

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA250-16-AP-4489

1. **Contracting Activity:** Department of Veterans Affairs, Network Contracting Office 10, at 8888 Keystone Crossing Blvd. Suite 1100, Indianapolis, IN 46240. The requesting activity VISN 10, Northern Indiana Healthcare System (NIHCS), Biomedical Engineering Service, at 2121 Lake Avenue, Fort Wayne, IN 46805 has submitted VA Form 2237# 610-17-1-177-0027 in the amount of \$212,799.96 for this request.
2. **Description of Action:** A proposed sole source task order against National Acquisition Center (NAC) Schedule 65II Contract V797P-6011B with Philips Healthcare, A Division of PENAC, 22100 Bothell Everett Hwy, Bothell, WA 98021, for the maintenance and repair services of the Philips Healthcare Brilliance 16 CT Scanner and Ingenuity Core 128 CT Scanner systems located at NIHCS.

The resulting task order will be a firm-fixed price task order effective November 1, 2016 with a period of performance through October 31, 2017.

3. **Description of Supplies or Services:** The services required to meet the Agency's needs are a comprehensive maintenance and repair plan for the Philips Healthcare Brilliance 16 CT Scanner and Ingenuity Core 128 CT Scanner systems. This maintenance and repair plan shall include regular preventative maintenance and emergency repairs during normal working hours in order to maintain the system at the Original Equipment Manufacturers (OEM) specifications and reduce equipment downtime. The task order will require the Contractor to perform routine quality assurance evaluations in order to assure optimum performance. The task order will also require the Contractor to provide software updates/upgrades and hardware upgrades to the system which are intended to reduce safety risks. The estimated total cost of the task order is approximately \$212.799.96.
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 Subpart 16.505(b)(2)(i):

() FAR Subpart 16.505(b)(2)(i)(A): The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(X) 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.

() FAR Subpart 16.505(b)(2)(i)(C): 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

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

contract, provided that all awardees were given a fair opportunity to be considered for the original order.

() FAR Subpart 16.505(b)(2)(i)(D): It is necessary to place an order to satisfy a minimum guarantee.

() FAR Subpart 16.505(b)(2)(i)(E): For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source". The statutory authority permitting an exception to fair opportunity for this action is 38 U.S.C. 8127(c), known as the Veterans First Contracting Program which provides the authority to directly contract with a Service-Disabled Veteran-Owned Small Business (SDVOSB) or a Veteran-Owned Small Business (VOSB).

() FAR Subpart 16.505(b)(2)(i)(F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

5. **Rationale Supporting Use of Authority Cited Above:** The Brilliance 16 CT Scanner and Ingenuity Core 128 CT Scanner systems must be serviced by the OEM due to end-user dependency on application support provided by the OEM. Changing the service contract to any source other than the OEM would eliminate access to application support. Service could not be provided by a source other than Philips Healthcare to ensure the system is functioning to OEM standards. The VA NAC awarded this contract specifically for the maintenance and repair of high-technology medical equipment within the VA. This contract was competed and Philips Healthcare was the only respondent awarded a contract for the repair of these specific machines.
6. **Efforts to Obtain Competition:** No additional efforts were made by the Contracting Officer to obtain competition. The original award was competitively awarded by the NAC. No additional market research was conducted as the NAC competitively awarded Contract V797P-6011B and Philips Healthcare was the only respondent for these specific Philips manufactured machines.
7. **Actions to Increase Competition:** No action has been taken to overcome any barriers to the restricted competition. As the machines are manufactured by Philips Healthcare, and Philips Healthcare maintains the proprietary software necessary to maintain the machines to optimal working conditions without licensing or distributing to third parties, the Government, if the required services are to be met, must contract with Philips Healthcare for these services.
8. **Market Research:** Market research was conducted through various internet searches of FPDS, VetBiz, GSA eLibrary, and SBA's Dynamic Small Business Search Engine tool. No small businesses were found capable of providing these maintenance services to the Brilliance 16 CT Scanner and Ingenuity Core 128 CT Scanner systems.
9. **Other Facts:** None.

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

- 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.

Dr. George Scarlatis
Acting Chief, Biomedical Engineering
Northern Indiana Healthcare System

Date

- 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 the required services are available on NAC Contract V797P-6011B. This contract has already been reviewed by a Contracting Office and determined fair and reasonable prior to award.

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

Lisa Frymier
Contracting Officer
Network Contracting Office 10

Date

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

Director of Contracting /Designee (Required over\$150K but not exceeding \$700K): I certify the justification meets requirements for other than full and open competition.

Toni D. Waggoner-Boykin
Branch Chief, IN Services Team
Network Contracting Office 10

Date