# Justification for Other Than Full and Open Competition

U.S. Department of Housing
and Urban Development
Office of the Chief Procurement Officer

## PART 1 - PROGRAM OFFICE RECOMMENDATION

I recommend the use of other than full and open competition for the acquisition of [***describe services or supplies***]
Closing Agent Services for the State of Oklahoma.

Negotiations should be conducted with the following source(s) only [***provide names, addresses and points of contact; continue on separate sheets as needed***]:
Luna & Luna, LLP, 1505 Northwest Highway, Garland, TX 75041, Scott Luna

The estimated cost of this acquisition is: $ **560,000**

The statutory exception which allows this use of other than full and open competition is [***select one***]:

- ☐ Only one responsible source and no other supplies or services will satisfy agency requirements - 41 USC 253 (c)(1) (see FAR 6.302-1)
- ☒ Unusual and compelling urgency - 41 USC 253 (c)(2) (see FAR 6.302-2)
- ☐ Industrial mobilization; engineering, developmental or research capability; or expert services - 41 USC 253 (c)(3) (see FAR 6.302-3)
- ☐ Authorized or required by statute - 41 USC 253 (c)(5) (see FAR 6.302-5)
- ☐ Public interest (***NOTE: requires Secretarial approval and Congressional Notification***) - 41 USC 253 (c)(7) (see FAR 6.302-7)
- ☒ A description of the circumstances which support the use of the above statutory authority is attached and included as Exhibit 1 to this justification.

**Program Office Certification.** I certify that the information contained in this justification is accurate and complete to the best my knowledge and belief.

| Head of Program Office [***name***] | Title/Name of Office: | |
|---|---|---|
| Nancy J. Sullivan | Director, REO | |
| Signature: Nancy J. Sullivan | Date: 7/1/09 | For additional information contact: Judy Wasmuth |

## PART 2 - CONTRACTING OFFICER REVIEW AND CERTIFICATION

***Provide additional justification and comments here. Continue on back as needed.***

**Contracting Officer Certification.**

I certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief

| Name: | Signature: | Date: |
|---|---|---|
| Tony M. Karpowicz | Tony M Karpowicz | 7-1-09 |

## PART 3 - OTHER APPROVALS

**Up to $550,000 - Contracting Officer**

| Name | Title |
|---|---|
| Tony M. Karpowicz | Branch Chief, NFWR |
| Signature: Tony M. Karpowicz | Date: ~~6-29-09~~ 7-1-09 |

**$550,000 to $11,500,000 - Competition Advocate**

| Name | Title |
|---|---|
| Jackie D. Harris | Assistant Chief Procurement Officer |
| Signature: Jacquelyn W. Harris | Date: 8/7/09 |

**$11,500,000 to $57,000,000 - Head of the Contracting Activity**

| Name | Title |
|---|---|
| Signature | Date |

**Over $57,000,000 - Senior Procurement Executive**

| Name | Title |
|---|---|
| Signature | Date |

Additional Contracting Officer justification/comments from front [***attach additional pages if needed***]

**Additional Guidance for Completing the Justification**
(see HUD Handbook 2210.3, Chapter 4)

1. **PART 1 - Program Office Recommendation**

The supporting documentation in the Exhibit 1 must describe:

- The nature of the proposed acquisition that requires other than full and open competition;
- The unique qualifications of any proposed sole source; and
- The market research conducted (see FAR Part 10) and the results or the reason(s) why market research was not conducted.

The cost estimate must include all costs of the proposed acquisition, e.g., options, systems life costs, etc. The total will determine the approval level needed (see 3 below).

FAR Subpart 6.3 describes the statutory exceptions, their applicability and limitations on their use.

"Head of the Program Office" means:

- For all Headquarters acquisitions: the cognizant Assistant Secretary or designee.
- For field acquisitions: the program office director (e.g., Director, Multifamily Housing) within the State or Area Office or the Director of the Administrative Service Center for Administration-initiated acquisitions.

**PART 2 - Contracting Officer Review and Certification**

Besides any information provided to support the program office's justification, the Contracting Officer shall provide:

- Documented results of any Commerce Business Daily notices or explanation of why no notice was published.
- A statement of actions the Department may take to remove barriers to competition for subsequent acquisitions of similar services / supplies; and
- A determination that the anticipated cost / price is fair and reasonable. (See FAR Subpart 6.3 for further guidance.)

The Contracting Officer signing the certification shall be the same individual who will sign the proposed acquisition action which is the subject of this justification.

**PART 3 - Other Approvals**

The Contracting Officer shall obtain the approval for the dollar value ranges indicated.

If any person required to sign in these blocks disapproves this justification, he/she shall return it to the requesting activity with a written determination.

The requesting activity may obtain the name of the "Contracting Activity Competition Advocate" from the cognizant contracting office.

The "Head of Contracting Activity" is defined at Subpart 2402.1 of the HUD Acquisition Regulation (48 CFR Chapter 24). The cognizant contracting office may also provide the name of this individual.

# OKLAHOMA

**Exhibit 1 – JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION**
**R-DEN-02379**

1. **Requiring Activity:** **Santa Ana Homeownership Center, Real Estate Owned Division (SAHOC-REO)**
   **Contracting Activity:** **OCPO, Western (Denver) Field Contracting Operations**
   **Requisition Number:** **R-2009-8AH-00086**
   **Solicitation Number:** **R-DEN-02379**

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

The Santa Ana Homeownership Center, Real Estate Owned Division hereby requests an emergency Limited Competition bridge contract for the continued and uninterrupted Closing Agent services for Real Estate Owned (REO) sales in the State of Oklahoma. The request is absolutely essential in that:

- Due to the rapid deterioration of the national economy, we have experienced a very large, unexpected increase in foreclosure activity and the REO inventory in Oklahoma continued to grow at a substantially greater rate than had been projected at the inception of the contract in 2005. However, as soon as it became apparent that we had the risk of exceeding our maximums, and subsequently being without services, we immediately started the process to procure a new contract.

