

EXPORT-IMPORT BANK OF THE US

Justification and Approval for Other Than Full and Open Competition

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 is to award a Firm Fixed Price (FFP) Purchase order to Varella & Advogados Associados to provide legal recovery services to assist EXIM Bank in its efforts to collect outstanding amounts owed to EXIM Bank 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's defaulted loan of [REDACTED] Claim No. G491524, [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 claim, involving the referenced debtor and guarantor(s) located in Brazil. The estimated value for this Contract is [REDACTED]. The period of Performance for this contract will be five (5) years.

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

In accordance with Federal Acquisition Regulation (FAR) Part 13: Simplified Acquisition Procedures (SAP), the Export Import Bank of the United States (EXIM Bank), intends to conduct a sole source / limited source procurement for commercial services of outside (private sector) legal counsel. The Competition in Contracting Act (CICA), 41 USC 3301 *et seq.*, does not apply to SAP procurements. However, the SAP requires that SAP procurements be conducted in a manner to promote competition to the "maximum extent practical." SAP procurement at or below the SAP threshold (\$150k) may be limited to one source reasonably available. FAR 13.106-I(b). SAP procurement of commercial items/services in excess of the SAP threshold may rely on streamlines sole source determination set forth at FAR 13.501. Procurement of supplies or services not commercial in nature, in excess of the SAP threshold, must comply with CICA. Legal services, and ancillary professional services in support of the legal services, (as described in the Statement of Work accompanying this Justification and Approval, (Statement of Work), including without limitation, any such services related to asset protection, enforcement rights, inspections, due diligence and interpretation of host nation laws and international conventions, are – by definition – commercial in nature.

41 USC §253(g), as implemented by FAR 6.302. The specific paragraph must be cited. Most likely, only the -1 or -2 authorities will be cited. Please be aware that failure to adequately plan for future requirements does not constitute appropriate use of the unusual and compelling urgency statutory authority.

- (x) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- () (2) Unusual and Compelling Urgency per FAR 6.302-2;
- () (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- () (4) International Agreement per FAR 6.302-4
- () (5) Authorized or Required by Statute FAR 6.302-5;
- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

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 claim being 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 countersuits, 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, handling of funds, facilitation of payments, and fraud.

The firm Varella & Advogados Associados is uniquely qualified to pursue this case in Brazil due to the seasoned recovery expertise, accompanied by commercial legal expertise, blended with a full understanding of EXIM Bank's activities, collection processes and rules and regulations that comply with the U.S. government guidelines. Varella & Advogados Associados will not require a familiarization period or training prior to immediately commencing performance of the Performance Work Statement since the firm is already overseeing litigation in Brazilian court. Accordingly, Varella & Advogados Associados is the only firm capable 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.

The law firm Varella & Advogados Associados was assigned Case G491524 under contract 83310120P0014. Varella & Advogados Associados is the local counsel that has managed the claim for EXIM Bank since its inception and the firm is fully familiar with the case. The introduction of another party would require EXIM Bank to take risks of poor or inadequate execution that would be presented by an unfamiliar party, regardless of qualifications. The litigation is fully authorized by EXIM Bank's Office of the General Counsel, was previously empowered under this new purchase to undertake such legal action. Varella & Advogados Associados has been involved in litigations of this nature for several decades and is fully registered as practicing attorney duly recognized and registered in the Brazilian judicial system.

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, EXIM 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.

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 Justification 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 public 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 on several heavily structured EXIM Bank transactions and demonstrated a high degree of competence in the advisory/documentary role. A review of legal support for EXIM Bank 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 Bank, its transactions and legal experience with this transaction situated in Brazil. EXIM Bank has been utilizing Varella & Advogados Associados services since 2003 and is satisfied with the services being provided.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

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 Supporting the Use of Other than Full and Open Competition: NA

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.


Name:  Date 
Title: 
Facility: 

13. Approvals in accordance with FAR 13.501

- a. **Contracting Officer's Certification (required)**: I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.


Name:  Date 
Title: 