

## DEPARTMENT OF VETERANS AFFAIRS

### Justification and Approval Under

### Simplified Acquisition Procedures for Restricting Competition

1. **Contracting Activity:** Department of Veterans Affairs, Network Contracting Office (NCO) 20, 5115 NE 82<sup>nd</sup> Ave, Vancouver, WA 98662 for the Seattle VA Medical Center.
2. **Nature of the Action Being Processed:** The Department of Veterans Affairs proposes to enter into a Basic Purchasing Agreement (BPA) on the basis of other than full and open competition for the purchase of consumables for the Benchmark Ultra IHC/ISH Staining Analyzer for the Seattle and American Lake VA labs.
3. **Description of Supplies or Services Required to Meet the Agency's Needs:** This procurement under PR # 663-15-1-019-0020 is to purchase consumables (such as reagents, controls, and calibrators) for the Benchmark Ultra IHC/ISH Staining Analyzer which was purchased for the Seattle and American Lake VA Medical Centers in Feb-March 2013. The request is for one year of supplies for FY15. This justification will support a BPA covering a one year period, Date of Award (Oct 1, 2014) through- (Sept 30, 2015). These items were on Purchase Order 663-C45146, which expired on September 30, 2014. In order to provide for the necessary continuation of access to these supplies, this BPA is urgently needed and will provide for the time to execute a long term contract. The analyzer is on a GSA Contract with Ventana Medical Systems GS-24F-0043M; however, the consumables are not on contract and must be purchased open market. The total estimated value of these consumables for this period is \$220,000.00.
4. **Statutory Authority Permitting Restriction in Competition:** The authority for applying the Commercial Test Program of **FAR 13.5** is (Section 4202 of the Clinger-Cohen Act of 1996) and is implemented by for restricting competition on this procurement via FAR 13.106-1(b)(2) under an urgent need. The specific reason for restricting competition is the supplies are required to be purchased from the manufacturer of the analyzer, under the licensing rights of the contract VA260-13-F-0537 for the purchase of the Benchmark Ultra IHC/ISH Staining Analyzer.
5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** Ventana Medical Systems is the manufacturer of the Benchmark Ultra IHC/ISH Staining Analyzer and has proprietary rights to the consumables. The stainer is used for diagnosis of cancer cells on tissue and lab samples. Ventana Medical Systems has locked in pricing on the consumables for five years based on the purchase of the analyzer in Feb 2013 and will be effective through Feb 12, 2018.
6. **Description of Efforts Made to Ensure that Offers are Solicited from As Many Potential Sources as Deemed Practicable IAW FAR 13.104:** Market research has shown that the consumables are proprietary Ventana Medical Systems for use with the Benchmark Ultra Full System. Ventana Medical Systems has been acquired by Roche; these items are not covered on contract at this time. It is assumed that these items will be added to a Roche contract in the future.



7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable – IAW FAR 13.106-3:** The prices for these consumables are included on a price list which was locked in with the purchase for the analyzer, and are locked for a period of five years. This price list will be used for all items purchased during this performance period. This price list was determined to be fair and reasonable on the following purchase orders: (A copy of the price list is on file in the briefcase and will be attached to the BPA).

663-C31614	10/01/2012-09/30/2013	Histology Stainer-Ventana	\$140,000.00
(Less product-quantity increase this fiscal year due to new equipment, same pop)			
663-C45146	11/07/13-09/30/14	Histology Stainer-Ventana	\$220,000.00
(Same products-quantity, less pop due to late award, but estimated same amount needed this year, has used \$165,000.00 to date, need to wait for final invoices)			

8. **Description of the Market Research Conducted and the Results, or Statement of Reasons Market Research was not Conducted (FAR 10):** In accordance with FAR Part 10 a search was conducted of all required sources: Ability One, BPA's (including VA WSNC, VISN20, and local station), NAC, VISN or stations IDIQs, GSA Advantage, VetBiz, and SBA, with no results. Due to the existing equipment and proprietary rights this has been determined to be a single source procurement under the simplified acquisitions procedures (SAP) as a follow-on contract.
9. **Any Other Facts Supporting the Restriction of Competition:** None. The consumables purchased must work with the Ventana Benchmark Ultra instrumentation. While it may be possible to purchase histology consumables from other vendors, they will not work on the equipment on hand. Ventana consumables must be used on Ventana instruments to obtain the proper results.
10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** No other sources expressed an interest in this procurement.
11. **Statement of 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:** No actions are planned at this time as it would require changing the equipment on hand in the lab. Seeing it was purchased less than a year ago, it would not be cost effective to the Government to change it at this time.
12. **Requirements Certification - IAW FAR 6.303-2(c):**

I certify that the requirement outlined in this justification is a bonafide 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.

  
Name: Kenneth Pitchford  
Position: Laboratory Information Manager

Date 10/2/14

**13. Approvals in accordance with FAR 13.501 and VHAPM, Volume 6, Chapter VI: OFOC SOP:**

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

October 2, 2014

\_\_\_\_\_  
Name: Mona L Nimmo  
Contracting Officer  
VISN 20 Supply Team 2 Acquisitions

\_\_\_\_\_  
Date

- b. **Acquisition Manager's 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 for other than full and open competition.

10/2/2014

\_\_\_\_\_  
Nicholas M. Jenkins  
Director of Contracting  
Network Contracting Office 20 (NCO 20)

\_\_\_\_\_  
Date