

**JUSTIFICATION & APPROVAL (J&A)
FOR OTHER THAN FULL AND OPEN COMPETITION
SOLICITATION #: HTC711-15-R-R001
MULTIMODAL-02 CONTRACT**

1. **CONTRACTING ACTIVITY.** United States Transportation Command (USTRANSCOM), Specialized Transportation and Support Division, 508 Scott Drive, Scott AFB IL 62225-5357. USTRANSCOM is DoD's single manager of common user transportation of all modes (sea, air, surface).

2. **NATURE AND/OR DESCRIPTION OF THE ACTION BEING APPROVED.** In accordance with DoD Directive 5158.4, the Commander U.S. Transportation Command (USTRANSCOM) is responsible for sealift and airlift readiness and assigned the mission to "Provide effective and efficient air, land and sea transportation for the Department of Defense (DoD), in times of peace and war." This action is in support of fixed-price, multiple award, Indefinite Delivery/Indefinite Quantity (IDIQ) contracts with a relevant equitable price adjustment to support door-to-door transportation for government cargo to include, airlift, sealift, and/or linehaul. USTRANSCOM will award multiple contracts under this justification to Voluntary Intermodal Sealift Agreement (VISA) ocean carriers and/or Civil Reserve Air Fleet (CRAF) air carriers determined to be the best value to the Government considering technical, price, and past performance.

Offerors of U.S. flag ocean transportation service receive preference over offerors of foreign flag service to the extent authorized by the Cargo Preference Act of 1904 (10 USC 2631), the Cargo Preference Act of 1954 (46 USC 55303), or other applicable law. Consistent with DFARS 247.206, DFARS 247.301-71, FAR 52.247-64, and in support of USTRANSCOM's readiness mission, an offeror of U.S. flag service that participates in the Voluntary Intermodal Service Agreement (VISA) receives priority for ocean requirements over an offeror of US flag service that does not participate in VISA.

Offerors of U.S. flag air transportation service receive preference over offerors of foreign flag service to the extent authorized by Fly CRAF Act (49 U.S.C. 41106) and Fly America Act (49 USC 40118). Consistent with FAR 52.247-63 and DoD Instruction 4500.57, Transportation and Traffic Management, and in support of USTRANSCOM's readiness mission, an offeror of U.S. flag air transportation that participates in CRAF receives priority for air requirements over an offeror of US flag air transportation service that does not participate in CRAF.

3. **DESCRIPTION OF THE SUPPLIES/SERVICES REQUIRED TO MEET THE AGENCY'S NEEDS.** This requirement provides for multimodal transportation services to provide door-to-door movement of DoD and other US Government cargo via multiple modes of transportation to include airlift, sealift, and line haul to/from multiple locations globally. Offers must be capable of providing ocean, air, related transportation, warehousing and distribution services, stuffing/unstuffing containers, and palletizing cargo. Offerors will be required to transload cargo from one mode of transportation to another at seaports and/or aerial ports, and deliver cargo to final destinations by the Required Delivery Day (RDD) using multiple modes of transportation. This is one of several contracts established by USTRANSCOM to meet the recurring shipping requirements of DoD shippers and authorized agents.

The contracts will be awarded with a base year plus two one-year option periods beginning 01 Aug 15 through 31 Jul 16 for the base year, 01 Aug 16 through 31 Jul 17 for option period one and 01 Aug 17 through 31 Jul 18 for option year two. Option year prices will be calculated using the base year prices plus an economic adjustment factor.

The cost estimate for this acquisition is projected at _____ for the base year, _____ for option period one, and _____ for option period two plus the six month extension estimated at _____

The total contract value for all three periods plus the six month extension is _____

This estimate is derived from current contract costs, preliminary cargo volume forecast data, anticipated cargo volume decline due to withdraw from Afghanistan, and forecasted market conditions.

4. STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN

COMPETITION. Authority for this acquisition is 10 USC 2304(c)(3) and FAR 6.302-3, Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services.

