

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOFOC)
(In accordance with Federal Acquisition Regulation (FAR) 6.3 – Other than Full and Open Competition)

1. This document is a justification for other than full and open competition prepared by NASA's Goddard Space Flight Center (NASA's GSFC):

NASA GSFC's Innovative Technology Partnerships Office (ITPO) has a requirement to launch the 2014 Goddard OPTIMUS PRIME Spinoff InWorld Challenge for students in grades 3 through 12 by September 1, 2014. This annual contest seeks to educate the public about NASA's programs, GSFC spinoff technologies benefitting the public, and the companies that have successfully commercialized GSFC technology. The Government requires a uniquely qualified business with the knowledge, resources, and tools necessary to initiate and manage responsible and effective online youth and parent relationships by adhering to Children's Online Privacy Protection Act (COPPA), and best practices when dealing with community sites or features that may have both children and adults present. Small business Privacy Vaults Online, Inc. (Privo) (McLean, Virginia) is the only responsible source that can satisfy Agency requirements. This document justifies the determination for using other than full and open competition.

2. The nature and/or description of the action being approved:

The OPTIMUS PRIME Spinoff InWorld Challenge contest will be open to the public and is targeted towards children in 3rd through 12th grades. The ITPO Office will need to collect personally identifiable information from children under the age of 13 for this contest, and as a result will be required to conduct the contest in a manner that is COPPA compliant. The participants of the challenge will create and submit original videos highlighting their favorite GSFC spinoff success story. In addition, ITPO requires support from the contractor with COPPA compliant outreach, photographic and video documentation of contest related events.

3. Description of the supplies or services required, including an estimated value:

The GSFC ITPO requires a fully hosted, Web-based service for registration, authentication, parental authorization, identity vetting, data hosting, and audit record maintenance from a Federal Trade Commission designated COPPA Safe Harbor organization for its annual OPTIMUS PRIME Spinoff InWorld Challenge. The proposed contract is anticipated to be awarded September 2014. The value of this acquisition (base plus 2 one-year options) is approximately \$430,000.

4. Statutory authority permitting other than full and open competition:

The applicable statutory authority permitting other than full and open competition is 10 U.S.C. 2304 (c) (1), as cited under FAR 6.302-1, only one responsible source, and no other supplies or services will satisfy Agency requirements.

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

Privo is the first and only infomediary service to be recognized by the Federal Trade Commission (FTC). The Privo Privacy Assurance Program was approved as a safe harbor provider under the COPPA Rule in

August of 2004. Website operators are *deemed in compliance* if the operator complies with Commission approved self-regulatory guidelines. In order to ensure COPPA compliance, and thereby protect the Agency from possible litigation, the Safe Harbor designation is a required capability for the proposed project. In addition to Privo, there are three other organizations with the FTC Safe Harbor designation (TRUSTe, ESRB, CARU), but none of them provide the necessary support services required by ITPO to implement the OPTIMUS PRIME Spinoff Contest. TRUSTe provides Website monitoring and compliance controls, but does not provide hosting of registration services. The Entertainment Software Rating Board (ESRB) assigns ratings for video games and apps so parents can make informed choices. ESRB does not provide hosting of COPPA compliant registration services. The Children's Advertising Review Unit (CARU) reviews and evaluates advertising for truth, accuracy, appropriateness and sensitivity to children's still developing cognitive abilities. CARU does not provide hosting of COPPA compliant registration services. Privo is therefore the only company capable of meeting the requirements of this procurement. Standing up a COPPA compliant registration capability is essential to the execution of the contest. COPPA guidelines are very stringent with regard to how parental consent is verified, what types of questions can be asked and how the data is stored once it is collected. NASA GSFC ITPO does not have the resources or the expertise to develop its registration system in-house. The ability to host the registration process externally is therefor critical.

6. Description of the efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a notice was or will be publicized as required by Federal Acquisition Regulation (FAR) 5.2:

In accordance with FAR Part 5.2, this procurement was synopsisized on NASA's Acquisition Internet Services (NAIS) Business Opportunities web site on January 2, 2013. NASA's GSFC used the combined synopsis and solicitation procedures in accordance with FAR Subpart 12.6 as supplemented by the FAR Subpart 13.5. The results of the synopsis are included in Section 10 below.

7. A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

The Contracting Officer will review the proposed cost by the vendor to determine if the price is fair and reasonable. Since certified cost or pricing data is not required for commercial items in accordance with FAR 15.403-1(b)(3), data other than certified cost or pricing data will be used as necessary to establish a fair and reasonable price. Strategically, this will include utilizing data related to prices (e.g., established catalog or market prices, sales to non-governmental and governmental entities), relying first on data available within the Government; second, on data obtained from sources other than the offeror; and, if necessary, on data obtained from the offeror. Cost data may be used if necessary.

8. Description of the market research conducted, and the results, or a statement of the reasons market research was not conducted:

Market research activities have been conducted for the ITPO procurement by technical personnel and procurement. The assigned personnel also reviewed the results of market research conducted less than 18 months ago and determined the market research to still be current, accurate, and relevant. NASA does not believe any alternate sources can fulfill the contract requirements. In addition, this procurement was synopsisized on NASA's Acquisition Internet Services (NAIS) Business Opportunities web site.

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

The COPPA guidelines would be extremely difficult to implement properly with the internal personnel resources available to the ITPO. Furthermore, no NASA internal expertise or policy guidance regarding implementing COPPA compliance currently exists. It would therefore create a significant legal risk to GSFC if the ITPO were to attempt to implement COPPA requirements within the OPTIMUS PRIME Spinoff InWorld Challenge without external expert guidance.

10. Sources, if any, that expressed an interest, in writing, in the acquisition:

In accordance with the requirements of FAR 5.203(a), a notice of NASA's intent to acquire the infomediary services was published through NAIS to the Electronic Posting System and to the Federal Business Opportunities worldwide Web site on August 7, 2014 with an offeror response date of August 22, 2014. NASA GSFC used the combined synopsis and solicitation procedures in accordance with FAR Subpart 12.6. During the 15-day response period, only PRIVO submitted an offer in response to the Infomediary Services combined synopsis and solicitation.

11. The actions the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required:

Code 504 will continuously examine the feasibility of the other organizations with the FTC Safe Harbor designation to fulfill the requirements of the ITPO. This effort will include reassessing the market for these services. Additionally, Code 504 will study any barriers that may exist regarding other organizations being able to perform ITPO requirements for the OPTIMUS PRIME Spinoff InWorld Challenge contest.

