

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

1. **Contracting Activity:** Department of Veterans Affairs, VISN 11, Battle Creek VA Medical Center at 5500 Armstrong Road, Battle Creek, MI 49037-7314. The Requesting Activity, Battle Creek Biomedical Engineering, has submitted VA Form 2237# 515-15-1-091-0007 in the amount of \$50,250.00 for this request.
2. **Description of Action:** A proposed sole source task order with options (base year and four (4) one (1) year options) 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 Vantage Titan 1.5T MRI Scanning system located at the Battle Creek VA Medical Center. The resulting task order will be a firm-fixed price task order effective October 1, 2014.
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 Vantage Titan 1.5T MRI Scanning 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. 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 estimated total cost of the task order, including all options, is \$251,250.00
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 Toshiba Vantage Titan 1.5T MRI Scanning system must be serviced by the Original Equipment Manufacturer (OEM) due to proprietary operating 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. Additionally, TAMS is the only contractor to support the First Look Maintenance partnership between the Battle Creek VA and Toshiba which provides Battle Creek Biomedical Equipment Technicians extensive training and technical support on VA-owned Toshiba manufactured equipment to reduce equipment downtime and maintenance costs.
6. **Efforts to Obtain Competition:** Sources Sought Announcement VA251-14-I-0493 was posted to the Federal Business Opportunities website on Wednesday, July 23, 2014 with a close date of Tuesday, July 29, 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.

Ronald Chapman  
Supervisor, Biomedical Engineering

Date: \_\_\_\_\_  
Signature: 399370

**Ronald A  
Chapman**

Digitally signed by Ronald A Chapman  
399370  
DN: dc=gov, dc=va, o=internal,  
ou=people,  
0.9.2342.19200300.100.1.1=ronald.chapman@va.gov, cn=Ronald A Chapman  
399370  
Date: 2014.09.03 09:11:12 -0400
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 Office and determined fair and reasonable prior to award.

Jared Tritle  
Procuring Contracting Officer

Date: 9/3/2014  
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: 9/3/2014  
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.

Edith Bowman  
Legal Counsel

Date: 9/3/2014  
Signature: /s/ Edith Bowman

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: 9/3/2014  
Signature: Toni Waggoner-Boykin