

**Justification & Approval
For Other than Full and Open Competition**

EXCEPTION TO FAIR OPPORTUNITY ON A MULTI-AWARD IDIQ CONTRACT

As a legislative branch agency, the Library is subject to the competition and advertising requirements of 41 U.S.C. § 6101. Like the Competition in Contracting Act and the FAR, 41 U.S.C. § 6101 does not require competition when a contracting officer certifies that only one source or brand-name item is available, when dictated by public exigency, or when otherwise authorized by law.

This document sets forth the justification and approval for award of a contract or order by means providing for other than full and open competition per 41 U.S.C. § 6101, LCR 7-210, and, as applicable, FAR 6.302, FAR 13.106-1, FAR 8.405, and FAR 16.505. Contracting without competition shall not be justified on the basis of a lack of advance planning or concerns related to availability of funds.

This form shall be used to support instances where competition will be limited to a single source, a limited number of sources, including where a brand name product is required.

Part 1 – Identification

1. Contracting Agency and Activity: Library of Congress, National Library Service for the Blind and Print Disabled

2. Nature of Action Being Approved

- ☐ Contract (or modification)
- ☒ LoC or Leg Branch Order
- ☐ GSA Schedule or GWAC
- ☐ Other

Requisition Number: NLS20210080
Contractor (or Brand Name): Zoomax (USA), Inc.
Estimated Value (Base and all options): XXXXXXXXXX
Period of Performance: 04/01/2021 – 03/31/2021

3. Description of Supplies or Services Required to Meet Library Needs

The Library requires the following supplies or services: The Library of Congress seeks to purchase 500 braille ereader pilot units from Zoomax USA, Inc. The braille ereader units are a new technology being pioneered by NLS along with its contractor partners to assist blind and print disabled NLS patrons within the United States as well as abroad. In addition to these braille ereader pilot units, the Library of Congress is also purchasing 6 agile sprints related specifically to these units.

Part 2 – Program Office Justification & Approval

4. Authority for Contracting Without Competition

Over \$250,000

For this requirement over \$250,000, under FAR part 6, the basis for contracting without providing for full and open competition is:

- ☐ There is only one responsible source and no other supplies or services will satisfy Library requirements. 41 U.S.C. § 6101(b)(2)(C); FAR 6.302-1.
 - ☐ Library's minimum needs can only be satisfied by contractor's unique capabilities or products. FAR 6.302-1(b)(1).
 - ☐ Source controls copyrights, patents, raw materials, or secret processes cannot be acquired otherwise, or similar circumstances. FAR 6.302-1(b)(2).
 - ☐ Other exception identified in FAR 6.302-1:
- ☐ There is such unusual & compelling urgency that the Government would be seriously injured if competition is not limited. 41 U.S.C. § 6101(b)(2)(B); FAR 6.302-2. Option years are not permitted.
- ☐ Source is expressly authorized or required by statute (e.g., AbilityOne, UNICOR, GPO, GSA Public Buildings Service, Appropriations Act, etc.) per 41 U.S.C. § 6101(b)(1) and FAR 6.302-5:
- ☐ Other basis authorized in 41 U.S.C. § 6101(b) or FAR part 6.302:
- ☐ Library's needs can only be satisfied by a brand-name product or item which is essential to the Government's requirement. FAR 6.302-1(c).
- ☐ The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

Up to and including \$250,000

For this requirement up to \$250,000, using simplified acquisition procedures under FAR part 13, the basis for contracting without providing for full and open competition is:

- ☐ Only one responsible source is reasonably available to meet Library requirements. 41 U.S.C. § 6101(b); FAR 13.106-1.
 - ☐ Product or service is reasonably available from only one source.
 - ☐ Source controls copyrights, patents or other exclusive licensing arrangements.
 - ☐ Urgent circumstances; only one source can reasonably deliver by required date. Option years are not permitted.
 - ☐ Source is expressly authorized or required by statute:
- ☐ Library's needs can only be satisfied by a brand-name product
- ☐ The Product is listed the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

