

LIMITED SOURCES JUSTIFICATION

**ORDER >\$3,000
FAR PART 8.405-6**

2237 Transaction # or Vista Equipment Transaction #: 589-14-3-5614-0406 (VA255-13-J-0135)

This acquisition is conducted under the authority of the Multiple Award Schedule Program. The material or service listed in par. 3 below is sole source, therefore, consideration of the number of contractors required by FAR Subpart 8.4 – Federal Supply Schedules, is precluded for the reasons indicated below.

Restricted to the following source: Provide original manufacturer's name for material or contractor's name for service. (If a sole source manufacturer distributes via dealers, ALSO provide dealer information.)

Manufacturer/Contractor: Quest Diagnostics
Manufacturer/Contractor POC & phone number: Michael Anderton (615) 672-9798
Mfgr/Contractor Address: 285 West Hester Road, Cottontown, TN 37048
Dealer/Rep address/phone number: _____

The requested material or service represents the minimum requirements of the Government.

(1) AGENCY AND CONTRACTING ACTIVITY:

Department of Veterans Affairs
Columbia VAMC
Pathology and Lab Medicine

Network Contracting Office 15 (NCO 15)

NCO: 15

(2) NATURE AND/OR DESCRIPTION OF ACTION BEING APPROVED:

Action being processed for approval is a limited sources justification for a six-month extension to current order VA255-13-J-0135 issued against blanket purchase agreement (BPA) VA255-BP-0130 established against Federal Supply Schedule (FSS) contract V797P-7105A.

(3) (a) A DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED TO MEET THE AGENCY'S NEED:

Services required to meet the Agency's need are reference laboratory services to be provided to the Columbia, VAMC. Services consist of routine and specialty laboratory testing that cannot be performed in-house due to severe backlog or lack of specialized equipment.

(b) ESTIMATED DOLLAR VALUE: \$300,000.00

(c) REQUIRED DELIVERY DATE: Current order expires April 25, 2014 therefore, modification to extend services will need to be executed prior to this date.

(4) IDENTIFICATION OF THE JUSTIFICATION RATIONALE (SEE FAR 8.405-6), AND IF APPLICABLE, A DEMONSTRATION OF THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS TO PROVIDE THE REQUIRED SUPPLY OR SERVICE. (CHECK ALL THAT APPLY AND COMPLETE)

Specific characteristics of the material or service that limit the availability to a sole source (unique features, function of the item, etc.). Describe in detail why only this suggested source can furnish the requirements to the exclusion of other sources.

A patent, copyright or proprietary data limits competition. The proprietary data is: (If FAR 8.405-6(a)(2)iii before posting. Do not include specific proprietary data. Only mention the type of equipment, procedure, etc. to show that proprietary supplies or services are being procured.)

These are "direct replacements" parts/components for existing equipment.

The material/service must be compatible in all aspects (form, fit and function) with existing systems presently installed/performing. Describe the equipment/function you have now and how the new item/service must coordinate, connect, or interface with the existing system.

The new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order must not have been previously issued under sole source or limited source procedures.

An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

The statutory authority for restricting consideration is FAR 8.405-6(a)(1)(i)(A), an urgent and compelling need exists and following the procedures would result in unacceptable delays.

NCO 15 is currently in the acquisition process to establish a blanket purchase agreement against the Federal Supply Schedule (FSS) for reference laboratory services; however, due to two consecutive bid protests, NCO 15 will be unable to complete the acquisition process prior to expiration of the current order which is April 25, 2014. In the absence of an extension, services will lapse and agency operations (e.g. veteran patient care) will be severely impacted.

