

**JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN
COMPETITION
(41 U.S.C. 3304(a)(1))**

J&A No.:22-01-EX

Pursuant to the requirements of the Competition in Contracting Act (CICA) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.3 and in accordance with the requirements of FAR 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR 6.303-2 as follows:

1. **Agency and Contracting Activity.** The Department of Homeland Security, Federal Emergency Management Agency (FEMA) proposes to issue a contract on a basis other than full and open competition.
2. **Nature and/or Description of the Action being Approved.**
 - (a) **Nature of action:** To initiate a purchase order for subscription-based licenses for Mental Health Application for 12-months. This award continues current services for licenses support.
 - (b) **Name and address of the contractor.** Headspace, 2415 Michigan Ave, Santa Monica, CA 90404.
 - (c) **Contract type** Firm Fixed Price.
 - (d) **Estimated total value (including options).** The estimated value of this contract is \$192,159.00. Provide breakdown as shown below:

Period	Unit	Price	Total
Base Year	23,292 each	\$8.25	\$192,159.00

Total \$192,159.00

Note: The service will continue from purchase order 70FA3021P000000041 for \$174,690.00

- (e) **Type of funding:** Operational support funds.
- (f) **Year of funding:** FY22.
- (g) **Solicitation number:** 70FA3022B000000021.

(f) Background information about the requirement.

FEMA's mission is helping people before, during, and after disasters. FEMA has a dedicated workforce that works tirelessly to provide exceptional, quality, and consistent mission-enabling products and services that the American public rely on us to deliver. FEMA is responsible for preparing for, protecting against, responding to, recovering from and mitigating against the risk of natural disasters, acts of terrorism, or other man-made disasters. To maintain a workforce physically and mentally prepared to respond to these major events, FEMA offers many work-life services that support the efforts of everyone in the workplace to achieve success both at work and home to include, but not limited to, workplace flexibility, health and wellbeing, caring for dependents, financial/legal support, community involvement, culture change, and paid and unpaid time off. To supplement the work-life services FEMA already offers, the Office of Chief Administrative Officer seeks to purchase a mental health application, which focuses on meditation and mindfulness, to be available for use by all FEMA employees nationwide.

FEMA intends to procure mental health licenses in support of Agency's employees. The requirement was competed in 2021 with only one contractor meeting the Agency's requirement due to compliance of Section 508 of the Americans with Disabilities Act. This sole source justification and approval continues services while another requirement is developed and competed full and open.

3. Description of Supplies/Services.

The requirement is to procure 23,292 licenses for the mental health application licenses at a total cost of \$192,159. The applications licenses will provide subscription-based access to a mental health application that offers online mindfulness and meditation services for FEMA employees. The goal is to provide FEMA employees the ability to receive unlimited access to hundreds of exercises on everything from stress to sleep to focus and anxiety with the intent of reducing employee stress and improving the well-being, distress and job strain of FEMA employees.

The Mental Health Application must be accessible via a mobile application that must meet the following capabilities:

- Is accessible on the iOS platform
- Provide meditation and mindfulness content that is updated weekly
- Has an administrative dashboard to manage enterprise subscriptions
- Has an administrative dashboard show usage
- Is able to provide aggregate reporting on usage
- Is capable of web-domain whitelisting capability (@fema.dhs.gov) to easily allow new registrants to gain access to the enterprise subscription
- Meets ADA Section 508 compliance or equivalent
- Must not sell or provide FEMA data to third parties
- Must not solicit FEMA accounts with promotional partner offers

4. Identification of Statutory Authority Permitting Other Than Full and Open Competition.

The statutory authority permitting other than full and open competition is 41 U.S.C.3304(a)(1) implemented by the FAR Subpart 6.302-1 entitled “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.”

5. Demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.

(a) Rationale for using the authority cited in section 4 of the J&A.

The incumbent contractor has the capability to meet the Government’s privacy standards. With regards to Section 508, the incumbent contractor is Web Content Accessibility Guidelines (WCAG) Level A compliant and was WCAG Level AA compliant by the end of Q1 2022.

WCAG are part of a series of web accessibility guidelines published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), the main international standards organization for the Internet.

