AO 370B (12/18)

JUDICIARY PROCUREMENT PROGRAM

JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY (JEFO)

Under Multiple Award Contract e.g. NASA SEWP

1. Agency name, contracting activity and requesting office *(provide identification of Judiciary organization requesting the procurement, i.e., Administrative Office of the US Courts, department, office OR court unit or federal public defender organization)*

   Administrative Office of the United States Courts (AOUSC), Department of Technology Services (DTS), supported by the Procurement Management Division (PMD).

2. Nature and description of the action and the estimated dollar value of proposed order

   This is a JEFO related to the GSA Enterprise Infrastructure Services (EIS) program to meet the AOUSC's Internet Data Center (IDC) services requirements. This JEFO is for two IDC task orders, each with a 10-year period of performance based on the projected continued need for like-for-like services. One is for the AOUSC in support of the Federal Judiciary (except the Office of Defender Services), and the other task order if for the Office of Defender services. The two are separated to avoid potential conflicts, but the vendors must remain the same because there is shared network infrastructure. The estimated dollar value for the two IDC orders (when combined) is [redacted]

3. Contract under which order is being issued

Name of Contracting Agency:	General Services Administration (GSA) Enterprise Infrastructure Solutions (EIS)
Name of Contractor:	AT&T Corp.
Contract number:	GS00Q17NSD3000

4. Description of supplies/services required to meet Judiciary needs

   The AOUSC's two IDCs are currently provided by AT&T Corporation (AT&T) under task orders issued against the GSA's Networx contract. The orders provide space, power, and cooling at the IDCs to support the AO's private internal Infrastructure as a Service (IAAS) and Platform as a Service (PAAS) capabilities. Following is a list of key services provided for or enabled by the Networx contract orders:

   - Critical high-speed internet access
   - Dedicated high-speed connectivity between IDCs
   - Session Initiated Protocol (SIP) trunking
   - Redundant high speed Local Area Network (LAN) infrastructure
   - Redundant security infrastructure across multiple security zones
   - Network Time Protocol (NTP)
   - Domain Name Services (DNS)
   - Simple Mail Transfer Protocol (SMTP)
   - Secure Remote Access (Remote Access VPN, IPSECISSL)
   - Identity Management and AAA Services
   - Wireless LAN
   - Content Delivery Service
   - Voice over Internet Protocol
   - Video Teleconferencing Services
   - Application Delivery Services

- National Logging Service
- IDC SecOPs

5. Basis for exception to fair opportunity process

☐ Brand Name/Items peculiar to one manufacturer - FAR 16.505 (a)(4)(i)

☐ 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)(A), Guide Vol. 14 § 410.30.70(a)

☒ 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 - FAR 16.505(b)(2)(i)(B), Guide Vol. 14 § 410.30.70(b)

☐ 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 and all awardees were given a fair opportunity to be considered for the original order - FAR 16.505(b)(2)(i)(C), Guide Vol. 14 § 410.30.70(c)

☐ Order to satisfy a minimum guarantee under the IDIQ contract - FAR 16.505(b)(2)(i)(D), Guide Vol. 14 § 410.30.70(d)

6. Supporting rationale *(explanation of the unique nature of products/services being procured, contractor's unique qualifications, or other factors supporting use of the authority cited)*

GSA's Networx contract vehicle has been used for the last 10 years to provide the Judiciary's Enterprise Network Operations Services & Internet Data Centers (IDC) Services, and a Diverse Network Services. AT&T is the vendor for the Judiciary's current IDC services task order. IDC services are provided at facilities in Ashburn, VA and San Diego, CA. The Networx contract is due to expire in March 2023, and GSA has established the Enterprise Infrastructure Solutions (EIS) contract as its replacement. The AOUSC intends to conduct two procurements which will result in three award areas. Other procurements will be undertaken to meet any remaining requirements currently being met under the expiring GSA Network contract, but that are not within the scope of EIS.

AT&T currently provides the power and cooling necessary for operating and maintaining the Judiciary's IDC infrastructure. Although AT&T no longer owns its data center facilities, it has a perpetual lease with the new facility owners, Evoque Data Center Solutions (Evoque). While this does not impact the current services obtained from AT&T via the Networx contract, this new arrangement initially suggested that other providers could potentially provide the same power and cooling services as AT&T. Based on the constraints below, that assumption is incorrect. There are profound business implications with the solicitation and award of these services at another location. Due to the issues detailed below, the Government's requirement is to continue operations at the current data center location without moving the government-furnished property. Based on the market research detailed below, the only EIS vendor capable of meeting this requirement is AT&T. Therefore AT&T is uniquely qualified to meet the government's requirement.

