

JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION

Acquisition Title:

Agency:

Acquisition Year (FY):

Author and Title:

2. Description of Action:

Nature:	<input type="checkbox"/> New Requirement	<input checked="" type="checkbox"/> Follow-on Requirement	
	<input type="checkbox"/> Modification to Existing Purchase Order/Contract Number:		
Pricing:	<input type="checkbox"/> Firm-Fixed Price	<input type="checkbox"/> Time & Materials	Cost \$39,646,335
	<input type="checkbox"/> Other:		<input checked="" type="checkbox"/> Cost Plus Fixed Fee
Funds:	<input type="checkbox"/> OMA	<input checked="" type="checkbox"/> Other Funds:	Project Numbers 3707 and 1872

Name of Proposed Contractor(s): HighPoint Digital, Inc.

Street Address: 8520 Allison Pointe Blvd., Ste. 310

City, State, Zip: Indianapolis, IN 46250

3. Description of Services or Supplies:

Basis for Approval (FAR 6.303-1(d)):	<input checked="" type="checkbox"/> Individual Basis	<input type="checkbox"/> Class Basis
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The total estimated value of the proposed action, including all options is \$39,646,335

The Centers for Medicare & Medicaid Services (CMS) intends to issue a Bridge Contract to HighPoint Digital, Inc. (HighPoint) for Training, Quality Assurance and Content Development (TQC) while CMS completes a competitive procurement for the continuation of these services. An unsuccessful Offeror submitted a protest to the United States Government Accountability Office (GAO) in October 2022. The protest will not be resolved in time to allow for an adequate transition period prior to expiration of the existing TQC contract on January 31, 2023 (HHSM-500-2013-00099C). CMS requires that these critical TQC support services continue during the time period of January 31, 2022 (when the current contract expires) through the time the follow-on contract is awarded and fully transitioned. Transition of a contract of this magnitude is extensive and is anticipated to take up to approximately six (6) months to complete. This Bridge Contract is necessary because it will ensure continued and uninterrupted development and deployment of training and scripted content used to support customer service representatives (CSRs) until the new contract can be awarded and fully transitioned.

Under this TQC contract, the contractor develops and maintains training and content solutions/materials used by customer service representatives (CSRs) to address Medicare and Marketplace inquiries in a manner that is complete, accurate and consistent.

The proposed Bridge Contract will be awarded on or before January 31, 2023 for a six (6) month base period and two (2) option periods of four (4) months and two (2) months, respectively. The purpose of this Bridge Contract is to acquire continued support of TQC operations with an objective of providing uninterrupted training and scripted content to CSRs for both the Medicare and Marketplace programs.

By maintaining the current contractor for this Bridge Contract, the need for extensive infrastructure implementation and training/transition to new staff will be minimized. Indeed, to bring in a new contractor while a competitive process is underway would be a waste of Government resources and significantly increase the operational risk. Furthermore, the amount of time and effort necessary to bring a contractor up to the current contractor's operational effectiveness will not meet the Government's immediate need. This Bridge Contract will eliminate the need for duplicative transition costs, resulting in a significant cost savings to the Government. It will also avoid disruption to the work being performed and mitigate the risk of premature loss of technical staff resources and expertise during this period.

4. Authority and Rationale: Identify the statutory authority, FAR title and FAR citation permitting other than full and open competition. It may be one of the following most commonly used citations by the operating divisions of the Department of Health and Human Services (HHS), but other exceptions may apply per [FAR Subpart 6.3](#).

