EXPORT-IMPORT BANK OF THE UNITED STATES

Justification and Approval for Other Than Full and Open Competition

Commercial Services Acquisition under FAR 13.106-1(b) and FAR 13.501

1. **Contracting Activity:**

The requirement is being conducted by the Export Import Bank of the United States, Office of Contracting Services (OCS) at 811 Vermont Avenue, NW, Washington, D.C. 20571.

2. **Nature and/or Description of the Action Being Processed:**

The purpose of this Justification for other than Full and Open Competition is to award a new Firm Fixed Price (FFP) Purchase order to Varella & Advogados Associados to provide legal recovery services to assist EXIM in its efforts to collect outstanding amounts owed to EXIM by the obligor/buyer and all guarantors, if any. These efforts will include, asset searches, site visits, negotiations, litigation, documentation of agreements, embargoing assets and executing upon assets.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:**

The Contractor is required to provide all professional services, including all labor, materials, postage, tools, travel, supervision, and incur expenses necessary that entail the judicial process to undertake the asset recovery Scope of Work. The contractor shall perform non-personal services necessary to perform collection on EXIM Bank defaulted loan **"standard recovery contract with** Varella & Advogados Associados **for the following case(s) in** [redacted]: Claim G776114 / [redacted] **/ for a total buyer debt of $** [redacted]. The Contractor shall attempt recovery on behalf of EXIM Bank and, if provided EXIM Bank's express instruction to do so, institute legal proceedings and/or provide credit restructuring services to EXIM Bank's Recoveries Group, Asset Management Division ("AMD") related to the referenced claims, involving the referenced debtor and guarantor(s), located in Canarana, Mato Grosso, Brazil. The estimated value for this contract is **$** [redacted] of which due diligence costs (Line item 1) are estimated at $ [redacted] and recovery fees of [redacted] of recovery estimated at $ [redacted] The Period of Performance for this contract will be five (5) years.

4. **Statutory Authority Permitting Other than Full and Open Competition:**

41 USC §3304), as implemented by FAR 6.302. FAR 13.106-1(b) permits the Contracting Officer to

consider the types of factors listed under FAR Part 6.302 when making the determination to solicit only one source. FAR 13.106-1(b) does not require that the Contracting Officer select only one of the listed authorities, as is the case when the Competition in Contracting Act applies.] For actions exceeding the simplified acquisition threshold procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901

(x) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy

Agency Requirements per FAR 6.302-1;

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):**

The contract action involves collecting on EXIM Bank's claim in a foreign country. It is imperative to hire local counsel in Brazil where the claims are to be monitored/litigated with experience in: locating assets, especially potential hidden assets, and embargoing and executing upon such assets; drafting and negotiating restructuring agreements appropriate for debtors of the type in this matter; and litigating the collection matter in all levels of courts throughout the debtor's country. It is also imperative that the local counsel have experience handling collection matters of this sort on behalf of foreign entities, and especially foreign government entities such as EXIM Bank, because such representation often raises issues and creates legal risks for the foreign government entity. These risks include the risk of counter-suits, referrals for criminal prosecution, and withholding tax questions. Additionally, it is imperative to hire local counsel that is familiar with EXIM Bank's policies and procedures so as to avoid problems with payment procedures, handling of funds, facilitation of payments, and fraud.

The firm of Varella & Advogados Associados in the Republic of Brazil and its local office in Rio de Janeiro, Brazil is uniquely qualified to pursue these cases in Brazil. The Contractor has extensive experience in dealing with the complex U.S. Government administrative requirements. The contractor is certified to complete this type of work under Brazilian law. Varella & Advogados Associados is registered in SAM. Finally, Varella & Advogados Associados has experience in recovery matters in Brazil. The contractor possesses a comprehensive understanding of work under this procurement. Varella & Advogados Associados will not require a familiarization period or training prior to immediately commencing performance of the Performance Work Statement. Accordingly, Varella & Advogados Associados is the only firm capable of providing the services described in Section 3 above without EXIM Bank experiencing duplication of cost for familiarization/training nor unacceptable delays in fulfilling its requirements.

Getting a quick start in assigning a new claim to a contractor in a foreign country is key.
By the time an insured files a claim with EXIM Bank and the time that it is reviewed by the Claim Processing unit and paid by the OCFO a few months at least may have lapsed, not taking into consideration the time from the last shipment to the buyer, which could very well add nine months to the process. By the time the RO receives the claim for collection close to one year may have gone by before any attempt is made to collect from the foreign buyer, a definite disadvantage to the taxpayer. A debtor may be in hiding, it could have sold the company/operating under a different name, it may have transferred assets to avoid collection, its financial condition may have suddenly changed and/or its local

currency may have depreciated. There's only a handful of contractors that understand the scope of recovery work required by EXIM Bank.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:**

In accordance with 41 U.S.C. 3304, the Bank has sought to identify as many potential sources as practicable under the circumstances. The specialized knowledge required to minimize the risks and maximize the chances of success in EXIM Bank's executing its rights under the Finance Documents and the need for confidentiality, limits the likelihood of identifying multiple firms possessing the requisite skill set. Offerors are located through SAM registry, U.S. Embassy contacts, conferences, with the ability to work in recovery matters in Brazil

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:**

The Contracting Officer has determined that the anticipated cost to the Government for the supplies/services covered by the J&A will be fair and reasonable based upon prior experience with this contractor, comparison to rates and collection percentages assessed by similar firms in the same and similar jurisdictions, and by review of published rates publicly available.

8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:**

AMD confirmed that the types of services to be undertaken by the Contractor are commercial in nature. These services are provided to private and public sector entities without distinction. EXIM Bank has worked with Varella & Advogados Associados and demonstrated a high degree of competence in the advisory/documentary role. A review of legal support for EXIM indicated that Varella & Advogados Associados is uniquely positioned to provide the services required for this instance. No other firms were identified that possess similar knowledge of EXIM, its transactions, and legal experience with projects situated in Brazil.

9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:**

Varella & Advogados Associados provides seasoned collection specialist(s) who have been involved both in the private and public sectors of Brazil. In addition, the firm is fully cognizant of the process of litigation within Brazilian courts.

10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:**

No other sources expressed interest, in writing, in this acquisition.

11. **A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required**:

For the reasons set forth in Paragraph 5, EXIM Bank has no plan at this time to compete future contracts for the types of services covered by this document. If another potential source emerges, the Agency will assess whether competition exists.

12. **Requirements Certification:**

I certify that the requirement outlined in this justification is a Bona Fide Need of the Export-Import Bank of the US and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

[redacted]

Name: [redacted]

Title: [redacted]

Facility: [redacted]

13. **Approvals in accordance with FAR 13.501**: Contracting Officer's Certification (required): I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

[redacted]

Name: [redacted]

Title: [redacted]

Facility: [redacted]