The Case Management/Electronic Case Files (CM/ECF) system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district, and appellate courts, and 592 court locations. CM/ECF allows courts to accept filings and provides access to filed documents online. CM/ECF gives access to case files to multiple parties and offers expanded search and reporting capabilities. The system also offers the ability to immediately update dockets, download documents, and print directly from the court system. The system is available 24 hours a day, 7 days a week (except for routine or emergency maintenance). In turn, CM/ECF is the most important application suite used within the federal judiciary for fulfilling its core business functions. Per 28 U.S.C. § 452, Congress directed that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." When CM/ECF is down (even temporarily), court operations can be severely compromised.

CM/ECF applications/systems were originally developed in-house within the judiciary and were not optimized to run on a Wide Area Network, but rather in a distributed, decentralized model where they ran on court's Local Area Networks (LANs). As a cost-savings measure, when CM/ECF was subsequently transitioned from local court servers a few years ago to a centralized hosting environment supported by the current IDCs, there were significant performance issues during such migrations. Specifically, there were fail over and fail back attempts that completely disrupted related court operations and led to data corruption. It took DTS significant efforts to fully restore data from backup media. Such outages significantly impact the timely administration of justice because when CM/ECF is down, attorneys may miss filing extension deadlines, dockets might not be updated timely, and attorneys might not have timely access to other critical documents.

There are other vital judiciary-wide applications that could similarly be adversely impacted due to a new data center migration, such as the Judiciary Enterprise Network Information Exchange (JENIE), Public Access to Court Electronic Records (PACER), Probation and Pretrial Services Case Tracking System (PACTS), and/or Human Resources Management Information System (HRMIS). The size of the IDC infrastructure supporting these vital applications is large and complex and would take years to move into new data centers. But then, pursuing a competition for new data centers would further be wasteful to taxpayers, as that would be contrary to the agency's future hybrid-cloud strategy discussed in Paragraph 8 that seeks to diminish the use of data centers in the years ahead.

CM/ECF and related applications are also not redundant across the two IDCs; therefore, relocating and reinstalling the existing equipment within a new location while continuing on-going CM/ECF operations out of the other IDC is not feasible. Moving to new centers would cause every IT department in the AO and the courts major disruptions. Having such national judiciary applications unavailable to the courts and probation & pretrial officer community (e.g., during fail-over attempts or other downtimes) could leave over 34,000 judiciary staff unable to timely perform all of their mission-critical duties in addition to impacting countless attorneys and other external parties who require access to judiciary applications like PACER (to view case information) or CM/ECF (to electronically file in a case). It is critical that these services that support the primary missions of the Third Branch operate efficiently and seamlessly so that it can achieve its Constitutional and statutory missions. Any attempt to relocate the data center government furnished property or replicate it in new centers currently poses severe and unacceptable risks to the federal judiciary's primary business operations.

7. Description of market research conducted and the results, or explanation why market research was not Conducted

As part of market research, the AOUSC issued a Request for Information (RFI) to all EIS vendors to seek their contractor capabilities and interest to meet the full range of Judiciary JDC requirements and to support a potential comprehensive transition of the existing IDCs to new facilities while maintaining continuity of services and functions, transparent to end users. The RFI provided three alternative procurement strategies, each identified and considered by the AOUSC, for addressing the expiration of the Networx Universal contract, which were:

- Compete the IDC requirements under a full and open competition outside of EIS;

- Compete the IDC requirements under the GSA EIS program and offer all EIS contractors a fair opportunity for two task orders covering the IDC requirements; or

- Issue a sole source task order(s) to the current provider under EIS based per the fair opportunity exception stated in paragraph five above.

Three EIS vendors replied to the RFI: AT&T, CenturyLink, and Verizon. The latter two (non-incumbent) vendors proposed futuristic cloud modernization solutions that were not deemed to be feasible for implementation at the present time, as discussed in Paragraph 8. Even assuming, *arguendo*, that a competition for merely like-for-like (new) data centers was technically feasible at an acceptable risk, such competition would not yield a true "fair opportunity" for non-incumbent vendors. Specifically, non-incumbents would have to buy all new equipment, software, hardware, servers, licenses, and storage to recreate the existing IDC environments. While a rental equivalent factor (per FAR 45.202 and FAR 52.245-9) would likely be assessed to the incumbent's proposal (assuming it proposed the existing IDC solution); nevertheless, the challengers' proposals would still be at a great financial disadvantage negating the ability to provide them with a true "fair opportunity" to compete. The significant transition costs for a non-incumbent's new IDC solution would not be expected to be recovered through the competitive process.

