



**DEPARTMENT OF THE NAVY**  
**FLEET AND INDUSTRIAL SUPPLY CENTER**  
1968 GILBERT STREET, SUITE 600  
NORFOLK, VIRGINIA 23511-3392

J&A Number: NF 14174

**JUSTIFICATION AND APPROVAL**  
**FOR USE OF OTHER THAN FULL AND OPEN COMPETITION**

1. Contracting Activity

Fleet and Industrial Supply Center (FISC) Norfolk  
1968 Gilbert Street, Suite 600  
Norfolk, VA 23511

2. Description of the Action Being Approved

This requirement is to extend the period of performance for husbanding services (HS) that support mandatory users for Aruba-Curacao-Bonaire from 1 Sep 09 through 31 Aug 10. This contract extension is necessary to provide logistical support as well as Anti Terrorism Force Protection (ATFP) and Port Tariff support to ships as they pull into port. The current contract with E.L. Maduro & Sons (Curacao), Inc. N00189-02-D-0009, expires on 31 Aug 2009. Mandatory users of the contract are US Navy warships visiting Aruba-Curacao-Bonaire ports of Willemstad, Oranjestad, Kralendijk and all other ports covered under this contract. This Justification and Approval (J&A) supports a modification for a twelve (12) month contract extension, using other than full and open competition. This extension will ensure continuity of husbanding services until a competed, husbanding services contract can be awarded for Aruba-Curacao-Bonaire.

3. Description of Supplies/Services.

This extension is for husbanding services at any berthing or anchorage location in the Aruba-Curacao-Bonaire ports cited in the contract. The contractor is to provide husbanding-related services and supplies requested by ships while they are in port. Supplies and services are the same, or similar, to those provided under the current contract, N00189-02-D-0009. Total Estimated Dollar Value of the Acquisition Covered by this J&A is \$367,377.34. This dollar amount is based on current year spending on the contract minus 32% for Port Tariff costs. Historically through the life of this contract Port Tariff costs make up approximately 32% of the total contract value. These costs are reimbursable and the contractor is not allowed to claim profit or overhead on these costs. The expected cost of the contract for the period of performance extension is forecasted to remain the same as the prior period based on current Fleet operation forecasts.

4. Statutory Authority Permitting Other Than Full and Open Competition

IAW FAR Part 6.302.-2 Unusual and Compelling Urgency:

- 10 U.S.C. 2304(c) (1), One source or limited sources
- 10 U.S.C. 2304(c) (2), Unusual and compelling urgency
- 10 U.S.C. 2304(c) (3), Industrial mobilization; engineering, developmental, research capability; or expert services
- 10 U.S.C. 2304(c) (4), International agreement
- 10 U.S.C. 2304(c) (5), Authorized or required by statute
- 10 U.S.C. 2304(c) (6), National Security

5. Rationale Justifying Use of Cited Statutory Authority

Husbanding support is critical to the Navy's global war-fighting mission. Husbanding service contracts provide crew sustaining support to ships pulling into port. Some of the most vital services provided under this contract include, the removal of CHT (Waste Water/Sewage), the replenishing of potable water and the ability to increase security measures at the port for the protection of U.S. Navy personnel and equipment. NAVSUP is currently developing an enterprise contract plan for husbanding services. This enterprise contract plan implements strategy to meet the Navy's vision on husbanding services on a global scale. The first contract plan was solicited on 30 March 2007, and award was made to Multinational Logistics Service, LTD (MLS) on 31 Jan 08. This award was protested by Inchcape Marine Services (ISS) on 11 Feb 08. As a result of this protest the government took corrective action and the protest was dismissed by GAO on 23 April 08. The corrective action taken on 7 May 08 was to terminate the award to MLS. The solicitation was then re-opened for solicitation on 28 July 08, and an award was made to MLS on 20 May 09 and another protest was filed by ISS on 2 June 09. On 5 Aug 09 GAO dismissed the protest in light of corrective action taken by the government. In accordance with corrective action, the government cancelled the award to MLS and re-solicit the enterprise effort in November 09. Based on the previous two solicitations the government feels that it will take approximately twelve (12) months to award the husbanding services enterprise contract. While the re-solicitation of the enterprise contract is taking place, husbanding services are still required. Not having a contract vehicle to provide support for port visits in Aruba-Curacao-Bonaire presents substantial risk to the Navy's global readiness capability. Often, due to exercises and other unforeseen operational requirements, the timing of the requirements for husbanding services cannot be predicted, which makes it imperative that husbanding services be available, i.e., under contract, at all times. A break in contract coverage presents unacceptable operational risk because of delays in fulfilling the requirement through other methods. Requirements for specific port visits are definitized only shortly before the date for the visit, and husbanding service providers have required lead-times that are close to the time that requirements become definite. The award of the extension to the current contract is essential because there simply is no time to compete and negotiate a new short term contract with other vendors without causing a break in service. E.L. Maduro & Sons (Curacao), Inc. is best positioned to continue providing these services during the period required to award the enterprise contract in Aug 2010. This extension to E.L. Maduro & Sons (Curacao), Inc. will provide essential contract support for

