



DEPARTMENT OF THE NAVY
NAVSUP FLEET LOGISTICS CENTER SIGONELLA
ROTA SHORE
PSC 819 BOX 8
FPO AE 09645-0008

IN REPLY REFER TO
J&A No: 16-019

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

1. CONTRACTING ACTIVITY

Requiring Activity: U.S. NAVAL STATION, ROTA, SPAIN

Contracting Activity: NAVSUP Fleet Logistics Center, Sigonella
Rota Shore
PSC 819 Box 8
FPO AE 09645-0008

Requisition Number: N6817116082C130

2. NATURE/DESCRIPTION OF CONTRACT ACTION

This document supports limiting the number of sources to solicit proposals from a single source, Louis Berger Aircraft Services (LBAS) and issue solicitation N68171-16-R-6005 in support of Naval Station (NAVSTA) Rota to that contractor. The resulting contract will provide air terminal and ground handling services (ATGHS) at NAVSTA Rota. The contract will consist of a base period of performance of three months and three- 3-month option periods. Each period of performance will also include a CLIN with a not-to-exceed price of \$25,000 for personal protection equipment. The total period of performance, inclusive of all options, will be 12-months as shown below.

CLIN	Period of Performance	Estimated Amount Euro €	Estimated Amount U.S. Dollars \$*
0001	01 May-31 July 16	€2,120,466.00	\$2,343,315.28
0002	01 May-31 July 16	€22,622.50	\$25,000
0101	01 Aug – 31 Oct 16	€2,120,466.00	\$2,343,315.28
0102	01 Aug – 31 Oct 16	€22,622.50	\$25,000
0201	01 Nov 16 –31 Jan 17	€2,120,466.00	\$2,343,315.28
0202	01 Nov 16 –31 Jan 17	€22,622.50	\$25,000
0301	01 Feb – 30 April 17	€2,120,466.00	\$2,343,315.28
0302	01 Feb – 30 April 17	€22,622.50	\$25,000
Total Estimated Amount		€8,572,354.00	\$9,473,261.13

*USD/Euro conversion based on FY16 Revised Navy Budget Exchange Rate (BER): \$1.00 = €0.9049.

This contract will be funded with FY16 Operations & Maintenance, Navy (O&MN) and appropriate Air Force funds.

3. DESCRIPTION OF REQUIRED SUPPLIES/SERVICES

This contract will be for the provision of ATGHS in support of the Department of Defense (DOD) Transportation System to include but not limited to all U.S. Government owned or operated aircraft, U.S. sponsored foreign Government or civil aircraft, Coalition Forces aircraft, North Atlantic Treaty Organization (NATO), commercial contract aircraft, and commercial tendered aircraft, at NAVSTA Rota, Spain. The Contractor shall facilitate on-time aircraft departures and maintain the ability to provide sustained ATGHS for a working Maximum on Ground (MOG) capability of four (4) wide-body aircraft or the equivalent thereof.

These services are currently obtained via a Firm Fixed Price (FFP) contract, N68171-10-C-0022, for commercial services, issued by NAVSUP Fleet Logistics Center Sigonella (NAVSUP FLC), Det Naples, Italy. Contract N68171-10-C-0022 was competitively awarded on 02 August 2010 with a start date of 01 November 2010 to CAV International Inc. CAV International Inc. was later acquired by Louis Berger Aircraft Services (LBAS) and performance continued by LBAS. This contract was structured with an eleven month period of performance beginning 01 November 2010 through 31 October 2015, four 12-month option periods, and a final period of 1-month. FAR clause 52.217-8 was also utilized in conjunction with Request for Authorization to Bridge 16-19 and Justification and Approval 16-004.

The table below summarizes the contract information:

PERIOD OF PERFORMANCE	TOTAL AMOUNT
01 November 2010 – 30 September 2011	€8,128,054.00
01 October 2011 – 30 September 2012	€8,652,852.00
01 October 2012 – 30 September 2013	€8,812,560.00
01 October 2013 – 30 September 2014	€8,990,796.00
01 October 2014 – 30 September 2015	€9,172,776.00
01 October 2015 – 31 October 2015	€706,822.00
01 November 2015 – 30 November 2015	€762,635.00
01 December 2015 – 31 December 2015	€706,822.00
01 January 2016 – 30 April 2016	€2,834,745
TOTAL EURO	€48,768,062.00

4. STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION

The statutory authority permitting other than full and open competition is 10 U.S.C. 2304(c)(2) as implemented by FAR 6.302-2 “Unusual and Compelling Urgency.”

