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Federal Acquisition Service

JUSTIFICATION AND APPROVAL (J&A)
For Other than Full and Open Competition
In Accordance with FAR 6.302-2

1. Contracting Activity:
US General Services Administration (GSA)
Federal Acquisition Service (FAS)
Office of Travel, Transportation, and Logistics (QMAAA)
1800 F St NW, Washington, DC 20405

2. Nature and/or Description of the Action Being Approved:
This justification supports a contract ceiling (maximum quantity) increase for the 2022 Transit Bus program, under the authority of FAR 6.302-2, Unusual and Compelling Urgency. On December 9, 2021, New Flyer of America (New Flyer) was awarded a contract with a 60 month period of performance along with four other vendors, all competing on many Special Item Numbers (SINs). Based on historical performance, the transit bus program in past years had relatively few purchases and the Contracting Officer (CO) believed the contract ceilings for each vendor set below $50M would cover purchases over the next five years.

At the time of contract awards, the COVID pandemic had started, but significant supply chain delays and labor shortages which would significantly increase pricing of these buses in future open seasons could not have reasonably been accounted for.

Additionally, as a result of having to terminate the contract for one of our former contractors, orders placed against the contracts for the remaining transit bus suppliers were funneled to our remaining suppliers, primarily New Flyer. Additionally, the REV Group that supplied another one of our other transit bus contractors, American Truck & Bus (AT&B), decreased the allocation they were providing which forced AT&B to close their offerings. Therefore, AT&B is unable to fulfill any transit bus orders on this program. Because of this, there is a greater expectation that New Flyer will receive a significantly larger portion of orders moving forward. SIN 377L for 35' electric transit buses has also recently been added to New Flyer's offerings which will result in additional purchases by Federal agencies through the remainder of the period of performance of this contract.

As a result, GSA intends to issue a modification to increase the contract ceiling amount to support the current transit bus buying needs of external agencies and the GSA Fleet Vehicle Leasing Program. This action will allow GSA to continue to support the mission of the vehicle buying program across the Federal Government. The anticipated increase is listed below for the 2022 Transit Bus program:

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Industry Partner	Contract Number	From	By	To
New Flyer of America	47QMCA22D000Y	$49,900,000.00	$74,900,000.00	$124,800,000.00

To ensure GSA can continue providing transit buses offered by New Flyer of America, it is essential that the contract ceiling is increased as outlined above.

Failure to increase the contract ceiling would result in adverse outcomes including a break in essential service for all vehicle buying and fleet management components in the Federal Government until new contracts can be successfully awarded.

3. Description of Supplies or Services:
GSA Fleet's Vehicle Buying program purchases up to $1.5 billion annually in high-quality vehicles and automotive services at significant savings for customer agencies. Under this program, GSA enters into contracts with commercial firms to provide commercial vehicles at fair and reasonable prices for given periods of time. GSA is the mandatory source for all new, non-tactical light vehicles purchased in the United States for executive branch agencies. As a procurement agent of the United States Government, GSA is responsible for issuing solicitations and awarding contracts to meet this obligation. GSA accepts requisitions from eligible entities in accordance with GSA Order OGP 4800.2I.

As a subset of GSA's vehicle buying efforts, the contracting team currently manages the 2022 Transit Bus program. Vehicle types, by Special Item Number (SIN) under this program, currently active and being sourced by the Government include, but are not limited to:

- 377A - BUS-HEAVY DUTY TRANSIT-40 FT-34 PASS-LOW FLOOR DIESEL
- 377B - BUS-HEAVY DUTY TRANSIT-40FT-34 PASS-LOW FLOOR-CNG
- 377C - BUS-HEAVY DUTY TRANSIT-40FT-34 PASS-LOW FLR DSL ELEC HYBRID
- 377D - BUS-HEAVY DUTY TRANSIT- 40 FT 34 PASS- LOW FLOOR BATT ELECT
- 377E - BUS HEAVY DUTY TRANSIT-60FT-46 PASS LOW FLOOR BATT ELECT
- 377F - BUS-HEAVY DUTY TRANSIT-40FT-34 PASS LOW FLOOR H2-BATT ELECT
- 377G - BUS-HEAVY DUTY TRANSIT-60FT-46 PASS-LOW FLOOR H2-BATT ELECT
- 377H - BUS-HEAVY DUTY TRANSIT-40FT-34 PASS LOW FLOOR BATT ELECT ZION
- 377I - BUS-HEAVY DUTY TRANSIT-60FT-46 PASS LOW FLOOR BATT ELECT ZION
- 377K - BUS-HEAVY DUTY TRANSIT-30 FT 22 PASS-LOW FLOOR BATT ELECT
- 377L - BUS-HEAVY DUTY TRANSIT-35 FT 28 PASS-LOW FLOOR BATT ELECT

4. Statutory Authority Permitting Other than Full and Open Competition:
Only specified makes and models of transit buses,outlined in the Federal Purchase Descriptions for Transit Buses, will satisfy the Federal Government's need for additional units or replacement items, and only the sources currently on contract are available.

