

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, NJ 07724
  
2. Description of Action: The proposed action is for a firm-fixed price delivery order to be issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for the renewal of brand name Zovy LLC (Zovy) Secure Archive (SA) software maintenance support.
  
3. Description of Supplies or Services: The Office of Information and Technology (OI&T), Service Delivery and Engineering, Enterprise System Engineering, Enterprise Messaging and Collaboration Services (EMCS) requires the renewal of software maintenance support for its existing 20,000 Zovy SA Perpetual software licenses. The Contractor shall provide 24 hour per day, 7 days per week, 365 days per year (24x7x365) software maintenance support with four hour on-site response time at both the VA production data center in Hines, IL and the disaster recovery site in Martinsburg, WV. The Contractor shall also provide telephone and email support to authorized Government contacts. As part of the maintenance services, the Contractor shall provide and install software upgrades and updates, perform data migration services, and maintain and repair any Contractor-provided SA equipment. The software maintenance support shall be delivered within 30 days after receipt and processing of the delivery order. The period of performance shall be 12 months beginning October 1, 2016. The total estimated price of the proposed action is 
  
4. Statutory Authority: The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c)(2) as implemented by the Federal Acquisition Regulation (FAR) Subpart 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 Above: Based on market research, as described in section eight of this document, it was determined that limited competition among resellers is available for this proposed action. The Veterans Affairs Central Office and OI&T's email archiving infrastructure is based upon existing Zovy proprietary SA software and hardware configurations and VA requires software maintenance support services that are compatible and interoperable with the existing infrastructure. Only Zovy's SA software maintenance meets all of VA's functional requirements to support continued operation of email archiving across VA and can seamlessly integrate and is interoperable with the current proprietary infrastructure. In order to provide the required software maintenance support, including installation of software upgrades and updates and migration services, access to Zovy's proprietary source code is required. Any other brand name

solution would require its own proprietary source code and infrastructure that would not permit seamless integration into VA's existing email archiving system. Only Zovy or its resellers have access to the proprietary source code to provide the required maintenance support for the software, which includes 24x7x365 support with a four hour on-site response time for issues that cannot be resolved remotely. This code is also required to ensure any services performed on the currently fielded software is properly configured.

Other brand name solutions, as detailed in section eight of this document, are not interoperable or compatible with the currently fielded Zovy brand name architecture components. Specifically, Zovy owns all proprietary programming language and intellectual property associated with its software and hardware configurations. No other brand name product is interoperable or can seamlessly integrate into the existing infrastructure without Zovy's proprietary hardware configurations and software application programming language utilized by VA's existing SA software solution. Additionally, only Zovy products can meet all of VA's functional requirements. Only Zovy brand name SA software can provide eDiscovery functionality and is interoperable and compatible with VA's legacy HP Autonomy email archiving system. Specifically, Zovy owns Original Equipment Manufacturer (OEM) rights to Autonomy Consolidated Archive (ACA) proprietary functionality through an exclusive agreement with HP Autonomy. This agreement, in addition to proprietary code developed by Zovy, provides Zovy with direct migration capability of legacy data from HP Autonomy's proprietary Enterprise Archive Solution (EAS) software and Digital Safe (DS) Mail backend storage appliance, which are no longer supported. Furthermore, Zovy provides direct translation capabilities of HP Autonomy's archiving and indexing technologies (e.g. EAS and DS Mail) converting migrated legacy data into a useable format and providing a platform for accessing the data moving forward. Therefore, continued operation of the existing Zovy proprietary SA infrastructure is required.

Failure to obtain the aforementioned software maintenance support will have a direct and significant impact on VA. Only Zovy or its resellers can maintain operational availability of the existing integrated archiving and eDiscovery infrastructure as well as provide migration of legacy data through direct translation with the legacy indexing platform. Without the Zovy SA software maintenance, the system will cease to function and critical data from VACO and OI&T email may be lost. Additionally, the Inspector General and Office of General Counsel will be unable to retrieve necessary data from emails to support investigation and litigation missions.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. This effort did not yield any alternative sources that can meet the Government's requirements. It was determined, however, that limited competition is viable among resellers for the required Zovy SA software maintenance support that hold current NASA SEWP V GWACs. In accordance with FAR 5.301 and 16.505(b)(2), notice of award of this action will be synopsisized and this justification will be posted on the Federal Business Opportunities Page (FBO) and made publicly available. This justification will also be

posted with the solicitation on the NASA SEWP V GWAC website for consideration by prospective Offerors.

7. Actions to Increase Competition: Limited competition for this requirement among authorized resellers is anticipated. Additionally, 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: The Government's technical experts conducted market research in March 2016 to ascertain if any other software product or service could meet VA's requirements. Specifically, VA technical experts reviewed other similar software and similar services which included Autonomy's Consolidated Archive, Symantec's Enterprise Vault, and EMC's Source One. Although these vendors provide email archiving solutions with similar capabilities, only Zovy or an authorized reseller are capable of providing software maintenance that meets all of the Government's functional requirements and seamlessly integrates into the existing Zovy proprietary email archive infrastructure. On August 23, 2016, VA confirmed with Zovy via email that they are the only company that has an OEM agreement for ACA worldwide, which, in addition to the use of Zovy proprietary code, allows direct migration and translation capabilities of legacy data. In addition, VA's technical experts could not identify any other sources that can provide the required maintenance and technical support without access to Zovy's proprietary technical data utilized by the current Zovy SA software. Based upon the market research conducted, the Government's technical experts concluded that Zovy software maintenance is the only commercially available product that can meet the Government's interoperability and compatibility requirements previously discussed in section five above.

Additionally, market research was conducted in August 2016 utilizing the NASA SEWP V GWAC Provider Look-up tool to ascertain the extent of limited competition among resellers. The results of the search found that there are several resellers of Zovy products that could possibly meet VA's needs. Therefore, limited competition is anticipated.

9. Other Facts: None.