

**DEPARTMENT OF VETERANS AFFAIRS**

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

**For**

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

**Acquisition Plan Action ID: VA255-16-AP-1138**

1. **Contracting Activity:** Department of Veterans Affairs, VISN 15, Eastern Kansas Health Care System Dwight D. Eisenhower and Colmery-O'Neil Medical Center
2. **Nature and/or Description of the Action Being Processed:** This procurement is for the replacement of Sleep Lab and EEG medical systems that operate on a Windows XP OS. These systems have been identified as security risks to the IT network, which are a vulnerability to PHI/PII, and the VA network overall. This procurement represents a new contract and will replace much of the hardware and software currently in use, however some peripherals are still in use and must be interoperable with the new system.
3. **Description of Supplies/Services Required to Meet the Agency's Needs:** The procurement will upgrade the sleep lab and EEG software and hardware to bring them into compliance. The system is used in sleep studies with our Veterans to diagnose a wide variety of sleep-related issues, and also perform brain studies on veterans. The software can be used to analyze the studies, pull patient information directly from the patient record, and then send the study back to that patient's record after physician review. This reduces the amount of orphaned patient records and studies. The acquisition must be interoperable with previously acquired studies so trends can be analyzed. The upgrade includes all hardware (with the exception of VA provided servers) and software, in addition to services and training to ensure safe operation. The total for equipment and services is \$248,667.76.
4. **Statutory Authority Permitting Other than Full and Open Competition:**  
(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;
5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):**

Only One Responsible Source (FAR 6.302-1) is able to provide the services and equipment requested. The equipment is highly specialized as it is used to diagnose brain and sleep related conditions. The peripherals that interface with the patient are not included in the scope of the upgrade, only the equipment which interfaces with the peripherals after a study has been acquired. For this reason, the software and hardware acquired must be functional with existing peripherals which are Natus, Grass Technologies equipment. In addition, we still maintain a vast database that includes roughly 5 years of sleep studies acquired using the currently installed Natus system. This data is in the Natus format, and in order to perform trending analyses overtime, the new data must be the same, or interoperable with, the old format. There is a potential for inaccurate, or misdiagnoses if this functionality is lost. No other solution is able to supply the software due its proprietary nature.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:**

An SDVOSB RFQ was posted to NASA SEWP, however, no vendors replied to the solicitation.

Chapter VI: Other Than Full and Open Competition (OFOC) SOP  
Attachment 3: Request for Sole Source Justification Format >\$150K

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:**

The cost is expected to be fair and reasonable based on VA NAC FSS pricing. The same costs were paid by other VA Medical Centers based on VA Contract No. V797P-4345B.

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

Other manufacturers were reviewed but their solutions were not interoperable with the aforementioned EEG/Sleep Lab peripherals and legacy studies, as indicated in section 5. See the attached Market Research for full details.

9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:**

N/A

10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:**

Natus Medical and Compumedics

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:**

No actions are currently being planned on this equipment after this refresh. The next time this equipment is planned, it will be a total system replacement and will go out for competitive bid.

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.

\_\_\_\_\_  
Robert C Hamilton  
Chief Biomedical Services  
Eastern Kansas Health Care System

\_\_\_\_\_  
Date

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

- a. **Contracting Officer or Designee's Certification:** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Eric Murray  
Contracting Officer  
NCO 15

09/19/2016  
\_\_\_\_\_  
Date



Department of Veterans Affairs  
SAO CENTRAL  
VISN 15 Contracting Activity

MEMORANDUM FOR RECORD

FROM: Eric Murray, Contracting Officer

SUBJECT: Market Research Report

I. MARKET RESEARCH

The Contracting Officer shall conduct market research in compliance with mandatory sources of supply. Once a mandatory source has been found, no further research will be conducted of lower priority sources.

Unusual or compelling urgency. The contracting officer may use a source lower in priority than as specified in paragraph (a) of this section when the need for supplies or services is of an unusual or compelling urgency (see [FAR 6.302-2](#)). The Contracting Officer must include a justification for each deviation in the procurement file if FSS, or post on [www.fbo.gov](http://www.fbo.gov) if an open market requirement.

This requirement is a Sole Source see Limited Sources Memo for details.

1. Veterans First Contracting Program

- Vendor Information Pages at <https://www.vip.vetbiz.gov/> was checked
- Set Aside for SDVOSB
  - Set Aside for VOSB
  - No SDVOSB or VOSB are capable to perform under the selected NAICS

2. Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see [Subpart 8.7](#));

- [Ability one IAW FAR 8.704\(a\) \(2\) Procurement List for Services](#)

This requirement is available through mandatory sources. No further sources sought.

- Ability one is not able to provide this requirement at this time.

