

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval (J&A) For Other Than Full and Open Competition (>\$150K)

1. **Contracting Activity:** Department of Veterans Affairs, NC04, H.J. Heinz Facility.
2237# 646-15-4-127-0020
2. **Nature and/or Description of the Action Being Processed:** Brand Name Only and Only One Responsible Source - Sole Source Award, to Baxter Healthcare, for a Base and Two Option Year, Firm Fixed Price Contract.
3. **Description of Supplies/Services Required to Meet the Agency's Needs:** Furnishing of Baxter Healthcare Home Peritoneal Supplies, for direct delivery to VA Patients Homes, to be used with Baxter Healthcare Dialysis Machines, that the VA is currently leasing from Baxter Healthcare. This will involve the purchasing of hundreds of different types of Peritoneal Dialysis Supplies to support an estimated 14 Patients. The Contract will be a Multiple Year (Base and One Option Year Contract. Estimated value \$210,000 per year, or \$420,000 for two years. Period of Performance is as follows:

Base Year: 9/12/2015 – 09/11/2016

Option Year 1: 09/12/2016 – 09/11/2017

4. **Statutory Authority Permitting Other than Full and Open Competition:** 41 USC §3304(a)(1), as implemented by FAR 6.302-1.

- (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- () (2) Unusual and Compelling Urgency per FAR 6.302-2;
- () (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- () (4) International Agreement per FAR 6.302-4
- () (5) Authorized or Required by Statute FAR 6.302-5;
- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

FAR13.5 Test Program: 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).

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

It is essential to the Government, that it purchase Baxter Healthcare Peritoneal Dialysis Supplies, since all VA Home peritoneal patients are equipped exclusively with Baxter Healthcare "Home Choice" Dialysis Machines, and according to Baxter Healthcare, only Baxter Healthcare Peritoneal Supplies are compatible with Baxter Healthcare Dialysis Machines. Therefore, the use of this brand product in this acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company.

These items will be purchased on a Sole Source basis with Baxter Healthcare, since they are the sole exclusive seller of their Peritoneal Dialysis Supplies.

The Contract File of the existing Baxter Healthcare Contract (Contract# VA244-12-C-0463), contains an eCMS screen shot evidencing a Sources Sought was advertised to Fedbizops on 8/15/2012, under VA RFQ#VA244-12-R-1488, as well as, a Memo to File, that indicates there were no responses to that FBO advertisement, which supports the above Sole Source claims.

"Accordingly, Baxter Healthcare is the only firm capable of providing the supplies and services described in Section III above without the Veteran's Health Administration experiencing substantial duplication of cost that could not be expected to be recovered through competition and unacceptable delays in fulfilling its requirements."

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** A Special Notice of Intent to Sole Source Synopsis will be posted to Fedbizops for 3-5 days, prior to award of the Contract.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** The Contracting Officer confirmed that the prices quoted by Baxter Healthcare for the Base Year of the newly proposed contract, were anywhere from 3% to 37% higher than what they are currently charging the VA under VA Contract, VA244-12-C-0463, and the prices quoted for Option Year One, are 3% higher than the prices they quoted for the Base Year, which was due to an increase in manufacturing and distribution costs. For this reason, and the fact that the prices quoted for the Base and Option Year One, are less than what Baxter Healthcare is charging private sector companies, as evidenced by their Commercial Price List, and the fact that Baxter Healthcare quoted a price that was the same as their Federal Supply Schedule Contract prices, for four of the supply items, supports the determination, that the quoted prices are fair and reasonable.

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

Baxter Healthcare has confirmed they sell these items to the General Public, and therefore, they are considered commercial items.

The Contracting Officer has obtained written statements from Baxter Healthcare, confirming no other company's peritoneal dialysis supplies are compatible with the Baxter Healthcare machines that are in the VA Patients homes, and that Baxter Healthcare is the sole seller of their peritoneal supplies, to the Department of Veterans Affairs.

A Google Search was performed, using the words "Baxter Healthcare Peritoneal Supplies" and only Baxter Healthcare came up.

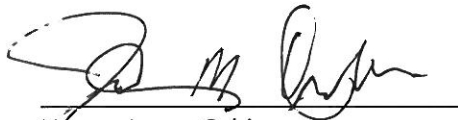
A GSA Advantage Search was performed, using the words "Baxter Healthcare Peritoneal", and no results were found, indicating the items are not available on the Federal Supply Schedule (FSS). Baxter has also confirmed they do not sell these Peritoneal Supplies on the FSS.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: None

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: None

11. 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 VA would have to change the manufacturer brand of Dialysis Machines it uses.

12. 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: Joann Orbin
Title: Administrative Officer
Facility: University Drive, Pittsburgh

9/3/15
Date

13. Approvals in accordance with the 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.

Name: Michael Lamb
Title: Supervisory Contract Specialist
Facility: H.J. Heinz

09/03/2015

Date

- b. **Director of Contracting /Designee (Required \$150K and above):** I certify the justification meets requirements for other than full and open competition.

Name: Michael J. Lamb
Title:
Facility: NCO4, Branch
Chief

09/03/2015

Date