

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID: \_\_VA528-16-AP-2177\_\_**

**Contracting Activity:** Department of Veterans Affairs, VISN 02, Buffalo VA Medical Center, 3495 Bailey Avenue, Buffalo NY 14215.

1. Purchase request number: 528-17-1-4803-0001.

2. **Description of Action:** This is a request for approval of a task order under VA NAC contract V797P-6011B for full service maintenance coverage on the Philips Healthcare imaging equipment currently in use at the Buffalo VA Medical Center. This procurement will be conducted in accordance with FAR Part 16. The purpose of the service agreement is to reduce service costs and improve equipment turn-around time and reliability. This will be a firm-fixed price task order off of NAC/DSCP contract #V797P-6011B for a total dollar value of \$425,360.04. The anticipated period of performance is October 1, 2016 to September 30, 2017.

3. **Description of Supplies or Services:** The Buffalo VA Medical Center requires a service maintenance plan for the Philips Healthcare imaging equipment currently in use to include replacement parts coverage, remote service support, telephone support, operating system software and hardware reliability reports, as well as, continuing education and support service. The contractor will be responsible for full maintenance coverage by providing all replacement parts, labor, travel expenses, tools, test equipment and other incidentals necessary to maintain or restore the listed equipment to operating specifications according to the manufacturer's recommendations throughout the term of the contract.

Covered equipment includes the following:

- 1 MultiDiagnost Eleva with Flat Detector, site ID 47190569
- 1 Forte Jetstream AZ, site ID 545297
- 1 Brilliance CT 64, site ID 548277
- 1 Brightview, site ID 54619444

The purpose of the service agreement is to reduce service costs and improve equipment turnaround time and reliability. This will be a firm-fixed price task order off of NAC/DSCP contract #V797P-6011B for a total dollar value of \$234,400.08. The anticipated period of performance is October 1, 2016 to September 30, 2017.

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): *Cite the authority under one of the "five exceptions" requiring a written justification listed under FAR 16.505. Identify only one specific statutory authority that will be used*

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*to justify an exception to fair opportunity. When using the fifth exception to fair opportunity (FAR Subpart 16.505(b)(2)(i)(E)) include the statute authorizing the specified source.*

( ) 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 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:** Philips Healthcare, a Division of PENAC is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Philips Healthcare HTME medical equipment described above due to patents and copyrights on the equipment. This prevents other possible contractors from accessing the diagnostic software, possessing necessary tooling and providing OEM parts to the Government. To ensure that services performed on the equipment meets OEM requirements as per Title 21 Part 820, Subpart N, Section 820.200, "Servicing in order to mitigate any liability as a result of equipment failure due to improper servicing of modification of equipment." These maintenance services are considered "highly specialized" and thus there is only one responsible source.

**6. Efforts to Obtain Competition:** *A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.*

Past procurement history indicates that this procurement was sole sourced to the joint DSCP/VA contract V797P-6011B due to patents and copyrights precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for Philips in Schedule 65 II A resulted in nineteen companies being identified. A search of their FSS schedules

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indicated that none of these companies have line items in their contracts for the repair and servicing of Philips medical equipment. A further search in in VA MedSurg Catalog for Philips service maintenance plan failed to identify any line items that would satisfy the needs of the agency. A VetBiz search under NAICS code 811219 with keyword Philips produced zero matches.

**7. Actions to Increase Competition: *Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, and etc.***

The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.

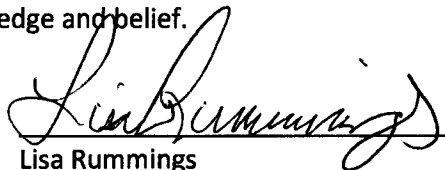
**8. Market Research: *Provide a description of the market research conducted among the contract holders and the results. If market research was not conducted, the reasons it was not conducted should be stated. When citing 16.505(b)(2)(i)(b) or 16.505(b)(2)(i)(e), the only possible way to state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here.***

See section 6.

**9. Other Facts: None**

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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.



Lisa Rummings  
Program Support Specialist  
Buffalo VA Medical Center

9/13/16  
Date

11. Determination that Anticipated Cost is Fair and Reasonable: A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

The pricing of this contract has been compared to pricing from previous procurements for the same items. Buffalo VA Medical Center has a service maintenance agreement with Philips Healthcare, A Division of Penac (V797P-6011B/VA528-15-F-0127, 10/30/2014-09/30/2016, 528C60053) that contains the same service maintenance plans requested in this procurement. The annual price of the last option year of this task order \$425,360.04. The quote for the requested service maintenance agreements is \$234,400.00, the decrease in price is due to the removal of the Philips Achieva and Philips Allura units from the service maintenance agreement. A review of the annual pricing for the four remaining units, indicate that these prices are the same as in the last option year of the current task order therefore considered fair and reasonable.

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

\_\_\_\_\_  
Michael Spivack  
Contracting Officer  
NCO-2, Services Team

\_\_\_\_\_  
Date

13. Approvals in accordance with the VHAPM, Volume 6, Chapter VI: OFOC SOP. *This part if filled out by Contracting Staff as part of the Justification*

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

\_\_\_\_\_  
Irma Ferro  
Division Chief  
NCO 2

\_\_\_\_\_  
Date

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- b. **VHA HCA 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 (if over \$13.5 million) or approve (\$700K to 13.5 million) for other than full and open competition.

N/A \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_  
VHA Head of Contracting Activity (HCA)

- c. **VA Deputy Senior Procurement Executive Approval (over \$13.5 million but not exceeding \$68 million):** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for other than full and open competition.

\_\_\_\_N/A\_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_  
Deputy Senior Procurement Executive (DSPE)  
Office of Acquisition and Logistics  
Department of Veterans Affairs

- d. **VHA Senior Procurement Executive Approval (over \$68 million):** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for other than full and open competition.

\_\_\_\_N/A\_\_\_\_\_  
Jan R. Frye \_\_\_\_\_ Date \_\_\_\_\_  
Deputy Assistant Secretary for Acquisition and Logistics  
Senior Procurement Executive (SPE)  
Department of Veterans Affairs