

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Other Than Full and Open Competition

1. **Contracting Activity:** Service Area Office East (SAO East), Network Contracting Office 1 (NCO 1 New England) on behalf of Department of Veterans Affairs, VISN 1, All Medical Centers Contracting Office VISN 1 proposes the following justification for an interim contract for the rental of oxygen medical equipment and the provision of respiratory services on a basis of other than full and open competition for the VISN 1 Prosthetics Service Line.

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

The nature of the requirement is the award of an interim contract for the rental of oxygen medical equipment and the provision of respiratory services based upon the past permanent/extended VISN 1 Home Oxygen Contract VA241-13-D-0169 that sets a specific rental price for the oxygen delivery systems and for the provision of respiratory services in the VA New England Healthcare. This proposed Interim Contract is for a period of three (3) months with an option for an additional three (3) months is pending while the Government Accountability Office (GAO) makes a determination on the current contract (VA241-14-D-0103) currently under CICA stay in response to Protest of Rotech Healthcare Inc. (B-410203.1) and (B-410203.3). Thirty to sixty days (30 to 60) is a reasonable period for the incumbent contractor to transition all patients into the database, deliver and setup oxygen medical equipment and accomplished required inventories. The transition period I requires the incumbent contractor to work with the awardee on an interim solution should the timing be different. Since this requirement is direct patient care, ongoing services are required. This proposed interim contract I allows for continued services and avoids an unnecessary unauthorized commitment that would then require ratification. Interruption of services is not an option.

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

The Department of Veterans Affairs (VA) has an ongoing program for the rental of oxygen medical equipment and the provision of respiratory services for over 3,200 oxygen patients and 9,200 CPAP/BiPAP/APAP patients. (Continuous, Bi-Level, Positive Airway Pressure)- The contractor will furnish home oxygen and respiratory equipment, ventilator set-up and follow-up services, conduct in-home pulmonary assessments and re-assessments by respiratory therapists, set-up/provision of travel oxygen equipment, set-up/complete overnight oximetries and provide documentation of patient education.

Manufacturer of the equipment

Various Manufacturers and respiratory therapy services

Need of Contract for:

- 1) Rental of Oxygen Equipment
- 2) Initial starts of oxygen by trained staff/patient service technicians and/or respiratory therapists
- 3) Recurring oxygen patient visits/pulmonary assessments by respiratory therapists

- 4) Recurring oxygen patient visits by patient service technicians for maintenance of the equipment
- 5) Initial starts of ventilators by respiratory therapists
- 6) Recurring ventilator patient visits/pulmonary assessments by respiratory therapists
- 7) Provision of patient education
- 8) Set-up and provision of travel oxygen equipment
- 9) Set-up and pickup of overnight oximetry equipment
- 10) Initial starts of CPAP/BiPAP/APAP by trained respiratory therapists
- 11) Recurring CPAP/BiPAP/APAP patient visits/assessments by respiratory therapists
- 12) Maintenance/Secure Storage of VA-purchased CPAP/BiPAP/APAP equipment

Justification for ONLY ONE RESPONSIBLE SOURCE AND NO OTHER SUPPLIES OR SERVICES WILL SATISFY AGENCY REQUIREMENTS: The proposed contract is an interim contract for a base of three months with an option to extend for three months while the long term contract (a base year with four (4) one (1) year options) is being reviewed by the GAO under protest. Based on market research conducted via a sources sought notice published for this proposed interim contract, any contractor will require 30 to 60 days to transition patients to their equipment, conduct required inventories, enter patients into their data base, and begin performance under the contract. The incumbent contractor will be requirement to work with the new contractor to transition and this interim contract will allow for that. As stated above, this requirement is direct patient care and ongoing services are required. This proposed interim contract will allow for continued services and avoid an unnecessary unauthorized commitment that would them require ratification. Interruption of services is not an option.

The incumbent contractor has been providing the services required under an interim contract and there is no transitional period required.

Given the uncertainty induced by the Incumbent's interposition of a protest and the absolute requirement to provide the highest quality of service for Veterans in VISN 1, VISN 1 Prosthetics and Contracting agreed that VISN 1 must move forward with an interim contract (Oct. 31, 2014 through Jan. 30, 2015) with an additional option period (Jan. 31, 2015 through Apr. 30, 2015) for the provision of rental oxygen equipment and respiratory services – including use of statute 38 U.S.C. Section 8123:

VAAR 806.302-5(b)(1) allows an exception to full and open competition for prosthetic appliances in accordance with 38 U.S.C. § 8123.

