

Justification For Other Than Full and Open Competition

1. Agency/Contracting Activity:

Department of Veteran Affairs
Office of Acquisition Operations
Strategic Acquisition Center - Frederick
321 Ballenger Center Drive
Suite 125
Frederick, MD 21703

2. Nature/Description of Action:

a. **Background:**

The Department of Veterans Affairs is defending against a contract claim filed by the general contractor of a construction project to build a new VA Medical Center and associated structures in Orlando, Florida. The claim is being litigated before the Civilian Board of Contract Appeals (CBCA). That litigation involves extensive discovery requests, including requests for electronically store information (ESI). The volume of ESI requested, as well as concurrent demands on VA resources, resulted in significant delays in the gathering and processing of that data. As a result, the CBCA Judge in charge of the case set a deadline of December 1, 2014, for VA to produce all responsive discovery documents and ESI. Despite significant efforts, VA was not able to meet that deadline and sanctions were imposed.

The sanctions Order directed VA and the Claimant (general contractor) to agree to an independent third party expert to complete e-discovery efforts, or, in the alternative, to each nominate an independent third party expert to complete e-discovery efforts. The contractor nominated RenewData Corporation. The VA proposed a competition among three qualified contractors. The CBCA Judge determined that VA's proposal was not compliant with his earlier Order, and, in a December 3, 2014 Order (attached), directed VA to enter into an agreement with RenewData Corporation and to pay that company directly for its expert services.

On January 6, 2015, because VA and the Claimant could not reach agreement on a scope of work for this contract, the Judge issued an Order (attached) directing VA to get RenewData Corporation to answer five (5) questions. In a subsequent Order (attached), issued on January 12, 2015, the Judge directed VA to enter into a contract in this regard by Wednesday, January 14, 2015.

b. **Project Initiation Time Line:**

The CBCA Order detailed above requires that VA enter into a contract with RenewData Corporation by January 14, 2015. To mitigate further delay and advance VA's interests in the litigation, time is of the essence in completing this acquisition.

3. Description of Project:

The contractor will provide answers to the 5 questions detailed in the CBCA Order dated January 12, 2015:



(3)

(4)

(5)

4. Statutory Authority:

41 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1), FAR 6.302-1, Only one response source and no other supplies or services will satisfy agency requirements.

5. Proposed Contractor's Unique Qualifications:

This procurement is to be awarded to RenewData Corporation, as that company is the only qualified source that can timely perform the required e-discovery tasks in accordance with the December 3, 2014 Order issued by the CBCA. In that Order, and in a subsequent Order dated January 12, 2015, the CBCA mandated that VA enter into a contractual relationship with that specific contractor for the aforementioned services. RenewData Corporation is a full-service e-discovery provider with expertise in forensic searches, backup tape restoration and data processing.

The CBCA has the legal authority to conduct litigation, including resolving discovery disputes and imposing sanctions on litigants. See 48 CFR 6101.33 (2013). As a result, the CBCA Order instructing VA to enter into a contractual relationship with RenewData Corporation to accomplish the required e-discovery forms a reasonable basis for a sole-source award.

GAO has stated that litigation support services in unique situations should be produced under the "only one responsible source" rationale. Relevant factors included the critical, time-sensitive requirement for litigation support due to an aggressive, court-imposed discovery schedule in a complex, high-dollar claim. See SEMCOR, Inc.; HJ Ford Associates Inc., B-279794, B-279794.2, B-279794.3, 98-2 CPD P 43 (1998).

6. Efforts To Ensure Offers Are Solicited From As Many Potential Sources As Is Practical:

Not applicable due to item 3 and 5 above.

7. Determination That Anticipated Costs Will Be Fair And Reasonable:

RenewData Corporation has provided a proposal dated January 9, 2015. In that proposal, RenewData's estimated total was [REDACTED]. The proposal included an hourly rate breakdown: \$198.00 per hour for Lead Consultant, [REDACTED] per hour for Senior Associates, and [REDACTED] per hour for Expert Witness Services. The proposal indicated an estimated quantity of hours for those individuals of [REDACTED] hours, [REDACTED] hours and [REDACTED] hours, respectively.

Based on the Market Survey indicated below, as well as an opinion from VA's internal e-discovery implementation manager, the rates and hours included in RenewData's proposal are fair and reasonable.

8. Description Of Market Survey:

[REDACTED]



9. Other Factor Supporting The Use of Other Than Full And Open Competition:

None.

10. Listing Of Sources Expressing An Interest In The Acquisition:

Not applicable. See above.

11. Statement Of Actions In Overcoming Barriers To competition:

Not applicable. It is anticipated that the services will be secured through a non-competitive procurement in compliance with an Order issued by the Civilian Board of Contract Appeal judge.

12. Certification:

I certify that the supporting data forming the basis for this justification is complete and accurate to the best of my knowledge and belief.