Actions other than simplified acquisition procedures (select only one and provide an explanation):

[FAR 6.302-1](#): Only one responsible source and no other supplies or services will satisfy agency requirements, 41 U.S.C. 3304(a)(1)

Only the incumbent contractor, HighPoint, has the extensive infrastructure, organization, and institutional knowledge to provide these services during the time period of this Bridge Contract. Given the size and complexity of the TQC contract, another contractor would be unable to have the necessary infrastructure and organization in place by the expiration of the current TQC contract to provide the support services during the time between the expiration of the current contract and the new TQC award and transition - a process that could take up to six (6) months. Therefore, HighPoint is the only contractor that can provide the agency with uninterrupted TQC support services during this time period. The size and complexity of the TQC contract would require a significant amount of time and funding for any other contractor to effectively transition. Based on past experience, CMS estimates approximately \$20,000,000 for transition (depending on the contractor's level of excess capacity and infrastructure availability). The transition includes but is not limited to the following:

- Finalizing lease arrangements with facilities for work locations
- Establishing data connectivity (CMSNet) to the facilities (Pre-established at up to 180 days)
- Recruiting and hiring writers, editors, training instructional designers, and Medicare/Marketplace policy experts

- Rapid development and deployment of call center training and scripts related to Marketplace and Medicare

Additionally, the TQC program interfaces with a complex contracting network made up of the call center itself, translation services, print, desktop, call recording, learning management and helpdesk services that support different elements of contact center operations. However, all are managed through separate contracts. It would be impossible for CMS to award to any other contractor than HighPoint (the incumbent) for this bridge contract due to the infrastructure and organization needed to perform the requirement, the timeframe required for transition of the TQC support services, and the need to transition/change necessary ancillary agreements, all of which are a result of the magnitude of the effort involved in this requirement.

[FAR 6.302-2](#): Unusual and compelling urgency, 41 U.S.C. 3304(a)(2)

[FAR 6.302-5](#): Authorized or Required by Statute, 41 U.S.C. 3304(a)(5)

Other (See [FAR Subpart 6.3](#) for additional authority)

5. Agency Actions to Take or Remove Barriers That Led to Other Than Full and Open Competition (If applicable):

The TQC follow-on requirement is currently being recompeted as a small business set aside. As a result of the ongoing competitive process, there are no additional actions that need to be taken to increase competition.

6. Bridge Contracts:

History of Current Competition: Procurement planning for the TQC full and open competition began in August 2020 with the posting of sources sought announcements on GSA eBuy and SAM.gov seeking information regarding the availability and capability of qualified small businesses. On September 1, 2020, CMS received thirty (30) capability statements in response to this notice. Each capability statement was analyzed to assess the respondent's capability to perform critical TQC requirements. It was originally anticipated that evaluation of these capability statements would take approximately one (1) month to complete (i.e., completed on or around October 1, 2020). However, due to a variety of factors, capability statement review was not completed until mid-April 2021. These factors included, but were not limited to: (i) a higher than anticipated volume of capability statements received; (ii) competing priorities; and (iii) unprecedented impact of COVID-19 on all active and in-development contracts. While procurement planning and preparation did not completely stop during this period, intended milestones were delayed by several months. Upon completion of capability statement review, CMS concluded that the breadth of responses from qualified small business concerns indicated that a small-business set aside was appropriate for this requirement. Following completion of this capability statement review, CMS began obtaining all necessary pre-solicitation clearances and drafting the solicitation materials. The final solicitation was posted to SAM.gov on October 12, 2021 with a Phase 1 proposal due date of November 19, 2021 (RFP: 75FCMC21R0041). At the request of potential offerors, this Phase 1 proposal due date was subsequently extended to November 30, 2021. By October 20, 2021, CMS had received over 150 questions related to the solicitation. Effectively responding to this large volume of questions required substantial time and energy to complete. Furthermore, on October 29, 2021 CMS held a pre-proposal virtual conference to provide a brief overview of this requirement and address some of the common themes that arose in the solicitation questions. CMS did not provide formal answers to all solicitation-based questions until November 10, 2021, when an updated solicitation package including all Q&As was posted to SAM.gov. Phase 1 proposals were received on November 30, 2021 and evaluation of these Phase 1 submissions was completed on or about February 16, 2022. Advisory down-select notifications were sent, with Phase 2 proposals due on or before March 15, 2022. Phase 2 proposals were received on March 15, 2022. Award was made on September 22, 2022. An unsuccessful Offeror submitted a protest to the United States Government Accountability Office (GAO) on October 5, 2022. The protest will not be resolved in time to allow for an adequate transition period prior to expiration of the existing TQC contract on January 31, 2023 (HHSM-500-2013-00099C). Furthermore, the incumbent must participate in the transition of services of this magnitude, which could take up to six (6) months to complete.

