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***]
REO Field Service Manager Realignment Contracts

Negotiations should be conducted with the following source(s) only [***provide names, addresses and points of contact; continue on separate sheets as needed***]:
See Attached Exhibit 1

The estimated cost of this acquisition is: $ 4,697,611.00

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 3304 (a)(1) (see FAR 6.302-1)
- ☒ Unusual and compelling urgency - 41 USC 3304 (a)(2) (see FAR 6.302-2)
- ☐ Industrial mobilization; engineering, developmental or research capability; or expert services - 41 USC 3304 (a)(3) (see FAR 6.302-3)
- ☐ Authorized or required by statute - 41 USC 3304 (a)(5) (see FAR 6.302-5)
- ☐ Public interest (***NOTE: requires Secretarial approval and Congressional Notification***) - 41 USC 3304 (a)(7) (see FAR 6.302-7)

☐ A description of the circumstances that 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:	
Vance T. Morris	Associate General Assistant Secretary for Housing	
Signature: VANCE MORRIS Digitally signed by: VANCE MORRIS DN: CN = VANCE MORRIS C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of Housing Date: 2021.06.29 16:56:25 -04'00'	Date:	For additional information contact:

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:
Sharon L. Washington	SHARON WASHINGTON Digitally signed by SHARON WASHINGTON Date: 2021.06.29 17:20:19 -04'00'	

PART 3 - OTHER APPROVALS

Up to $700,000 - Contracting Officer

Name	Title
Sharon L. Washington	
Signature SHARON WASHINGTON Digitally signed by SHARON WASHINGTON Date: 2021.06.29 17:21:06 -04'00'	**Date**

$700,000 to $13,500,000 - Competition Advocate

Name	Title
Akinsola A. Ajayi	Competition Advocate
Signature AKINSOLA AJAYI Digitally signed by: AKINSOLA AJAYI DN: CN = AKINSOLA AJAYI C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Chief Procurement Officer Date: 2021.06.29 17:30:38 -04'00'	**Date**

$13,500,000 to $68,000,000 - Head of the Contracting Activity

Name	Title
Signature	**Date**

Over $68,000,000 - 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)

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.

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 Federal Business Opportunity 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.

Exhibit 1 – Class Justification and Approval (J&A) for FSM Realignment

<u>1. Identification of the agency and the contracting activity</u>:

Agency: The U.S. Department of Housing & Urban Development, Washington, D.C.
Program Office: Office of Single Family Housing, Office of Single Family Asset Management
Contracting Activity: Office of the Chief Procurement Officer (OCPO), Atlanta Office - Southern Field Contracting Operations

<u>2. Nature and/or description of the action being approved:</u>

HUD's Office of Single Family Housing, Office of Single Family Asset Management has an urgent and compelling need to continue Field Service Management (FSM) services. HUD intends to realign FSM areas needing coverage to an existing highly performing FSM Contractor, DGG RE Investments, LLC d/b/a Guardian Asset Management, in the areas listed below. This action is necessary to ensure that critical property maintenance and preservation services for HUD-owned properties in area(s) 4A, 8A, 4D, 5D and 1P will be provided without service disruption. Contract area 4A (Indiana, Kentucky) will realign to DGG's area 3A contract. Contract area 8A (Florida, Puerto Rico, Virgin Islands) will realign to DGG's area 3A contract. Contract area 4D (Iowa, Nebraska, South Dakota, and Wisconsin) will realign to DGG's contract area 1D. Contract area 5D (Minnesota, Montana, North Dakota, and Wyoming) will realign to DGG's contract area 1D. Contract area 1P (Michigan) will realign to DGG's contract area 3P.

<u>3. A description of the supplies or services required to meet HUD's needs (including the estimated value)</u>

The FSM contractor shall provide property preservation and protection (P&P) maintenance services denoted in its contract until July 31, 2021. The realignments are intended to provide FSM services while the FSM 3.12 procurement is underway. The estimated cost for the realignment for all five areas to Guardian is $4,697,611.00, as provided below:

Contract Area	Estimated Value
4A	$766,089.00
8A	$1,373,058.00
4D	$896,483.00
5D	$829,770.00
1P	$832,211.00
TOTAL	$4,697,611.00

The FSM contractor will be permitted to review and approve transmittals for work performed on or before July 31, 2021. These transactions must be processed in the case management system (P260) by FSMs on or before August 31, 2021. The realignment for these contract areas is a temporary measure urgently needed to avoid a delay in preservation/maintenance and protection of HUD's property assets and minimize losses to the FHA Insurance Fund.