5. RATIONALE JUSTIFYING USE OF CITED STATUTORY AUTHORITY:

Use of FAR 6.302-2 is appropriate when unusual and compelling urgency precludes full and open competition and when delay in award will result in serious injury to the Government. This authority permits limiting the number of sources solicited and to not use full and open competition for this urgent and compelling requirement.

The current contract N68171-10-C-0022 expires on 30 April 2016 and the Navy has no mechanism to extend the current contract. As discussed below, a break in service will cause serious injury to the Government and performance under a new contract must begin 1 May 2016. There is not sufficient time to compete this effort and transition from the incumbent to another contractor will take a minimum of 90-days. The only way the Government can have a contract in place to start performance by 1 May 2016 is to issue a contract to a single source using this authority and to avoid a break in service and serious injury to the Government..

In this instance, unusual and compelling urgency arises from ongoing litigation and the results of that litigation in the Court of Federal Claims (Case No. 15-1279C). The Government originally made award to the incumbent, LBAS, on 7 October 2015. A bid protest was filed by ALGESE 2 s.c.a.r.l (ALGESE) in the Court of Federal Claims. On 4 March 2016 the judge ruled in favor of the protester and permanently enjoined the Navy from contracting for these requirements with LBAS and ordered termination of the contract. On March 28, 2016, the Department of Justice filed a motion to reconsider the judgment and motion to stay the Court’s judgment pending appeal. On 29 March, 2016, after oral argument at a hearing, the Court issued a Remand Order providing the Navy 45-days to update its responsibility determination and consider revising the business clearance memorandum. During this 45 day period the Court ordered that the permanent injunction for the follow-on contract remain in place and retained jurisdiction over the matter. The Remand Order also provided that the Navy can proceed with a bridge contract to LBAS for a base period of 3 months, with 3- three month option periods. The Navy has suspended performance of the follow-on contract pending resolution of the litigation process which could take more than 12 months.

The current period of performance ends 30 April 2016 and the Government does not have any further authority to extend the period of performance for contract N68171-10-C-0022 beyond that date. Due to the Court’s order that the permanent injunction remain in place, the Navy is unable to move forward with performance under the follow-on contract N68171-16-C-6000. Additionally, the Department of Justice has advised the Navy not to move forward with award of N68171-16-C-6000 to ALGESE while litigation is pending. While the Court has ordered that the permanent injunction remain in place for the follow-on award,

the Court, in its 29 March Remand Order, stated, “The Navy may proceed with its “bridge” contract to Louis Berger Aircraft Services...” ALGESE and LBAS were the only two offerors included in the competitive range and the only offers evaluated as technically acceptable by the Source Selection Authority. On 23 March 2016, The Government issued a solicitation for a 3-month contract to ALGESE with three additional 3-month option periods. The solicitation required a performance start date of 1 May 2016, to maintain continuity of services as the current contract expires on 30 April 2016. On 28 March 2016, ALGESE informed the Navy in filings with the Court that it is unable to meet the 1 May 2016 performance start date. ALGESE further stated that they require a 110+-days to transition prior to full performance. Therefore, the only contractor able to provide continuity of operations and meet the Navy’s requirements is LBAS. The Navy hereby requests authorization to issue a sole-source contract to LBAS with a performance start date of 1 May 2016. Approval of this action will prevent a break in service and significant disruption to air operations at NAVSTA Rota and serious injury to the Government..

Failure by the Government to award a single-source, stand-alone bridge contract action will result in serious injury. Without a bridge, NAVSTA Rota would lack contractual coverage and experience a break in a service. A lapse in the required services would result in a complete loss of ATGHS at NAVSTA Rota which would be detrimental to support of the Defense Transportation System, U.S. sponsored foreign Government or civil aircraft, Coalition Forces aircraft, North Atlantic Treaty Organization (NATO) aircraft, Strategic Airlift Capability Heavy Airlift Wing (HAW) aircraft, commercial contract aircraft, and commercial tendered aircraft, at NAVSTA Rota, Spain. Supporting missions include the five (5) Combatant Commanders (COCOMS), U.S. Transportation Command (USTRANSCOM); U.S. Armed Forces Europe (USAFE); U.S. Central Command (CENTCOM); U.S. Africa Command (AFRICOM); and, Naval European Command (NAVEUR) with a Joint Chiefs Of Staff Mission, and President of The United States (POTUS) interest.