Milestones for Bridge Contract: The notice of intent to issue a sole source Bridge Contract was posted on SAM.gov on November 08, 2022. This J&A provides justification for the sole source Bridge Contract. The competitive follow-on award will not be made in time to allow for an adequate transition period prior to the end of the existing TQC contract on January 31, 2023. It is anticipated that award of this Bridge Contract will occur on or prior to that date. This Bridge Contract will ensure continued and uninterrupted support of the CMS call center operations until a new contract can be awarded and effectively transitioned.

To bring on a new contractor while a competitive process is underway would not be cost effective and would significantly increase the risk to TQC operations. Only the incumbent contractor has the extensive logistics and organization currently in place to provide these services during the time period of this Bridge Contract. The size and complexity of the TQC program would require a significant amount of time and funding for any other contractor to transition. Based on past experience, CMS estimates approximately \$20 million for transition (depending on the contractor's level of excess capacity and infrastructure availability). Accordingly, to ensure continued operations, these services must continue to be provided by the incumbent contractor, which has been supporting the TQC program under the existing contract.

The amount of time and effort necessary to transition-in a contractor and bring them up to operational effectiveness will not meet the Government's immediate needs. The Bridge Contract will eliminate the need for duplicative transition costs, resulting in a significant cost savings to the Government. Finally, the Bridge Contract will minimize disruption to the work currently being performed.

7. Actions to Increase Competition:

The TQC requirement is currently being recompeted as a small business set aside. However, the award will not be made in time to allow for an award and adequate transition period prior to the expiration of the existing TQC contract on January 31, 2023. This Bridge contract is a one-time requirement to continue TQC performance while the work is being recompeted, awarded and transitioned.

A notice of CMS's intent to issue a sole source Bridge Contract was published on SAM.gov on November 08, 2022. No responses were received from interested vendors.

8. Market Research:

For the existing competitive acquisition, market research was conducted utilizing a Sources Sought Notice to encourage early involvement of industry in the procurement planning process, and to gauge the level of interest and capability of qualified small businesses. Additionally, a pre-proposal virtual conference was held to provide a brief overview of this requirement and address common themes that arose in the solicitation questions.

CMS also posted on SAM.gov its intent to issue a sole source Bridge Contract. There were no response(s) received.

9. Procurement History:

Purchase order or contract number: HHSM-500-2013-00099C

Was action competed?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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If action was not competed, state the cited authority, summarize rationale, and describe the actions that were supposed to be taken to increase competition and the results thereof:

N/A - action was competed

10. Additional Information to support the justification:

N/A

11. Technical / Requirements Certification: *By my signature below*, I certify that the supporting data included in this J&A is accurate and complete.

<u>Program Manager</u>	
Name:	Rob Pierce
Position Title:	Program Manager
Email address:	Rob.Pierce@cms.hhs.gov
Phone:	(410) 786-5323
<u>Program Manager Supervisor (or one level above Program Manager)</u>	
Name:	Frances Harmatuk
Position Title:	Director, Call Center Operations Group
Email address:	Frances.Harmatuk@cms.hhs.gov
Signature:	Frances Harmatuk -S <small>Digitally signed by Frances Harmatuk -5 Date: 2022.12.19 10:27:18 -05'00'</small>
Date:	

12. Fair and Reasonable Price/Cost Determination: As Contracting Officer, by my signature below, I hereby determine that the anticipated price/cost to the Government for this contract action will be fair and reasonable.