GSA Schedule Order

For this GSA schedule order under FAR part 8, the basis for not competing among GSA schedule-holders and/or specifying a brand name product or item is:

- ☐ An urgent and compelling need exists, and following GSA procedures would result in unacceptable delays. FAR 8.405-6(a)(1)(i)(A).
- ☐ Only one GSA source is capable of fulfilling the requirement at the level of quality required because the supplies or services are unique or highly specialized. FAR 8.405-6(a)(1)(i)(B).
- ☐ In the interest of economy and efficiency, the new work is a logical follow-on to an original order that was placed competitively among GSA schedule-holders (i.e., the original order was not sole-source or limited-source.) FAR 8.405-6(a)(1)(i)(C).
- ☐ Library's needs can only be satisfied by a brand-name product
- ☐ The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

Order Under Multiple Award Indefinite-Delivery Contract or GWAC

For this order under FAR subpart 16.5, the basis for contracting without providing for full and open competition is:

- ☐ The need is so urgent fair opportunity would result in unacceptable delays. 41 U.S.C. § 6101(b)(2)(C) and FAR 16.505(b)(2)(i)(A).
- ☒ The Library's minimum needs can only be satisfied by contractor's unique capabilities or products. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(i)(B).
- ☐ A logical follow-on order in the interest of economy and efficiency. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(C).
- ☐ To satisfy a minimum guarantee. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(D).
- ☐ Authorized or required by statute. 41 U.S.C. § 6101(b)(1) and FAR 16.505(b)(2)(E).
- ☐ The Library's minimum needs can only be satisfied by a brand-name product or item which is essential to the Government's requirement. 41 U.S.C. § 6101(b)(2)(B) and FAR 16.505(a)(4)(i).
- ☐ The Product is listed on the Library of Congress Enterprise Architecture Repository (LCEAR) database (Attach applicable IT Standard Data Sheet)

5. Rationale for Contracting Without Competition

We are authorized to limit competition on the basis of the citation in section 4 because: The Library of Congress has two competitive multi-award IDIQ contracts for the development and production of braille ereader units for use by NLS patrons. The contract holders are Zoomax and Humanware.

At the moment, Humanware has had orders placed for more than 2000 pilot units while Zoomax has had only 1500 ordered to far. The program is entering into the pilot phase now that the initial batches of products have arrived and are being distributed out to NLS patrons. In order to have a statistically reasonable basis of comparison between the two product lines, a minimum of 2000 units is required. In order for the Zoomax pilot to be comparable, a minimum of 500 additional pilot units must be ordered.

Once full scale production orders for the braille ereader units begin in earnest, NLS patron preferences shall be one of the factors that contribute to the fair opportunity competitions. However, in order to obtain fair data on NLS patron preferences, a minimum of 2000 units is required from both businesses.

In addition to the above, a minimum of 2000 pilot units is required for NLS to examine and understand the level of effort that will be required to service and maintain each ereader. The level of effort for conducting regular maintenance of the device by local (volunteer) NLS network library staff must be assessed in order to determine if there is a difference between the devices in this respect. In order to obtain fair data on the servicing and maintenance of the device a minimum of 2000 units is required from both businesses.

Since only Zoomax can provide the Zoomax pilot units, the Library's minimum needs for statistically relevant and equal pilot testing can only be satisfied by contractor's unique capabilities or products can only be obtained by issuing an order directly to Zoomax without providing Fair Opportunity to both contract holders.

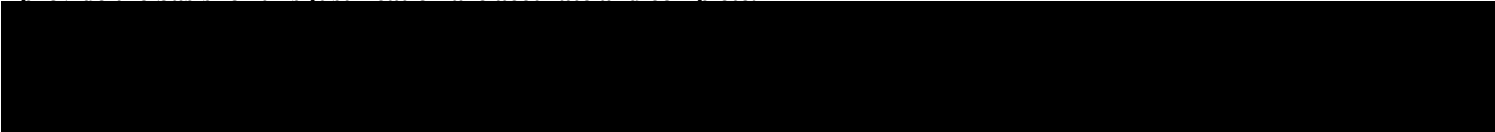
Finally, the agile sprints being purchased are related solely to the Zoomax products. No other business can provide these sprints on the Zoomax products other than the manufacturer. As a result, only Zoomax can provide the additional agile sprints that the Library requires.

