

## **Limited Source Justification and Justification for Other than Full and Open Competition**

*"Source Selection Information – see FAR 2.101 and 3.104"*

### **1. Identification of the agency and contracting activity.**

- **Federal agency and contracting activity:** HHS – Centers for Medicare & Medicaid Services
- **Sponsoring organization:** Office of Information Services / Consumer Information & Insurance Systems Group
- **Project Officer information**
  - **Project Officer :** Paul Weiss
  - **Mailing address:** 7500 Security Blvd, Baltimore, MD 21244
  - **E-mail address:** paul.weiss@cms.hhs.gov
  - **Telephone number:** (410) 786-6089

### **2. Nature and/or description of the action being approved.**

This justification supports the award of two out of scope modifications which included the addition of open market items to a GSA Schedule 70 task order with Terremark Federal Group, Inc. The modifications were modification 00013 dated February 11, 2013 and 00014 dated February 17, 2014. The out of scope services that are on schedule can be justified with a Limited Source Justification (LSJ) in accordance with FAR Part 8 because CMS is procuring these services from a GSA Schedule 70 contract. The open market items require a Justification for Other than Full and Open Competition (JOFOC) since the items are not included on a GSA Schedule contract, they are treated as brand-name specific requiring justification in accordance with FAR Part 6.3.

For administrative convenience, CMS is consolidating the information required in the LSJ and JOFOC into one combined document that fully addresses the requirements of each justification.

CMS executed urgently required modification 00013 to add technology infrastructure (computing capacity) and service requirements (on-site support at the Exchange Operations Center (XOC)) not contemplated at time of award. The additional services are required to provide sufficient cloud computing to support the operations of the Federally Facilitated

Marketplace (FFM) and Data Services Hub (DSH). These two projects support the Affordable Care Act (ACA) health care reform implementations.

- **Acquisition purpose and objectives.**

The goal of this effort is to obtain the technology infrastructure and service requirements to provide the cloud computing environment for the FFM and DSH. The FFM is the Federal health care exchange. The DSH is the information conduit to be used to share information among all state exchanges, stakeholders and Federal partner agencies. CMS executed Mod 00014 to obtain technology infrastructure and software requirements in preparation of the anticipated traffic increase for the last month of open enrollment.

One of the key provisions of the ACA is the implementation of Insurance Exchanges. An Exchange is an organized marketplace to help consumers buy health insurance in a way that permits easy comparison of available plan options based on price, benefits, services and quality.

Each Exchange requires a state-of-the-art, Federal Information Security Management Act (FISMA) compliant cloud-based infrastructure that can dynamically scale as needed, and a secure, cloud-based Application Lifecycle Management (ALM) that functions as a component of a Platform as-a-Service (PaaS).

- **Project background.**

The Program Support Center (PSC) provides procurement services for Federal customers. The Center for Consumer Information and Insurance Oversight (CCIIO) sought the assistance of the PSC in 2011 to award a cloud services contract for CCIIO. The PSC competed the effort under GSA Schedule 70 in accordance with FAR 8.405-2 Ordering Procedures for Services Requiring a Statement of Work and awarded this task order to Terremark.

The PSC transferred the order to CMS in 2011. CMS then modified the order several times to add services. The Contracting Officer determined that the modifications were within the scope of the order.

The contracting officer considers the work contained in the subject modifications to be out of scope and requiring this justification. Both parties could not have contemplated that this additional capacity and the required on-site services were required. This additional capacity was not included in the original task order, and therefore

the addition of the work is justified and approved with this Limited Sources Justification.

CMS recognized that some of the required services and products were not included on the GSA schedule. Therefore CMS determined that it would add the open market items to the task order in accordance with the process described at FAR 8.402 (f). This justification is necessary in order to satisfy FAR Part 6 requirements for these open market items now that the price list is finalized and the open market services are known.

The value of the Modification 00013 is \$890,383.94

Mod 13: The order contains an adjustment to CLIN 022. CLIN 022 was to purchase Cloud Platform. The services were previously awarded under Modification 00012. After execution of Modification 00012, Terremark realized the quantity executed was not needed. Therefore, they adjusted the quantities through Modification 00013. The quantity was adjusted from 104 to 22. CMS and the contractor calculated the applicable credit due as a result and Terremark applied \$34,440 to Modification 00013. The net increase to the contract value is \$890,383.94. The total value of the services described below is \$924,823.94. The difference between the value of the added services and the total price increase reflects the application of the credit.

