(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.**

The current incumbent, MVM Inc., has been performing these services under an existing contract since March of 2022 and was the incumbent before that since March of 2021. This vendor attended QMA's initial industry outreach event and has expressed their interest in competing for the long-term effort that will be enabled as a result of this bridge. Their prices may increase—possibly dramatically as a result of the current rate of inflation—but likely only in response to current market conditions. Pricing on the current contract has already been determined fair and reasonable by the CO, and the GSA CO has no reason to expect unreasonable pricing on this subsequent contract considering pricing has remained static for nearly two years. The GSA CO will evaluate pricing to ensure the proposed contract pricing is fair and reasonable based on current market conditions.

**(8) A description of the market research conducted (see part 10) and the results or a statement of the reason market research was not conducted.**

Market research for this effort was not conducted. When QMA was initially contacted by ORR to serve as the contracting activity for the UCTL requirement, market research was initiated for the long-term effort only, but the results of that research are not relevant for this effort. A short-term contract is necessary to ensure these critical services continue to be rendered while QMA works to award the competitive acquisition for the long-term contract solution.

**(9) Any other facts supporting the use of other than full and open competition, such as:**

- (i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

Not applicable

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

Not applicable

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

The authority described in FAR 6.302-2 is cited for this bridge contract, and more specifically FAR 6.302(a)(2), which states "When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for." In this instance, the government could be harmed in a number of ways. Most immediately, UC are continuing to arrive in the United States without their parents, and the US government is assuming responsibility for their wellbeing, and for matching them with sponsors who will take custody of them once their initial screening is completed and they can be transported via contractor support. ORR, the agency tasked with this mission, cannot accomplish it without contractor support, and a lapse in this service contract will disrupt—potentially devastate—this essential function with respect to the UC.

FAR 6.301(c) indicates that contracting without providing for full and open competition, which is what this bridge contract represents, shall not be justified on the basis of a failure to adequately plan sufficiently in advance of a requirement, nor based on concerns regarding the availability of funding. In this case, while both of these may have been contributing factors to the need for a bridge contract, this justification is not based simply on poor planning or the unavailability of funds; the work that is accomplished under this contract is essential, and allowing the current contract to expire in March 2023 is simply not an option that is allowable for ORR to continue to place UC with sponsors. The purpose of this bridge contract is to allow ORR and GSA sufficient time to complete source selection and award the long term contract to provide these services moving forward, not to enter into a long term contract on a non-competitive basis due to poor planning. This bridge contract merely mitigates the risk of a lapse in services from occurring whilst the government awards the competitive, long-term contract resulting from RFP 47QMCH23R0001.

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

Not applicable. The government is in the middle of source selection for the long-term, competitive contract and cannot disclose the offeror identities at this time.

**(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 the supplies or services required.**

Not applicable. In this case, the barrier to competition is simply the time available to execute a multiple year contract for the UCTL services, and the bridge contract itself is the mechanism to allow for a competitive award of the long term UCTL contract that will replace it.

**(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.**

The undersigned certifies that this justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Michael A. Sands  
Contracting Officer  
Office of Acquisition Operations (QMA)

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*Michael Sands* 3/8/2023  
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Concurrence:

I have reviewed this contract action and I have determined to the best of my knowledge and belief, based on the information contained herein, that it complies with all applicable policies and regulations.

Mark J. Lee  
Assistant Commissioner  
Office of Policy and Compliance (OPC)  
Federal Acquisition Service (FAS)

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*Mark J Lee* 3/9/2023  
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Approval:

Nicholas West  
Senior Procurement Executive (SPE) (Delegated)  
General Services Administration (GSA)

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*Nicholas West* 3/9/2023  
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