

DEPARTMENT OF VETERANS AFFAIRS

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

VA260-15-AP-4088

1. Contracting Activity: Department of Veteran Affairs, VA Puget Sound Medical Center; Network Contracting Office 20 – 8524 Wall Street, Spokane, WA 99208. Acquisition Plan # VA260-15-AP-4088.

2. Nature and /or Description of the Action Being Processed: Request for other than Full and Open Competition for Oncology Advanced full-service software and hardware technical support contract on two Elekta Linear Accelerator systems. Elekta technicians are the only authorized service technicians allowed to perform maintenance and technical support on this equipment. The current service agreement, Contract # VA260-13-C-0028, expires at the end of September 2015.

3. Description of Supplies/Services Required to Meet Agency's Needs: This requirement provides for a service and maintenance contract on two Elekta Synergy Linear Accelerator Systems. The estimated value is \$366,392.29 for this first year for a total contract price of \$1,831,961.45. The systems are required to treat bone marrow treatment and cancer patients. The period of performance is October 1, 2015 – September 30, 2016 plus four (4) option years. The required services are as follows:

- Two on-site preventative maintenance inspections per unit per year
- Telephone support and technical assistance 24 hours per day
- On-site service response within 8 hours of coverage excluding holidays
- All factory-certified replacement parts
- Free mandatory software updates

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

- (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;

FAR 13.5 Test Program: The authority for applying the Commercial Test Program of FAR 13.5 is (Section 4202 of the Clinger-Cohen Act of 1996) 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): Elekta is the manufacturer of the Linear Accelerators and has sole proprietary rights to the licenses to the software of the accelerators and workstations. A copy of the proprietary rights letter has been loaded in the file. In

addition, Elekta has the factory certified parts to minimize downtime for this key equipment. The Contractor has the ability and knowledge to support the Synergy System and all its critical hardware and software on station and remotely. No other vendor is authorized to provide the support this system requires. The service contract is required for the continued operation of these systems that, if not functioning, would result in critical and unacceptable patient treatment delays.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable: Due to Elekta having proprietary rights, no action was conducted to promote competition; however, a market review and small business review was conducted which yielded no other sources.

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable: The VA Puget Sound Healthcare System is the only VA facility in NCO 20 with this type of equipment. Therefore, the anticipated cost for this order was compared to Task Order VA69D695C20163 awarded against IDIQ # VA69D-P-1453 on October 1, 2011 for NCO 12 in Hines, IL. This Delivery Order was awarded to Varian Medical Systems, Inc., for maintenance services for two Varian Linear Accelerators with a total value of \$624,734 covering a time period of 23 months. This Delivery order is considered by the customer to be relatively similar in service and product provided to the Elekta product. The anticipated price to the Government for (2) Elekta Synergy Linear Accelerators with workstations is \$366,392 per year based on base year with (4) option year contract. The price includes \$179,835 per year for the Elekta Synergy Linear Accelerator with workstation S/N 151664, and \$186,557 per year for the Elekta Synergy Linear Accelerator with workstation S/N 151953. The cost to the Government has been determined to represent relatively standard pricing within the industry for companies to retain proprietary rights to their technology and provide the service(s) that will be incorporated into this procurement action. After receipt of the proposal, the Contracting Officer, if necessary, will open discussions and negotiations. The Contracting Officer may then develop and negotiate specific Government price targets, request recent commercial invoices, request informal cost or price data, and/or request additional information from the vendor to support their pricing. All of these efforts will be used to ultimately determine the prices fair and reasonable.

8. Description of the Market Research Conducted and the Results or a Statement of the Reasons Market Research Was Not Conducted: Market research was conducted to determine that this requirement could be met with services customarily available in the commercial marketplace. Further market research showed that the Elekta retained proprietary rights for maintenance of the system. A notice of the proposed acquisition, advising industry of the pending acquisition and soliciting inquiries from interested parties, was posted to FedBizOpps. There were no responses expressing interest. Finally, in addition, the Contract Specialist reviewed Unicor, AbilityOne, NAC National Committed Use, NAC 65+66 Catalog, and the GSA e-Library with no other providers found.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: This is a service contract in which Elekta has sole proprietary rights for the manufacturer and maintenance of the Elekta Synergy Linear Accelerator System.

10. Listing of Sources that Expressed, In Writing, an Interest in the Acquisition: No sources expressed in writing an interest in the acquisition as it was announced on the Federal Business Opportunities website on 19 Feb 2015.

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: It is

common for high-tech medical equipment manufacturers to retain full rights to the firmware and diagnostic tools and equipment for repair and maintenance functions. However, we will continue to conduct market research to determine if any other sources offer this service.

12. Requirements Certification: I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veteran 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.

Chester E. Lohman
501322

Digitally signed by Chester E. Lohman
DN: cn=Chester E. Lohman, o=Internal, ou=people, email=Chester.E.Lohman@va.gov, c=US
Date: 2015.08.14 14:02:38 -0700

8/14/2015

Chester Lohman
Biomedical Equipment Support Specialist Imaging
VA Puget Sound Health Care System

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.

Ross A. Byrne
484794

Digitally signed by Ross A. Byrne 484794
DN: cn=Ross A. Byrne 484794, o=Internal, ou=people, email=Ross.A.Byrne@va.gov, c=US
Date: 2015.08.17 07:25:39 -0700

8/17/2015

Ross Byrne
Contracting Officer

Date

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

Richard G. Steffey
917188

Digitally signed by Richard G. Steffey
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Date: 2015.08.17 11:17:20 -0700

17AUG2015

Richard Steffey
Acting, Director of Contracting
Network Contracting Office 20 (NCO 20)

Date

c. SAO (if over 650k): I certify the justification meets requirements for other than full and open competition.


Christopher S. Williams
Acting Director, Service Area Office, West

8/17/15
Date

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 recommend approval (if over \$12.5 million) or approve (\$650K to \$12.5 Million) for other than full and open competition.

Delia A. Adams, Acting
Norbert Doyle
VHA Head of Contracting Activity (HCA)

18 Aug 15
Date