

3/10/2014

14-0065-NC08 - Repair Varian
Medical System Accelerator
KMN (E)

DEPARTMENT OF VETERANS AFFAIRS
Justification and Approval
For
Other Than Full and Open Competition

1. Contracting Activity: Department of Veterans Affairs, VISN 8

2. Nature and/or Description of the Action Being Processed:

This is a request for Other Than Full and Open Competition for the procurement of labor and materials/parts to perform repair of Varian Medical Systems Linear Accelerator at San Juan, Miami, West Palm Beach, Bay Pines, and Tampa VA to first class operating condition. Contract Type will be Firm Fixed Priced for FY14 as a new contract. Option Years are in the best interest of the government to avert redundant processes, ensuring equipment warranties are maintained, and obtaining discounted pricing. The Independent Government Cost Estimate for this project is \$8,450,113. This contract will cover both repair and maintenance of all systems associated with the linear accelerators for all five sites. The services provided will cover both scheduled and unscheduled maintenance and emergency calls.

Year 1 - Base Year - 4/1/2014 - 9/30/14

Year 2 - Option Year 1 - 10/1/14 - 9/30/15

Year 3 - Option Year 2 - 10/1/15 - 9/30/16

Year 4 - Option Year 3 - 10/1/16 - 9/30/17

Year 5 - Option Year 4 - 10/1/17 - 9/30/18

3. Description of Supplies/Services Required to Meet the Agency's Needs:

Linear Accelerators (LA)s require regular inspections, maintenance, and adjustments. Linear Accelerators are highly complicated and extremely fragile devices that require precise calibration to ensure that individuals receiving treatment are obtaining the proper doseages of radiation. Preventative maintenance services, like the one being sought in this requirement, reduce the number of shutdowns and outages and improve the safety and quality of the operations of the machines. Having reliable, functioning machines is critical to the day to day operations of these hospitals that serve the nations veterans. Non-functioning machines become high visibility problem and this should be a consideration when seeking preventative maintenance services. While deaths are extremely rare, the government needs to recognize this liability within its hospitals and address it by having highly qualified and competent servicers. Each linear accelerator is a highly specialized system with an acquisition value of more than \$2,500,000. This is one of only three of these specialized units used daily for patient radiation oncology treatments at the facility. This information outlines how important it is for hospitals to seek out and obtain a highly qualified, competent and insured contractor for this requirement. Clear and concise preventative maintenance contracts will go a long way towards LA(s) operating safely and reliably. VISN 8's objective with this procurement is to provide its hospitals with a high quality, uniform, long term service coverage while seeking an overall cost discount based on the large number of machines being serviced. Historically, these services have been provide to the

above referenced medical centers through individual sole source, firm fixed price contracts with Varian.

Services to be provided

Periodic Maintenance Inspection (PMI) - All mandatory safety and reliability modifications for the equipment

Mandatory Upgrades Coverage - Every major software upgrade release by installing the most recent production version for the software, Any training associated with the upgrade according to Training & Technical Support (TTS) guidelines.

Software Upgrade and associated training

Maintenance Releases / Service Packs (MR/SP) and associated

Refresher Training - 3 Days - Supply all parts necessary to keep the Software System related computers

On-site Labor coverage (OSL) - On-site emergency field service support, for the equipment covered

On-site Emergency Labor

Training - Provide technical support for products covered

Help Desk Support Technical (HDST) - Provide remote diagnostics and support during standard business hours

Remote Access - Provide remote diagnostic and support during standard business hours

This contract will be all inclusive for all parts and labor

Equipment and Services Covered

Tampa - Eclipse Essentials and Clinac H294235, H290516, H290369

Bay Pines - Eclipse / ARIA-RO - Essentials and Clinac H295036

West Palm Beach - Eclipse / ARIA-RO - Essentials and Clinac H294960

Miami - Eclipse / ARIA-RO - Essentials and Clinac H293979

San Juan - Eclipse / ARIA-RO - Essentials and Clinac H140931

Contractor must maintain a 95% guaranteed uptime on all covered equipment in VISN 8
Contractor performance will be measured in terms of the uptime statistics being evaluated for each successive 12-month. Should the system fail to achieve the required uptime of 95% communicated with Varian, and the failure is attributable to Varian, then the following year's support agreement will be adjusted according to the schedule below.

Uptime % Credit

95.0 - 100.0 None

94 - 95 3%

94 And LOWER 6%

4. Statutory Authority Permitting Other than Full and Open Competition:

Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1

5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above :

The current equipment is proprietary and use of other manufactures or service companies would void the warranties in effect for the next five years. Additionally, the Software for the system is proprietary with no alternate sources available. The required preventative maintenance and software support services can only be obtained from the Original Equipment Manufacturer (EOM), Varian Medical Systems, and there are no other options currently available for meeting the agency needs.

6. Description of Efforts made to ensure that offers are solicited from as many potential sources as deemed practicable:

A Sources Sought notice was issued on November 10, 2013 to all prospective vendors. The sources sought was posted under classification code 65 – Medical, Dental and Veterinary Equipment and Supplies, NAICS code 811 – repair and Maintenance/811310 – Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. No responses were received.