The air operations and runway at the Naval Station are among the few available to the U.S. military in Europe that operates on a 24 hours per day/7 days a week /365 days a year basis supporting the U.S. European, Central and African Combined Commands, North Atlantic Treaty Organization (NATO) and coalition/allied forces. The Naval Station hosts the U. S. military’s largest weapons, ammunition and fuel storage facilities and caches in Europe.

The air operations facilities are capable of loading and unloading the weapons, ammunition and fuels needed for operations and exercises throughout Europe, Africa, Asia and the Middle East. The runways are capable of supporting large heavy lift aircraft, including the U.S. Air Force C-5A “Galaxy” and C-17, “Globemaster” and are also equipped with arresting gear for emergencies.

The ground handling personnel, facilities, equipment, and operations can simultaneously support the arrival/departure of three heavy lift aircraft. The apron areas of the airfield support the storage of more than 15 C-5A and C-17 aircraft. The air traffic control at Naval Station Rota includes instrumentation for all weather landings and takeoffs. The facilities include in-ground refueling systems for the safe and efficient fueling of aircraft.

The U.S. Air Force has permanently stationed an Air Mobility Operations Group, Squadron and air re-fueling units at NAVSTA Rota to facilitate the maintenance of aircraft in the region and the movement of people, equipment and supplies throughout Europe, Africa, Asia and the Middle East.

Additionally, air operations at NAVSTA Rota supports the movement of active duty troops, including Marines, Army Ranger and airborne units and Special Forces personnel to the Middle East including Afghanistan, Iraq and Syria.

Naval Station Rota is the headquarters for Commander Task Force (CTF)- 68, a forward deployed command having operational control of units in Rota and within its area of responsibility. These units include special operations, mobile explosive ordinance disposal, mobile counter improvised explosive device (IED), intelligence, construction, mobile diving and salvage, coastal riverine patrols, and anti-terrorism. For example, the U.S. Marine Corps has permanently stationed a Fleet Anti-Terrorism Security Team “FAST” Company at Naval Station Rota. Immediate access to Naval Station Rota’s air transportation facilitates the “FAST” Company’s ability to immediately respond to acts of terrorism, threats, and events involving any U.S. Embassy and Department of State personnel in Europe and Africa.

CTF- 68 is also responsible for planning and executing exercises with NATO, coalition/allied countries, and partner forces including: BALTOPS (June 2016); Sea Breeze (July 2016); Open Spirit (May 2016); Argonaut (May 2016); Phoenix Express (May 2016); and African Lion (April 2016), each of which depends upon the air operations at Naval Station Rota to insure that equipment and personnel are in place to support these exercises. These exercises aid in the training and proficiency of crisis management, strategy and tactics, and humanitarian/good will and host/partner nation alliances.

Finally, air operations at NAVSTA Rota supports the maintenance and repair of the four U.S. Navy Aegis guided missile destroyers home ported and forward deployed in Rota. The home port and forward deploy of these four ships in Spain was an initiative of The President as part of the ballistic missile defense of Europe. The air operations at NAVSTA Rota supports the

four ships by providing the replenishment of personnel, ships force and immediate access to repair and replacement parts available in the United States. The air operations also support all Sixth Fleet vessels in the area in need of immediate repair parts.

In addition to the operational impact discussed above, the current contract employs 172 unionized Spanish employees. A break in service would result in a lack of contractual coverage for this labor force and no mechanism to employ or provide payment to these employees. The likely result would be labor unrest, disputes, protests and a future strike. The last time the contract changed hands in 2010 there were instances of sabotage of contractor equipment and other work stoppages that lasted for several years until agreements with the Spanish unions were reached. Such activity may negatively impact air operations at Naval Station Rota.

The U.S. Air Force has the capability to operate the air terminal and ground handling functions at Naval Station Rota with military personnel for a limited period of time and at reduced and restricted levels. Using this capability, the air operations would be unable to operate on a 24-hours a day/7-days a week /365-days a year basis and there would be significant degradation in the number of heavy lift aircraft that could be processed simultaneously. This course of action would also degrade our national defense capabilities by taking uniformed service members away from their primary war fighting task and have them take over these air terminal and ground handling functions. In addition, the Spanish employees who are currently employed at the air terminal would lose their employment which could, as has occurred in the past, create labor unrest and strife. The labor unrest experienced after 2010 was not the result of the loss of employment of the Spanish workforce, so it is reasonable to conclude that the loss of employment would result in significantly more antagonism between the workers, contractor and the Navy.