5. DEMONSTRATION THAT THE CONTRACTOR'S UNIQUE QUALIFICATION OR NATURE OF THE ACQUISITION REQUIRES THE USE OF INDUSTRIAL MOBILIZATION AUTHORITY.

USTRANSCOM must have a contractual mechanism in-place to provide an immediate and secure alternate method to move cargo to support the war fighter's requirement and meet the RDD. Past experience with the transportation of surge requirements, combined with capacity saturation at the Afghanistan and Pakistan borders, closure of Torkham Chaman border, and increased hostilities along the Ring Road, resulted in a severe cargo bottleneck at the border and subsequent attacks on cargo. There continues to be instability that has lead to deteriorating security on roads in Pakistan and Afghanistan, border closures, and subsequent attacks on Government cargo. This example demonstrates that the Government requires a commercial end-to-end solution to avoid surface movements and decrease transit times.

USTRANSCOM recognizes the continuing need for a formalized program for the acquisition of sealift and airlift augmentation under less than full mobilization conditions. Therefore, ocean and airlift carrier's commitments of owned/controlled transportation assets to the VISA and CRAF programs will be recognized by granting a VISA and/or CRAF participant a priority in task order award.

On January 30, 1997, the Secretary of Defense (SECDEF) approved the VISA as an alternative to the Sealift Readiness Program (SRP) for the purposes of Section 909 of the Merchant Marine Act of 1936. VISA Stage III commitment also satisfies the requirement of Section 653 of the Maritime Security Act (PL 104-239) for an Emergency Preparedness Program approved by the SECDEF in order for carriers to qualify for subsidy contracts.

CRAF is a voluntary program through which the nation's airlines provide stand-by commitments to support mobilization as a supplement to organic airlift capacity. As an incentive to participate in the CRAF program, air carriers that participate in the CRAF are entitled to participate in the award of DoD's peacetime airlift requirements. The continued success of the CRAF program is essential to national security. The CRAF participants provide civilian airlift assets needed to support military operations and mobilization requirements. This fleet of civilian aircraft is available to the military to meet peacetime requirements, surge needs, and mobilization requirements for major crises. The CRAF program greatly reduces the need to buy and maintain aircraft and crews for airlift. The CRAF program was formalized through a series of presidential executive orders and memoranda of understanding, the first of which was signed December 15, 1951. The National Airlift Policy, issued in June 1987 by President Reagan, reinforced the need for and use of the CRAF program. The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of US defense and foreign policies. The policy states that military and commercial airlift resources are equally important and interdependent in the fulfillment of this national objective. The National Airlift Policy provides that where appropriate, US policies shall be designed to enhance the mobilization base of the US commercial air carrier industry. During peacetime, DoD requirements for passenger and cargo airlift augmentation shall be satisfied by the procurement of airlift from commercial air carriers participating in the CRAF program, to the extent DoD determines such airlift is suitable and responsive to military requirements.

The DoD relies heavily upon VISA and CRAF carriers for transportation of peacetime and contingency military cargoes. In particular, the VISA program (published annually in the Federal Register) is a mechanism by which U.S. ocean carriers pledge their owned/controlled assets to meet DoD requirements in the event of a contingency. The VISA program is a readiness program established under the authority of the War and National Defense Production Act of 1950 (50 USCS App Section 2061). Similarly, the CRAF program is a mechanism by which U.S. air carriers pledge their owned/controlled assets to meet DoD requirements in the event of a contingency. The CRAF priority for DoD cargo strengthens the US flag air carrier industrial base and provides operational advantages to DoD in performing national security missions.

USTRANSCOM's mission, which involves support of the war fighter in peace and war anywhere in the world, compels the VISA priority for U.S. ocean carriers pledging owned/controlled U.S. flag ocean assets crewed primarily by U.S. mariners and the CRAF air carriers pledging owned/controlled U.S. flag air assets to DoD in the event of a contingency. Unlike foreign companies, U.S. companies are subject to U.S. law, including requisitioning statutes, and are more likely to perform their VISA obligation to support DoD in a national security situation. U.S. companies also are more likely to be eligible to plan with DoD for contingencies in a classified environment and to perform classified aspects of the transportation mission. Although there have not been instances where foreign flag crews have declined to perform or threatened to not perform transportation for DoD to a particular destination in a national security situation, U.S. crews are considered more reliable to achieve contingency objectives and can meet contract security requirements.

