

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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<https://oversight.house.gov>

February 22, 2023

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Mayorkas:

The Committee on Oversight and Accountability is investigating a sole source, no-bid contract issued by the Department of Homeland Security (DHS) on January 26, 2023 in the amount of \$1.5 million, with a potential award amount of \$3 million.<sup>1</sup> DHS justified its decision not to use fair and open competition in procuring legal services by citing to “unusual and compelling urgency.”<sup>2</sup> We are concerned the alleged “unusual and compelling urgency” justification is to avoid congressional scrutiny and oversight.<sup>3</sup> We request documents and communications to understand DHS’s use of a sole source, no-bid contract in this matter.

The use of sole source, no-bid contracts put taxpayer dollars at risk of waste and abuse. Therefore, the Federal Acquisition Regulation (FAR) permits deviation from full and open competition only in limited circumstances. One of those circumstances include:

When the agency’s need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.<sup>4</sup>

In this matter, DHS’s sole source, no-bid contract does not appear to meet the “unusual and compelling urgency” justification. DHS has not demonstrated how full and open competition in procuring legal services for DHS would cause serious injury to the government.

DHS has a pattern of relying on sole source, no-bid contracts. DHS’s Inspector General reported just last year that officials at a DHS component, U.S. Immigration and Customs Enforcement, bypassed the normal competitive process to issue an \$87 million sole source

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<sup>1</sup> Contract Summary, PIID 70RDAD23C00000002, *available at* [https://www.usaspending.gov/award/CONT\\_AWD\\_70RDAD23C00000002\\_7001\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_70RDAD23C00000002_7001_-NONE_-NONE-).

<sup>2</sup> *Id.* (Competition Details: Other than Full and Open Competition “URGENCY (FAR 6.302-2)”; *see also* 48 C.F.R. § 6.302-2.

<sup>3</sup> *See* Myah Ward, *Biden Cabinet member lawyers up as GOP threatens impeachment*, POLITICO (Feb. 10, 2023).

<sup>4</sup> 48 C.F.R. § 6.302-2(a)(2).

contract in 2021.<sup>5</sup> Contracting officials at that agency failed to “adequately justify the need for the sole source contract...” and were unable to provide any evidence to the Inspector General that the agency “procured a qualified contractor at the most cost-effective price.”<sup>6</sup> The Committee is concerned that DHS’s reliance on sole source, no-bid contracts is risking taxpayer dollars for political expedience.

To assist the committee in its investigation of the DHS’s use of a sole source, no-bid contract to procure legal services issued on January 26, 2023, please provide the following documents and information as soon as possible, but no later than March 8, 2023:

1. A complete copy of the sole source, no-bid contract referenced above and any attachments incorporated by reference;
2. All documents and communications related to the sole source, no-bid contract referenced above;
3. All documents and communications containing any bid proposal related to the sole source, no-bid contract referenced above;
4. All documents and communications relied on by DHS contracting officials in determining to award the contract as a sole source, no-bid contract instead of going through a competitive bid process;
5. All documents and communications purporting to constitute any “market research” performed by DHS with respect to the sole source, no-bid contract referenced above;
6. All documents and communications containing any final or draft justification and approval document required by the FAR related to the sole source, no-bid contract referenced above; and
7. All documents and communications containing any legal analysis of the sole source, no-bid contract referenced above, including but not limited to any Office of Legal Counsel opinion transmitted to DHS.

Attached are instructions for producing the documents and information to the Committee. If you have any questions, contact the Committee on Oversight and Accountability Majority staff at 202-225-5074.

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<sup>5</sup> See Dep’t of Homeland Security Inspector Gen., *ICE Spent Funds on Unused Beds, Missed COVID-19 Protocols and Detention Standards while Housing Migrant Families in Hotels* (Apr. 12, 2022) (OIG-22-37).

<sup>6</sup> *Id.*

The Honorable Alejandro Mayorkas

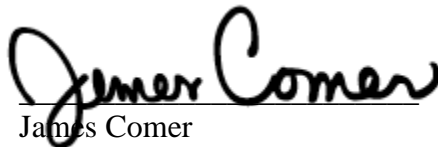
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The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, “any matter” at “any time” under House Rule X, and has jurisdiction over the “[o]verall economy, efficiency, and management of government operations and activities, including Federal procurement.”

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath the name.

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member  
Committee on Oversight and Accountability