



**Limited Sources Justification  
ICE Charter Flight Services  
FAR 8.405-6(a) & 8.405-6(c)**

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**1. Agency and Contracting Activity:**

U.S. Immigration and Customs Enforcement (ICE), Office of Acquisition Management (OAQ)

**2. Nature/Description of Action:**

**a. Acquisition Purpose and Objectives**

The purpose of this acquisition was to provide for a Special High-Risk Charter (SHRC) flight to Bangladesh, India, and Vietnam on November 18, 2019 SHRC Mission# 20-0076 for the ICE Air Operations Division within ICE Enforcement and Removal Operations (ERO). This SHRC mission was within the scope of task order GS-33F-004DA/ 70CDCR18FR0000002 and will remove up to 163 total aliens. This removal flight, including its timing, was considered by ERO as mission critical and had to occur on November 18, 2019.

**b. Mission Background**

The task order was competitively awarded to Classic Air Charter, Inc. (CAC) on December 1, 2017. The task order provides for both daily scheduled charter flights to remove detainees to routine destinations as well as special high-risk charter flights to farther locations. This air charter service is being performed out of Mesa, Arizona.

At the time of the award, the task order included an SHRC rate for a 300+ passenger aircraft. However, according to CAC only one aircraft was available to meet the ERO removal timeline for this SHRC mission.<sup>1</sup> To meet the government's request for a SHRC flight, CAC was only able to provide a Boeing 777-200 aircraft to meet the ERO scheduling timeline, but not at the negotiated rate for a 300+ passenger aircraft.<sup>2</sup> Because of the limited availability of suitable aircraft, the government agreed to a SHRC rate for the Boeing 777-200 for the mission that exceeds the contracted rate for a 300+ passenger aircraft.

**3. Description of Supplies/Services Required and Estimated Value:**

Under this action, ICE required a large charter aircraft with a minimum of 200 passenger seats. Large Aircraft SHRC aircraft must be capable of transporting 148 to 300 passengers at a range of

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<sup>1</sup> See Letter of Explanation\_GSA Rate.pdf (attached)

<sup>2</sup> *Id.*

at least 2,700NM. Due to the limited availability of 200+ passenger aircraft and ICE’s unique mission, CAC was limited to one subcontracted air carrier for SHRC flights. Per the air carrier, the only available aircraft for the November 18, 2019 mission was a Boeing 777-200 aircraft with 300+ passenger seats.

The Large SHRC rate under task order 70CDCR18FR0000002, using a 300+ passenger aircraft, was \$17,214.80 per flight hour plus any Other Direct Costs (ODCs). Due to the high demand for 200+ passenger aircraft during the month of November 2019, the only aircraft available was a Boeing 777-200, which the carrier could not provide at CAC’s GSA Schedule rates. The all-inclusive flight hour rate (flight hours plus air carrier ODCs) that OAQ agreed to for the SHRC mission using the substitute Boeing 777-200 was \$33,500.00 per flight hour. In this instance, the Boeing 777-200 all-inclusive rate was due to the billing structure of the CAC subcontractor supplying the aircraft. Per CAC’s GSA Schedule, the flight hour rate for the 777-200 was \$18,373.80. After combining the GSA flight hour rate with the GSA SIN 599-1000 ODC estimates the all-inclusive cost was \$33,500.00 per flight hour.

Rate Comparison Chart						
	Flight Hour Rate	Flight Hours	Price Before ODCs	ODCs (With Receipts)	Total Price	% Above Task Order Price
<b>Task Order:</b>	\$17,214.80	51.92	\$893,735.03	\$622,936.59	\$1,516,671.62	0%
<b>Proposed:</b>	\$33,500.00	51.92	\$1,739,208.33	\$56,570.00	\$1,795,778.33	18.4%

OAQ agreed to the requested \$33,500.00 per flight hour all-inclusive rate plus ODCs with receipts (as opposed to ODCs without receipts which are included in the flight hour rate). The total estimated value of this Large SHRC mission was \$1,795,778.33, which was \$279,160.99 (18.4%) higher than the order price.

**4. Authority and Supporting Rational:**

**a. Acquisition Authority:**

This acquisition was conducted under the authority of FAR 8.405-6(a)(1)(i)(B) which states that the government may also limited sources where, “[o]nly one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized.”

**b. Supporting Rational:**

Under the circumstances, the government had an urgent and compelling need for this scheduled mission date due to binding international agreements with Bangladesh, India, and Vietnam for specific dates of arrival. To have revised travel documents and obtain new landing agreements would have resulted in an unacceptable delay to the government or an inability to remove these aliens who had final orders of removal. It was imperative that ICE complete this critical removal operation in a timely manner. Selecting a specific date for a charter flight too far in advance can

be challenging given the many factors that are out of the control of ICE, including competing demands for this aircraft and the diplomatic and administrative constraints described above.

Additionally, per CAC this was the one and only 200+ passenger aircraft available on the mission date. For this reason, and because any delay caused by having to wait for a different 200+ passenger aircraft to become available would have resulted in an unacceptable result for the agency, the SHRC flight to Bangladesh, India, and Vietnam had to occur on November 18, 2019 using the higher rate.

#### **5. Contracting Officer Best Value Determination (FAR 8.404(d)):**

The contracting officer has determined that the proposed action represented the best value consistent with FAR 8.404(d). The proposed rate for this mission represented the greatest overall benefit to the government, considering price and administrative costs, for the following reasons:

- 1) GSA had already determined that the fixed hourly rates for services in CAC's schedule 599-1000 contract GS-33F-004DA are fair and reasonable;
- 2) CAC quoted rates for the Boeing 777-200 were within a reasonable range of its other 300+ passenger aircraft GSA contract rates; and
- 3) Allowing an available Boeing 777-200 to be used as a substitute aircraft under the current task order resulted in the lowest overall cost to the government considering the alternative costs of conducting a competitive acquisition for only one mission.