The value of the Modification 00014 is \$1,514,012.02.

**3. Description of the supplies or services required to meet the agency's needs (including the estimated value).**

- **Project title:** Cloud Computing Services
- **Project description**
- **Mod 00013:**
  - \$482,342.16, GSA Schedule
  - \$442,481.78, Open Market
  - **\$924,823.94, TOTAL – Mod 00013**

CMS required additional cloud computing services and support over and above that contemplated at time of award. CMS added additional services from Terremark's GSA schedule contract, specifically: Cross-Connect (Fiber-SM) and onsite XOC Support. Mod 13 also required certain open market services that are not available on GSA schedule. This justification also covers the acquisition of services that are brand-name or peculiar to one manufacturer. The use of such descriptions is essential to the Government's requirements thereby precluding consideration of

products manufactured by other companies. The following open market items were added by modification 00013 as required to improve performance of the Marketplace:

Service/Product Description	Total Cost (cost x quantity x mos)
CISCO ASA 5500 SSL VPN 500U LIC	\$ 39,855.44
CISCO ASA 5585 FIPS OPACITY KIT	\$ 1,328.74
PhoneFactor Multi-Factor Authentication (includes 150 licenses)	\$ 975.00
10GBASE-LR-SFP Module	\$ 9,268.40
10GBASE-SR-SFP Module	\$ 1,154.20
LMVM Expansion per 40Ghz/160GB RAM	\$ 98,700.00
Compute : Private Edition Infrastructure Compute Capacity (Large Memory VM) - 160GB MEM, 40Ghz (480 GB Min)	\$ 291,200.00
	\$ 442,481.78

- Mod 14:
  - \$784,804.02, GSA Schedule
  - \$729,208.00, Open Market
  - **\$1,514,012.02, Total – Mod 00014**

CMS added additional services and software from Terremark's GSA schedule contract, specifically: Compute: Federal E-Cloud - Dedicated Cloud Service: Storage, Professional Services – Hosting, Red Hat Enterprise Linux Server, Premium Support, JBoss Enterprise SOA Platform, Managed, 64Core Premium Support, Red Hat Middleware Services, Trend Micro Deep Security Compliance pack, MarkLogic Server Enterprise Edition Base Server Production (Perpetual), Additional 50 VMs Managed Services, and 24x7 Managed Services Upgrade for Production/Implementation (50 VMs). The value of the services added from Terremark's GSA schedule contract was \$784,804.02.

CMS also required certain open market services that are not available on GSA schedule. This justification also covers the acquisition of services that are brand-name or peculiar to one manufacturer. The use of such descriptions is essential to the Government's requirements thereby precluding consideration of products manufactured by other companies. The following open market items were added by modification 00014 as required to improve performance of the Marketplace:

Service/Product Description	Total Cost (cost x quantity x mos)
Professional Services - Senior Data Architect - Per Hour (after hours) 80 hours Carahsoft Technology Corporation - PS-SDA	\$ 30,160.00
Professional Services - Senior Data Architect - Per Hour (regular business hours) 125 hours Carahsoft Technology Corporation - PS-SDA	\$ 36,348.00
Compute : Private Edition Infrastructure Compute Capacity (Large Memory VM) - 160GB ME	\$ 83,200.00
Custom LMVM 1 Month of service	\$ 312,000.00
Custom Storage Buffer for replication for 1 month of service	\$ 30,000.00
Custom Storage 1 month of service	\$ 120,000.00
LMVM Expansion per 40Ghz/160GB RAM	\$ 117,500.00
	\$ 729,208.00

- **Requirement type.**

- ☐ Support services (non-research & development)
- ☐ Supplies/equipment
- ☒ Information technology (IT)
- ☐ Other (specify): \_\_\_\_\_

- **Type of action.**

- ☐ New requirement
- ☐ Follow-on
- ☒ Other (specify): \_\_\_\_ Modification to add out of scope services and open market items

- **Proposed contract/order type.**

- ☒ Firm-fixed-price
- ☐ Time and materials
- ☐ Indefinite delivery (specify whether indefinite quantity, definite quantity, or requirements): \_\_\_\_\_
- ☐ Other (specify): \_\_\_\_\_

- **Acquisition identification number:**

Contract: GS-35F-0073U

Order: HHSP-233-2011-00177G

- **Total estimated dollar value and performance/delivery period.**

The value of modification 0013 is \$890,383.94. The period of performance of the order will remain unchanged.