Enclosure E5.3 of Department of Defense Instruction (DoDI) 4500.57, Transportation and Traffic Management (March 18, 2008) states: "The Department of Defense relies on the private sector for transport of a significant portion of its wartime and peacetime cargo. The relationship between the Department and the private sector is critical to mobilization, deployment, and sustainment of military forces. The goal of VISA is to provide assured access to the U.S. flag ocean transportation industry through the contractual pledges by carriers of their vessels and intermodal systems capacities, in return for priority for DoD peacetime business. Accordingly, when the Department determines that commercial sealift capacity is required, the priorities listed in Section E5.4.1 through Section E5.4.7 will be applied." These VISA priorities benefit a VISA participant, defined in the VISA document as a U.S. vessel operator and all U.S. subsidiaries and affiliates of that U.S. vessel operator that own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

Enclosure E3.2 of Department of Defense Instruction (DoDI) 4500.57, Transportation and Traffic Management (March 18, 2008) also states: "The partnership between the Department of Defense and U.S. civil commercial air carriers is critical to mobilization, deployment, and sustainment of military forces. This alliance is embodied in the CRAF program, which provides for civil air carriers to voluntarily pledge their airlift resources to support DoD mobility requirements in times of emergency or contingency in return for a portion of DoD peacetime airlift business. The DoD Components shall, in accordance with applicable law (sections 40118 and 41106 of Reference (o)) and regulatory guidance (Reference (p)), ensure that all DoD acquisitions of commercial air transportation services require CRAF participation as a prerequisite for award to the maximum extent possible unless there is a documented negative critical mission impact. Carriers not eligible for CRAF may be used only when CRAF-participating carriers cannot meet mission requirements."

In addition, for this solicitation, offerors must be VISA and CRAF participants in order to receive an award. The VISA and CRAF carriers must remain a participant in good standing during the entire period of the contract. Failure to do so will eliminate any subsequent consideration for priority placement of DoD cargo. Participation in the CRAF and VISA programs represents a risk to the carriers in the event of mobilization. CRAF and VISA carriers will see significant disruption to their commercial operations in activation. Restricting participation to asset owning carriers provides an incentive to carriers to commit their fleets to the readiness programs.

The VISA and CRAF priorities for DoD cargo strengthens the US flag ocean and air carrier industrial base and provides operational advantages to DoD in performing national security missions. In the commercial sector non-asset owning or controlling companies (freight forwarders and third-party logistics companies) are often utilized to maximum value. However it is essential operationally that USTRANSCOM have a direct contractual relationship with the asset owning companies. USTRANSCOM must have the ability to interact directly with the asset owning/controlling companies in order to conduct joint planning efficiently and to discuss possible route changes, vessel positioning, and US Flag ocean carrier capacity throughout the life of the contract. The VISA and CRAF priorities further the sustainment of this limited ocean/air carrier industrial base that is critical to USTRANSCOM's mission.

The ability to compete for this requirement, whether or not a particular carrier actually receives an award, provides a direct incentive for participation in these critical readiness programs. In the commercial sector, non-asset owning or controlling companies (freight forwarders and third-party logistics (3PL) companies) are

often utilized to maximize value. Allowing 3PL to participate is a disincentive to asset owning carriers to commit fleets to the readiness programs as 3PLs cannot contribute air or ocean assets to the readiness programs. The ability of USTRANSCOM to mobilize an asset without a direct contractual relationship with the asset owner (i.e. subcontractors) presents too great a risk to readiness.