New Flyer of America is the only contractor that offers SINs 377A, 377B, 377C, 377D, 377E, 377F, 377G, 377H, 377I, and 377L.

- The vehicles provided under this contract must undergo rigorous Pre-Delivery Inspections (PDIs) to ensure full compliance with Federal Vehicle Standard outlined in the Purchase Descriptions (PDs) which specifically govern transit buses. Given the critical nature of this program, timely delivery to various Federal Government locations and military installations across the United States—and occasionally worldwide—is essential.
- Additionally, new contract cycles were not scheduled until the 2026 Transit Bus Program acquisition planning begins toward the end of calendar year 2025. As discussed above, contracting ceilings were met much earlier than anticipated. While the Contracting Center could begin this process earlier, new contracts could not be awarded in time to prevent a lapse in coverage. As a result, increasing contract ceilings to the existing contracts is in the Government's interest and will ensure critical mission needs can still be met.

5. Demonstration of the Contractor's Unique Qualifications:

The Government's need for increased contract ceiling with New Flyer is driven by urgent and compelling requirements that are essential to maintaining critical operations. As the current contract holder, New Flyer is uniquely positioned to meet these needs due to its specialized experience, technical expertise, and established production and logistical capabilities.

New Flyer has demonstrated an unparalleled understanding of the program's stringent requirements, including the design, manufacturing, and timely delivery of vehicles that meet exacting Federal and military standards. These capabilities are the result of years of experience and investment, which no other source can replicate within the time available. The specialized nature of the work means that any transition to a new contractor would involve prohibitive delays in onboarding, production, and delivery—delays the Government cannot afford without jeopardizing mission readiness.

Time is a critical factor. The vehicles required must be manufactured and delivered promptly to ensure continuity of operations at Federal Government locations and military installations across the United States. New Flyer's established infrastructure, proven supply chain, and logistical expertise are essential to meeting this accelerated schedule. Alternative sources would face significant hurdles, including lengthy lead times to develop the necessary production capabilities and overcome logistical constraints, making them unable to fulfill the Government's requirements within the necessary time frame.

Under the authority of FAR 6.302-2, it is clear that the urgency of this requirement precludes full and open competition. A delay in awarding this contract increase to New Flyer would result in unacceptable consequences, including disruption to critical Government operations and significant risks to national security and public welfare. New Flyer's unique qualifications make it the only source capable of meeting the Government's needs without interruption, ensuring the

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timely delivery of essential vehicles and maintaining the operational readiness essential to the mission.

6. Description of Efforts Made to Solicit Offers from as Many Sources as Practicable:
Given the timing of this requirement, significant efforts were made to identify additional sources. However, the program's sales volume to New Flyer has sharply increased to support critical agency missions for the National Park Service and many other customers. This surge was further amplified when an additional vendor, previously awarded a contract under this program, was terminated due to non-performance. Also, another vendor on contract is currently not offering any SINs due to a closure of a primary supplier. Inflation has also been severe over the past couple of years as well, eroding the value of the dollar. In the end, competing firms' sales volume grew more rapidly than anticipated, limiting available capacity and at higher prices to customers.

Furthermore, the contracting office is in the process of soliciting industry partners as part of the 888E opportunity for the program. Notifications are regularly posted on SAM.gov every 6-months to attract additional business to this program. The time between drafting this document and the anticipated next contract award in two years time is insufficient to ensure the necessary support during the interim.

7. Determination of Fair and Reasonable Cost:
The Contracting Officer has confirmed that the pricing is fair and reasonable through price analysis conducted during the original award and yearly model year (open season) adjustments, which included comparisons to historical data and comprehensive market research. Although this Justification and Approval (J&A) seeks approval to raise the contract ceiling, the unit prices for all current delivery orders have already been negotiated and will remain unchanged. These unit prices were determined to be fair and reasonable at the onset of the program, and no further adjustments or negotiations are necessary.

8. Description of Market Research:
This program is currently in the process of accepting offers for FY25 Fall Open Season. Extensive market research has been conducted to identify other potential vendors capable of meeting the Government's requirements for the new program. This research, particularly in the acquisition of motor vehicles for executive agencies and the Department of Defense, is ongoing. The Contracting Officer and the Light Vehicles Acquisition Branch (QMAAA) continuously monitor a variety of sources, including trade journals, newspapers, OEM websites, and various online platforms, to gather information on both current and prospective contractors.