4. The statutory authority permitting other than full and open competition:

FAR 6.302-2, Unusual and Compelling Urgency and 41 U.S.C. 3304(a)(2)

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

The current awards will expire on May 31, 2021, and the preferred strategy was to extend the current contracts at their current option pricing while the FSM 3.12 contracts are being procured to avoid a break in service. In the areas addressed by the justification, three contractors rejected short term extensions at their existing option 2 rates. DGG is performing similar services at a satisfactory level or higher in other locations and is willing to step in to perform the services for a sixty-day period at negotiated pricing for those areas. The time between the estimated award of new contracts and expiration of the current contracts is not sufficient to competitively award a short-term contract and has resulted in an unusual and compelling urgency for services on or before June 1, 2021. DGG currently has a presence in the three Home Ownership Centers (HOCs) (Atlanta, Denver, and Philadelphia) where service coverage is needed and is performing at a satisfactory or above level in their assigned areas within each HOC.

A lapse in FSM services for a 60-day period may depress overall surrounding neighborhood property values due to the Department not performing routine P&P services. The contractor proposed for realignment is fully staffed with equipment and office(s) to perform the requirements of the Performance Work Statement (PWS) without significant schedule delays and startup costs.

6. A determination of efforts made to ensure that offerors are solicited from as many potential sources as is practicable, including whether a notice was or will be published as required by Subpart, 5.2. and if not, which exception under 5.202 applies:

Due to its urgent need and short turnaround, HUD will seek to satisfy this requirement by realigning service areas for the five areas that were rejected by incumbents at their then-current option pricing. A notice will not be published due to the proposed action(s) being made under FAR. 6.302-2. The Contracting Officer shall post this justification on the Government-Point-of-Entry.

On May 26, 2021, an email was sent to all the current FSM contractors (Innotion, BLM, Alpine, Strategic Alliance (SAM JV), and DGG) to see if they would be interested in a 60-day extension on their current contracts at their current option year pricing.

Innotion Enterprises, which had areas 6A, 1D, 2D, 4D and 5D, stated it was interested in extending 6A, 1D and 2D at the current CLIN pricing but was not interested in an extension on contract areas(s) 4D and 5D at the current CLIN pricing. Innotion stated due to current market conditions in their 4D and 5D areas they would like to continue; however, they would require increased pricing which would have provided as part of the now-cancelled Bridge Contract solicitation.

BLM, which had areas 1P, 4P, and 5P accepted the extension offer for areas 4P and 5P however it was not interested in the extension for area 1P, stating that the option rates were not viable for Area 1P due to various economic changes.

Strategic Alliance (SAM JV), which had areas 4A and 8A, declined the extension for both areas. SAM JV was not willing to accept the extension under its current contract prices. DGG, which had areas 3A,1D,3P,3S,4S,5S, and 6S, accepted the extension offer at its current option pricing.

After offering an extension opportunity to all current FSM contractors at their option rates, the Agency needed to secure coverage for the areas that could not be extended at current option pricing. HUD determined realignment of geographic areas 4A, 8A, 4D, 5D, and 1P (in accordance with the clause H.6 of the existing FSM contracts, Option to Increase/Decrease the Geographic Service Area) represented the best option for the Government. The realignment clause allows the agency to unilaterally realign areas to a successfully performing contractor. More specifically, after meeting the guaranteed contract minimum established in HUDAR Clause 2452.216-76, the Government reserves the right to non-competitively increase or reduce the geographic service area of these contracts through contract modification.

DGG was the only company considered for realignment of the entire requirement because it has a contract providing service to each of the HOCs (Atlanta, Denver, and Philadelphia) that need coverage, and it has an overall performance of satisfactory or higher for each of its contract areas.

The solicitation for the FSM 3.12 long-term follow-on contract was posted on February 05, 2021, and closed on March 26, 2021, and allowed potential offerors to submit competitive proposals.

<u>7. A determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable:</u>

The pricing for the realignment of FSM areas 4A, 8A, 4D, 5D, and 1P will be negotiated at a price comparable to what is currently being recognized in the impacted areas. The contracting officer determined DGG's pricing to be fair and reasonable based on historical pricing.

<u>8. A description of the market research conducted (see part 10) and the results or a statement of the reason market research was not conducted:</u>

The agency is realigning FSM areas 4A, 8A, 4D, 5D, and 1P to an existing FSM contractor that is performing at a satisfactory or higher level. A modification for 60-days using the realignment clause H.6 OPTION TO INCREASE/DECREASE THE GEOGRAPHIC SERVICE AREA will be issued; the Agency is aware of the current contractors and their pricing and due to the exigency of the need, no additional market research was conducted for this short-term requirement.

