

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval (J&A)**

**For**

**Other Than Full and Open Competition (>\$150K)**

**Acquisition Plan Action ID:** VA261-16-AP-4310

**1. Contracting Activity:** Department of Veterans Affairs, VISN 21, VA Palo Alto Health Care System (VAPAHCS), 2237 No. 640-17-1-034-0005.

**2. Nature and/or Description of the Action Being Processed:** This is a new action to purchase microbiology lab supplies for the VA Palo Health Care System (VAPAHCS). The VAPAHCS is requesting a sole source contract with Biomerieux, Inc. for one (1) year due to the upcoming expiration (09/30/2016) of their current contract for this requirement. The current order was placed off of the contractor’s VA FSS, Schedule 66 III NAC Contract (V797P-7128A).

An order will not be placed off of the contractor’s VA FSS, Schedule 66 III NAC Contract (V797P-7128A) for this requirement because the requested supplies are considered open market items.

**FAR13.5 Simplified Procedures for Certain Commercial Items:** This procurement is for microbiology lab supplies, and will be made in accordance with FAR 13.5 Simplified Procedures for Certain Commercial Items and specifically FAR 13.501 Special Documentation Requirements, under which acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2.

**3. Description of Supplies/Services Required to Meet the Agency’s Needs:** The required microbiology lab supplies are listed in the table below:

Material No	Material Description	Price	Qty	Ext Amt
21341	GN TEST KIT VTK2 20CARDS		200	\$
21342	GP TEST KIT VTK2 20CARDS		200	\$
21343	YST TEST KIT VTK2 20CARDS		20	\$
21346	NH TEST KIT 20 CARDS		20	\$
21347	ANC TEST KIT 20 CARDS		50	\$
22226	AST-GP67 TEST KIT 20 CARDS		300	\$
410851	BACT/ALERT FA PLUS		200	\$
410852	BACT/ALERT FN PLUS		200	\$
413400	AST-GN69 TEST KIT 20 CARDS		300	\$
413944	AST-XN06 TEST KIT 20 CARDS		300	\$
				\$

These supplies are required to run on current, VA-owned equipment manufactured by Biomerieux, and will be used in the Microbiology Lab at the VAPAHCS for microbiological detection, mycobacteria, and sterile body fluid testing.

**Estimated Dollar Value for the Period of Performance:** [REDACTED]

**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.

**FAR13.5 Simplified Procedures for Certain Commercial Items:** The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented for 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):** The VA owns the following Biomerieux manufactured equipment:

- a. COLORIMETER VITEK2 60
- b. BACTALERT 3D

No other microbiology supplies will work or are compatible with the existing VA owned Biomerieux manufactured equipment listed above. Additionally, Biomerieux does not have authorized distributors contracted to sell the requested supplies to VA Medical Centers. Therefore, Biomerieux is the sole distributor and the only source capable of providing the supplies to the VAPAHCS.

Based on the aforementioned, Biomerieux, Inc. has been identified as being the only source capable to provide the supplies for Biomerieux equipment IAW FAR 6.302-1.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** An RFQ (Sources Sought) (RFQ1126482) was issued via GSA eBuy and a Presolicitation Notice (VA261-16-N-0970) was issued via FBO on 08/11/2016 and closed on 08/18/2016. The notice included the requested microbiology lab supplies from Biomerieux and indicated that the VA Palo Alto Health Care System (VAPAHCS) intends to negotiate a sole source contract with Biomerieux for a one (1) year order. However, any firm that adequately established it could provide the required Biomerieux microbiology lab supplies or a potential equal product, were encouraged to submit written notification to the Contract Specialist with for consideration before the close of the Sources Sought Notice. Biomerieux emailed the contract specialist indicating that they could provide the requested microbiology lab supplies. No other sources expressed interest or provided a response to the sources sought notice.

Additionally, the contract specialist contacted Biomerieux to confirm that they did not have any authorized distributors for the required supplies. Furthermore, a search on VetBiz was conducted using the search term "microbiology" in NAICS 325413. The search produced no results.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** By signing this document the Contracting Officer is stating that the anticipated cost to the Government will be fair and reasonable. This requirement is for a commercial item and is, therefore exempt from certified cost or pricing data requirements. However, current pricing information is required to be furnished by Biomerieux to ensure VA is receiving fair and reasonable pricing consistent with Biomerieux's best Federal customer.

**Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** Market research, in accordance with FAR Part 10, was conducted.

Because the Government owns Biomerieux equipment, the requiring activity has deemed that only Biomerieux manufactured supplies are compatible. Therefore, no other supplies manufactured by another source would be compatible with Biomerieux equipment. Furthermore, Biomerieux has confirmed that it does not have any authorized distributors contracted to sell the microbiology supplies to the VA.

Based on the market research conducted, Biomerieux is the only source capable of providing the supplies that will work and are compatible with VA owned Biomerieux equipment.

8. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** N/A
9. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** Biomerieux has expressed interest in the acquisition. No additional sources expressed interest in the acquisition.
10. **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:** No follow-on competitive acquisition is planned at this time. However, VA will continue to monitor the commercial marketplace to determine if other sources are capable of providing supplies that can be run on VA-Owned Biomerieux-manufactured equipment. Additionally, the VA intends to conduct a competitive acquisition when this equipment has to be replaced.