unscheduled port visits, scheduled port visits, and planned exercises that require husbanding services. For example, the Navy's involvement in the annual joint exercises (with various South American and Central American Navies) PANAMEX and UNITAS exercises frequently changes the ports which U.S. Naval vessels will visit. These exercises have both diplomatic and military preparedness implications. Failure to maintain consistent, reliable, and comprehensive husbanding support during and after the exercise has the potential to adversely affect the exercise and the training it is intended to provide to U.S. and various South American and Central American forces. Likewise, inability to provide comprehensive husbanding support to naval vessels operating in and around the Aruba-Curacao-Bonaire will substantially limit the Navy's operational reach and interfere with diplomatic relations with important strategic partners.

The contracting officer considered the alternatives of having the individual ships acquire husbanding services by utilizing on-scene Navy contracting officers to acquire services from suppliers at individual ports, using individual competed purchase orders, and awarding a competed twelve-month contract. Each alternative is discussed in turn:

- a. On-scene contracting officers: Utilizing on-scene contracting officers to acquire husbanding supplies or services is not an acceptable alternative because doing so substantially increases the risk that required supplies and services will not be available at the time they are required. Since the Navy does not have contracting officers permanently assigned to the ports in Aruba-Curacao-Bonaire, contracting officers would have to be sent on a temporary assigned duty (TAD) basis to provide on-scene contracting support. Upon arrival Contracting Officers would likely not have substantial knowledge of the local commercial infrastructure, locally available sources for supplies and services, the extent to which local suppliers have performed satisfactorily or unsatisfactorily in the past, or the extent to which specific suppliers are willing/not willing to enter a contractual agreement directly with the U.S. Government to provide the supplies and services. These challenges would have a significantly adverse affect on the contracting officer's capability to timely satisfy both the broad set of routine husbanding supplies and services required by a ship during a port visit and the short-notice mission requirements that may arise during the visit. Locating suppliers, entering contractual arrangements with suppliers, and administering the contractual arrangements are paramount to the success of a port visit. On-scene contracting officers, can not accomplish these tasks as effectively as E.L. Maduro & Sons (Curacao), Inc. with its already-existing business relationships and detailed local knowledge of this specific Area of Operations.

Therefore, utilizing an on-scene contracting officer or officers presents an unacceptable risk that not all the required supplies and services will be acquired in accordance with the mission requirements of the ship. On-scene contracting officer support also introduces funding (TAD travel) and manpower issues (on-

scene contracting officers are not available to award other, short-notice requirements for standalone contracts).

- b. Individually competed purchase orders: The Navy has only a limited amount of time from the date notice is received of an upcoming ship visit until the date that contractual husbanding services must begin to be provided. This time period is reduced by the time required to declassify and communicate requirements such as visit dates and force protection postures. Based on past experience, there will be insufficient time to award stand-alone, competed purchase orders for the majority of the U.S. Navy ship visits to Aruba-Curacao-Bonaire that require husbanding support during the twelve month period.