9. Any other facts supporting the use of other than full and open competition:

Planning for the Field Service Management (FSM) 3.12 follow-on contracts began in 2018; far enough in advance to allow for timely execution of the awards. HUD originally planned to close the solicitation on October 25, 2018. Prior to that time, the internal customer, the Office of Single Family Housing, requested consolidation of the geographical areas, which would have resulted in 11 contracts, instead of 18.

The consolidation was approved by the Chief Procurement Officer (CPO) on April 16, 2019. A Bundling memo was approved on May 26, 2020. The notices to all impacted small business were sent on September 11, 2020, and OCPO anticipated publishing the FSM 3.12 solicitation on October 12, 2020. On September 24, 2020, however, the Small Business Administration (SBA) appealed the Agency decision to issue the solicitation using Full and Open competition. The SBA Appeal was elevated to the Office of the Chief Procurement Officer (CPO) on October 27, 2020 and subsequently to the Secretary of HUD on December 07, 2020. The Secretary denied the appeal on January 11. 2021.

As a result of protests filed against HUD's Asset Management (AM) 3.9 solicitation, the Agency determined to specifically assess the impact of the novel COVID-19 pandemic on future Indefinite-Delivery Indefinite-Quantity solicitations, including the FSM 3.12 solicitation. After reviewing the changes in these COVID-19 related policies, the FSM 3.12 estimated volumes were revised to reflect current market conditions. Therefore, OCPO revised the final market research document to reflect these developments and posted the FSM 3.12 solicitation on February 5, 2021.

The current FSM contracts expire on May 31, 2021. Based on significant holding costs that would be realized in the event of a lapse in services, there was an unusual and compelling urgency to assure continued service until the FSM 3.12 contracts could be fully operational. Most recently, HUD determined to solicit bridge contracts for a period of up to 12 months on sole-source limited competition basis to prevent unacceptable delays. The structure of these contracts would have been a base period and include exercisable options that, if necessary, would have allowed HUD to continue servicing these contract areas and their assets until the 3.12 contracts could become fully operational.

The decision to pursue the bridge contracts also led to a round of protests of the solicitation method which resulted in corrective action. At the point that corrective action was taken, it became apparent that the time remaining to avoid a lapse in service was too short to complete award a bridge contract and a new strategy was developed to place a 60-day sole source extension on the current FSM contracts at the current Option pricing.

Therefore DGG, dba Guardian, Innotion, BLM, Strategic Alliance JV (SAM JV), and Alpine, which are currently performing these services, were solicited in their respective areas at their existing option pricing. After Innotion, SAM JV, and BLM declined the extensions at their current option year two pricing for areas 4A, 8A, 4D, 5D, and 1P, the Agency decided that realigning those areas to DGG was in the best interest of the Government. This decision would permit negotiations with a single contractor and allow the agency to meet the exceptionally short deadline required to get a solution in place.

The SBA Appeal and the impact of COVID-19 pandemic prohibited the Agency from posting the FSM 3.12 solicitation as planned. Thus, the Contracting Officer was unable to finalize all internal approvals and solicitation documents until the SBA Appeal was decided and the impact of the Pandemic was considered and incorporated into the solicitation documents. Unforeseen changes and delays have impacted the Agency's milestones for awarding the FSM 3.12 contracts. HUD has a critical need to solicit to continue service in all contract areas. A lapse in services would prevent HUD from preserving/maintaining and protecting its REO inventory. This will result in unoccupied assets for a prolonged period, which poses an increased risk in adverse occupants, theft, vandalism, and other health and human safety concerns. Based on historical data, the average startup time for a new contractor to complete transition-in activities and enter a given FSM market is at least 60 days.

DGG is able to provide P&P services on existing inventory and inventory that will be acquired and/or assigned during the 60-day extension period.

<u>10. A list of the sources, if any, that expressed, in writing, any interest in the acquisition:</u>

Due to the urgent nature of the requirement, and after soliciting to the current contract holders, the Agency determined the most logical solution is to realign the areas without a short-term incumbent extension to DGG.

4A	Strategic Alliance (SAM JV), DGG
8A	Strategic Alliance (SAM JV), DGG
4D	Innotion Enterprises, DGG
5D	Innotion Enterprises, DGG
1P	BLM, DGG

<u>11. A statement of the actions, if any, that the agency may take to remove or overcome any barriers to competition before any subsequent acquisition of the supplies or services required.</u>

Over the long term, there are no barriers to competition for these services. The delays experienced are principally due to the SBA Appeal, and the impact of the Presidentially declared Pandemic on March 13, 2020.