

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Other Than Full and Open Competition

1. **Contracting Activity:** Department of Veterans Affairs, NCO 12, 695 Milwaukee Medical Center Department of Veterans Affairs, Great Lakes Acquisition Center, South 84th Street, Bldg. 115, Suite 101, Milwaukee, WI 53214.

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

This justification and approval is for a firm-fixed price base and [REDACTED] option years contract. The Contractor shall furnish all labor, transportation, parts, and expertise necessary to provide emergency (unscheduled) repair, troubleshooting, updates and unlimited phone support of the Eclipse treatment planning software and associated hardware used in the Radiotherapy Department at the Hines VA Hospital.

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

The Varian Eclipse system is a sophisticated, interconnected software suite that provides for radiation treatment planning, treatment delivery, image acquisition and storage, and record-and-certify capability. The contractor will provide software support for the Varian Eclipse Radiation Oncology treatment system. This support includes upgrade releases that will enhance and improve patient, periodic maintenance to decrease down time, onsite & phone support for problems and questions, computer hardware that was purchased from Varian Medical Systems will be upgraded as needed.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

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

- (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- () (2) Unusual and Compelling Urgency per FAR 6.302-2;
- () (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- () (4) International Agreement per FAR 6.302-4
- () (5) Authorized or Required by Statute FAR 6.302-5;
- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

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

The proposed source is Varian Medical Systems., 2250 Newmarket Parkway Suite 120 Marietta, GA 30067. Based on market research, it was determined that only Varian Medical Systems Inc. can meet the VA's requirement. Varian Medical Systems is the original equipment manufacturer and the only authorized contractor who is capable of providing the services described in Section III. Varian Medical Systems will provide manufactured parts and labor necessary to service and maintain the equipment according to Varian Medical System's published operating specifications. Only Varian Medical Systems can install the modification in the equipment as soon as practical due it being proprietary and perform preventative maintenance requirements include software updates that only the Varian Medical Systems has access to. Therefore, no other vendor can adequately perform the required services because they will not be able to provide the latest proprietary software versions. In accordance with (IAW) company policy and service agreement terms and conditions, only engineers trained and certified by Varian Medical Systems are authorized to repair and/or service Varian Medical Systems' trademarked medical equipment and provide proprietary parts available solely from the servicing company. Therefore, compliance is required: service attempted or performed by any person or company not authorized to perform such service will constitute a breach of the warranty and will consequently may void

the warranty on the equipment currently in operation at Hines, WI VAMC and will result in unacceptable delays in fulfilling the agency's requirements.

In addition, Varian is the only company that will honor replacing existing hardware previously purchase through them, they currently are the only company with Copyrights and Trademark rights to the Eclipse system. Without the use of the Eclipse system we cannot provide Radiation Therapy Treatments to the patients, to replace the system with another brand/company would incur the government a cost above providing software/hardware support provided by Varian Medical Systems.

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

An intent to sole source notice was posted to www.fbo.gov on August 4, 2014 and closed on August 11, 2014 with no one responding back.

https://www.fbo.gov/?s=opportunity&mode=form&id=40f19222ffdc97c2d0f2be310ec7a8c&tab=core&_cview=0

Contracting Officer conducted market research, details of which are in the market research section of this document. None of these efforts yielded additional sources capable of meeting the Government's entire requirement.

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

[REDACTED]

[REDACTED]

[REDACTED]

Contracting Officer has determined the final contract price to be fair and reasonable based on historical data.

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

In accordance with FAR Part 10, market research has been conducted for this acquisition. The following techniques were used:

Querying the Government wide database of contracts and other procurement instruments intended for use by multiple agencies available at

<https://www.vip.vetbiz.gov/>

<http://www.gsaelibrary.gsa.gov/ElibMain/searchResults.do;jsessionid=D50657B06DBA59D41E80F66BF16516EB.prd1pweb>

Through market research, it has been determined that the requested commercial services are available from only one source, Varian. Searches of FSS online catalogs, VetBiz.gov, and SBA vendor databases yielded no responsible sources for the required services. A notice of intent to sole source was posted to FBO prior to award providing an opportunity to responsible sources to respond; but no other responsible sources were identified.

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

Compliance with the specifics of the warranty and the service agreement is required: service attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the equipment currently in operation at Hines VAMC. This single factor precludes modification to enhance competition. Thus, acquiring a service contract with a potential contractor other than the suggested source can potentially prove too costly and injurious to the Government. If VA were not to obtain this particular service, we would not be able to safely and effectively treat patients.

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: “See Section VI above.”

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: When new radiation therapy planning system is needed, NCO 12 should conduct a competitive procurement for the equipment to include option years for maintenance services.

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

conduct a competitive procurement for the equipment to include option years for maintenance services.

- 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.



Erin Williams
Biomedical Chief
Hines, IL VAMC

8/18/14

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.



Trong Nguyen
Contracting Officer
Network Contracting Office 12

Date

- b. **NCM/PCM (Required \$3K and above):** I certify the justification meets requirements for other than full and open competition.



Christine Hansen
Director of Contracting
Network Contracting Office 12

Date