



---

UNITED STATES INTERNATIONAL TRADE COMMISSION

---

Washington, DC

**JUSTIFICATION AND APPROVAL**

**OTHER THAN FULL AND OPEN COMPETITION**

REQUISITION NUMBER: 6200-OOSE-130003/1578

1. CONTRACTING OFFICE

United States International Trade Commission  
Office of Procurement  
500 E Street, SW  
Washington, DC 20436

REQUIRING OFFICE

United States International Trade Commission  
Office of the Secretary  
500 Street, SW  
Washington, DC 20436

2. NATURE/DESCRIPTION OF ACTION(S).

The United States International Trade Commission (USITC) has a requirement for court reporting services on a temporary basis. This is the justification and approval, in accordance with FAR Subpart 13.104, 13.106-1 and 6.303-2 for other than full and open competition resulting in award of a sole source Time and Materials Purchase Order to Heritage Reporting Corporation.

3. DESCRIPTION OF SUPPLIES/SERVICES.

This requirement is for temporary court reporting services for the USITC on a short-term basis for a 3-week period based on the following rationale:

- a. The Commission's current GSA Federal Supply Schedule Blanket Purchase Agreement (BPA) for court reporting services expires on Wednesday, December 12, 2012.
- b. An open market re-competition is currently being conducted, with an award projected in January 2013.

## JUSTIFICATION AND APPROVAL

### OTHER THAN FULL AND OPEN COMPETITION

- c. Inasmuch as the government requires court reporting services on an ongoing basis, the mission of the USITC would be negatively impacted by any break in service while awaiting the award of the new contract resulting from the re-competition.
- d. The anticipated Purchase Order will serve as a bridge vehicle between the expiration of the current BPA, and the award of the new competitive procurement. The estimated value of the Purchase Order during the 3-week performance period is \$34,634.90.

#### 4. STATUTORY AUTHORITY.

The statutory authority for this procurement is 41 USC 3305 and 41 USC 3304(a)(2). This acquisition is made pursuant to FAR Part 13 and FAR subpart 6.303-2 (Unusual and Compelling Urgency). To carry out its mission, the USITC holds hearings, conferences, meetings, and other proceedings, such as depositions, for the purpose of receiving testimony and evidence or making decisions. These proceedings frequently involve highly technical subjects such as electronics, computer technology, chemistry, biotechnology, sophisticated manufacturing techniques, and may include technical, economic, finance, and statistical acronyms, vocabulary or terms of art applicable to specific industries. The Commission requires court reporting services for these types of proceedings.

The Commission is required by statute to conduct several types of proceedings, such as import injury investigations and intellectual property-related import investigations that consider the impact on the United States of imports. These investigations concern domestic industries, importers, and foreign producers. Witnesses travel from across the country and from foreign countries to testify at Commission hearings. In many cases, parties have very substantial interests in the outcome of cases, running into the billions of dollars. Many of the investigations have strict statutory deadlines. In those that do not, a delay in the Commission's determination can cost the parties substantial amounts because of uncertainty in the market and the absence or delay of a remedy for injury or damage suffered. This would put pressure on the agency's ability to complete proceedings in a timely manner.

In its statutorily-mandated investigations, the Commission is required to hold various types of hearings or administrative trials on the record. Transcripts are necessary to the conduct of each of these types of hearings and trials conducted by the Commission, as it is required by statute and regulation to maintain a complete record in all of its imports injury and Section 337 filings and proceedings. In import injury investigations, the Commission votes in public meetings that also must be transcribed. The lack of court reporting services would prevent the Commission from completing its statutorily-mandated investigations that are at the center of its mission.

#### 5. DEMONSTRATION OF CONTRACTOR OR BRAND UNIQUE QUALIFICATIONS

The current contractor is fully capable of performing the work as described in the Statement of Work, has performed acceptably under the current BPA, and can meet the rigorous schedule of these events. The current BPA ends on Wednesday, December 12, 2012, midway through a week in which there are multiple proceedings occurring, including week-long Section 337 hearings on Certain Food Waste Disposers and Certain Semiconductor chips, Commission hearings on Large Residential Washers and Utility Scale Wind Towers, and other proceedings. These multiple ongoing proceedings are better served by having the same contractor providing court reporting

## JUSTIFICATION AND APPROVAL

### OTHER THAN FULL AND OPEN COMPETITION

services throughout the period of the proceeding without the ramp-up period that would be needed if transitioning to a new contractor. For these reasons, the government determined that these unique circumstances and qualifications made the current contractor eligible to participate in the sole source procurement for the short-term temporary court reporting services.

6. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.

The USITC has determined that it is not practicable under the circumstances to solicit offers from more than the current contractor. The current BPA ends on Wednesday, December 12, 2012, midway through a week in which there are multiple proceedings occurring on a week-long basis. These multiple ongoing proceedings are better served by having the same contractor providing court reporting services throughout the period of the proceeding without the ramp-up period that would be needed if transitioning to a new contractor. The notice required by FAR Subpart 5.201 was not publicized as the exception at FAR Subpart 5.202(a)(2) applied to this procurement.

7. DETERMINATION OF FAIR AND REASONABLE COST

In accordance with FAR Subpart 13.106-3, I hereby determine that the anticipated cost or price to the Government for this action will be fair and reasonable. The Price Reasonableness Memorandum detailing the Fair and Reasonable Price Determination will be included in the purchase order file documentation.

8. MARKET RESEARCH

Market Research was not conducted in accordance with FAR Subpart 10, as it was determined that the current contractor has demonstrated an ability to perform in an acceptable manner, is able to meet the rigorous schedule of proceedings, and can provide fair and reasonable pricing.

9. ANY OTHER FACTS SUPPORTING THE JUSTIFICATION

By utilizing the current contractor for this short term requirement, the USITC has mitigated the risk of delay associated with transitioning to a new contractor in the middle of multiple proceedings ensuring that the agency's proceedings can be completed in a timely manner, as well as ensuring the maintenance of court reporting services to support the rigorous schedule and technical nature of the proceedings.

10. LISTING OF SOURCES

None

11. FUTURE PLANS TO PROMOTE COMPETITION

The USITC is currently conducting a full and open competitive procurement for court reporting services that is expected to be awarded in January 2013.

**JUSTIFICATION AND APPROVAL  
OTHER THAN FULL AND OPEN COMPETITION**

12. CONTRACTING OFFICER CERTIFICATION

By signing below "I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief."

Approved By:                      Print Name Celeste H. Rueffner Contracting Officer

**FOIA Exemption (b)(6)**

Date: 12/12/12

13. TECHNICAL PERSONNEL CERTIFICATION

By signing below "I certify that the supporting technical data which form a basis for this justification, that are the responsibility of technical or requirements personnel are accurate and complete to the best of my knowledge and belief."

Prepared By:                      Print Name James R. Molboin Requestor/COR

**FOIA Exemption (b)(6)**

Date: 12/12/12