They are a set of recommendations for making Web content more accessible, primarily for people with disabilities- but also for all user agents, including highly limited devices, such as mobile phones. The WCAG standards represent a higher level of accessibility than Section 508 standards. The incumbent met and exceeded the requirement to be compliant with Section 508 of the Americans with Disabilities Act. The incumbent is the intellectual property holder of their licenses.

Two vendors have the capability to meet the Government’s privacy standards, but most likely would not meet Section 508 standards.

WCAG and 508 compliances are important to the Agency and the Government will be harmed if the supply or service is not acquired from the incumbent.

The follow-on contract will be full and open. This J&A provides an interim solution and fills the gap for continuous service while the follow-on contract is being developed and a solicitation implemented. The follow-on contract will have the same requirement. The synopsis of the current requirement fulfills the regulatory posting requirement but also allows vendors to know what the Agency's needs are and an opportunity to obtain WCAG and 508 standards.

6. Description of Efforts Made to Ensure that Offers are Solicited from as Many Potential Sources as is Practicable.

In accordance with FAR 5.101(a)(1), the current action will be synopsized, and notice will be posted on the Government Point of Entry, the website (www.sam.gov). Therefore, interested and qualified sources will have the opportunity to express an interest in this requirement. In addition, the follow-on effort will be competed using full and open competition (competitive procedures of FAR 13.5).

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable.

Proposals obtained will be evaluated for cost/price reasonableness and realism based on the techniques described in FAR 15.404-1. Price analysis shall be used when certified cost or pricing data are not required.

The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications.

8. Description of Market Research.

For the previous contract, FEMA conducted market research on DHS Strategic Source Vehicles First Source II and 8a STAR. Of the 39 First Source II vendors, seven responded and stated they do not currently have a commercially available Meditation and Mindfulness applications and are not re-sellers of such licenses. Of the 25 8a STARS II vendors, two vendors responded. One vendor stated they have access to a similar website which would be offered on a per member/per month basis, however, their website is for therapy-based services which not in scope of FEMA's requirement. The second vendor stated they do have access and are authorized re-sellers of a series of other apps.

9. Any Other Facts Supporting the Use of Other Than Full and Open Competition.

Section 508 Applicable EIT Accessibility Standards

36 CFR 1194.21 Software Applications and Operating Systems, applies to all EIT software applications and operating systems procured or developed under this work statement including but not limited to GOTS and COTS software. In addition, this standard is to be applied to Web-based applications when needed to fulfill the functional performance criteria. This standard also applies to some Web based applications as described within 36 CFR 1194.22.

36 CFR 1194.22 Web-based Intranet and Internet Information and Applications, applies to all Web-based deliverables, including documentation and reports procured or developed under this work statement. When any Web application uses a dynamic (non- static) interface, embeds custom user control(s), embeds video or multimedia, uses proprietary or technical approaches such as, but not limited to, Flash or Asynchronous Javascript and XML (AJAX) then 1194.21 Software standards also apply to fulfill functional performance criteria.

36 CFR 1194.24 Video and Multimedia Products, applies to all video and multimedia products that are procured or developed under this work statement. Any video or multimedia presentation shall also comply with the software standards (1194.21) when the presentation is through the use of a Web or Software application interface having user controls available.

36 CFR 1194.31 Functional Performance Criteria, applies to all EIT deliverables regardless of delivery method. All EIT deliverable shall use technical standards, regardless of technology, to fulfill the functional performance criteria.

36 CFR 1194.41 Information Documentation and Support, applies to all documents, reports, as well as help and support services. To ensure that documents and reports fulfill the required 1194.31 Functional Performance Criteria, they shall comply with the technical standard associated with Web-based Intranet and Internet Information and Applications at a minimum. In addition, any help or support provided in this work statement that offer telephone support, such as, but not limited to, a help desk shall have the ability to transmit and receive messages using TTY.