Approval of this Justification and Approval will allow for continuous service and avoid labor disruption. Because LBAS has provided identical services at NAVSTA Rota for more than five-years, the Navy is confident that LBAS will meet all performance requirements by 1 May 2016 to maintain continuity of operations and avoid serious injury to the Government.

6. DESCRIPTION OF EFFORTS MADE TO SOLICIT OFFERS FROM AS MANY OFFERORS AS PRACTICABLE:

This contract action (not to exceed 12-months) will be made to LBAS on a single-source basis. There is not sufficient time to solicit offers from any other sources. The contract must be in place with all personnel and equipment by 1 May 2016. LBAS is the only contractor familiar with the requirement able to submit a proposal within the requisite timeframe and start performance on 1 May 2016. The contract action contemplated herein is being executed to provide continuous services during pendency of litigation, appeals and a suspension of performance. Upon resolution of the litigation, performance of the follow-on contract which was competitively awarded will begin. Notice of this justification and the Government's intended modification of the contract will be provided on <https://euro.neco.navy.mil/> in accordance with FAR 6.305.

7. DETERMINATION OF FAIR AND REASONABLE COST

LBAS is the incumbent contractor and is currently executing under contract N68171-10-C-0022. The Government issued modification P00035 to contract N68171-10-C-0022 on 17 December 2015. The Government, utilizing its authority under FAR 52.217-8 and Justification and Approval 16-04 issued the modification to add CLIN 0801 for the period of performance of 1 January 2016 through 30 April 2016. The monthly price for performance under CLIN 0801 is Euro 706,822, which has previously been found fair and reasonable. As the Government will utilize the same performance work statement for the requested single source contract, the Government anticipates that LBAS will propose that price or a similar price in response to solicitation N68171-16-R-6005. As such, the Government anticipates a proposed price that is fair and reasonable. The Government will utilize price analysis techniques identified in FAR PART 15 to ensure the Government receives a fair and reasonable price.

8. ACTIONS TAKEN TO REMOVE BARRIERS TO COMPETITION

As stated above, the contract action contemplated herein is being executed to provide continuous services during pendency of litigation and suspension of performance of the follow-on contract. Upon resolution of the litigation, performance of the competitive follow-on contract will begin.

9. CONTRACTING OFFICER'S DETERMINATION

The Contracting Office has determined that the sole-source contract action is in the best interest of the Government.

10. CONTRACTING POINT OF CONTACT:

The points of contact at NAVSUP FLC Sigonella, Rota Shore are as follows:

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Contracting Officer
Phone: 34-956-82-2997(CMML)
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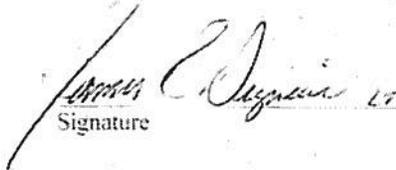
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CERTIFICATIONS AND APPROVAL

TECHNICAL REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein, are complete and accurate to the best of my knowledge and belief.

TECHNICAL/REQUIREMENTS COGNIZANCE:

	<u>James P. Sigmond</u>	<u>727-141112</u>	<u>4/16/2016</u>
Signature	Name (Printed)	Phone No.	Date

LEGAL SUFFICIENCY REVIEW

I have determined this Justification is legally sufficient.

	<u>John Miller</u>	<u>727-141112</u>	<u>4/16/2016</u>
Signature	Name (Printed)	Phone No.	Date

CONTRACTING OFFICER CERTIFICATION

I certify that this Justification is accurate and complete to the best of my knowledge and belief. To the extent that the J&A LSI value is between \$150K and \$650K, the Contracting Officer's signature below also represents approval of the J&A LSI.

	<u>Paul Campbell</u>	<u>DSN: 727-2997</u>	<u>1 APR 2016</u>
Signature	Name (Printed)	Phone No.	Date

CONTRACTING ACTIVITY COMPETITION ADVOCATE REVIEW

To the extent that the J&A LSI value is between \$0.50K and \$12.5M, the Competition Advocate's signature below also represents approval of the J&A LSI.