

DEPARTMENT OF VETERANS AFFAIRS
Justification and Approval
For
Exception to Fair Opportunity Memo

1. **Contracting Activity:** Department of Veterans Affairs, VISN 11, Richard L Roudebush VA Medical Center at 1481 West 10th Street, Indianapolis, IN 46202. The Requesting Activity, Indianapolis Biomedical Engineering, has submitted VA Form 2237# 583-15-1-169-0017 in the amount of \$191,249.96 for this request.
2. **Description of Action:** A proposed sole source task order with options (base year and one (1) 12-month option) against VA National Acquisition Center (NAC) Contract V797P-6033(b) with Toshiba America Medical Systems, Inc. (TAMS), 2441 Michelle Drive, Tustin, CA 92780-7047, for the maintenance and emergency repair services of a Toshiba Aquilion 640 Computed Tomography (CT) system located at the Richard L Roudebush VA Medical Center.
3. **Description of Supplies or Services:** The services required to meet the Agency's needs are a comprehensive maintenance and repair plan for the Toshiba Aquilion 640 CT system. This maintenance and repair plan shall include regular preventative maintenance and emergency repairs during normal working hours in order to maintain the system at Manufacturer's specifications and reduce equipment downtime. The task order will require the Contractor to perform routine quality assurance evaluations in order to assure optimum performance of the CT system. The task order will also require the Contractor to provide software updates/upgrades and hardware upgrades to the system which are intended to reduce safety risks. The resulting task order will be firm-fixed price, with a total estimated value, including the option, of \$414,374.96.
4. **Statutory Authority:** The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by the Federal Acquisition Regulation (FAR) Subpart 16.505 Subpart 16.505(b)(2)(i):
 - () FAR Subpart 16.505(b)(2)(i)(A): The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
 - (X) FAR Subpart 16.505(b)(2)(i)(B): 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.
 - () FAR Subpart 16.505(b)(2)(i)(C): The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
 - () FAR Subpart 16.505(b)(2)(i)(D): It is necessary to place an order to satisfy a minimum guarantee.
 - () FAR Subpart 16.505(b)(2)(i)(E): For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source". The statutory authority permitting an exception to fair opportunity for this action is 38 U.S.C. 8127(c), known as the Veterans First Contracting Program which provides the authority to directly contract with a Service-Disabled Veteran-Owned Small Business (SDVOSB) or a Veteran-Owned Small Business (VOSB).

() FAR Subpart 16.505(b)(2)(i)(F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

5. **Rationale Supporting Use of Authority Cited Above:** The Aquilion 640 CT is a new technology released by TAMS in 2012 and acquired by the Richard L Roudebush VA Medical Center in November 26, 2013. The Requesting Activity contacted TAMS to inquire about TAMS network of maintenance and repair subcontractors in order to determine the possibility of competing this requirement. TAMS currently only offers training for the Aquilion 640 CT system to its Toshiba Field Service Engineers. The training is not available for the public as of the writing of this justification. Additionally, the Toshiba Aquilion 640 CT system must be serviced by the Original Equipment Manufacturer (OEM) because the system has proprietary software, hardware, and parts that are only available from TAMS. Service could not be provided by a source other than Toshiba to ensure the system would remain functioning to OEM standards.
6. **Efforts to Obtain Competition:** Sources Sought Announcement VA251-14-I-0655 was posted to the Federal Business Opportunities website on Thursday, August 28, 2014 with a close date of Tuesday, September 2, 2014 at 1200 EST. This posting was made to ensure as many potential sources as possible were made aware of the Government's requirement and can submit responses showing their capability to the VA. As a result of the Sources Sought Announcement, no responses were received, confirming the Contracting Officer's assumptions regarding the inability of the market place to meet our requirements. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award on the Federal Business Opportunities Page (FBO) and the justification will be made publicly available.
7. **Actions to Increase Competition:** No actions are being taken to remove or overcome any barriers to competition. Barriers to competition are the Original Equipment Manufacturer's lack of training to personnel other than their own Field Service Engineers. As the Government requires specific training on this recently developed, high-technology piece of equipment in order to maintain the system at optimal performance, the OEM is currently the only source of these services. Until the OEM provides training to personnel outside of their own, this Government does not have an option to go outside of the OEM for training. The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.
8. **Market Research:** As described in Section VI above, market research, in accordance with FAR Part 10, was conducted by synopsis of the proposed acquisition through a Sources Sought Announcement, advising industry of the pending acquisition and soliciting inquiries from interested parties.
9. **Other Facts:** None.
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.

Jennifer Defrancesco

Date: 9/5/14

Chief, Biomedical Engineering

Signature:



11. **Fair and Reasonable Cost Determination:** I hereby determine that the anticipated price to the Government for this action will be fair and reasonable based on the fact the required services are

available on VA National Acquisition Center (NAC) contract V797P-6033(b). A NAC contract has already been reviewed by a Contracting Officer and determined fair and reasonable prior to award.

Jared Tritle
Procuring Contracting Officer

Date: 9/5/2014
Signature: Jared Tritle

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

Jared Tritle
Procuring Contracting Officer

Date: 9/5/2014
Signature: Jared Tritle

13. Legal Sufficiency Certification: I have reviewed this justification and find it adequate to support an exception to fair opportunity and deem it legally sufficient.

Melody Goldberg
Legal Counsel

Date: Review Conducted 9/4/14

14. Network Contract Manager (NCM) or Designee: I have reviewed this justification and find it adequate to support an exception to fair opportunity.

Toni Waggoner-Boykin
Supervisory Contract Specialist

Date: 9-5-14
Signature: Toni Waggoner-Boykin