

U.S. Customs and Border Protection
Justification for Brand Name Exception to Fair Opportunity (JEFO) – FAR 16.505(a)(4)
Exceeding the SAT

Date: March 24, 2021

PR Number: PR20123465

1. Agency and Contracting Activity.

The Department of Homeland Security, Customs and Border Protection, Office of Acquisition, prepared this justification for a brand name exception to fair opportunity.

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

CBP intends to award a task/delivery order under the single-award DHS Cellular Wireless Managed Services (CWMS) 2.0 Indefinite Delivery Indefinite Quantity (IDIQ) Contract No. 70RTAC21D00000001, pursuant to FAR 16.505(a)(4), restricting consideration to an item peculiar to one manufacturer (e.g., a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer).

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

The CBP Office of Professional Responsibility (OPR) requires AT&T and Verizon Wireless brand wireless services, wireless devices, and the management of OPR's existing consolidated wireless carrier accounts under the DHS CWMS IDIQ.

Performance Period	Performance Period Dates	Amount
Base Period	March 30, 2021- March 29, 2022	
Option Period 1	March 30, 2022- March 29, 2023	
Option Period 2	March 30, 2023- March 29, 2024	
Option Period 3	March 30, 2024- March 29, 2025	
Option Period 4	March 30, 2025- March 29, 2026	
Total Value Including All Options		

4. Identify the exception to fair opportunity and supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited.

The exception to fair opportunity that applies is found at FAR 16.505(a)(4), which applies when restricting consideration to an item peculiar to one manufacturer. None of the exceptions at FAR 15.505(b)(2) applies, but this justification adheres to the format and requirements applicable to those exceptions and is modified to show the brand-name justification.

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Rationale:

OPR's mission of safeguarding and promoting the integrity and security of the CBP workforce requires OPR personnel in permanent locations nationwide and while traveling domestically and internationally to have access to dependable high quality wireless communication capabilities at all times, without interruption, with access to the priority voice and data services network made available to first responders.

AT&T was awarded the FirstNet contract under the sponsorship of the Department of Commerce to build out a dedicated, secure, nationwide LTE network for first responders. AT&T FirstNet offers subscribers access to priority voice and data services to allow users to have a permanent priority designation assigned to employees deemed as Law Enforcement, Federal Emergency Response Officials, and to other essential personnel.

Verizon Wireless also offers Frontline First Responder Priority resource on their existing infrastructure. This service offers mobile broadband priority and wireless priority service to Department of Homeland Security approved users. This service provides higher-priority network access over other users and end-to-end voice priority access to Verizon's network during times of national security, emergency preparedness and wireless network congestion.

Around 2016, Sprint stopped providing wireless support to the Federal Government. At that time, all CBP Sprint wireless lines were transitioned to AT&T or Verizon wireless. In 2019, Sprint merged with TMobile. The only other major US carrier that also offers a first responder capability is TMobile; however, the TMobile First Responder resource only offers first responder capability to state and local public and non-profit law enforcement, fire, and EMS agencies.

In addition to First Responder priority resources only provided by AT&T FirstNet and Verizon Wireless, these carriers have proven to have the capability of supporting the use of a unique service called Android Team Awareness Kit (ATAK), which is a suite of software that provides geospatial information and allows user collaboration over geography. This application provides for precision targeting, surrounding land formation intelligence, situational awareness, navigation, and data sharing which is a necessity for CBP OPR users in the performance of their mission. Continued use of this service, without interruption is a necessity for CBP OPR personnel in support of their mission requirements.

CBP OPR currently only utilizes AT&T FirstNet and Verizon Wireless services and devices. Because carrier devices — also known as locked devices — are sold through a wireless carrier (or a third-party vendor such as Widepoint) and only operate on that particular carrier's proprietary telecommunications network, switching to a new or different carrier would necessitate a change to the existing, in-use devices as well.

Additionally, as CBP OPR currently has close to a thousand existing devices in use by personnel throughout the country, a change to the existing carriers would not only eliminate the priority first responder capability, but it would be disruptive to mission critical operations and require hundreds of working hours to coordinate (both by mission support personnel as well as the end users who would have to remove their data and access from the old devices and reinstall and associate to the new devices), and would necessitate the acquisition of thousands of new devices. Due to this pre-existing equipment investment, estimated to be a minimum of \$ [REDACTED],

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associated with the replacement of the existing functional devices, CBP requires AT&T FirstNet and Verizon Wireless services and devices under this task order against the DHS Cellular Wireless Managed Services (CWMS) Indefinite Delivery Indefinite Quantity (IDIQ) contract.

Verizon and ATT are unique in being able to meet all of CBP's needs, including the Federal law enforcement priority access. Utilizing a combination of these two telecommunications carriers is essential to supporting OPR's mission critical needs.

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

The Contracting Officer (CO) determines that the anticipated costs to the Government under this Task Order will be fair and reasonable. These wireless services are being provided against the DHS CWMS IDIQ contract, which the DHS CO determined to be fair and reasonable upon award and discounts will be sought at the Task Order level.

6. Any other facts supporting the justification.

N/A

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.

CBP OPR will continue to monitor the marketplace to ensure that opportunities for competition will be afforded if possible for future acquisitions.

8. CBP intends to post this requirement on beta.SAM.gov pursuant to FAR 16.505(a)(4)(iii).

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.

Technical Representative/COR

____03/25/2021____
Date

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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:

Contracting Officer

03/25/2021_____
Date

*Note: In accordance with FAR 16.505(b)(2)(ii)(C)(1), proposed orders with an estimated value exceeding the simplified acquisition threshold, but not exceeding \$750,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval. For CBP, the contracting officer should sign each justification prior to approval by the next higher level (e.g., Competition Advocate, HCA, and/or CPO).

11. Chief Counsel Review (Per HSAM 3006.304-70 – Above the SAT)

Name (print) _ OCC review completed on 3/23/2021 _

Signature: Per OCC-HSAM 3006.304-70 does not apply to JEFOs under FAR 16.505 03/23/2021_____
Date

► JEFO Approvals:

12. COMPETITION ADVOCATE (Per FAR 16.505(b)(2)(ii)(C)(2) - Exceeding \$750,000 to \$15M)

☒ Approved ☐ Disapproved

Name (Print): _____
Competition Advocate

Signature: _____ Date: 3/25/2021_____