If a stand-alone purchase order is to be issued, the contracting officer must accomplish several tasks, each of which requires several days. The contracting officer must acquire the husbanding requirements for the visit from the ship, include them in a request for quotation (RFQ), and post the RFQ on NECO (the Navy's electronic point of entry for contracting opportunities). This coordination, RFQ preparation, and posting normally takes 3-4 business days (calendar days less Saturdays, Sundays, and U.S. federal holidays), including time to confirm any specifics about the requirements with the individual ship and time for the contracting officer to obtain funds for the purchase order from the ship. In order to afford potential offerors a reasonable time to review the RFQ, decide whether to submit a quotation, accomplish the necessary market research to prepare a quotation, ask and receive responses to any requests for clarifications, and prepare and submit a quotation, the RFQ should be left open on NECO at least 4-5 business days (longer if there is additional available time). Leaving the RFQ on NECO for less time largely defeats the purpose for competition of the purchase orders since potential offerors will not have sufficient time to prepare a quotation. Once quotations are received, the contracting officer must accomplish the technical review (including a review of the quotation's required force protection technical requirements), accomplish the review of past performance information (including contacting past performance references provided by the individual offerors), and accomplish the price evaluation. This evaluation process normally requires 3-4 business days, to include the time necessary to properly document the selection decision and conduct the internal Navy reviews that are required depending on the dollar amount of the purchase order. Once the evaluation is completed, the contracting officer will offer a purchase order to the offeror selected as part of the evaluation and, in order to ensure performance, normally require the offeror to sign the purchase order indicating its intent to perform the contract. The purchase order should be offered to the offeror selected as part of the evaluation at least 3 business days in advance of the start of the port visit (longer if possible) in order for the purchase order holder/contractor to have sufficient lead time to begin its performance in accordance with the ship's visit schedule. When individual port visits are separately competed, an offeror will not normally know if it will be issued a purchase order until very close to the start of the performance period.

Since the offeror and its potential subcontractors will likely be reluctant to bind themselves financially prior to knowing whether they have been selected to perform the port visit, this substantially increases the risk that, once a purchase order is issued, the selected husbanding services contractor will have difficulty performing since limited resources (wharf space, major equipment, key subcontractor services) may be available for scheduling so close to the beginning of performance. While there may be instances in which segments of the process take less time than anticipated, the entire process is normally expected to require from 13-16 business days.

Requirements for specific port visits are definitized only shortly before the port visit takes place. Husbanding service providers have required lead times that are close to the lead times of when the requirements are definitized. In addition, short-notice changes to planned port visits add to the number of requirements and/or shorten the available lead time. Therefore, these changes to requirements further increase operational risk. For example, operating units compete with commercial vessels for berthing space at many port visit locations in Aruba-Curacao-Bonaire. Since the previous contract expired, husbanding service providers have expressed concern that obtaining berthing space may become an issue if not coordinated as far in advance as possible with the husbanding service provider. When there is continuous coverage by a single service provider, berthing space requirements can be coordinated further in advance and operational risk reduced. However, when individual purchase orders are competed for each port visit, the provider is not known until shortly before the port visit begins and berthing space coordination is more likely to become an issue.

An actual timeline experienced by FISC Norfolk in the course of awarding a standalone purchase order for husbanding services in multiple ports throughout the AOR is as follows: (dates in the timeline that are later than the date of this approved J&A are projections made at the time the J&A is prepared and are subject to adjustment.)

- 3 JUL 09 Received indication of probable Class II port visit
- 8 JUL 09 Received initial LOGREQ excluding ATFP requirements
- 9 JUL 09 Received ATFP LOGREQ
- 10 JUL 09 Draft solicitation completed
- 10 JUL 09 Legal review of pre-solicitation documents
- 10 JUL 09 Solicitation issued
- 13 JUL 09 Responded to 4 requests for clarification
- 17 JUL 09 Due date for receipt of proposals
- 20 JUL 09 Evaluation of proposals
- 21 JUL 09 Prepare pre-negotiation/Award documents
- 23 JUL 09 Award documents legal review
- 24 JUL 09 Award documents approval, award, and distribution of contract
- 27 JUL 09 Ship arrival date (barring schedule changes)

This timeline illustrates the time required to award individual task orders and the limited margin of error available from the time of award until the start of performance.

It is also worthy of note that the cognizant contracting activity (FISC Norfolk) is not resourced to compete and award individual purchase orders for port visits in its area of responsibility. As described above, individual purchase orders are resource intensive. Thus the Navy's strategy for acquiring services is to award contracts covering specified geographic areas for a specified period of time. Although the Navy is challenged, from time-to-time, to compete and award stand-alone orders, this practice reduces efficiency, reduces effectiveness, and increases operational risk. Releasing sensitive, albeit unclassified, information about the specifics of upcoming port visits to multiple vendors while competing individual purchase orders could compromise security by more widely distributing information about the planned port visit before it begins. Because of the uncertainty and risk that stand-alone orders are expected to create and foster - especially when employed to cover a significant number of visits - there is also a real possibility that ships may inadvertently disclose unclassified, but still sensitive, ship visit schedule information to one contractor under the belief it is supporting a visit at a particular port, when the visit at that port at that particular time is being supported by a different contractor. Such disclosures, particularly in advance of the start of a visit, unnecessarily increase the security risks attendant to ship visits.

