**JUSTIFICATION & APPROVAL FOR FEDERAL ACQUISITION REGULATION SUBPART 16.5 ACQUISITIONS**

**EXCEPTION TO FAIR OPPORTUNITY**

Multiple Award Contract

Orders under Fair Opportunity

Federal Acquisition Regulation (FAR) 16.505, Defense FAR Supplement 216.505-70, Procedures, Guidance, and Information 216.505-70

Purchase Request Number:

Joint Warfighting Cloud Capability (JWCC) Contract Number:

Task/Delivery Order Number:

Procurement Title:

Estimated Value: $

Statutory and Regulatory Authority: 10 United States Code (U.S.C.) 2304c(b) and FAR (Select one of the following: 16.505(b)(2)(i)(A), 16.505(b)(2)(i)(B), 16.505(b)(2)(i)(C))

**EXCEPTION TO FAIR OPPORTUNITY**

Number: *(Assigned by the Procuring Activity Competition Advocate. If approval is at the Contracting Officer level, insert “Not Applicable”.)*

Upon the basis of the following justification, I, as the (insert title of appropriate official), hereby approve this exception to fair opportunity pursuant to the Statutory Authority of 10 U.S.C. 2304c(b) and Regulatory Authority of FAR (Select one of the following: 16.505(b)(2)(i)(A), 16.505(b)(2)(i)(B), 16.505(b)(2)(i)(C)). *NOTE: Use only one regulatory exception per Justification and Approval (J&A)*.

1. REQUESTING AGENCY AND CONTRACTING OFFICE:

Requesting Agency:

Insert Mission Owner name *(spell out acronyms if used again below)*

And complete address

Contracting Activity: *(If contracting office is DITCO, use the following text below. If not, provide me your contracting office information)*

Defense Information Systems Agency/Defense Information Technology Contracting Organization/PL85

2300 East Drive

Scott Air Force Base, IL 62225-5406

2. NATURE/DESCRIPTION OF ACTION(S):

This action is to issue a (select firm-fixed-price or time-and-materials)task order (TO) against the JWCC Indefinite Delivery/Indefinite Quantity Contract for(insert Procurement Title). This TO will be issued directly to (select Cloud Service Provider (CSP) Name: Amazon Web Services (“AWS”), Google, Microsoft, Oracle).The anticipated period of performance (PoP) is for a base period of Xmonths with X, X-month option periods (*option periods are not allowed in J&As citing urgency as the authority unless it’s an interim contract due to a protest)*. The total estimated value is$$$$ of FYXX (Select: Operations & Maintenance, Research, Development, Test & Evaluation, or Procurement) funds.

3. DESCRIPTION OF SUPPLIES/SERVICES:

This requirement is for *(provide a brief description of the supplies and/or services required to meet the agency’s needs (explain the requirement in layman's terms so it can be understood by a non-technical reviewer who is not familiar with the requesting agency or the project))*.

The PoP consists of a base period of Xmonths with X, X-month option periods and an estimated value of $$$$.

4. SUPPORTING RATIONALE, INCLUDING A DEMONSTRATION THAT THE PROPOSED CONTRACTOR’S UNIQUE QUALIFICATIONS OR THE NATURE OF THE ACQUISITION REQUIRES USE OF AN EXCEPTION TO FAIR OPPORTUNITY:

1. Exception to Fair Opportunity. *The following exceptions apply to fair opportunity accomplished IAW 16.505. Select one:*

16.505(b)(2)(i)(B) - Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

16.505(b)(2)(i)(C) *-* The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

16.505(b)(2)(i)(A) *-* The agency's need for supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

1. Description of the Justification. *Provide a brief description of how this action requires the use of authority cited (include a discussion of the events, history, and circumstances which have led to the current situation that requires use of procedures for other than full and open competition). Identify the proposed contractor and include a discussion of their unique qualifications for fulfilling the order requirements. If the authority cited is “logical follow-on”, the rationale shall describe why the relationship between the initial order issued under JWCC and the follow-on is logical (e.g., in terms of scope, period of performance, or value).*

*If the authority cited is “unusual and compelling urgency”, document the required delivery schedule and lead-times involved, including a chronological explanation of events that caused the exigent situation. Be sure to explain any actual or apparent time lags between events. At the very least, include:*

* *Discussion and dates of when requirement became known by the requesting agency*
* *The required performance/delivery date*
* *Events that happened before the contracting office was notified of the requirement*
* *When the contracting office was advised of the requirement*
* *When the purchase request was received by the contracting office*
* *When vendors will be/were contacted*
* *When proposals are/were due*
* *When award will be/was made*

1. Justification.
2. Minimum Government requirements. *State the verified minimum requirements of the Government? Discuss, if applicable, how the required delivery/performance date impacted the decision to restrict competition.*

The cloud offerings must continue at their current level in order to support (explain what is being supported). These offerings include (provide information regarding minimum requirements).

