

## JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)  
Office of Acquisition Operations  
Technology Acquisition Center  
23 Christopher Way  
Eatontown, New Jersey 07724
2. Description of Action: The proposed action is for a firm-fixed-price (FFP) Delivery Order (DO), issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) IV Government Wide Acquisition Contract (GWAC) for software maintenance and support for BMC software currently owned by VA and utilized by Enterprise Testing Service (ETS) Capacity and Performance Engineering Services (CPE). The period of performance for this effort shall consist of one 12-month base period with two 12-month option periods.
3. Description of Supplies or Services: Brand name BMC software maintenance and support is required to provide ongoing maintenance and support services for the existing brand name BMC software products currently being utilized by ETS CPE. This maintenance and support shall consist of any and all manufacturer-released software updates, patches and versions for the existing licenses. The maintenance and support shall also include access to the manufacturer's approved support resources such as help-desk and consultation services for the purposes of resolving problems, issues, and questions concerning the existing brand name BMC software licenses. The support and maintenance services are required to ensure continuity of operations for the current software by providing patches and bug fixes to resolve software problems. Additionally, new software versions provided as part of maintenance are required to ensure the brand name BMC software operates with new operating systems and software. The BMC tool is utilized by ETS to perform Capacity and Performance analysis. The resulting data from this analysis is used to formulate capacity planning recommendations for existing and planned production systems. The period of performance shall be from September 16, 2014 through September 15, 2015 with two 12-month option periods. The total estimated price of the proposed action, including all options, is
4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is Section 41 U.S.C. 4106(c)(2) as implemented by Federal Acquisition Regulation (FAR) Subpart 16.505(b)(2)(i)(B) entitled, "Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized."
5. Use of Authority Cited Above: This is a brand name justification in support of FAR Subpart 11.105, Items Peculiar to One Manufacturer. Based on market research, as described in paragraph 8 of this document, it has been determined that limited competition is available among authorized resellers for the required brand name BMC software maintenance. The mission of CPE is to establish testing environments that are accurate representations of field-deployed production information technology (IT)

systems. Therefore, CPE has taken the approach of replicating, to the maximum extent possible, actual field systems in its test center environments. In order to ensure that the field environments are equivalent to testing environments, it is imperative that the same tools and tool versions are used; as such, BMC software was purchased and installed for the existing testing environment. Within the testing environment, the BMC software tool is used by CPE to perform Capacity and Performance analysis. The resulting data from this analysis is used to formulate capacity planning recommendations for the planned or existing production systems. The required brand name software maintenance and support is required to provide software bug fixes and patches to resolve software issues to ensure continuity of operations for the BMC software. Further, new software versions provided as part of the maintenance are required to ensure the BMC software operates with updated operating systems. The software code required to provide new software versions, patches and fixes is owned by BMC; this intellectual property is not made available for use by third party vendors and is protected by contract, trade secret, copyright and patent laws. Due to the proprietary nature of the products, brand name BMC software maintenance and support is required and no other maintenance and support can meet the Government's requirement to ensure continuity of maintenance and support for the existing BMC software licenses to maintain replication of the testing environment with production environments.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. Although the Government is limiting competition as a result of specifying a brand name, limited competition is anticipated among resellers for the required maintenance and support. Additionally, this Justification for Exception to Fair Opportunity will be submitted to all four NASA SEWP IV GWAC Groups in order to fully notify all parties. All SEWP IV orders are placed under existing indefinite delivery, indefinite quantity contracts, and thus are not required to be synopsisized pursuant to FAR subpart 16.505(a)(1); however, notice of the Delivery Order award and this justification shall be made publically available on FedBizOpps.gov within 14 days after award in accordance with FAR 16.505(b)(2)(ii)(D).

7. Actions to Increase Competition: In order to remove or overcome barriers to competition in the future, the program office will continue to perform market research on this software maintenance and support to determine if other solutions can be considered for future procurements.

8. Market Research: The Government technical experts conducted market research in May 2014 via an internet search for similar software maintenance services. The Government reviewed Hewlett Packard (HP) and CA Technology's websites and although they have similar software products that perform Capacity and Performance analysis they do not provide maintenance services for BMC software. Access to the existing software code is required to provide software upgrades, patches and fixes, the software code is owned by BMC; this intellectual property is not made available for use ~~to~~ third party vendors and is protected by contract, trade secret, copyright and patent laws. Due to the proprietary nature of the products, BMC software maintenance and support is required and no other maintenance and support can meet the Government's

requirement to ensure continuity of maintenance and support for the existing software licenses. Only BMC, or an authorized BMC reseller, has the right to perform the maintenance and support services. VA currently owns BMC licenses and the replacement of the existing licenses would be a significant expense, in terms of time and cost, to VA. The cost to purchase new licenses, as well as, the cost to implement the new software is not anticipated to be recuperated through competition. Additionally, CPE's engineers have utilized the BMC software tools for many years and have gained significant experience analyzing the data produced by the software. The ability to analyze the data produced by this tool has allowed CPE to provide proven Capacity and Performance recommendations for production systems. Replacing the BMC software tools with any other product would require a significant expenditure on training and considerable amount of time to implement a new product therefore delaying the analysis of systems.

Additional market research was conducted in May of 2014 utilizing the Manufacturer Lookup and Product Verification tool on the National Aeronautics and Space Administration (NASA) Solutions for Enterprise Wide Procurement (SEWP) IV Government Wide Acquisition Contract (GWAC) website. As result of the search it was determined that there are 21 authorized resellers of the brand name BMC products who hold current GWACs; three in Group A (Value Added Resellers (VARs) & Computer System Original Equipment Manufacturers); four in Group B (Service Disabled Veteran-Owned Small Business (SDVOSB) VARs); eight in Group C (Small Business Set-Aside VARs) and six in Group D (VARs). Further market research was conducted on May 12, 2014 via a Request for Information (RFI) submitted to all Prime contract holders of the NASA SEWP IV GWAC. On May 19, 2014 three responses were received; two responses were received from prime contract holders in Group B, and one response was received from an SDVOSB prime contract holder in Group A. It was determined that all three of the respondents are technically capable of providing the required software maintenance services. Based on the RFI responses, it was determined that there is viable competition for the required services amongst resellers on the NASA SEWP IV GWAC. Limited competition is expected for this acquisition.

9. Other Facts: On September 16, 2012, the Government awarded a Delivery Order number VA118-12-F-0349 for the above mentioned brand name BMC software maintenance for a 12-month base period and four 12-month options for maintenance and support under contract NASA SEWP Contract number NNG07DA44B. Since that time the Government's support requirement has changed and, as such, this action is being re-competed.

10. Technical and Requirements Certification: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

Timothy Green

Date: 6/12/2014

6/12/2014

X Timothy Paul Green  
Timothy Paul Green

Computer Specialist

Signature: Signed by: Timothy P. Green 270223

11. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable. The prices on NASA SEWP IV GWAC have already been determined to be fair and reasonable. As there are at least two interested vendors on NASA SEWP IV for this requirement, price competition is anticipated. Finally, the successful quote will be compared to the Independent Government Cost Estimate.

Carolyn A. Klein

Date: 6/12/2014

Procuring Contracting Officer

Signature: Carolyn A. Klein

12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief. As this contract action does not exceed \$650,000, the certification below required by FAR 16.505(b)(2)(ii)(C)(1) serves as approval.

Carolyn A. Klein

Date: 6/12/2014

Procuring Contracting Officer

Signature: Carolyn A. Klein