Key publications and resources referenced in this research include Automotive News, Ward's Automotive, The Wall Street Journal, Penton's Truck Blue Book, and various internet sources. These resources provide critical insights for offer analysis, contractor performance evaluations, and overall market conditions. Market research is conducted as needed throughout the year to ensure the program remains aligned with current industry trends.

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While there may be other potential industry partners in the marketplace, the time between the drafting of this document and the program's expiration is insufficient to allow for a full recompete.

The Contracting Office has conducted extensive research on the new recompeted program to establish a ceiling amount that will remain stable over time. Leveraging a comprehensive report of existing program orders, projected GSA Fleet Leasing vehicle replacements, and expected orders from external agencies, the Contracting Officer has developed a more accurate, forward-looking estimate. Additionally, surge capacity has been considered to mitigate potential pricing increases within the automotive industry, ensuring that budgetary adjustments will be minimized in the future.

9. Any Other Supporting Facts:
Transit buses are critical to support the mission of the vehicle buying programs across the Federal Government, and any delay would result in a break in service. These transit buses are critical for mission essential requirements, predominantly transporting passengers within the National Parks. There has been a larger increase in visitors to U.S. National Parks than ever before, which resulted in significantly more buses being ordered. Orders placed in FY24 exceeded FY23 by over $1.3M ($9,509,943.90 of orders placed in FY23 in comparison to $10,874,334.69 of orders placed in FY24). This supports the determination that New Flyer is the only responsible source available to meet the Government's requirements.

- Increasing the maximum contract ceiling for this multiple award IDIQ allows for the continuation of the contract within the specified period of performance, with the intent to avoid a disruption in service and efficiently transition customers from the current program to the 2026 program.

- Increased contract ceilings will help sustain strategic and tactical acquisition planning allowing for continuous solutions for vehicles to be purchased or leased by Federal Customers.

- Increasing the maximum contract ceiling is not a firm obligation or expenditure of appropriated funds as is the case when Federal agencies issue requisitions. As such, the current program is only responsible for ensuring the minimum guarantee (i.e., $10,000) as delineated in the master contract. This minimum guarantee has already been met.

- Increasing the maximum contract ceiling would not have changed the number of offerors or participants in the procurement at the original award as these vendors are the only contractors known to be able to meet the Government's entire requirement.

- These contracts are critical contracts relied upon by agencies all across the Federal Government. A disruption in vehicle availability would significantly impact the Government's ability to provide mission critical services for a vulnerable population.

10. Interested Parties:
At this time, there are no other known parties capable of supporting the size, scope, and scale of the program, particularly given the limited time between the drafting of this document and the award of the subsequent follow-on contract.

11. Actions to Remove Barriers to Future Competition:
For future requirements, the agency plans to enhance competition by conducting additional market research, issuing SAM.gov notices to all vehicle manufacturers, and hosting industry conferences and supplier engagement days. The Light Vehicles Acquisition Support Branch also intends to work closely with the Fleet Program Management Office and external customer agencies to project more accurate order quantities and cost estimates. The current solicitation for the FY25 Fall Open Season is posted on SAM.gov and includes or will include anticipated dates of award and all market research / industry engagement efforts. These efforts will provide opportunities for direct communication with potential vendors and allow the agency to share draft documents outlining all contract-related regulations. By taking these steps, the agency aims to foster full and open competition in subsequent procurements and ensure that the industry remains fully engaged in the program.

To prevent the recurrence of similar circumstances in the future, we are taking the following proactive measures, after ensuring that all vendors are financially responsible and capable of handling such actions:

1. **Incorporating Surge Capacity**: Future contract estimates (estimated unit quantities) will include a 25% surge capacity to account for unexpected increases in demand from agency purchase customers and GSA Fleet vehicle leasing programs.
2. **Ceiling Adjustments for Market Shifts**: Vendor ceilings will be rounded up by a surge factor to ensure they can handle potential increases due to market dynamics, evolving requirements, or unforeseen disruptions in supply.
3. **Enhanced Demand Forecasting**: We will strengthen our forecasting methodologies to better anticipate future needs, using historical data, market analysis, and closer collaboration with agency customers and GSA Fleet vehicle leasing.
4. **Contingency Planning**: Establishing contingency procurement strategies, such as pre-qualifying additional vendors, to provide flexibility and resilience during surges in demand.
5. **Vendor Communication and Training**: Conducting periodic reviews and communications with vendors to ensure their readiness to meet fluctuating demands, including scalability assessments and guidance on market trends.

These measures aim to enhance the program's agility and capacity to meet future requirements without recurring urgent actions.

12. Contracting Officer Certification:
I certify that the information in this justification is accurate and complete to the best of my knowledge and belief.

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12/5/2024

Craig D. Yokum
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Date

Concurrence:

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12/5/2024

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12/6/2024

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Legal Sufficiency:

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12/9/2024

Date

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