

JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

To: Luis Rivera, Acting Senior Procurement Executive

From: Brittany Brown, Director, CPS/OTI

Subject: Justification for an Exception to Fair Opportunity

1. This Document Sets Forth the Facts and Rationale Justifying an Exception to Fair Opportunity, in Accordance with FAR 16.505.

Contracting Agency: United States Agency for International Development (USAID)

Contracting Activity Bureau/Office: Bureau for Management, Office of Acquisition and Assistance (M/OAA)

Cognizant Technical Office: Bureau for Conflict Prevention and Stabilization, Office of Transition Initiatives (CPS/OTI)

2. The Nature and Description of the Action Being Approved:

This is a request to approve an exception to the fair opportunity process to award a Task Order under the SWIFT 5-Programs IDIQ to Chemonics International Inc. (“Chemonics”) for approximately \$200 million. The Task Order is requested to be issued on a sole source basis because the Agency's need for the services is so urgent that providing fair opportunity would result in unacceptable delays. Under this action, Chemonics will establish and manage a flexible, quick-response mechanism to implement activities in support of Ukraine’s stability and its transition to a prosperous, unified, and democratic state. Additional information is provided below:

Activity Title: Ukraine Confidence Building Initiative (UCBI) III

Contractor: Chemonics International Inc.

IDIQ Contract Number: 7200AA19D00015

IDIQ Ordering Period: September 6, 2019 – September 5, 2024

Anticipated Task Order Period of Performance: February 2022 – August 2023 (eighteen [18] months).

3. Description of the Services Required, including the Estimated Value:

In order to respond to urgent needs in Ukraine, USAID/OTI requires contractor support to establish and manage a quick-response mechanism under the SWIFT 5-Programs IDIQ. In order to meet these needs, this Task Order is requested to be awarded to Chemonics for a total estimated ceiling of \$200 million. This total estimated ceiling is based on the scope and scale of response anticipated to be required in the case of a large-scale Russian invasion, resulting in widespread displacement of persons, damage to infrastructure, interruption of basic service delivery, threats to civilian lives, and lasting detrimental secondary and tertiary effects for

Ukraine's stability. This estimated amount also takes into account the anticipated costs of security required for safe operation in an active conflict zone.

In close coordination with the U.S. Embassy and USAID Mission in Ukraine, the initial goal of the contemplated Task Order will be to support Ukraine and neighboring countries' democracy and stability in the face of escalating Russian aggression.

Initial priority objectives may include:

- Support the ability of Ukrainian citizens, civil society, and legitimate Government of Ukraine representatives to respond to immediate crisis needs
- Build Ukraine's national resilience in response to escalated/expanded Russian aggression

Task Order objectives are expected to shift over the life of the program to account for changes in the political and security environment.

The SWIFT 5-Programs IDIQ Contracting Officer's Representative (COR) has reviewed the contemplated Task Order's Statement of Work (SOW) and has determined that it is within the scope of the IDIQ and confirmed that there is sufficient ceiling in the IDIQ to cover the contemplated Task Order.

4. Identification of the Exception to Fair Opportunity and Supporting Rationale, including a Demonstration that the Proposed Contractor's Unique Qualifications or the Nature of the Acquisition Requires Use of the Exception Cited:

FAR 16.505(b)(2)(i)(A) allows for an exception to the fair opportunity where "[t]he agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays." The statutory authority for this exception is contained at 41 U.S.C. 4106(c)(1).

The scale and scope of Russia's hybrid warfare and military aggression towards Ukraine is currently at its highest level since the end of the Cold War. Russia has amassed over 100,000 troops near Ukraine's northern, eastern, and southern borders, including combat and aerial units with the capability to support a large-scale ground invasion as well as devastating missile strikes on population centers. Russia now has the ability to attack Ukraine on short notice, precipitating a range of complex crises ranging from the collapse of critical infrastructure, instability in the Ukrainian government, a major land war, and/or a refugee crisis in the heart of Europe.

The required services may be wide-ranging and will be based upon the specific needs presented by an escalation or continuation of aggression. Activities may include positioning resources for urgent needs to support an assortment of humanitarian relief efforts; supporting resumption of basic services in areas affected by Russia's hybrid warfare tactics; supporting the continuity of Ukrainian government functions and communication with citizens; ensuring access to information and services regarding Russia's aggression and Ukraine's response, including targeted responses to Russian disinformation attacks; providing contingency equipment to civic and government actors to continue functioning in the event of attacks on Ukraine's critical

infrastructure; assisting displaced Ukrainians inside or outside the country, including their integration with host communities; engaging subnational civil society actors as critical partners to help provide services, strengthen resilience, and build confidence in Ukraine's unity against Russian aggression; and assisting the Ukrainian government with civil preparedness.

