

## JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)  
Office of Acquisition Operations  
Technology Acquisition Center  
23 Christopher Way  
Eatontown, New Jersey 07724
2. Description of Action: This proposed action is for a firm-fixed-price task order to be issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for Bull System hardware maintenance.
3. Description of Supplies or Services: VA, Office of Information and Technology, Service Delivery and Engineering, Enterprise Operations (EO), has a requirement for brand name Bull System hardware maintenance. The Bull System is utilized throughout VA and is critical for the VA payment system via secure communication encrypted channels. The Bull System hardware maintenance coverage to be provided under the proposed effort will ensure that the system remains operational. The required hardware maintenance consists of repairs and/or replacement of Bull equipment components to fully restore the system to operational in the event of a system failure. Hardware maintenance services shall be available 24 hours a day, 7 days a week, 365 days per year. The base period of performance shall be October 1, 2016 to September 30, 2017. An option will be included for continued maintenance for the period of October 1, 2017 – September 30, 2018. The total estimated price of the proposed action is \$[REDACTED], including options.
4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is Section 41 U.S.C 4106(c)(2) as implemented by Federal Acquisition Regulation (FAR) 16.505(b)(2)(i)(B) entitled, "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."
5. Rationale Supporting Use of Authority Cited: The proposed source for this action is Merlin International, 4B Inverness Court East, Suite 100, Englewood, Colorado, 80112. Merlin currently has an exclusive partnership agreement in place with Bull as the sole authorized reseller of Bull hardware and software and associated maintenance and support services. Bull does not do business directly with the Government and authorizes Merlin to act as its sole reseller. Only Bull hardware maintenance can meet all of the Government's requirements. The currently installed Bull hardware is proprietary and communicates through proprietary source code which only Bull or an authorized reseller can maintain. Any other source would need access to Bull's proprietary source code in order to repair and properly configure the existing Bull hardware. In addition, there is no other hardware that is interoperable and compatible with the current Bull infrastructure. Use of any other hardware would result in severe interoperability and compatibility issues. Specifically, if another

manufacturer's hardware were introduced into the Bull infrastructure, the system would malfunction, eventually resulting in system failure which ultimately has a deleterious effect on VA's ability to maintain its core information technology applications that directly support Veterans. Therefore, Bull System hardware maintenance is the only hardware maintenance coverage that meets the Government's requirements.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D) the resulting contract award will be synopsized on the Federal Business Opportunities Page within 14 days of award and this justification will be made publicly available. This Justification for an Exception to Fair Opportunity will be posted on the NASA SEWP V website with the solicitation.
7. Actions to Increase Competition: The Government will continue to conduct market research to ascertain if there are changes in the marketplace that would enable future actions to be fully competed.
8. Market Research: The Government's technical experts conducted market research in April 2016 to ascertain the ability of similar hardware maintenance to meet the Government's requirements which is to maintain the currently installed Bull infrastructure. Specifically, the Government's technical experts conducted web-based research on web sites for other equipment manufacturers such as International Business Machines (IBM) and Hewlett Packard. None of the hardware maintenance services offered by these companies can meet the Government's interoperability and compatibility requirements. IBM and Hewlett Packard's hardware cannot communicate with or through the existing Bull proprietary source code. Installing another manufacturer's hardware would result in system malfunction, eventually resulting in system failure. Based on the above, only Bull System hardware maintenance meets all of the Government's requirements.
9. Other Facts: None.

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.

[REDACTED]

Date: [REDACTED]

Project Manager

Signature: [REDACTED]

11. 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 the Independent Government Cost Estimate. Pricing for products awarded on NASA SEWP V GWAC have already been determined to be fair and reasonable.

[REDACTED]

Date: [REDACTED]

Procuring Contracting Officer

Signature: [REDACTED]

12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief.

[REDACTED]

Date: [REDACTED]

Procuring Contracting Officer

Signature: [REDACTED]

13. Legal Sufficiency Certification: I have reviewed this justification and find it adequate to support an exception to fair opportunity and deem it legally sufficient.

[REDACTED]

Date: [REDACTED]

Legal Counsel

Signature: [REDACTED]

## Approval

Based on the foregoing justification, I hereby approve the acquisition of Bull System hardware maintenance in the estimated amount of \$1,551,268.03, on an other than fair opportunity basis pursuant to 41 U.S.C. 4106(c)(2), subject to the availability of funds, and provided that the property and services herein described have otherwise been authorized for acquisition.

Date: [REDACTED]

Signature: [REDACTED]

Advocate for Competition  
Office of Acquisition Operations