The value of modification 0014 is \$1,514,012.02. The period of performance of the order will remain unchanged.

**4. Identification of the justification rationale [see 8.405-6(a) and (b)] and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.**

**a. Acquisition authority.**

This acquisition is conducted under the authority of the Multiple Award Schedule Program. Consideration of schedule contractors will be restricted to fewer than the number required by Federal Acquisition Regulation (FAR) 8.405-6(a)(1)(i)(A) (i.e., fewer than three FSS contractors). There is an urgent and compelling need for the services and following the ordering procedures will result in unacceptable delays.

Additionally, CMS conducted portions of the modifications using the authority of 41 United States Code (U.S.C.) 253(c)(1) as set forth in Federal Acquisition Regulation (FAR) 6.302-1- Only one responsible source and no other supplies of services will satisfy agency requirements.

**b. Demonstration of the proposed contractor(s) unique qualifications to provide the required supply or service.**

- **Name and address of the proposed contractor(s).**

Terremark Federal Group, Inc., One Biscayne Tower, 2 S. Biscayne Boulevard, Suite 2800, Miami, FL 33131-1800

- **Nature of the acquisition and proposed contractor(s) unique qualifications.**

CMS could not have anticipated the need to add these additional services (which are comprised of services that are on Terremark's GSA contract and open market services that are not on GSA contract). The modification was needed to obtain on-site support at the XOC to improve efficiencies and communications with other Exchange contractors. CMS experienced a surge of traffic on the healthcare.gov website and exceeded the maximum limit on the number of concurrent users. Therefore, CMS also needed to urgently add the computing capacity in these modifications.

There is insufficient time to competitively procure the needed services. A procurement action like this would normally take about eight to 12 weeks to procure. CMS needed to immediately improve the system capacity. CMS believed if the additional services were not added urgently, the Exchanges would not function as designed and citizens would continue to have issues using the Marketplace.

This justification also approves the addition of open market items. The task order is a General Services Administration (GSA) Schedule 70 Information Technology Services Multiple Award Schedule (MAS) task order. The GSA competes and awards MAS contracts. Therefore all MAS orders placed in accordance with the procedures described at Federal Acquisition Regulation (FAR) 8.4 are considered to have been issued under full and open competition. GSA has also determined that the pricing for items and fixed

price services on the MAS is fair and reasonable. Therefore, when ordering fixed price services that are included in the Schedule 70 contract, Contracting Officers do not need to seek competition outside of the Schedule 70 contracts nor make a separate determination of price reasonableness.

FAR 8.4 also provides that ordering agencies may add items that are not included on the MAS. These items are defined as open market items. FAR 8.4 permits ordering agencies to add open market items if the agency follows pertinent acquisition regulations, including the requirement to obtain full and open competition described in FAR 6. In accordance with FAR 6.3, this document provides the required documentation and approval of the non-competitive acquisition from Terremark of the brand-name open market items described herein.

**5. Determination by the ordering activity Contracting Officer that the order represents the best value consistent with FAR 8.404(d).**

For both modifications, the Contracting Officer performed price analysis on the GSA schedule pricing proposed by the contractor. The Contracting Officer requested discounts to the already-negotiated GSA pricing. The Contracting Officer requested the contractor to provide detailed pricing information from the GSA schedule price list illustrating how the contractor derives its proposed pricing for the cloud services. For the labor portions of the required services, the Contracting Officer required the contractor to provide the estimated hours and GSA schedule labor categories proposed to perform the services. The Contracting Officer performed price analysis of these proposed rates and obtained a technical analysis from the CMS program office to determine if the quantities and types of labor were realistic to perform the required services. Based on the analysis described above, the Contracting Officer determined the total proposed price was fair and reasonable.

In determining the price to be fair and reasonable for the open market items, the Contracting Officer reviewed the commercial price list from the offeror in accordance with FAR 15.402. Consistent with FAR 15.404-1(b)(2)(iv), the Contracting Officer has obtained established catalog prices to determine price reasonableness. In accordance with FAR 15.403-1(b)(3) certified cost/pricing data is not required since the items being acquired are considered commercial items as defined in FAR 2.101. The Contracting Officer compared the commercial price list, the discounted prices and the proposed prices to determine price reasonableness.