Further efforts were made through the Small Business Dynamic search tool under NAICS 811219 as well as the keyword Varian. The search returned 4 small businesses. Contract Specialist forwarded the Sources Sought notice via e-mail to all four small business contractors listed in the Dynamic search. However, the only responses received claimed “we don't know of any source other than Varian that can support this product, and it is highly specialized and parts are only available from Varian”.

Letter from contractor, states “This is to confirm that Varian's Clinac and TrueBeam Delivery System products and ARIA as well as Eclipse products utilize proprietary Varian technology. SmartConnect is Varian's proprietary remote support and diagnostic service tool utilized by Varian support personnel.”

Per the VA National Acquisition Center, this was the same information they came up with during their research.

Contact was made with Gary Korkala from Kodex, Inc. X-Ray Associates East LLC. He stated “I don't know of any source other than Varian that can support this product. It is highly specialized and parts are only available from Varian”.

A search of FBO and the internet revealed several additional intent to award Sole Source postings from Air Force, Navy, Customs and Border Protection (CBP), Procurement Directorate, other VA's, and a Los Angeles County hospitals.

In accordance with FAR Part 6.302-1 - Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.

Varian Medical Systems is the only responsible source available to meet the government requirement with proprietary right.

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:

Pricing was determined to be Fair and Reasonable by a combination of reviewing procurement history beginning in FY 14 to current from all five locations. Varian has been the sole provider of the maintenance and support for the linear accelerators at these locations and a detailed history of pricing was available. In addition, the contracting officer reviewed both government estimates and compared prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers. Contract Specialist looked at pricing on contracts from not only the five locations in VISN 8 but from a VA in Houston, and Wright Patterson Air Force base. All locations were receiving similar pricing for similar work to be performed by Varian for VISN 8.

The cost of procuring these services individually at each site (2 million a year) is far more expensive than procuring them on one contract (1.65 Million). Combining these services on one contract will save the Government over \$350,000 a year and over \$1.7 million dollars during the 5 year period.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

Market research was conducted by posting a Sources Sought Notice on FedBizOpps. The Sources Sought Notice returned no responses.

Further market research was conducted utilizing the SBA Dynamic Small Business under key word Varian and NAIC 811219 resulting in four potential small businesses. The Contract Specialist forwarded the Sources Sought notice via e-mail to all four small businesses the Contracting Specialist did not receive any replies and does not expect any response from authorized and capable sources of servicing the equipment except the Original Equipment Manufacturer (OEM), Varian Medical.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition:

Varian Medical Systems is the Original Equipment Manufacturer (OEM) with proprietary hardware and software required for the equipment to be maintained. Varian has also communicated there are no authorized contractors to service Varian equipment. Varian's Smart Connect remote support tool is proprietary and cannot be utilized by any other vendor/provider. An exhaustive search of FBO revealed several J&A's for sole source procurements of the exact same service described above. A sole Source for Michael E. DeBakey, Houston TX, was just signed on February 12th 2013, and a contract was awarded (VA256-13-C-0205) for these exact same services.

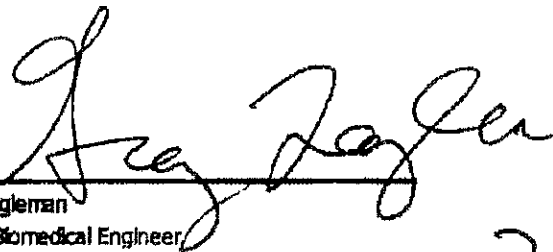
10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

No other sources were identified

11. A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:

Varian Medical Systems is the Original Equipment Manufacturer (OEM) with proprietary hardware and software required to maintain the equipment. Market research will be conducted on a continuing basis to determine if additional sources enter the market.

12. Requirements Certification: I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

X 
Greg Fogleman
VISN 8 Biomedical Engineer


2-13-2014

November 25, 2013
Name: Greg Fogleman

Date:

13. Approvals in accordance with FAR 6.304

a. **Contracting Officer's Certification:** (required) I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.


Cheryl Dyak
Contracting Officer
Network Contracting Office 8
Bay Pines VA Medical Center

2/25/14
Date

b. **NCM/PCM:** I certify the justification meets requirements for other than full and open competition.

MITCHELL J.
THOMAS 132545

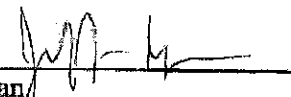
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Date: 2014.03.03 09:10:48 -0500

Mitchell Thomas
Network Contract Manager
Network Contracting Office 8

Date

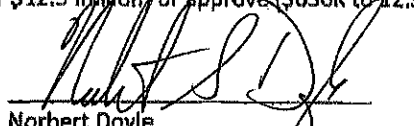
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c. **SAO:** I certify the justification meets requirements for other than full and open competition.


Jeffery Ryan
SAO Director, East Region

3/10/14
Date

- d. VHA HCA Review and Approval: I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval (if over \$12.5 million) or approve (\$650K to 12.5 million) for other than full and open competition.


Norbert Doyle
Chief Procurement and Logistics Officer
VHA Head of Contracting Activity (HCA)

Date 3/14/14