In addition, subsequent to these RFI findings, the AOUSC further engaged each of the judiciary application owners (e.g., CM/ECF, PACTS, etc.). In turn, it was discovered there were multiple technical constraints related to establishing two new data centers which puts the CM/ECF and other national judiciary applications at unacceptable risks as discussed earlier in this justification. In turn, where it is neither technically feasible to conduct a competition that would allow the creation of brand-new data centers at an acceptable risk nor a fair competition (given the prohibitive transition costs to non-incumbents), the final alternative considered was whether another EIS vendor could compete for the opportunity to take over the management of the existing IDCs.

Of the two non-incumbent RFI respondents, only one, CenturyLink, indicated a possibility of collocating with AT&T at the existing IDCs. The facility owner, Evoque, stated that the possibility of another vendor assuming the space would depend on the terms of the vendor's contract with them. The AOUSC engaged with CenturyLink to determine if they could continue operations in the current IDC locations. CenturyLink's response was "yes we can if the Courts directed AT&T and Evoque that we will assume control of the current datacenter environments where the services currently reside." The AOUSC explained that it did not have the authority to direct AT&T or Evoque. The AOUSC provided CenturyLink an opportunity to clarify if it could meet the requirement (to operate the existing equipment in the present IDCs) absent further AOUSC direction. AOUSC did not receive a response. The AOUSC followed up a second time and CenturyLink's response did not demonstrate it was capable of meeting the Judiciary's requirement to take over the existing IDCs.

8. 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.

AOUSC information technology (IT) modernization initiatives are underway which will secure and enhance the resiliency of Judiciary core business functions. Specifically, AOUSC is executing a multi-hybrid cloud strategy which will allow the AOUSC to migrate applicable data center systems to the cloud. The AOUSC has a proof of concept cloud services task order, and two other proof of concept task orders with the Judiciary's Federally Funded Research and Development Center: Judiciary Engineering and Modernization Center (JEMC), and an Integrated Project Team has been established.

Thus far, some major operational applications have been, or are in the process of being, replaced by the deployment of SaaS solutions. Over the next five to seven years, the AOUSC and various Judiciary stakeholders will invest resources in procuring cloud services, platform management tools, governance structure, and to decide to either migrate or redevelop existing/legacy systems to the cloud, or to replace them with Commercial Off the Shelf (COTS) cloud-based solutions. The AOUSC's approach allows for an orderly migration of CM/ECF and like systems/ applications to the AOUSC's enterprise cloud future-state.

Although the Judiciary anticipates implementing a commercial cloud solution in small phases starting in FY 2020, transitioning to the Next Generation of CM/ECF is not complete and is behind schedule. Requirements for a new cloud-based CM/ECF application has not begun. The requirements for CM/ECF (current), and CM/ECF (NextGen) took multiple years to coordinate with the 592 court locations within the Federal Judiciary. Therefore, the option years in the EIS IDC task order exist to account for the possibility of a transition from the IDC to a commercial cloud solution taking that long. During performance of the task order(s), it is anticipated that as applications transition to the cloud, less infrastructure will be needed at the IDCs. Therefore, the overall need for space, cooling, and power is also anticipated to decline. The Judiciary desires ultimately to discontinue the use of data center services, however, a small presence may remain solely to support CM/ECF and a limited number of other legacy applications.

Currently the AOUSC Networx task orders for enterprise operations include network operations, data center operations, service-related labor (Network Operations Center, Security Operations Center), related hardware, video hosting services, and software. The AOUSC intends to separate enterprise operations services data center services. This IDC procurement will not include service-related labor (beyond basic datacenter support), video hosting services, hardware, or software. The AOUSC has decided to remove all but the essential requirements from this IDC procurement. The Government intends to meet any additional requirements as competitively as practicable.

9. A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

All quoted pricing from AT&T will be compared to the EIS pricing that has already been established and found to be fair and reasonable by GSA. The anticipated cost to the Government, based on cost estimates from DTS, is fair and reasonable.

Certifications and Signatures:

To the best of my knowledge and belief, I hereby certify that the technical information provided in the above justification is accurate and complete. [redacted]

Typed Name:

Signature:

Program Office:

To the best of my knowledge and belief, I hereby certify that the above justification is accurate and complete.

Typed Name of Contracting Officer: [redacted]

Signature of Contracting Officer:

NOTE: *For actions requiring a one-time delegation from PMD, the approving official signature should be applied only after the one-time delegation has been received.*

Typed Name of Approving Official: [redacted]

Signature of Approving Official:

Title of Approving Official:

(For court units, the Approving Official is the court units chief judge or FPD, or the PLO when that authority has been specifically delegated.)