

**JUDICIARY PROCUREMENT PROGRAM
JUSTIFICATION FOR AN EXCEPTION TO FAIR
OPPORTUNITY (JEFO) - ADDENDUM**

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)

The 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 addenda related to the General Services Administration (GSA) Enterprise Infrastructure Services (EIS) program to meet the AOUSC's Internet Data Center (IDC) services requirements. This JEFO addenda, as well as the original JEFO signed by the Procurement Executive, [REDACTED], on 09/13/2019, is for two IDC task orders, for the AOUSC in support of the Federal Judiciary. One of the task orders shall be for the Department of Technology Services, and the other shall be for the Office of the Defender Services (FPD).

The period for each of the IDCs is as follows:

- San Diego IDC: A two-year base period plus one (1) 12-month option period.
- Ashburn IDC: A two-year base period plus six (6) 12-month option periods.

Note: The requested period of performance for the San Diego IDC is due to business forecasts in the California market. AT&T has indicated that they can only commit to the current location and pricing for the two-year base period plus one (1) 12-month option year. Currently, AT&T does not foresee any issues or challenges in committing for the two-year base period plus six (6) 12-month option years for the Ashburn, VA data center. In addition to this procurement activity, the Judiciary will be pursuing competitive procurements for new IDC locations, and hybrid cloud services. These actions are being taken to facilitate a smooth transition of legacy systems and applications to new data centers and/or cloud-hosted services within the three years for the San Diego IDC and within the next eight years for the Ashburn IDC.

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)
Name of Contractor: AT&T Corp.

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Contract number: GS00QI7NSD3000

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

As detailed in the original JEFO, approved on 09/13/2019, 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. The 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 JDCs
- 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, IPSEC/SSL)
- Identity Management and AAA Services
- Wireless LAN
- Content Delivery Service
- Voice over Internet Protocol
- Video Conferencing 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)
- (X) 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)

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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*)

As detailed in the original JEFO approved on 09/13/2019, GSA's Networx contract vehicle has been used for the last 12 years, approximately, to provide the Judiciary's Enterprise Network Operations Services & Internet Data Centers (IDC) Services and Diverse Network Services. AT&T is the vendor for the Judiciary's current IDC services task orders. 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, one for two task orders to cover Enterprise telecommunication services and the other for two task orders to cover the IDCs. Other procurements will be undertaken to meet any remaining requirements currently being met under the expiring GSA Network contract but are not within the scope of EIS.

DTS has determined that AT&T Corp. is the only EIS contractor that can meet the requirements to retain the current IDC locations while services are moved to new facilities as part of the Judiciary's hybrid cloud strategic direction. 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 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 services as AT&T if they became lease holders of either of the current IDC locations. Based on the constraints detailed below, that assumption is incorrect.

There are profound business implications for several of the systems housed at the current IDC locations that become amplified if the AOUSC were to have to move quickly to new IDC locations or to the cloud. To minimize operational risk, allow for sufficient time to solicit requirements, define a schedule to move services, and then award these services at other IDC locations, the Judiciary seeks to retain the current IDC locations in San Diego, CA, and Ashburn, VA, while concurrently competitively seeking new IDC locations. The vendor(s) awarded the contract(s) for the new locations will be asked to also propose the transition plan to move from the current to the new IDCs within that procurement activity.

Maintaining on-premise data centers for the foreseeable future is needed to facilitate continued hosting of mission critical legacy IT systems that are not "cloud-aware" or need to be in close proximity to other legacy systems to address application or network performance issues associated with latency. The current IDC configuration leverages geographically diverse locations and circuits to ensure high availability and

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failover for mission critical applications needed to fulfill constitutional requirements of the judiciary and local courts. Specifically, any excessive downtime to the Case Management/Electronic Case Files (CM/ECF) would impede due process and administration of justice. As such, CM/ECF and related support systems strive to maintain 99.999%, or no more than one-hour downtime per month, for the case management systems¹ used by the courts to conduct their Judicial Branch duties, and for the Bankruptcy Noticing Center which provides the noticing requirements required by statute². In extreme circumstances, courts can tolerate CM/ECF degradation associated with operating out of only one IDC. However, operating CM/ECF in this degraded state is not acceptable beyond 48 hours. CM/ECF, being the capstone application used by the Judiciary to conduct Judicial business, is required to have a live and replicate of the CM/ECF data to ensure the availability of data should an issue occur with the primary site.

