

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
LYNDON B. JOHNSON SPACE CENTER

Justification for An Exception to Fair Opportunity (JEFO)  
Pursuant to Federal Acquisition Regulation (FAR) 16.505(b)(2)(i)(D)

**Description of the action being approved:**

This justification documents the basis for issuing a Task Order (TO) under the Exploration Extravehicular Activity Services (xEVAS) contract using an exception to the fair opportunity process in accordance with FAR 16.505(b)(2)(i)(D), Exceptions to the fair opportunity process.

On May 31, 2022, Axiom, Incorporated (Axiom) and Collins Aerospace (Collins), were issued awards under xEVAS, a multiple-award Indefinite-Delivery Indefinite-Quantity (IDIQ) with contract numbers 80JSC022DA022 and 80JSC022DA023, respectively. On September 8, 2022, the Extravehicular Activity and Human Surface Mobility Program (EHP) competed and awarded the first Extravehicular Activity (EVA) TO for Artemis EVA Demonstration to Axiom for \$228.5 million. The TO also includes pre-priced options, which if ordered by the Government, require Axiom to complete an International Space Station (ISS) EVA Demonstration as a delta effort to the Artemis EVA Demonstration. However, NASA currently has a requirement to authorize another ISS EVA Demonstration in order to maintain the redundant capability that is a critical component of EHP's acquisition approach for xEVAS. This justification documents the basis for issuing a sole source TO to Collins under the xEVAS contract for this Demonstration.

As background, to obtain a reliable U. S. based EVA capability that replaces the nation's dependency on the aging ISS Extravehicular Mobility Unit (EMU) and provide new capability for lunar surface partial gravity EVAs, NASA determined that having two xEVAS contractors working on and ready to provide uninterrupted, reliable EVA services was necessary to ensure redundancy for ISS and Artemis programs. Having two contractors ready to perform EVA services will ensure that NASA meets its statutory obligations, its obligations to its international partners, and the Government's need to maintain ISS as a viable and productive facility through at least September 2030, while meeting NASA's scientific and exploration goals on the Moon and beyond, if one of the contractors encounters technical difficulties that prevents it from delivering EVA services. EHP's redundant approach also maximizes meeting the program objectives by reducing overall risk. Dual providers ensure a safer and more reliable EVA missions to ISS, the Moon, and beyond by providing more options and flexibility for NASA throughout contract performance. The approval of this JEFO will result in the award of a TO to enable the development of an xEVA system under CLIN 1A with Collins on a path that is very similar to CLIN 2A with the current provider, Axiom. The TO award for CLIN 1A is designed to successfully achieve the mission objectives described below.

**Description of the supplies or services required to meet the Agency's needs:**

This action is a firm-fixed-price TO for Sub Contract Line Item Number (SubCLIN) 1A, ISS EVA Demonstration, which represents work necessary to achieve a successful ISS EVA demonstration and certification. The overall objective of xEVAS CLIN 1 is focused on the commercial demonstration, certification, and delivery of recurring EVA services for the ISS Program.

Successful completion of the demonstration and certification means that the Contractor's xEVA System meets NASA's requirements for conducting EVAs in low-earth orbit on the ISS in accordance with documents identified in Section C, Performance Work Statement and Attachment J-02, xEVAS System Requirement Document.

Beyond the demonstration, commercial EVA services performed under the xEVAS contract, CLIN 1, include providing certified spacesuits (life support, pressure garments, informatics, avionics, and communications); crew aids; vehicle interfaces; flight and ground support hardware; accessories; and Contractor support to NASA training and real-time operations.

The total estimated price of the proposed TO for SubCLIN 1A is \$ [REDACTED] million. The estimated period of performance is authorization to proceed plus [REDACTED] months, which is the time expected to complete all required development, demonstration activities, and final certification of services that fall under the scope of SubCLIN 1A.

**Identification of Exception to Fair Opportunity:**

FAR 16.505(b)(2)(i)(D), It is necessary to place an order to satisfy a minimum guarantee.

**Supporting Rationale:**

The statutory authority for this JEFO, as implemented by FAR 16.505(b)(2)(i)(D), enables an exception to the fair opportunities process if it is necessary to place an order to satisfy a minimum guarantee, which is required due to the Government's obligation under the IDIQ contract. The contract must "specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract" per FAR 16.504(a)(4)(ii). Furthermore, NASA FAR Supplement (NFS) 1816.504(a)(4)(ii) states that "IDIQ service contract values and TO values shall be expressed only in dollars." Thus, the Government's obligation shall be fulfilled not by the number of missions, but rather by the dollar amount placed on the orders. If the minimum guarantee under the xEVAS contract is not satisfied, the Government could be found in breach of contract, which would carry financial liabilities up to the guaranteed minimum value established in the contract.

The guaranteed minimum in the amount of \$ [REDACTED] million was established in the Collins xEVAS contract at the time of award, and the Government is obligated to place orders reaching that amount within the ordering period. To date, Collins has not been competitively selected for award of any TO under the contract. However, the contract guaranteed minimum order obligation aligns with NASA's EVA requirements over the full duration of the contract. Due to the long period of performance on SubCLIN 1A, and the requirement of its completion before orders can be placed on SubCLIN 1B – ISS EVA Services, NASA has an immediate need to place a TO with Collins.

**Determination that the anticipated cost to the Government will be fair and reasonable:**

The request for Collins' TO proposal will use the prices established in Table B.4.1 ISS EVA Demonstration (SubCLIN 1A) Schedule for calendar year 2022, and the milestone prices in Attachment J-08, Work Plan, as a basis for negotiating the work under this TO. The Government determined Collins' pricing to be fair and reasonable at the time of award of the xEVAS contract on

May 31, 2022. The Contracting Officer (CO) made this determination based on a price analysis in accordance with FAR 15.305 Proposal Evaluation, FAR 15.404 Proposal Analysis, and NFS 1815.305 Proposal Evaluation. There have not been any developments in the relevant market that have changed in the months since award of the xEVAS contract to indicate that the market for EVA services has changed.

In accordance with the terms and conditions of the xEVAS contract, under which the requirement for certified cost and pricing data was waived, the CO will require Collins to provide data other than certified cost or pricing data and utilize this information to prepare a Pre-negotiation Position Memorandum (PPM) per NFS 1815.406-1. The PPM will include the results of the CO's price analysis, in accordance with FAR 15.404, Proposal Analysis, in determining the fair and reasonable price for the SubCLIN 1A services under the xEVAS contract.

**Any Other Facts Supporting the Justification:**

A Notice of Intent letter was provided to the two xEVAS contractors on September 30, 2022, notifying them of the Government's plan to sole-source to Collins for SubCLIN 1A ISS EVA Demonstration. The letter stated that any issues regarding the strategy be provided to the CO by October 7, 2022.

It is JSC's intent to compete future TOs whenever practical. A sole source award to Collins for CLIN 1A not only increases NASA's ability to compete EVA services tasks in the future, but also enables a strategy intended to mitigate the agency's technical and schedule risks associated with the development and execution of EVA services to support NASA's mission needs.

**A statement of the actions, if any, the Agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made:**

This SubCLIN 1A approval to Collins positions the Government to compete the SubCLIN 1B – ISS EVA services portion of the contract, if both xEVAS contractors have xEVA systems that are certified to provide the recurring ISS EVA mission services. The CO will continue to examine the market in the future for alternative solutions or new sources before executing any subsequent acquisitions for the same requirements. Also, the xEVAS contract includes an “On-Ramp” clause that enables competition for future requirements not currently on contract by allowing qualified new service providers an opportunity to provide EVA services in the future.