In order to provide the strongest incentive to participate in the vital readiness programs and to best maintain the industrial base of US flag ocean and air carriers in the declining market during the expected force drawdown, it is essential that USTRANSCOM have a direct contractual relationship with the asset owning/controlling companies. USTRANSCOM must be able to interact directly with the asset owning/controlling US flag ocean and air carrier companies in order to maintain the required operational capability and flexibility. This includes the requirement to discuss possible route changes, vessel positioning, and US Flag capacity throughout the life of the contract. US flag ocean and air carriers are also required to efficiently conduct joint planning, plan with DoD for contingencies in a classified environment, and perform classified aspects of the transportation mission.

Limiting competition to VISA and CRAF carriers is essential in maintaining both viable strategic air and sea partners, the continued success of the Defense Transportation System, and to maintain the sources of ocean and air carrier services in the interest of national defense.

6. **DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.** Participation is open to all CRAF and VISA carriers, provided they are in good standing. We will solicit all existing CRAF and VISA carriers. Other sources responding to a Federal Business Opportunities (FedBizOpps) notice will not be eligible for award.

7. **DETERMINATION BY THE CONTRACTING OFFICER THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.** Competition will still be maintained among the CRAF and VISA participants. Currently there are 24 CRAF participants and 19 VISA participants. As stated in paragraph 10 below, many companies have shown interest in this acquisition and we expect there to be adequate competition. The anticipated cost to the Government for this contract and all option periods will be fair and reasonable based on competition at the IDIQ and task order level and comparison to historical prices paid.

8. **DESCRIPTION OF THE MARKET RESEARCH CONDUCTED AND THE RESULTS, OR A STATEMENT OF THE REASONS MARKET RESEARCH WAS NOT CONDUCTED.** Formal market research was conducted and confirmed that this requirement meets the criteria of commercial service. Commercial terms and conditions identified through market research have been incorporated into the requirements document where applicable.

Market research was sought through the use of Requests for Information (RFIs) posted to FBO, review of prior acquisition files, internet searches, and on-line product/service information.

9. **ANY OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION.** Not applicable.

10. **A LISTING OF SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.**

Of the offerors that responded, were CRAF carriers and were VISA carriers.

11. A STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE MAKING ANY SUBSEQUENT ACQUISITION FOR THE SUPPLIES OR SERVICES REQUIRED.

The DoD relies on the United States air and sea transport industries to provide airlift and sealift support for the DoD in time of emergency or war. A mobilization base for multimodal, air, and ocean transportation support, committed to USTRANSCOM by contracts, is essential to maintain the required industrial base and ensure the prompt and effective response of these industries when needed. While using this authority, USTRANSCOM still solicits the maximum competition and awards contracts to eligible offerors.

12. **CONTRACTING OFFICER'S CERTIFICATION**. I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

EMILY S. TIFT
Contracting Officer

4 Nov 14

Date

13. **TECHNICAL/REQUIREMENTS PERSONNEL CERTIFICATION**. I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

ROBERT A DULIN, CDR, USN
USTRANSCOM/TCJ3

18 NOV 14

Date

ADALBERTO LOPEZ
Chief, ERC, Intermodal Programs Division

24 NOV 14

Date

CONTRACTING ACTIVITY: United States Transportation Command, Acquisition Directorate,
Specialized Transportation & Services Division (TCAQ-R)

PROGRAM: Multimodal-02 Contract

AUTHORITY: 10 USC 2304(c)(3) and FAR 6.302-3, Industrial Mobilization; Engineering,
Developmental, or Research Capability; or Expert Services.

ESTIMATED CONTRACT COST:

TYPE OF J&A: Individual

REVIEW AND APPROVAL:

DAVID W. STEVENS
Chief, Specialized Transportation Branch

6 Nov 14
Date

CHARLES M. BURTON
Chief, Specialized Transportation & Support Division

6 Nov 14
Date

Office of the Staff Judge Advocate

14 Nov 14
Date

MICHELLE M. MENDEZ
Competition Advocate

19 Nov 14
Date

JEFFERY T. BEYER
Chief, Business Support & Policy Division

19 Nov 14
Date

TAMARA D. THOUVENOT
Head of the Contracting Activity

19 Nov 14
Date

GAIL M. JORGENSEN U
SES, DAF
Senior Procurement Executive

25 Nov 14
Date