#### **6. Market Research:**

Market research for this mission consisted of comparing the newly negotiated prices with the current task order prices and the GSA Schedule prices.

#### **7. Additional Facts Supporting Justification:**

None.

#### **8. Actions Taken to Overcome Barriers that Led to Restricted Consideration:**

Currently, the main issue seems to be the lack of available aircraft that meet ICE's needs, which is fueled by the fact the Department of Defense (DOD) uses the same sub-contractors as ICE and is a much larger player in the market place. This places ICE at the mercy of whatever the current aircraft availability might be after DOD has had their pick.

There are currently discussions taking place between the government, CAC and GSA regarding all-inclusive large SHRC rates and aircraft availability.

**9. Certifications:**

**Technical Personnel:**

This justification is certified as complete and accurate by the technical personnel.

\_\_\_\_\_  
Bill Waddington,  
Management and Program Analyst  
ICE Air Operations

\_\_\_\_\_  
Date

**Contracting Officer:**

I certify that this justification is accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Benjamin Shih, Section Chief  
Office of Acquisition Management

\_\_\_\_\_  
Date

# Classic Air Charter



October 20, 2019

Mr. Benjamin Shih, Contracting Officer  
Immigration and Customs Enforcement  
Office of Acquisition Management  
801 I Street NW Suite 930  
Washington, DC 20536

Sent via email: benjamin.shih@ice.dhs.gov

**Subject: Letter of Explanation regarding pricing of Large SHRC Aircraft  
ICE Task Order No. 70CDCR18FR0000002**

Dear Mr. Shih:

An integral component of services provided under the referenced Task Order includes providing large aircraft for Special High Risk Charters (SHRC) upon request of ICE Air Operations. These missions operate to multiple OCONUS locations and require a high-level of coordination and organization to ensure success. Most recently, CAC has been solicited by IAO to charter a November mission using a B777-200ER that will operate out of Mesa, AZ to remove and repatriate Bangladeshi, Indian, and Vietnamese citizens. CAC has received an all-inclusive flight hour rate provided by our sole-source carrier for these mission, Omni Air International. A concern voiced to CAC by your offices is the disparity between Omni's rates and those currently published in CAC's GSA Schedules. Specifically, that the GSA wet-lease rate is significantly lower than the price quoted by Omni.

The difference in price listed in the GSA Schedule versus actual cost is due to a confluence of factors. Amongst the most impactful of these is that GSA rates are currently outdated for the available market of carriers willing to provide large aircraft for removals. CAC began to seek pricing for inclusion in our proposal beginning in 2017. The research conducted at that time to determine rates was based upon reliable data from 2015-2016. Upon award, CAC was not able to immediately pursue carrier relationships based on those rates because contract start was delayed by protest until mid-2018. In that interim and continuing since contract start, an increasingly unfavorable political environment has further constrained the available market of willing carriers for this type of operation. This was a field already restricted by the PWS ETOPs and FAA Part 121 requirements for SHRC aircraft and the nature of the work. Many carriers are discouraged by the potential of public backlash or negative media attention. As a result, our carrier selection pool has been reduced to a single operator, Omni. Omni is acutely aware that they are our sole, accessible and experienced source for providing large SHRC aircraft. CAC also faces competition from the

## Classic Air Charter



Department of Defense in locking in contracts on the less expensive B767-200ER. Lengthy approval times for SHRC missions have resulted in CAC losing B767 aircraft to the DoD leaving us with the most costly aircraft as our only option. Omni's ability to monopolize the market for PWS qualifying SHRC aircraft and their greater business volume with DoD has curtailed our negotiating ability on price and aircraft selection.

As you are aware, costs for SHRC operations under the Task Order are allocated between CLINs 1004 and 1005, which are wet-lease flight hours and ODCs, respectively. In our dealings with the carrier, rates have been presented to us as all-inclusive hourly rates without the benefit of receiving a cost breakdown to enable CAC to accurately apportion costs to each CLIN. Specifically, we are not provided data from the carrier on precise costs for the amounts attributed to various components that comprise the total cost such as the carrier's breakdown of flight crew hourly rates, ground handling charges, maintenance, overflight/landing permits, fuel, and so on.

CAC has put forth great effort to encourage better transparency from Omni, but they have been guarded in this respect. As CAC cannot realistically threaten to seek an alternative carrier, the incentive to provide the documentation and cooperation that would improve our cost accounting is virtually non-existent for Omni. Without the ability to evidence all ODC classified expenses through receipts or other documentation, CLIN 1004 has become a catch-all for any cost we cannot reverse engineer through documentation or inference. This artificially inflates the CLIN 1004 rate and creates a further implication that there is a significant disparity between the GSA rate and invoiced flight hour rate.

At present these explanations for the rate disparity are offered to justify the approval of the November mission, referenced above. However, CAC is highly motivated to seek resolution and are making a targeted and concerted effort to eliminate this concern for future missions. We are beginning to undertake new market analysis and will submit, through the appropriate channels, the findings of our research as justification for increase to our GSA rates. The recent corporate management restructuring of CAC expedites our ability pursue this course of mitigation and progress is expected before the end of the calendar year.

We look forward to taking these measures, as well as pursuing other creative solutions that ensure that CAC provides the best cost, highest quality service to the Department of Homeland Security for all components of this Task Order. Thank you for all time and consideration into this matter. Please do not hesitate to request any further clarification required and CAC will submit prompt and complete information.

Cordially,

A handwritten signature in black ink, appearing to read 'Gwen Carson', written in a cursive style.

Gwen Carson