1. Proposed sole source contractor.(Insert CSP)
2. Discussion regarding the cause of the sole source situation.  *If competition would have been feasible had more time been available, discuss other factors that had an impact on the decision to solicit only one source to satisfy the requirement (e.g., time required to conduct a competitive procurement; consideration of phase-in/phase-out requirements; complexity of requirement; etc.). Further, if the required delivery date could have been satisfied using competition to the maximum extent on the date the requirement first became known, an explanation for the delay in submitting the requirement should be provided. If normal contracting methods could not have satisfied the required delivery date, describe the circumstances that caused this emergency and how they will be prevented in the future.t*

The only source capable of performing the (insert Procurement Title) at the level of quality required is the incumbent contractor, (insert CSP). The refactoring of the current environment from the (insert CSP) environment to another CSP would result in additional time and cost. Migration from one platform to another platform would cost (provide estimated cost) and delay the project (provide estimated delay of project). In addition, there would be a duplication of costs of having to keep the solution running on one platform while refactoring it on another platform.

The only source capable of performing the (insert Procurement Title) at the level and quality required is (insert CSP) based on Government engineers being trained and certified in (insert specific cloud platform/technology). Due to (insert reason), there is insufficient time to retrain and obtain certification in another platform/technology.

The only source capable of performing the (insert Procurement Title) at the level and quality required is (insert CSP) based on (enter specific product name or feature) that is peculiar to (insert CSP). (Enter specific product name or feature) is essential to the Government’s requirements due to (insert reason). Other similar (insert “products” or “features”) do not meet, nor can be modified to meet, the Government’s requirements due to (insert reason).

1. Demonstration of unique source. *Discuss the unique capabilities, experience, expertise, etc., that the contractor has that makes it the only one capable of performing the required work. When FAR 16.505(b)(2)(i)(C) is cited for follow-on acquisitions, quantify substantial duplication of cost and unacceptable delay. Provide an estimate of the cost to the Government that would be duplicative and how the estimate was derived. Supply rationale for unacceptable delays, discuss why requirement continues, discuss why it would be of benefit to the Government for the specific contractor to continue work and specify how recent the previous competitive order was issued and the number of times this exception has been used. Discuss why the other IDIQ holders could not meet the stated requirement.*

*Clearly show that the chosen source is the ONLY source. Do not indicate that your source is the "only known source” unless you fully describe the process undertaken to make that determination (including items such as "sources sought" synopsis posted on the Federal Business Opportunities website.)*

(Insert CSP) possesses the knowledge, skills, capabilities, certification, clearance, and experience required to continue the program without a break or degradation in critical mission services. Given these critical mission requirements, (insert CSP) is the only contractor that is capable of performing the necessary services for the Department of Defense within the current required timeline.

1. Procurement discussion.
2. Identify the constraints of the procurement, such as schedule requirements, unique features and mandatory requirements, or the existence of proprietary data, copyrighted information or a patent which restrict competition. If the requirement is citing the exception for urgency, include a justification for the minimum quantity or period of performance. These milestones should be as realistic, firm and proactive as possible.
3. Since there is already an existing environment, the CSP is immediately able to shift to supporting the resultant award associated with this contract action, it would minimize any associated transition costs for the Government. In addition, another contractor would not be positioned to leverage investments made to date to most efficiently meet the objectives of the task order for the anticipated PoP.
4. Impact. *Describe the detrimental effects to the mission of the requesting activity or to the Government that would result if other than an exception to fair opportunity were pursued.*

5. COST/PRICE FAIR AND REASONABLE DETERMINATION: A determination that the price is fair and reasonable will be based on a comparison of the contractor’s proposal to the

independent government cost estimate and the JWCC Catalog pricing, including any discounts, which was previously found to be fair and reasonable and based on the contractor’s commercial pricing.

