

## **JUSTIFICATION AND APPROVAL FOR AN EXCEPTION TO FAIR OPPORTUNITY**

### **1. Contracting Activity**

Department of Veterans Affairs (VA)  
Strategic Acquisition Center – Frederick (SAC-F)  
321 Ballenger Center Drive, Suite 125  
Frederick, MD 21703

### **2. Description of Action**

This activity proposes to negotiate a new, noncompetitive award (sole source, logical follow-on) with Deloitte Consulting, LLC. This follow-on effort is being conducted under the authority of the indefinite delivery vehicle contract VA798-11-D-0124, that has an ordering period ending September 26, 2016. The anticipated period of performance of the follow-on contract is from August 1, 2016 to July 31, 2017. The proposed action is for a one-year, firm-fixed price (FFP) contract. The total estimated value of this acquisition is \$1,000,000.

### **3. Description of the Supplies or Services**

Deloitte is currently working to review existing catalog materials and planning documents, and then elicit requirements from facilities to align them with prime vendors. As part of their work to populate the catalog, Deloitte is supporting market research efforts by gathering product usage data as part of Task 6 Program Control Plan, Catalog Development Support (CLIN 0017a). Further, the contractor is working to develop a framework for requirements management through the lifecycle of the Medical/Surgical Prime Vendor Next Generation (MSPV-NG), including the methods for gathering and tracking requirements, then managing any change as part of Task 6 Program Control Plan Requirements Management Plan (CLIN 0017e). The Department of Veterans Affairs (VA), Veterans Health Administration (VHA), Procurement and Logistics Office (P&LO) is tasked with preparing acquisition packages for approximately 10,000 line items to submit to contracting in support of supplier agreements (BPAs and contracts) that will be a part of the MSPV-NG catalog/ formulary.

P&LO is requiring the services of Deloitte to assist the VA Program Manager (PM) with the development of procurement package documents for these 10,000 catalog line items, to include the coordination of market research for those items. This activity entails more of the work described at Task 6 Program Control Plan and Requirements Management Plan, to continue gathering facility requirements as part of market research and enable a more rapid cataloging process for this larger pool of products than initially anticipated. This support will require the utilization of industry subject matter experts to identify opportunities for brand name or equal products (functional equivalents) when available. Particularly in light of the recent Supreme Court ruling for Kingdomware, additional market research is needed to validate Office of Small and Disadvantaged Business Utilization (OSDBU) research to support set-aside decisions and non-manufacture rule waivers. In addition to documenting market research,

contractors will be creating a spreadsheet to include required line items, as well as a number of required data fields for the availability on the Federal Supply Schedule.

It is anticipated that the majority of the effort will be performed prior to November 18, 2016, with additional reduced level of support in the remainder of the performance period as the Program Management Office (PMO) is further defined and established. The Government has a goal of completing initial package requirements no later than November 18, 2016, to provide sufficient time for the Contracting Activity to appropriately compete and award all the line items required.

These services are considered performance-based severable services that are available in the commercial marketplace. The total estimated value of this acquisition is

#### **4. Statutory Authority**

The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by FAR Subpart 16.505(b)(2)(i)(C), entitled: "The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order."

#### **5. Rationale Supporting Use of Authority Cited Above**

SAC-F awarded task order VA119A-16-J-0067 to Deloitte on February 19, 2016 to assist the Government with standing up, staffing, and transitioning the MSPV PMO to a Government-staffed PMO. Task 6 of the Performance Work Statement includes a requirement for assistance with elicitation of facility product requirements, including salient characteristics research to populate the product catalog.

There is a learning curve associated with understanding the processes and procedures required to support the effort contemplated. Deloitte has been instrumental in assisting the Government develop the processes, as well as analyze the data being used to develop the packages. This detailed understanding of the program allows Deloitte to be suited to provide the required services without any down-time or introductory period, which could otherwise be inefficient to the Government and cause substantial delays. The P&LO must act quickly to get these packages completed due to the reasons cited below.

There are a number of reasons to support this effort. The MSPV-NG contract represents a single ordering portal that streamlines the ordering process by reducing the number of orders placed, and negating the need for a complete contract package for each order placed over the micropurchase threshold. It also eliminates the need to use purchase cards, which has shown to require six times more staff work than the delivery order process utilized under MSPV. The medical facilities are currently staffed to support this model.

