

DEPARTMENT OF VETERANS AFFAIRS
Other Than Full and Open Competition (OFOC)
Justification and Approval
For
Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA243-16-AP-1829

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 03, New York Harbor Healthcare System, Brooklyn Campus located in 800 Poly Place Brooklyn, NY 11208. Biomed Services of the New York Harbor Healthcare System (NYHHS) Brooklyn Campus, has submitted a VA Form 2237 requisition number 630-16-2-4454-0085 for the full service and maintenance task order award for Toshiba Radiology equipment in the amount of \$291,993.84. This is a Justification for Other Than Full and Open Competition.
- 2. Description of Action:** Network Contracting Office (NCO) 3 intends to accomplish a sole source task order action with no options against the VA National Acquisition Center (NAC) strategic contract V797P-6033(b), in association with Defense Supply Center – Philadelphia strategic contract SPM2D1-09-D-8322, with Toshiba America Medical Systems, Inc. (TAMS), 2441 Michelle Drive, Tustin, CA 92780-7047, for the maintenance and emergency repair services of three Toshiba radiological equipment items at the NYHHS Brooklyn VA Medical Center. The resulting task order will be a firm-fixed price task order effective May 1, 2016 through April 30, 2017.
- 3. Description of Supplies or Services:** The Contractor shall provide all personnel, equipment, tools, vehicles, materials, supervision, and other items and services necessary to perform preventive maintenance inspection and repairs on three diagnostic Toshiba Equipment. The first is AQ32/V Aquilion 32 CT Scanner System (SEG#: 252718 and Serial Number: 1DA0692045). The second is the Aplio XG Ultrasound System (SEG# 296954 and Serial Number: 99D0823344). Lastly is the AQ64 / CORE AQ64/CORE Aquilion 64 CT Scanner System (SID Number: 334730) accessories included are the CHEG-004C (ECG Scan Prospective for AQ/MP), CHEG-006A/3B.010 (sure cardio Prospective for Veloct), and Glassware: CT tube.B.Unltd.010 (unlimited tube coverage).
- 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(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.
- 5. Rationale Supporting Use of Authority Cited Above:** Toshiba is the sole manufacturer of the Aquilion CT as well as all software and accessories listed in the service requirement. Toshiba field service engineers have specialized training and are subject matter experts on the repair and maintenance of their systems. The company also owns the proprietary software and licenses to maintain, repair, and upgrade the software. Toshiba has the sole ownership of the certified Original Equipment Manufacturer's repair parts, and without those proper parts the equipment will not function.

6. Efforts to Obtain Competition: The Defense Supply Center Philadelphia (DSCP) issued the solicitation and accomplished contract award and the Department of Veterans Affairs, via the NAC administered the awarded contract. Market research efforts did not yield any additional sources that can meet the Government's requirements. There is no competition anticipated for this acquisition.

7. Actions to Increase Competition: 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. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsized at award on the Federal Business Opportunities (FBO) website and the justification will be made publicly available.

8. Market Research: The Government's technical experts conducted market research by reviewing other similar equipment and services for the equipment. This market research is an ongoing process starting in 2006 and continuously being conducted, as recently as April 2016. Based on reviews of these products, the Government's technical experts determined that only the OEM can meet the Government's interoperability and compatibility requirements previously discussed. Review of these products is based on actual VA experience using the competing diagnostic tools and software. Additionally, VA networking subject matter experts (SME) regularly review industry trade publications and conduct internet research to ascertain if any other brand name software is available. Based on these market research efforts, the Government's technical experts have determined that only Toshiba technical service can meet all of VA's needs.

9. Other Facts: The proprietary nature of the equipment and use of other manufacturers or service companies would void the warranties in effect. The required preventive maintenance and software support services can only be obtained from the OEM, Toshiba, and there are no other sources currently available for meeting the Agency needs.

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.

Irina Belets
Biomedical Engineer
Brooklyn VA Medical Center

Date: 4/22/2016
Signature: 
Chief of Biomedical Engineering

11. Determination that Anticipated Cost is Fair and Reasonable: I hereby determine that the anticipated price to the Government for this action will be fair and reasonable based on the fact that the required services are available on VA National Acquisition Center (NAC) contract V797P-6033(b) in association with Defense Supply Center – Philadelphia strategic contract SPM2D1-09-D-8322. The original solicitation and resulting award was competitively solicited and the prices included in resulting award determined fair and reasonable at the time of award.

Chapter VI: Other Than Full and Open Competition (OFOC) SOP
Attachment 5: Request for Exception to Fair Opportunity Memo

12. Contracting Officer's Certification (required): I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

Darryl M Majors
1063581

Digitally signed by Darryl M Majors
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Date: 2016.04.22 16:49:46 -04'00'

22 April 2016

Date

Darryl Majors
Service Branch Chief
Network Contracting Office 3

13. Approvals in accordance with the [VHAPM, Volume 6, Chapter VI: OFOC SOP](#).

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

HOPE L.
FREEMAN
126108

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Date: 2016.04.28 12:52:54 -04'00'

28 April 2016

Date

Hope Freeman
Division Chief
Network Contracting Office 3

No other signatures are required.