The business proposal evaluation will consist of a cost analysis utilizing certified cost or pricing data to determine the reasonableness of the proposed costs. Independent of the cost analysis, a cost realism analysis will also be performed. This process will consist of review and evaluation of specific elements of the offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; are consistent with the unique methods of performance and materials described in the offeror's proposal. The cost analysis and cost realism analysis will be used to determine that the offeror's proposed costs are fair, reasonable, and realistic for the work to be performed.

Cost Analysis will include analysis of the individual items of cost. Proposed costs will be compared against historical data as well as to the IGCE. The contractor's basis of estimate (BOE) will also be reviewed. Additionally, because there is a current competition underway for these services, the proposed cost elements for this Bridge Contract may also be compared against proposals that have been submitted in response to the current competition.

Cost Realism: In determining cost realism, CMS will consider the following (NOTE: the following list is not necessarily all inclusive):

1. The number and mix of proposed labor hours relative to the technical requirements and proposed approach.
2. Types, numbers and hours/days of proposed consultants.
3. The kinds and quantities of material, equipment, supplies, and services.
4. Travel proposed, including number of trips, locations, purpose, and travelers.
5. Other direct costs not specified above.
6. Whether proposed labor rates are adequate to recruit, hire and retain qualified employees.
7. Contractor's use and calculation of uncompensated overtime.
8. Whether proposed indirect rates: (i) are calculated and applied consistent with disclosed, CAS compliant, accounting practices; and (ii) properly consider anticipated future work.

Name:	Deborah S. Lester	Phone:	410-786-5136
Signature:	Deborah Lester -S <small>Digitally signed by Deborah Lester -S Date: 2022.12.19 11:02:21 -05'00'</small>	Date:	

13. Contracting Officer's Approval (Required for proposed contract not to exceed \$700,000 (value calculated including all options)): I hereby certify that this justification is accurate and complete to the best of my knowledge. I approve this justification subject to availability of funds, and provided that the services and supplies herein described have otherwise been authorized for acquisition.

Name:	Deborah S. Lester	Phone:	410-786-5136
Signature:	Deborah Lester -S <small>Digitally signed by Deborah Lester -S Date: 2022.12.19 11:02:57 -05'00'</small>	Date:	

14. Legal Review:

N/A – less than \$68 million

15. OPDIV Competition Advocate Approval (Required for proposed contract over \$700,000 but not exceeding \$13.5 million (value calculated including all options)):

I have reviewed this justification and find that it adequately supports other than full and open competition.

Name:	Karen Jackson	Phone:	410-786-0079
Signature:		Date:	

16. Office of Small and Disadvantaged Business Utilization Review: (Required for contracts exceeding \$68 million (value calculated including all options)): N/A Less than \$68 Million

Concur:	<input type="checkbox"/> N/A	Non-Concur:	<input type="checkbox"/>
Name:		Phone:	
Signature:		Date:	

17. OPDIV HCA Approval (Required for proposed contract over \$13.5 million but not exceeding \$68 million (value calculated including all options)):

Name:	For: Derrick Heard	Phone:	410-786-2545
Signature:	Douglas D. Bergevin -S <small>Digitally signed by Douglas D. Bergevin -S Date: 2022.12.23 10:07:10 -05'00'</small>	Date:	

18. Department Competition Advocate (Required for contracts exceeding \$68 million (value calculated including all options)): N/A Less Than \$68 Million

Concur:	<input type="checkbox"/> N/A	Non-Concur:	<input type="checkbox"/>
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Name:		Phone:	
Signature:		Date:	

19. HHS Senior Procurement Executive (SPE) Approval: N/A – less than \$68 million

Based on the foregoing justification, I hereby approve other than full and open competition for the above stated procurement, subject to the availability of funds, and provided that the services herein described have otherwise been authorized for acquisition.

State supplies/services being procured:

State the full statutory authority and FAR cite and title, consistent with paragraph 4, e.g. 41 U.S.C. 3304:

Name:	N/A	Phone:	
Signature:		Date:	