Currently, the supplier agreements under MSPV-NG are predominantly sole/limited source agreements that are scheduled to expire in one year. Therefore, it is pertinent for VA to accelerate this process with the additional support needed to ensure that the competitively awarded agreements will be in place prior to expiration of these agreements. Any lapse in coverage will have a significant impact on Veteran healthcare, in that supplies will not be readily available to Medical facilities.

Should the MSPV-NG program experience delays with this activity, VAMCs would be required to revert to purchase card buys and requests for local contracting. Neither the VAMCs' purchase card holders nor VHA Acquisitions have the capacity to handle the volume of purchases required to sustain operations. In addition, this would result in significantly increased operating costs, as well as supply costs due to VA's inability to leverage spend for these catalog items. A delay would also result in an increased risk for split purchases on the part of cardholders in an effort to "do the right thing" to maintain operations for the sake of Veteran patient care.

The existing contract was competitively awarded. Two offers were received and the total award value was \$3,782,301.88.

## **6. Other Facts**

The P&LO did consider alternate means of obtaining this staffing support through use of Federal Acquisition Certified Program/Project Management (FAC-PPM) Interns; however, these Interns are field-based, and scattered throughout the country. Initial training would require two weeks of travel, borne by the P&LO and each Intern is only available for a 30-day rotation. The training time and learning curve do not support such a short term rotation. In addition, it is estimated that approximately 18 full time employees would be needed in order to meet the November 18, 2016 deadline. Therefore, having the FAC-PPM Intern program support this effort is not a viable alternative.

The importance of allocating the proper amount of time that is necessary to conduct a competitive procurement would require a four to five month timeframe. The period of performance on the current Deloitte contract listed above will be concluded by September 25, 2017; therefore, a limited source follow-on contract is necessary to avoid a lapse in service. Additionally, attempting to openly compete and complete this particular effort in a timely matter would be realistically impractical.

## **7. Statement of actions, if any the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.**

Given the timelines for implementation, a majority of this activity will be completed by November 18, 2016. It's not anticipated that this level of support will be required beyond this date; however, a reduced amount of support will continue to be required for a total of up to one year.

## 8. 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.

Date: 7/19/16

Acting Healthcare Commodity  
Program Executive

Signature: \_\_\_\_\_


## 9. Fair and Reasonable Cost Determination

I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable based on an analysis of the contractor's price to continue these services. The contractor's priced labor hour rates will be verified to confirm that they do not exceed the established benchmark labor rates in the contractor's base ordering contract. The level of effort and the mix of labor proposed will be evaluated to determinate that the total price is reasonable for the effort. The Contracting Officer will seek additional price discounts of the established hourly labor rates on the base contract.

Lora Gross

Date: 7/19/2016

Procuring Contracting Officer

Signature:  Digitally signed by lora.gross@va.gov  
DN: cn=lora.gross@va.gov  
Date: 2016.07.19 10:11:23 -0400


## 10. Determination by the Approving Official that FAR 16.505(b)(2)(i)(C) Applies to this Order

I hereby determine that FAR Subpart 16.505(b)(2)(i)(C) applies to this order as supported by the information found herein.

Lora Gross

Date: 7/19/2016

Procuring Contracting Officer

Signature:  Digitally signed by lora.gross@va.gov  
DN: cn=lora.gross@va.gov  
Date: 2016.07.19 10:12:02 -0400

## 11. Procuring Contracting Officer Certification

I certify that this justification is accurate and complete to the best of my knowledge and belief.

Lora Gross

Date: 7/19/2016

Procuring Contracting Officer

Signature:  Digitally signed by lora.gross@va.gov  
DN: cn=lora.gross@va.gov  
Date: 2016.07.19 10:12:54 -0400

## 12. Legal Sufficiency Certification:

Justification & Approval MSPV-NG Support

I have reviewed this justification and find it adequate to support an exception to fair opportunity and deem it legally sufficient.

See Legal Counsel's response provided via

Legal Counsel

Signature: \_

Justification & Approval MSPV-NG Support

Approval

In my role as Contracting Activity Competition Advocate, based on the foregoing justification, I hereby approve the acquisition of increased support for the preparation of acquisition packages on an other than fair opportunity basis pursuant to the authority cited in paragraph 4 above, subject to availability of funds, and provided that the property and services herein described have otherwise been authorized for acquisition.

Clint Druk

Date: \_\_\_\_\_

Competition Advocate<sup>1</sup>  
Deputy Director, SAC-F  
Office of Acquisition Operations

Signature: \_\_\_\_\_

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<sup>1</sup> Authority delegated per the Associate Deputy Assistant Secretary for Procurement Policy (DSPE) memo, dated October 26, 2015.