3. A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR 8.002(a) (1) (v)) and Federal Supply Schedules (FAR 8.002(a) (1) (VI)).

- [NAC NATIONAL COMMITTED USE PROGRAM](#) this requirement is available through mandatory sources, (PRIME VENDOR).

Requirement is not in schedules **65 IB** Pharmaceuticals and Drugs; **65-IIA** Medical Equipment and Supplies, **65-IIC** Dental Equipment and Supplies, **65-IIIF** Patient Mobility Devices, **65-PARTVII** Invitro Diagnostics, Reagents, Test Kits and Test Sets, **65-VA** X-Ray Equipment and supplies, **66** Scientific Equipment

and Supplies, **66 III** Clinical Analyzers, Laboratory, Cost-Per Test, so a Search of catalog is not needed.

No National Committed Use Contracts are available for this requirement.

4. Federal Supply Schedules (see Subpart 8.4); Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66.

[NAC 65+66 SEARCH CATALOG](#) this requirement is available through non-mandatory sources.

Requirement is not in schedules 65 IB, 65-IIA, 65-IIC, 65-IIF, 65-PARTVII, 65-VA X-Ray, 66, and 66III so a Search of catalog is not needed.

No NAC awarded contracts are available.

5. Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

[NAC NATIONALLY AWARDED BPA SEARCH CATALOG](#)

This requirement is available through non-mandatory sources.

Requirement is not in schedules 65 IB, 65-IIA, 65-IIC, 65-IIF, 65-PARTVII, 65-VA X-Ray, 66, and 66III so a Search of catalog is not needed.

No NAC awarded contracts are available.

6. Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

CHECK LOCAL RESOURCES FOR VISN AWARDED CONTRACTS AGAINST FSS this requirement is available through mandatory sources.

No Multi-VISN, Single –VISN or locally awarded BPAs awarded against FSS are available.

7. Optional use Federal Supply Schedules (see Subpart 8.4); and Federal Supply Schedules without BPAs

[GSA ADVANTAGE WEBSITE](#) this requirement is available through mandatory sources.

No GSA/FSS sources are available.

## II. FINDINGS:

After consulting SDVOSB vendors on the NASA SEWP Program, it was determined sleep lab equipment and software was in the scope of NASA SEWP V. An SDVOSB RFQ was posted on Aug 29, 2016 and closed on Sep 9, 2016. The RFQ closed with no offers. One SEWP vendor contacted me and stated they were not able to work out a teaming agreement with any sleep study software makers.

Since the SEWP RFQ did not have a positive result. I started the process over. I was reviewing the VA NAC Federal Supply Schedules and located a vendor selling Compumedics Sleep Study Equipment. Discussing my findings with Robert Hamilton Chief of Biomedical Services at Eastern Kansas it was determined Compumedics equipment would not be compatible with the equipment and peripherals that were not going to be replaced with this procurement. It was determined the procurement should be brand name specific to the equipment that is in use at the facility.

The equipment currently in use is manufactured by Natus Neurology Incorporated (Natus). Discussions were held with Lu Hill, District Sales Manager and Claude Buckles, Key Account, Corporate Account, and GOVT. Contract Specialist representing Natus.

During the discussions it was revealed that Natus had been contacted by several SEWP vendors. Natus made a company decision not to team with any other vendors because they have an SDVOSB that sells small low cost items for them. The vendor is Quick Medical.

Quick Medical provided a quote to replace most of the sleep lab system for Eastern Kansas. The IGCE for the procurement was \$249,000.00. The price from Quick Medical was \$386,356.61. That price was 43% higher (app \$137,000.00) than the IGCE. I determined this to be price unreasonable. Quick Medical and Natus stated the price was in error because of a computer issue. Quick Medical responded with an offer of \$275,179.80. The same equipment is available from the manufacturer on Federal supply Schedule for \$248,667.76. The price difference is \$26,512.04 or 10.122%

Quick Medical does not manufacture the equipment. Quick Medical does not code the software. Quick Medical will not do the installation. I have determined the \$275,179.80 price as unreasonable.

Market research indicates this cannot be a small business set aside. The request is to replace most of the sleep lab equipment and software that is manufactured by Natus Neurology Inc. The non-manufacture rule (NMR) applies as the procurement is over \$150,000.00. The system must be replaced this fiscal year and a waiver of the NMR would delay the procurement.

A justification for Other Than Full and Open Competition (OFOC) will be completed. The sole source award will be made to the manufacturer, Natus as it is the only source for compatible equipment/software at a reasonable price.

III. **COMMERCIALITY DETERMINATION:** Market research indicates this is a commercial item customarily available in the commercial marketplace to the public, and it meets agency requirements. (Reference: FAR 2.101(a) ("Commercial Item) (6)).