The CM/ECF system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district, and appellate courts, in 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 electronic filing 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 primary core business functions. 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 configuration where the server(s) ran on the court's Local Area Network (LAN). As a cost-savings measure, CM/ECF was subsequently transitioned from distributed local court servers a few years ago to a centralized

¹ The Case Management/Electronic Filing (CM/ECF) and NextGen CM/ECF systems used by the Appellate, District and Bankruptcy Courts throughout the Judiciary.

² Courts must remain open at all times “for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” 28 U.S.C. § 452; see also Fed. R. Civ. P. 77(a) (“Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.”); Fed. R. Crim. P. 56(a) (“A district court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.”).

Several rules require represented parties to file electronically, subject to certain exceptions.:

Civil Rule 5(d)(3)(A)

Criminal Rule 49(b)(3)(a)

Bankruptcy Rule 5005(a)(2)(a)

Appellate Rule 25 (a)(2)(B)(i)

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hosting environment within the current IDCs, there were significant performance issues during these migrations. Specifically, there were fail-over and fail-back attempts that completely disrupted related court operations and led to data corruption. It took 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, complex, and cannot be moved all at once due to the requirement to have these applications available to the court system 99.999% of the time. Therefore, the AOUSC will execute the IDC moves with a phased approach based on the nature of the applications housed at each IDC and the complexity associated with moving them. Considering this approach, it is estimated that it will take approximately three years to move those applications currently housed at the San Diego IDC, and approximately eight years to move those applications located at the Ashburn IDC into a new location. Of Note: AT&T has indicated that a move from the San Diego, CA, IDC location needs to happen within three years of 07/15/2021 due to their IDC subcontractor consolidating its operations into one building. Because of this, priority will be given to migrating the San Diego IDC, followed by the Ashburn IDC, to ensure the mission critical systems leveraged by the Judiciary continue to meet the 99.999% uptime requirement at all times.

For the reasons detailed above, AT&T is the only EIS contractor uniquely qualified to meet the government's requirements for the retention of the current IDCs to support operational stability of mission critical applications/systems and facilitate a smooth transition to new IDC locations.

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

The market research conducted for the initial version of the EIS IDC JEFO, signed by the Procurement Executive, Frances Sullivan, on 09/13/2019, indicated that the AOUSC could not relocate the current IDCs. However, since then, the IDC marketplace has changed, and all major telecom providers have sold their IDC space to third parties. Additionally, those third-party IDC owners have begun consolidating and decreasing their brick and mortar IDC footprint as

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more of their customers are increasingly utilizing cloud-based solutions. As a result, the AOUSC has reassessed the IDC market conditions in comparison to its IDC requirements and realized there is no possibility for the AOUSC to not relocate. As a result, the AOUSC has been compelled to take the risks, discussed in the initial version of the EIS IDC JEFO, associated with moving the current IDC locations from their current locations in San Diego, CA and Ashburn, VA.

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.

As detailed in the original JEFO, 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 orders, 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 eight 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 2021, transitioning to the Next Generation of CM/ECF is not complete and is behind schedule. Additionally, requirements definition and solicitation 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 each of the EIS IDC task orders (AOUSC and FPD) exist to account for the possibility of a transition from the IDC to a commercial cloud solution taking that long.

Currently the AOUSC Network 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-

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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.

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 through the performance of the resultant EIS IDC task orders. The Judiciary desires ultimately to discontinue the use of data center services, however, a small presence may need to remain solely to support applications such as CM/ECF and a limited number of other critical legacy applications that DTS has yet to determine if they can be relocated and made fully functional again.

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.

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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.

Typed Name: _____

Signature: _____

Date: _____

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: _____

Signature of Contracting Officer: _____

Date: _____

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: _____

Signature of Approving Official: _____

Date: _____

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.)