Current U.S. Government estimates place the potential casualties for a large-scale invasion of Ukraine at 50,000 civilians, with the potential for up to 5 million internally or externally displaced persons. There is a clear, compelling, and urgent need to begin immediate programming to minimize the loss of human life and suffering as a result of an invasion. The use of a fair opportunity process to award a Task Order to implement the contemplated activities would result in unacceptable delays to the Agency's ability to respond to the urgent needs precipitated by this crisis. The Agency's Procurement Action Lead Time (PALT) for a fair opportunity Task Order is 75 days; this estimated timeline to award does not include required design and preparation activities. A delay of 75 or more days before being able to implement work to respond to the crisis will inevitably result in a failure of the U.S. Government to meet critical needs and provide life-saving assistance when it is most needed.

Based on our review, USAID considers the selected Contractor to be well placed to meet the need for immediate programming in this context. As the implementer of the Ukraine Confidence Building Initiative II Task Order and other related activities in-country, Chemonics has in place a team of qualified international and Ukrainian professionals who can begin immediately working on the required activities in order to meet critical needs. These professionals have deep experience working in sectors ranging from small-scale rehabilitation, essential service delivery, countering disinformation, support to displaced persons and host communities, and support to government messaging and preparedness – all of which may be part of an OTI response to the complex crises that a Russian attack would precipitate. This breadth of experience across disparate sectors makes Chemonics singular among contractors operating in Ukraine, others of which are predominantly focused on sector- or geographic-specific assistance and do not possess the relationships and subgranting/subcontracting mechanisms to quickly initiate new activities. These qualifications will allow Chemonics to respond quickly and with minimal delays for the relationship-building or staff hiring that selection of another contractor may require. Additionally, in performing their current work in Ukraine, contractor staff have established trusted relationships with key Government of Ukraine entities and representatives that would be most critical to a response to Russian aggression, including the Office of the President, Ministry of Reintegration, Ministry of Culture and Information Policy, and State Emergency Service. These relationships, and the close coordination it fosters, cannot be replicated quickly if a new award were issued to another contractor. Chemonics' regional footprint would be of substantial benefit to the U.S. government in the event of a displacement crisis that could affect multiple parts of the country. Further, Chemonics is currently registered with Ukraine's Ministry of Communication and Information Policy, a key partner for the contingency response, thereby lowering bureaucratic hurdles to initiate in-country programming, including grants, subcontracts, or other legal agreements. OTI would be unable to replace these existing capabilities using another mechanism quickly enough to meet the requirements of the aforementioned U.S. foreign policy priorities without significant disruptions. In sum, USAID has determined that a task order

to Chemonics is the best choice available to USAID to meet the need for flexibility and responsiveness to the rapidly changing country context in the timeframe required.

A period of performance of eighteen (18) months is the minimum contract length required to have a meaningful impact on the complex problem set, implement the required response and recovery activities, and allow time for a competed follow-on contract if required. Accounting for required processes related to start-up and closeout (and potentially transition to a follow-on contract), this period of performance would allow for approximately twelve (12) months of implementation of activities. An escalation of hostilities by Russia – even short of a full-scale invasion – could destabilize not only Ukraine but also the broader region, with potentially generational consequences. As such, this Task Order may be required to respond to secondary and tertiary effects of Russian hostilities even after an invasion has ended. A Task Order duration of any shorter time period would not suffice to begin addressing the challenges posed by the anticipated operating context, would not provide value to the U.S. Government, and would potentially leave the U.S. Government without a mechanism to implement critical activities in support of Ukrainian beneficiaries who need it most.

5. Determination/Demonstration By the Contracting Officer that the Anticipated Cost to the Government Will Be Fair and Reasonable:

USAID/OTI prepared an independent government cost estimate (IGCE) for the required services, based on its long-standing familiarity and experience under the SWIFT IDIQ with responding to complex crises and estimating anticipated costs. The calculation of the estimated value of the proposed effort is based on the analysis of activities envisaged by the SOW, and historical costs under other SWIFT IV and SWIFT 5-Programs Task Orders, including in Ukraine and other Eastern European countries. The negotiation and establishment of a fair and reasonable cost will be conducted by the Contracting Officer in accordance with FAR Subpart 15.4. Prior to issuing the Task Order, the Contracting Officer will determine that the anticipated cost to the Government is fair and reasonable.

6. Other Facts Supporting the Justification:

The selected Contractor, Chemonics, has relevant past performance for the region of performance and/or the nature of the technical work performed. Based on the relevancy and the positive past performance of these contracts, USAID/OTI believes the Contractor presents a low risk of unsuccessful performance of the contemplated Task Order.

7. 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:

No barriers to competition are foreseen for future procurements. USAID anticipates that any future follow-on requirements will be competed.