6. Actions to Overcome Barriers to Competition Before Subsequent Contract Is Required

To increase competition, we will: Once the pilot phase has been completed, fair opportunity will be given for future orders (beginning in FY 22) to both award holders. NLS user feedback is required to determine patron preferences, and this data will not be available until FY 22 at the minimum. As a result, future orders for braille ereader units placed in subsequent fiscal years will provide fair opportunity. This schedule and operational reality may change as the data set develops.

7. Program Office Certification

I certify that the description of the Government's minimum needs, schedule requirements, and technical information that provide the basis for this justification are accurate and complete.



Part 3 – Contracting Officer Determinations & Certification

8. Efforts to Solicit from As Many Potential Sources As Practicable

Unless a justification is based on FAR 6.302-2, Unusual and compelling urgency, contracting officers shall post justifications for other than full and open competition, including brand name justifications, to the Contract Opportunities website on beta.sam.gov (or eBuy for Brand Name Justifications under FAR Part 8) prior to requesting a proposal or otherwise entering into negotiations.

- ☐ Advance notice will be published in beta.sam.gov for 15 days before a contract is awarded. FAR 5.203(a).
- ☐ Advance or concurrent notice will be published in beta.sam.gov for a reasonable time for commercial items FAR 5.203(a) and 12.204(b).
- ☒ Advance notice will not be published because the action meets the following FAR exception:
- ☐ Notice would compromise national security. FAR 5.202(a)(1).
- ☐ Unusual and compelling urgency; notice period would seriously injure Government. FAR 5.202(a)(2).
- ☐ Expressly authorized or required to be made through another Government agency. FAR 5.202(a)(4).
- ☒ Order will be placed against an IDIQ contract awarded under FAR 16.5. FAR 5.202(a)(6).
- ☐ Order will be placed against GSA schedule or other competitively-awarded contract. FAR 5.202(a)(11).
- ☐ Other:
- ☐ Advance notice will not be published per 41 U.S.C. § 6101; see attached deviation from the FAR per LCR 7-210 § 3.A.

We made the following efforts to interest potential sources in this award: Zoomax and Humanware

9. Listing of Sources That Expressed Interest in Writing

The following sources expressed interest in this award: Zoomax and Humanware

10. Additional Information

The following additional information is relevant to this justification and approval: N/A

11. Contracting Officer Determination that Price Is Fair and Reasonable

As explained in detail below, I have determined that the prices for this contracting action are fair and reasonable based on comparison of the prices to the following (see FAR 15.404-1(b)(2)):

- | | |
|---|--|
| <input type="checkbox"/> Historical prices paid by the Government | <input type="checkbox"/> Published competitive price lists |
| <input type="checkbox"/> Library's Independent Government Estimate | <input type="checkbox"/> Prices obtained through market research |
| <input checked="" type="checkbox"/> Other: Prices established in an IDIQ contract | <input type="checkbox"/> Prices obtained through competitive proposals |

The following analysis (based on attached pricing information) supports my determination: The order placed shall utilize prices established in the IDIQ contract. Those prices have been determined to be fair and reasonable at the time the IDIQ was awarded.

12. Contracting Officer Determination of Responsibility

- ☒ Checked System for Award Management (or will check in the case of competitive proposals for a brand name product)

13. Contracting Officer Determination of Best Value

I have determined that this action represents the best value to the Government because: Pricing can be determined to be fair and reasonable. In addition, the additional pilot units are required so that the Library may conduct pilot testing and obtain data from NLS patrons and test users with similar numbers from both Zoomax and Humanware distributed amongst NLS patrons to obtain apples to apples data.

14. Contracting Officer Certification

I certify that, to the best of my knowledge and belief, this justification is accurate and complete. For those actions up to \$700,000, I approve contracting without competition for this requirement.

James R. Robinson

Name

James R. Robinson

Signature

03/17/2021

Date