DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval
For
Other Than Full and Open Competition
(Orthopedic and Prosthetic Appliances and Related Services)

1. **Contracting Activity:** Department of Veterans Affairs, Veterans Health Administration, Network Contracting Office (NCO) 20, Vancouver, WA.

2. **Nature and/or Description of the Action Being Processed:** The J&A is to support the award of a contract or purchase order on a sole source basis with **Biomet** for the purchase of orthopedic and prosthetic appliances or services, specifically prescribed by a physician as the optimum method of treatment for a specific patient treated under the care of a Veterans Administration Hospital.

   This procurement is being handled under AP#**VA260-12-AP-2417** for a **Surgical Implant** where in accordance with FAR 6.001(a), acquisitions conducted under FAR 13 for SAP are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2, IAW the VHA SOP for Other Than Full And Open Competition dated 3-22-2011.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** Various orthopedic and prosthetic appliances and services as specifically prescribed for a patient under a Physician's care. The dollar value cannot be determined at this stage in the acquisition.

4. **Statutory Authority Permitting Other than Full and Open Competition:** Pursuant to the authority of 41 U.S.C. 253(c) and 38 U.S.C. 8123 as implemented by the following checked Federal Acquisition Regulation (FAR) regulations, and 806-302-5 of the Veterans Administration Acquisition Regulation (VAAR) Supplement.

   (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
   (X) (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
   (X) (5) Authorized or Required by Statute FAR 6.302-5; (38 U.S.C. 8123)
   ( ) (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):** As the needs of each patient are unique to each Veteran being treated, it is the attending Physician's authority to prescribe the method of treatment to best satisfy the medical condition of his/her patient. These needs are urgent and compelling in order to ensure the patient's physical function within society. Denial of the ability of Physicians to prescribe specific treatments to their patients would inverstly affect VA facilities to rendure proper patient centered care.

6. **Description of Efforts Made to Ensure that Offers Are Solicited from As Many Potential Sources As Deemed Practicable:** This J&A covers a vendor who will specifically provide orthopedic and prosthetic appliances or services and has been specifically prescribed by an attending Physician to best treat the Veteran patient. No further action to compete these requirements will be accomplished, as it is the authority of the Physician to judge the level of treatment necessary to satisfy the care needs of his/her patient.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** The fair and reasonableness of the cost/price will be based on the analysis of the supplier's quote/proposal, including back up information supporting the cost/price with prior similar contracts or purchase orders in accordance with FAR 13.106-3. It is anticipated this analysis will be conducted using experienced technical representatives, contract specialists, and field pricing support.

8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** Market research has discovered that Physician's treatment methodology is based largly upon the judgement of what is best for each individual paitient. There are multiple companies that provide orthopedic and prosthetic appliances with various differences between each product or service. Those differences are weighed by the Physician and a decision is made on the most effective manner of treatment for each Veteran patient's needs. Further market research has also determined that these appliances or services have been regularly purchased in the past and are readily available within the industry.

9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** As previously mentioned, the right of a Physician to make a judgement call on the most advantageous method of treatment is the core reason for utilizing other than full and open competition procedures. Full and open competition would open the way for outside sources (i.e. contracting, providers, etc.) to exercise professional judgement and circumvent a Physician's treatment methodology.

10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** None.

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:** For the reasons set forth in paragraph 5 & 9, the Veterans Health Administration has no plans at this time to compete further contracts or purchase orders for the types of supplies/services covered by this J&A. The Veterans Health Administration will assess whether competition of future requirements are feasible based upon regular analysis of supplies/services being purchased and market conditions.

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.

for Jennifer Powers — 2/29/2012

Name — DATE

13. Approvals IAW VHA SOP 3.22.11:

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

Keisha Lidahl — 3/7/12

Name: — Date

Contracting Officer

NCO 20 (...) Acquisitions Team

b. **Acquisition Manager's Review and Approval:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval for other than full and open competition.

Lynnial E. Trusty Jr. — Date

NCO 20 Network Contracts Manager

Service Area Office - West