- c. Competed twelve-month bridge contract: There is insufficient time to compete a separate stand-alone contract to cover the twelve-month period and have that contract in place by 1 September 09. There is not a sufficient amount of time available for the Contracting Officer to prepare a solicitation for this requirement. Furthermore, even if a solicitation were ready, the requirement is complex enough in nature that it would require a significant amount of time for offerors to prepare proposals. A short time constraint on proposal due dates would have an adverse effect on an offerors capability to provide a comprehensive proposal thereby limiting competition and potentially receiving proposals from offerors that don't fully understand the Navy's needs and are therefore unable to complete the contract requirements as intended.

This analysis shows that other methods of obtaining the needed services present substantial risk to husbanding services support. An extension of E.L. Maduro & Sons (Curacao), Inc.'s contract is the only reasonable solution to meeting the Navy's current husbanding needs. E.L. Maduro & Sons (Curacao), Inc. has the required combination of available assets/infrastructure, established vendor relationships and knowledge of the Navy operating units to effectively support port visits by US Navy ships to the variety of Aruba-Curacao-Bonaire ports to meet this requirement. In addition to being the incumbent on the most recent contract, E.L. Maduro & Sons (Curacao), Inc. has been the sole

provider of husbanding services for Aruba-Curacao-Bonaire ports since 2004.

In light of the critical nature of these services, the need for uninterrupted contract coverage and the recent award protest, as well as having considered alternatives available for contract coverage beginning on 1 September 2009, the Contracting Officer has determined that a twelve (12) month contract extension is the most viable solution to ensure continuous husbanding support for the Navy until the enterprise contract is awarded in Aug 2010.

6. Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable

IAW FAR 5.202(2) the proposed contract action is made under the conditions described in 6.302-2 and the government would be seriously injured if the agency complies with the time periods specified in 5.203. Based on the urgent and compelling circumstances of this requirement it is not in the Governments best interest to solicit multiple offerors.

7. Determination of Fair and Reasonable Cost

The original contract was competed and prices were determined to be fair and reasonable. The Government will extend current prices, which are considered to be fair and reasonable based on competitively awarded contracts.

Recent market research was conducted by the government to obtain current market prices prior to establishing the estimated prices under the follow-on requirement. The quoted prices and the existing contract prices provide a basis for a fair and reasonable price determination.

8. Actions to Remove Barriers to Future Competition

This contract is viewed by the Navy as a means to preserve the status quo until the enterprise contract is awarded. The new solicitation for the enterprise contract is anticipated to result in a competitive award by 1 Aug 2010.

9. Listing of the sources, if any that expressed in writing an interest in the acquisition

The Contracting Officer has not received expressions of interest from any other companies with the exception of the three offerors (Inchcape Shipping Services, Multi Logistical Services, and Latin America Shipping Company) who submitted proposals for the C3MS Contract.

(Certifications and approval signatures are on next page)

TECHNICAL AND REQUIREMENTS CERTIFICATION REQUIRED BY FAR 6.303-1(b)

I certify that the facts and representations under my cognizance, which are included in this justification and it's supporting Acquisition Plan No. N/A which form a basis for this justification, are complete and accurate.

TECHNICAL COGNIZANCE

\_\_\_\_\_  
(Signature) (Title)  
(Code) (Phone) (Date)

REQUIREMENTS COGNIZANCE

\_\_\_\_\_  
(Signature) (Title)  
(Code) (Phone) (Date)

CONTRACTING OFFICER CERTIFICATION REQUIRED BY FAR 6.303-2(a) (12) or FAR 8.405-6(b) (2) or FAR 13.501(a) (2) (i)

I certify that this justification, including its supporting Acquisition Plan No. \_\_\_\_\_ is accurate and complete to the best of my knowledge and belief.

 \_\_\_\_\_ *Contracting Officer*  
(Signature) (Title)  
(Code) (Phone) (Date) 31 Aug 09

REVIEW BY COUNSEL FOR LEGAL SUFFICIENCY AS REQUIRED BY NMCAG G5206.303-90

FISCN  *Asst Counsel* 8-31-09  
(Code) (Phone) (Signature) (Date)

APPROVAL AS REQUIRED BY FAR 6.304:

Contracting Officer

\_\_\_\_\_  
(\$0 - \$500K) (Signature)  
(Code) (Phone) (Date)

Competition Advocate

\_\_\_\_\_  
(Over \$500K - \$10M) (Signature)  
(Code) (Phone) (Date)