Solicitation VA255-12-Q-0268 for current acquisition for reference laboratory services was issued May 1, 2012 with offer due date of May 31, 2012. Following the closing of the solicitation, June 11, 2012 schedule holder Laboratory Corporation of America ("LabCorp") filed protest (B-406867) with the Government Accountability Office (GAO) claiming that the contracting officer's decision to refuse the quotation due to untimely submission was unreasonable. Pursuant to the bid protest mechanism, filing with the GAO triggered an automatic stay of evaluation and contract award during the pendency of the protest. Although permissible under the Competition in Contracting Act (CICA), Department of Veterans Affairs ("VA") counsel did not elect to override the bid-protest stay after carefully weighing the VA's position and the time frame required for GAO to render a decision. September 13, 2012, GAO dismissed the protest due to patent ambiguity (see attached). Subsequent to GAO's dismissal of the protest, NCO 15 received notification from LabCorp of intent to file a complaint for declaratory and injunctive relief (i.e. "appeal") with the Court of Federal Claims (CoFC); this bid protest (No. 12-622C) was filed September 20, 2012. Protests filed with the CoFC do not include an automatic stay; however, counsel for the Department of Justice voluntarily imposed a suspension of solicitation evaluation and award until an opinion was issued by CoFC. December 21, 2012 the opinion issued by CoFC granted the plaintiff's (i.e. LabCorp) motion and enjoined the VA from evaluating quotations received and making an award unless the VA made provision to accept a quotation from LabCorp or conduct a new procurement for the services required. The CoFC opinion was published as judgment February 25, 2013 (see attached). Following the publishing of the CoFC Judgment, the Department of Justice in cooperation with the Department of Veterans Affairs and General Services Administration is considering an appeal with the U.S. Court of Appeals for the Federal Circuit. Counsel for the Department of Justice has advised that the appeal process could possibly exceed six months and that during the interim, all action concerning the new acquisition for reference laboratory services is to remain status quo; i.e. there is to be no evaluation of quotations received, no acceptance of late quotations, or cancellation of the original solicitation and issuance of new. At this time the protest has been upheld and a new solicitation will need to be issued.

Taking into consideration the delays encountered due to the aforementioned legal proceedings, there is no realistic option to continue reference laboratory services other than through a contract (order) extension with the incumbent contractor until a new solicitation can be created, issued, evaluated and awarded. The term of six-months was determined appropriate due to the anticipated

length of the solicitation and evaluation process. It is anticipated that at a minimum 6 months will be required to perform this acquisition successfully.

(5) DESCRIBE WHY YOU BELIEVE THE ORDER REPRESENTS THE BEST VALUE CONSISTENT WITH FAR 8.4 TO AID THE CONTRACTING OFFICER IN MAKING THIS BEST VALUE DETERMINATION:

Action being processed for approval is a limited sources justification for a six-month extension to current order VA255-13-J-0135 issued against blanket purchase agreement (BPA) VA255-BP-0130 established against Federal Supply Schedule (FSS) contract V797P-7105A. Order has already been placed against an existing BPA established against a FSS contract; therefore, the BPA's award is indicative that the ordering activity has previously concluded the BPA (and issued orders) represents best value and resulted in the lowest overall cost alternative (considering price, administrative costs, etc.) to meet the Columbia VAMC need(s). GSA has already determined the prices of these fixed-priced services under schedule contracts to be fair and reasonable.

(6) DESCRIBE THE MARKET RESEARCH CONDUCTED AMONG SCHEDULE HOLDERS AND THE RESULTS OR A STATEMENT OF THE REASON MARKET RESEARCH WAS NOT CONDUCTED:

Market research has not been conducted.

(7) ANY OTHER FACTS SUPPORTING THE JUSTIFICATION:

An alternative to extending the current order considered by NCO 15 was to issue a new limited-source, short-term order due to the urgent and compelling need; however, VHA Procurement Manual, Volume 6, Chapter III, Procurement Process has the submission deadline to meet a target award date (based upon current milestone plans) of 50 days **following the submission of a complete procurement package**. Due to the legal developments, lengthy resolution, and constraints imposed by the bid-protest process, insufficient time remains to develop a procurement package and obtain the required services through a limited-source FSS acquisition.