6. MARKET RESEARCH: *Describe the extent of the market research (FAR 10.002) conducted to identify all qualified sources and the results thereof. Research must have been meaningful and conducted within the previous 12 months. The J&A must include a detailed description and results of the market research (including who, what, when, where, why and the outcome) or a statement discussing why it was not conducted. The J&A should also fully analyze any alternative strategies to using an exception to fair opportunity and indicate a good faith effort to consider viable alternatives.*

Market research was conducted and resulted in a signed market research report on 9 Nov 2021 for the basic JWCC contracts. After a survey of the market, it was concluded that the JWCC Contract is in the Government’s best interest due to technical feasibility and cost to the Government.

Additional research was conducted (on date or date range) by reviewing the specific capabilities in the JWCC Contracts and it was determined that (insert CSP) is the only source capable of fulfilling the Government’s minimum needs in the manner and time frame required. (Insert brief discussion of market research data that supports this determination).

Further research was conducted (on date or date range) by reviewing the JWCC contractor's catalogs to determine if other similar offerings (to include: (enter “product '' or “feature”)) meet or can be modified to satisfy the Government’s requirements. The results have determined that no other offering is suitable as follows (insert brief discussion of the results). Therefore, it was determined the (enter specific product or name feature as identified in paragraph 4(c)(3) above) is essential to the Government’s requirements and (insert CSP) is the only source capable of fulfilling the Government’s minimum needs in the manner and time frame required.

7. ANY OTHER SUPPORTING FACTS: *Indicate any other facts supporting the use of the authority.*

8. ACTIONS THE AGENCY MAY TAKE TO REMOVE OR OVERCOME BARRIERS THAT LED TO THE EXCEPTION TO FAIR OPPORTUNITY:

1. Procurement History. *(repeat for each previous instance of this acquisition).*
2. Contract Number:
3. Task Order Number (if applicable):
4. Period of Performance:
5. Competitive Status:
6. Business Size: *(e.g. large or small business, 8(a), etc)*

*(b) Briefly describe the actions proposed to remove barriers to fair opportunity and explain the results thereof, if a J&A was prepared to support any related prior procurement(s).*

To overcome future barriers to competition, (Agency) is preparing a fair opportunity competitive follow-on requirement. The follow-on is expected to be competed, solicited, and awarded by (insert date).

To overcome future barriers to competition, (Agency) will pursue training and certification for Government engineers in other technologies.

To overcome future barriers to competition, future development and enhancement of IaaS components will include shifting to a containerized platform. This will enable multiple vendors to meet the requirements which will enable the flexibility to shift workload based on financial and mission requirements.

*Required certifications/approvals should begin on a separate page.*

TECHNICAL CERTIFICATION: I certify that the supporting data under my cognizance which are included in the J&A are accurate and complete to the best of my knowledge and belief.

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

REQUIREMENTS CERTIFICATION: I certify that the supporting data under my cognizance which are included in the J&A are accurate and complete to the best of my knowledge and belief.

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

CONTRACTING OFFICER CERTIFICATION: I certify that this justification is accurate and complete to the best of my knowledge and belief. *(Add the following and delete the “APPROVED BY” blocks below if this certification is also serving as approval: Since this effort exceeds $250K but does not exceed $750K, this certification serves as APPROVAL.)*

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

*(For Approval signature, select the appropriate approval level signatory and delete all others.)*

PROCURING ACTIVITY COMPETITION ADVOCATE APPROVAL: I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief. Since this justification does not exceed $15M, this review serves as approval and my written determination that the aforementioned FAR circumstances apply.

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

HEAD OF THE CONTRACTING ACTIVITY APPROVAL: I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief. Since this justification does not exceed $100M, this review serves as approval.

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

SENIOR PROCUREMENT EXECUTIVE APPROVAL: I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief. Since this justification exceeds $100M, this review serves as approval.

NAME: XXXXXX SIGNATURE: See separate signature page

TITLE/ORGANIZATION:

PHONE: DATE:

ALL QUESTIONS REGARDING THIS JUSTIFICATION ARE TO BE REFERRED TO *[insert name, phone number, and email of Contracting Officer or Contract Specialist as appropriate]*