§8123. Procurement of prosthetic appliances

The Secretary may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law.

The current interim contract is due to end Oct. 30, 2014. This acquisition is expected to result in a Firm-Fixed-Price Indefinite Delivery/Indefinite Quantity (FFP- IDIQ) Interim contract from Oct. 31, 2014 through Jan. 30, 2015, with a three month option to extend. The realistic estimated dollar value is \$700,000 per month, for a total estimate of \$4,200,000 for the entire life of the interim contract.

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

41 USC § 3304(a)(1) as implemented by FAR 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

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

This contract is being issued on a sole source basis because the long term solution (a base year with four (4) one (1) year options) has been protested by the incumbent and a decision on the merits is now pending with the GAO with a decision expected November 26, 2014. The services required are direct patient care services and services cannot be interrupted. VISN 1 patients requiring home respiratory care services based on an initial VA physician's consult (home oxygen systems – concentrator, liquid stationary, liquid portables, ventilator, compressor, large cylinders, small portable cylinders; ventilator equipment; CPAP/BiPAP/APAP equipment) all require urgent delivery or pick-up from the patient's home. The cost to the government/VISN 1 Prosthetics and Sensory Aids are substantial without a contract – the contract Statement of Work (SOW) requires the vendor to provide/repair/store/set-up patient-ready oxygen equipment in emergent and non-emergent situations, as well as document that the patient/family understands the proper operation of the item(s) according to set time requirements. If there were no contract, the government would be required to solicit for vendors who can provide the required services, forcing the government to pay prices beyond commercial market prices for this immediate service and delaying and obstructing patient care. This would also place a strain on government resources during Influenza season and would compromise the Government's capacity to mobilize for other events compromising the Government's ability to store the CPAP/BiPAP/APAP equipment for patients in the community, some of which require significant space. The government would be forced to pay another vendor to store the equipment in the community while the vendor with the knowledge of the equipment would pick it up and install, thus diverting scarce medical appropriations away from direct patient care. The contract SOW states the vendor is not paid for the storage of the CPAP/BiPAP/APAP (and some VA-owned ventilators) equipment and has a set charge for the set-up and assessment of the respiratory patients.

Patient care will be adversely impacted without a contract – inpatient discharges will be delayed without a vendor able to deliver and set-up the required home respiratory equipment for the patient to safely reside in the home without inpatient services.

The CPAP/BiPAP/APAP (and some VA-owned ventilators) equipment is purchased by the Government. The items require delivery, installation, storage and routine service/refurbishment to veteran patients served by its eight medical centers and its associated outpatient clinics. The total number of patients at each VA site is subject to change but VISN-wide is over 3,200 oxygen patients and 9,200 CPAP/BiPAP patients.

The period to be covered by this contract will be October 31, 2014 through April 30, 2015, with an option to extend for three months. The Department of Veterans Affairs reserves the right to exercise extensions, subject to the availability of funds.

Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable: On January 17, 2014, VA issued the RFP to provide home respiratory supplies and services to veterans and beneficiaries in the Veterans Integrated Service Network geographical area No. 1 (New England) RFP VA241-14-R-0003 (Ex.A) The RFP stated that the contractor shall provide "all supplies, materials, equipment, transportation of equipment, equipment services, labor, supervision, patient education, safety management, infection control, as necessary for patients on home oxygen therapy," as specified under the statement of work (SOW). The RFP anticipated the award to one Offeror of a firm-fixed price, indefinite-delivery, indefinite quantity contract for one base year and four option years. Estimated total value of the contract is fifty one million nine hundred and fifty thousand dollars \$51,952,000.00 based upon the independent government cost estimate.

The solicitation provided three evaluation factors as stated in 52.212-2 (Ex. A., page 96 of 111) as follows: (1) Technical (2) Past Performance (3) Price. The offerors were instructed to submit their proposals in three volumes Volume I- Price Proposal, Volume II-Technical Proposal, and Volume IIA Past Performance (Ex. A., pages 87-88 of 111). The solicitation provides factors of Technical and Past Performance are of equal importance but, when combined, are significantly more important than price (Ex. A., page 96 of 111).

