

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 4 option years contract for the contractor to furnish all labor, material, parts, tools, equipment, supervision, transportation, and expertise necessary to provide preventive maintenance and emergency (unscheduled) repair of 37 ventilator equipment units at the Hines VA Hospital.

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

The contractor will provide repair service, which consist of calibration, cleaning, oiling, adjusting, replacing parts, and maintaining the equipment, including all intervening calls necessary between regular services and calibrations. All required parts, tools, manuals, software, etc. required to maintain the equipment in top operating condition shall be furnished by the contractor. These ventilators are highly responsive and offer superior comfort, delivering sensitive, precise breaths to critical ill neonatal through adult patients and it provides exception responsiveness and control. Contractor will do one preventative maintenance/inspection and provide one-six month EST visit per years for each ventilator.

The estimated dollar value is \$237,747.75. It will be a firm-fixed price contract for a base plus four option years with a period of performance from 10/1/2014 – 09/30/2019.

Full service Maintenance contract for ventilator equipment at the Hines VA Hospital	Period of Performance	Estimated Amount

	SUBTOTAL (Services)		\$ 237,747.75
	TOTAL		\$ 237,747.75

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 Covidien Inc., 2101 Faraday Ave Carlsbad, CA 92008. Based on market research, it was determined that only Covidien Inc. can meet the VA's requirement. Accordingly, Covidien Inc. is the original equipment manufacturer and the only authorized contractor who is capable of providing the services described in Section III. Covidien Inc. will provide manufactured parts and labor necessary to service and maintain the equipment according to Covidien's published operating specifications. Only Covidien 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 Covidien 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, as required by the Respiratory Therapy department. In accordance with (IAW) company policy and service agreement terms and conditions, only engineers trained and certified by Covidien are authorized to repair and/or service Covidien's trademarked medical ventilators 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 ventilators currently in operation at Hines, WI VAMC and will result in unacceptable delays in fulfilling the agency's requirements.



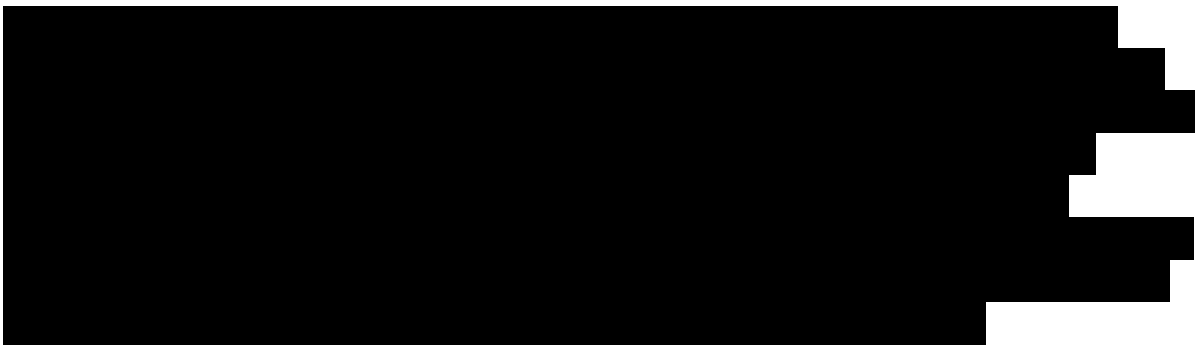
6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:**

An intent to sole source notice was posted to www.fbo.gov on June 23, 2014 and closed on June 30, 2014 with no one responding back.

https://www.fbo.gov/?s=opportunity&mode=form&id=5d6ad04de3f399f372d4ebabfa473426&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 all of the Government's requirement.

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



<https://www.fpds.gov/common/jsp/easySearchDocumentController.jsp?agencyID=3600&PIID=VA24914P1108&modNumber=0&transactionNumber=0&idvAgencyID=&idvPIID=&actionSource=searchScreen&actionCode=&documentVersion=1.4&contractType=AWARD&docType=B>

<https://www.fpds.gov/ezsearch/fpdsportal?indexName=awardfull&templateName=1.4.4&s=FPDSNG.COM&q=N0025911P0080>

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 preventative maintenance and repair services are available from only one source, Covidien Inc. 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 (VA69D-14-I-1196 posted on June 23, 2014 and closed on June 30, 2014; received no response) was posted to FBO prior to award providing an opportunity to responsible sources to respond; but no other responsible sources were identified.

https://www.fbo.gov/?s=opportunity&mode=form&id=5d6ad04de3f399f372d4ebabfa473426&tab=core&_cview=0

In addition, Contracting Officer did a search on FBO.gov and came up with many sole source awards to Covidien Inc. The most recent one was posted on May 9, 2014 by NCO 9.

1. https://www.fbo.gov/index?s=opportunity&mode=form&id=97f6d24d2116d150b0fa8aef58a3e68b&tab=core&_cview=0
2. https://www.fbo.gov/?s=opportunity&mode=form&id=90986ee7255d9b7122bf90055c871b4d&tab=core&_cview=0
3. https://www.fbo.gov/index?s=opportunity&mode=form&id=b2ee0da38516f9f73392a962a90abf00&tab=core&_cview=1
4. https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=046fcd8b40ddd7c5169ac20d114b2ca4&_cview=0
5. https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=046fcd8b40ddd7c5169ac20d114b2ca4&_cview=0
6. <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=fc1111193225a5b7a39ccafe606aa8c2>
7. https://www.fbo.gov/?s=opportunity&mode=form&id=8e945a9b6f6d791adf32f5b0839dcef0&tab=core&_cview=0
8. https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=3a5b8cf2793eb49f026164d15cd6c2d0&_cview=0

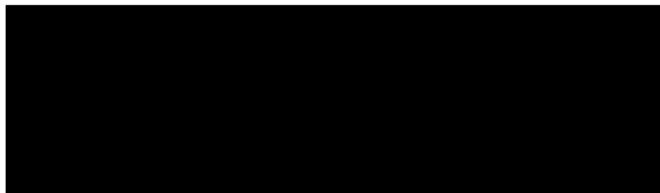
9. Any Other Facts Supporting the Use of Other than Full and Open Competition:

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 ventilators 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 ventilator equipment 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 cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.



Erin Williams
Biomedical Engineer
Milwaukee VAMC 695

6/30/2014

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, Great Lakes Acquisition Center

06/30/2014

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

Date