- A single Closing Agent handles the closings of all FHA, REO properties for the entire State of Oklahoma, and without their services there is a significant risk that homebuyers, communities, and businesses will be negatively impacted.

- The requested Bridge Contract will ensure the uninterruption of services during the new procurement process.

The REO Division handles the acquisition, management, marketing and sale of FHA, REO properties thru the services of a Management and Marketing (M&M) contractor. The M&M cannot finalize the sale of the properties without the services of a Closing Agent contractor. Therefore, the services of a Closing Agent contractor are of an unusual and compelling nature in the overall process, and are absolutely essential in order to provide for uninterrupted succession in the overall process. The SAHOC, REO Division requires this action to offset the impact of the delay of a new Small Business competitive award to provide these services for the Division. The anticipated cost of this service is $560,000 for a period not to exceed eight (8) months; a base period of four (4) months, and two (2) two-month option periods. The option periods will only be exercised if needed due to exigent circumstances.

The current Closing Agent contract expires 06-30-2009. The proposed Limited Competition bridge contract is required to allow sufficient time to award the new Small Business competitive procurement and to allow for a transition period to implement the SOW under the new contract.

**3. Description of services required to meet SAHOC-REO's needs:**

The contractor shall provide real estate property sales closings for single family properties owned by the U.S. Department of Housing and Urban Development (HUD) located within the State of Oklahoma. Performance under this contract will involve interaction with homebuyers and their representatives in the real estate community, mortgage lenders, non-profit housing and advocacy organizations, staff from HUD's HOC, and service providers under contract to HUD, such as the M&M contractors. Additionally, this contract may be impacted by changes in regulation, legislation, or housing policy initiatives identified by the White House or the HUD Secretary.

As described above, the total performance of this emergency bridge contract will not exceed eight (8) months. The total estimated dollar value of this emergency contract, if all options are exercised, is $560,000.

**4. Identification of the statutory authority permitting Other Than Full and Open Competition:**

41 USC 253 (c) (2) (FAR 6.302-2) – Unusual and Compelling Urgency.

**5. A description of the efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a FEDBIZOPPS notice was, or will be, published as required by FAR 5.2, and, if not, which exception under 5.202 applies.**

This is a Limited Competition bridge contract and offers will only be sought from the incumbent and those other companies rated acceptable in the original contract offering. The requirement for notice to potential sources, for example, through publication in FedBizOps pursuant to FAR Subpart §5.2, is specifically exempted for contract actions subject to the conditions of unusual and compelling urgency in which the Government would be seriously injured by the delays that such notice requires. The exemption is specifically provided in FAR §5.202(a)(2).

It is this office's desire to maximize the use of competition. Accordingly, the procurement strategy for the full 5 year follow-on competition (R-DEN-02362) will generate an adequate response to a competitive Small Business, best value procurement, utilizing price and technical factors. As of the closing date of the solicitation a substantial amount of additional time (approximately up to 8 weeks; depending on the number of offers) will be required before award; allowing for a thorough analysis of the proposals by the Technical Evaluation Panel. We believe the additional time required will ensure we achieve maximum competition among Small Businesses and will ensure the achievement of HUD's Small Business contracting goals.

**6. The Contracting Officer has determined that the anticipated cost to the Government will be fair and reasonable.**

The prior procurement strategy and the current pending contracting action provided for Small Business competition. Extensive market research was conducted for both actions with separate independent government cost estimates developed: the anticipated cost to the Government of this emergency bridge contract action is consistent with those price ranges, adjusted for the short term nature of the contract vehicle and transition period. The Government will use a combination of cost and price analysis techniques; comparison of previously proposed prices and previous Government contract prices for the same items to determine proposed cost to be fair and reasonable.

**7. A description of the market research conducted (see FAR Part 10) and the results or a statement of the reason market research was not conducted.**

Contracting will be soliciting bids for this limited competition from all offerors who were deemed acceptable on the previously awarded contract. No further market research was conducted because of the urgency of the short term bridge contract.

**8. Any other facts supporting the use of other than full and open competition.**

Performance by in-house by government employees is not a feasible alternative due to the unavailability of the special technical skills required to perform these tasks and the lack of time in which to train them.

**(i) Explanation of why submission of a Contract Management Review Board package has not been finalized for a full and open competition**

A package for a full and open competition has been prepared and submitted, but the probability exists that following the package approval, the completion of the Technical Evaluation Panel, and final award may not take place before we suffer a loss of services due to the substantially increased inventory of new REO properties and increased sales, beyond what had been anticipated in the contract which was awarded five years ago, and the approaching expiration of the current contact.

**(ii) When 603-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.**

The Closing Agent contractor performs an integral function in the support of the HUD's mission to increase homeownership, support community development and increase access to affordable housing.

The function of the Closing Agent is to finalize the sale and transfer title of REO properties, acquired through the FHA foreclosure process, to the new owners; thus enabling new homeownership and aiding communities by decreasing vacant REO properties and increasing neighborhood development. Without Closing Agent services, the properties will remain in HUD's inventory and will continue to incur holding costs by the government.

**9. A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.**

See items #5 and #7 above.

**10. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the services are required.**

The REO Division's services are normally procured on an 8(a) or Small Business competitive basis and HUD will continue to procure these services competitively. The current solicitation for these services will provide the necessary competition and the anticipated date of the new award is 6/30/2009.