Section 508 Applicable Exceptions

Exceptions for this work statement have been determined by DHS and only the exceptions described herein may be applied. Any request for additional exceptions shall be sent to the COTR and determination will be made in accordance with DHS MD 4010.2. DHS has identified the following exceptions that may apply: 36 CFR 1194.3(b) Incidental to Contract, all EIT that is exclusively owned and used by the contractor to fulfill this work statement does not require compliance with Section 508. This exception does not apply to any EIT deliverable, service or item that will be used by any Federal employee(s) or member(s) of the public. This exception only applies to those contractors assigned to fulfill the obligations of this work statement and for the purposes of this requirement, are not considered members of the public.

Section 508 Compliance Requirements

36 CFR 1194.2(b) (COTS/GOTS products), When procuring a product, each agency shall procure products which comply with the provisions in this part when such products are available in the commercial marketplace or when such products are developed in response to a Government solicitation. Agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meet some but not all of the standards, the agency must procure the product that best meets the standards. When applying this standard, all procurements of EIT shall have documentation of market research that identify a list of products or services that first meet the agency business needs, and from that list of products or services, an analysis that the selected product met more of the accessibility requirements than the non-selected products as required by FAR 39.2. Any selection of a product or service that meets less accessibility standards due to a significant difficulty or expense shall only be permitted under an undue burden claim and requires authorization from the DHS Office of Accessible Systems and Technology (OAST) in accordance with DHS MD 4010.2.

10. A Listing of the Sources, if Any That Expressed, in Writing, an Interest in the Acquisition.

At this time, no potential sources have expressed interest in this action. However, the Agency intends to synopsise, and notice will be posted on the Government Point of Entry, the website (www.beta.sam.gov). Therefore, all interested and qualified sources will have the opportunity to express interest in this requirement. FEMA intends to make this justification publicly available

on beta.sam.gov within 14 days after award of the contract modifications.

11. A Statement of the Actions, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required.

To maximize competition for the follow-on effort, FEMA will use full and open competition, and all interested small business concerns may be able to compete accordingly.

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12. Contracting Officer's Certification. I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

Contracting Officer

Date

13. Technical/Requirements Personnel Certification. I certify this requirement meets the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.

Technical Representative

9/12/2022

Date

APPROVAL:

Contracting Officer

Date

Note: The Contracting Officer is the final approving official when the action does not exceed \$700K and must also sign the justification when the contract is awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

Procuring Activity Advocate for Competition

Date

Note: The Procuring Activity Advocate for Competition (PAAC) is the final approving official when the action exceeds \$700K but is less than or equal to \$13.5M and must also sign the justification when the contract is awarded under FAR 6.302-7 *Public Interest*, regardless of dollar amount. Approval by the PAAC is not required if the J&A is reviewed and approved by an official designated by the Component who meets either of the criteria at FAR 6.304(a)(3)(i) or (ii). However, this exception does not apply to justifications citing FAR 6.302-7 and exceptional circumstances applying to actions above the simplified acquisition threshold that cite FAR 6.302-2 *Unusual and Compelling Urgency* as the authority.

Head of Contracting Activity

Date

Note: The HCA is the approving official when the action exceeds \$13.5M but is less than or equal to \$68M (less than or equal to \$93M for USCG) and must also sign the justification when the contract is awarded under FAR 6.302-7 *Public Interest*, regardless of dollar amount. The HCA is not required to approve the justification if the Component PAAC meets either of the criteria at FAR 6.304(a)(3)(i) or (ii). However, this exception does not apply to justifications citing FAR 6.302-7 and exceptional circumstances applying to actions above the simplified acquisition threshold that cite FAR 6.302-2 *Unusual and Compelling Urgency* as the authority.

Chief Procurement Officer

Date

Note: The Chief Procurement Officer is the final approving official when the action exceeds \$68M (exceeds \$93M for USCG) and must also sign the justification when the contract is awarded under FAR 6.302-7 *Public Interest* or the justification results in the invocation of the exception to the Buy American statute at FAR 25.103(b)(2) or 25.202(a)(2), regardless of dollar amount. When CPO approval is required **only** because FAR 25.103(b)(2) or 25.202(a)(2) is applicable to the procurement, the J&A shall be routed for review and approval using the Buy American Reporting Tool in OCPO's Enterprise Reporting Application.