**6. Description of the market research conducted among schedule holders and the results, or a statement of the reasons market research was not conducted.**

As discussed above, there was insufficient time to follow normal competitive procedures. However, CMS believes it is most reasonable to have the current contractor perform this work as they are in the best position to add the required capacity as quickly as possible to their cloud environment. In regards to the open market items, market research confirmed the open market items are not available on schedule. CMS believes the items are critically needed to provide the required cloud services.

**7. Any other facts supporting the justification.**

The Health Care Reform efforts this task order supports affect a significant portion of the country's citizens. CMS is not in a position to take the time to compete the added capacity requirements and successfully implement the exchange program as mandated by law.

CMS should maintain the integrity of Terremark's Federal agency-only infrastructure. Terremark offers a readily available private Federal Cloud that is hosted in a datacenter purposed specifically and exclusively to house Federal IT Infrastructure (Tier III + datacenter in Culpeper, VA - 60 miles+ from DC). It is not feasible for CMS to bring in Open Market services from another contractor to the Terremark infrastructure without negatively impacting IT security awareness/readiness.

As Terremark's solution to CMS is built on leveraging best of breed technology from HP, IBM, VMware and Cisco to achieve unmatched flexibility and control, Terremark is better suited to provide the Open Market services to CMS and ensuring compatibility and support for transition out activities.

Obtaining the open market services from another source would negatively impact on-going support and problem resolution as additional time will be required to troubleshoot.




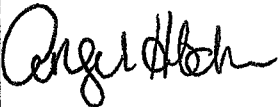

8. Statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

a. Removal of barriers to competition. N/A

b. Listing of sources, if any, that expressed an interest, in writing, in the acquisition. N/A

9. Program office certification

This is to certify that the portions of this justification that have been developed by the undersigned program office personnel, including supporting information and/or data verifying the Government's minimum needs or requirements, or other rationale for limited sources, are accurate and complete.

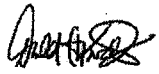
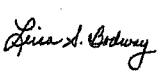

Official	Name & Title	Signature	Date
Contracting Officer's Representative	Paul Weiss		2/25/14
Contracting Officer's Representative's Immediate Supervisor	Angela Hitchcock		2/25/14
Head of the Sponsoring Program Office	<del>David Nelsen</del> Janet Vogel		2-26-14

# 10. Contracting Officer Certification


This is to certify that the justification for the proposed acquisition has been reviewed and that to the best of my knowledge and belief the information and/or data provided to support the rationale and recommendation for approval is accurate and complete.

Official	Name & Title	Signature	Date
<b>Contracting Officer</b>	Andrew Mummert	Andy Mummert Digitally signed by Andy Mummert DN: cn=Andy Mummert, o=OAGM, ou=CMS, email=andrew.mummert@cms.hhs.gov, c=US Date: 2014.02.28 16:32:03 -05'00'	

# 11. Chief of the Contracting Office and Head of the Contracting Activity signature(s):

Official	Name & Title	Signature	Date
<b>Cognizant Division Director</b>	Andrew Mummert, Director, Division of Information Systems Contracts	Andy Mummert Digitally signed by Andy Mummert DN: cn=Andy Mummert, o=OAGM, ou=CMS, email=andrew.mummert@cms.hhs.gov, c=US Date: 2014.02.26 16:32:33 -05'00'	
<b>Cognizant Group Director</b>	Don Knode, Director, Information Technology Contracts Group		Date: 2014.03.01 08:36:16 -05'00'
<b>Director, Division of Policy Workforce and Systems</b>	Leisa Bodway, Director, Division of Quality Assurance and Technology	 Digitally signed by leisa.bodway2@cms.hhs.gov DN: cn=leisa.bodway2@cms.hhs.gov, c=US Date: 2014.03.03 20:39:11 -05'00'	
<b>Head of the Contracting Activity</b>	Daniel F. Kane, Director, Office of Acquisition and Grants Management		3/6/14

**12. Competition Advocate signature:**

Official	Name & Title	Signature	Date
Competition Advocate	Tim Love, Chief Operating Officer		2/6/14