The Department of Veterans Affairs received six (6) offers. Offers were opened and a responsiveness determination was made of all offers received by the Contracting officer. All offers were determined to be responsive and were further evaluated by the source selection evaluation board. The board met on April 29, and April 30, to review the Technical and Past Performance of the Offers received. The board analyzed each of the sub factors in descending order of importance against the information received in the proposal from each of the offerors. The board reconvened on May 15, to review and rate each of the offers for the Technical and Past Performance merits of each at the factor level; and determine a competitive range. Notice to those offerors whose offers were not considered the most highly rated was provided by email notification with an attachment on May 29. The offerors that were considered the most highly rated were provided with an email on June 6 with a meaningful discussion agenda attached (Ex. C). We asked that we receive a written response by June 10 and a follow up to meeting was scheduled for June 18 to discuss any remaining questions that needed to be discussed.

On July 22 a post solicitation amendment was issued for the inclusion of additional FAR clauses and to amend the solicitation to include the invoice and billing procedures. We were unable to post this to FBO due to limitations by the ECMS program therefore we emailed this Amendment to all offerors in order that all offerors received a full and complete solicitation.

On July 29 we requested Rotech provide us with their best and final Proposal and we stated "We are providing Rotech an opportunity to provide your best and final offer in writing in terms of pricing as your pricing is considered high. Although Technical and Past Performance, when combined, are significantly more important than Price, Price will contribute to the source selection decision. You will need to submit your final proposal revision by Noon EST on July 30, 2014. Please be advised that the final proposal revision shall be in writing and that the Government intends to make award without obtaining further revisions." (Ex. C). The Source Selection Authority reviewed the revised price proposal of Rotech Healthcare, Inc. and discussed with the board. The Board made a recommendation of unanimous decision to award to Community Surgical Supply of Toms River, NJ on July 30, 2014. The Source Selection authority agreed with the recommendation of the source selection evaluation board and awarded the contract to Community Surgical Supply of Toms River, NJ on July 31 and announced the award on FBO on August 1. Rotech requested a formal debriefing on August 4. A debriefing meeting was schedule for August 7.

Rotech Healthcare, Inc.(Rotech) protested the actions of the Department of Veterans Affairs on August 11 Registered: B-410203. Rotech filed a second Protest on Aug 18 under B-410203.3. On August 26 the Contracting Officer provided reacted copies the protested actions filed by Rotech to Community Surgical Supply of Toms River, NJ (CSS).

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

The Contracting Officer determines the pricing will be fair and reasonable based upon a comparison of the prices to the independent government estimate and historical pricing for the same or similar service. The incumbent contractor has not increased the cost of the services provided and has continuously offered and applied the 5% discount per month for timely payment, which has saved the Government a significant amount of money.

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

The RFP was issued and 6 offerors were received in response to the Government's RFP however only the incumbent has locations that are currently hold certifications from the Joint Commission, are currently stocked with equipment to meet patient's needs, have access capability to provide and to receive protected patient healthcare information to continue to service our veterans without interruption to vital healthcare services and have access to the VISN 1 patients names, addresses and phone numbers and a detailed listing of equipment. As stated above it is estimated that it would take 30-60 days to have a new service provider to set up and begin servicing our patients placing them at unnecessary risk.

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

See Item #5 above.

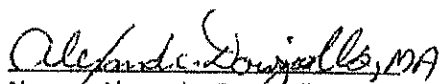
9. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

There were six responses to RFP VA241-14-R-0003 as described in paragraph 6 above.

10. 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:

The long term solution is assigned to a contract specialist within NCO 1 and the Lead Contract Specialist is working diligently with the Office of General Counsel while awaiting the decision from the GAO. The decision is expected on November 26, 2014. The dollar value of the contract is \$46,311,990.00.

11. 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.



Name: Alexander Dowgiallo, MA

Title: VISN 1 Prosthetics Health Systems Specialist/COR

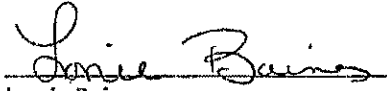
Facility: VISN 1 - VA New England Healthcare System

10-14-14

Date

12. 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.



Lorrie Baines
Contracting Officer
Network Contracting Office 1

10-14-2014
Date

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

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Name: Deborah F. Mattingly
Network Contracts Manager
NCO 1

Date

- c. SAO (If over 500K): I certify the justification meets requirements for other than full and open competition.

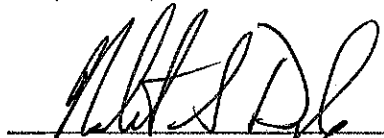
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Name: Eldred Jackson
(Acting) Director, Service Area Office, East

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- d. VHA HCA 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 approve (\$500K to 10 million) for other than full and open competition.



Name: Norbert Doyle
Chief Procurement and Logistics Officer
VHA Head of Contracting Activity (HCA)

10/28/14
Date