

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA261-17-AP-2676

1. **Contracting Activity:** Department of Veterans Affairs, VA Sierra Pacific Network (VISN 21) VA Southern Nevada Healthcare System N Pecos Rd, Las Vegas 89086.

2. **Description of Action:**

This is an exception to fair opportunity justification for a new task order against existing National Acquisition Center (NAC) National Contract Service (NCS) high-tech medical equipment multiple award schedule. VISN 21 VA Southern Nevada Healthcare System (VASNHS) is requesting a new firm fixed price service contract for preventive maintenance agreement from 03/01/2017 through 2/28/2018 with Siemens Medical. Contracting Office cannot follow the fair opportunity process specified in the contract number SPM2D1-09-D-8314/V797P-6029P (a DLA contract jointly shared with the VA), because Siemens is the only known vendor that can supply service support that includes preventive maintenance, corrective maintenance during hours of coverage, and software support system that includes updates/upgrades to:

1. EE#51599 Equipment Description: Siemens Syngo.via Model: 10496180
2. EE#54271 Equipment Description: Siemens Syno.via Model: ML350P
3. EE#: 49082 Equipment Description: Siemens Ultrasound System Model: S2000
4. EE#:49084 Equipment Description: Siemens Ultrasound System Model: S5000
5. EE#:49079 Equipment Description: Siemens Ultrasound System Model: S2000
6. EE#: 49083 Equipment Description: Siemens Ultrasound System Model: S2000
7. EE#: 62364 Equipment Description: Siemens Ultrasound System Model: S2000
8. EE#: 56049 Equipment Description: Siemens Ultrasound System Model: X300
9. EE#: 56025 Equipment Description: Siemens Ultrasound System Model: X300
10. EE#: 50039 Equipment Description: Siemens DR System Model: Ysio
11. EE#: 50039 Equipment Description: Siemens DR System Model: Ysio
12. EE#: 55092 Equipment Description: Siemens DR System Model: Ysio
13. EE#: 55093 Equipment Description: Siemens DR System Model: Ysio
14. EE#: 45168 Equipment Description: Siemens DR System Model: Ysio
15. EE#: 50039 Equipment Description: Siemens DR System Model: Ysio
16. EE#: 49682 Equipment Description: Siemens Syngo Model: Multimodality WP
17. EE#: 64224 Equipment Description: Siemens Syngo Model: Multimodality WP
18. EE#: 64225 Equipment Description: Siemens Syngo Model: Multimodality WP
19. EE#: 64223 Equipment Description: Siemens Syngo Model: Multimodality WP
20. EE#: 49523 Equipment Description: Siemens IR System Model: Artis Zee Ceiling
21. EE#: 49062 Equipment Description: Siemens Syngo Workplace Model: Syngo X
22. EE#: 55095 Equipment Description: Siemens PET/CT System Model: Biograph MCT 64

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- 23. EE#: 45148 Equipment Description: Siemens Syngo Wizard Model: Biograph Workplace
- 24. EE#: 47773 Equipment Description: Siemens RF System Model: Luminous TF
- 25. EE#: 47756 Equipment Description: Siemens RF System Model: Luminous
- 26. EE#: 54203 Equipment Description: Siemens HYBOR System Model: Artis Zeego
- 27. EE#: 50204 Equipment Description: Siemens Somatom CT Model: Definition Flash
- 28. EE#: 47747 Equipment Description: Siemens Somatom CT Model: Definition Flash
- 29. EE#: 53220 Equipment Description: Siemens Uroscop Model: Omnia
- 30. EE#: 53969 Equipment Description: Siemens Syngo Workplace Model: Syngo X

3. Description of Supplies or Services:

The proposed action is to provide preventive maintenance services on 30 Siemens Medical Equipment located at VA Las Vegas Health Care System 6900 N Pecos Rd, North Las Vegas, NV 89086. Siemens has remote connectivity to this equipment and proprietary service software that is necessary to service the above equipment remotely. The total estimated value of the proposed action is \$1,299,288.87

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 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:

Software updates and upgrades to these systems are only available from Siemens on these systems as they are the original equipment manufacturer. These updates and upgrades will not be available from any other source. Compliance with the specifics of the warranty and the service agreement is required. Services attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the systems currently in operation at Las Vegas Healthcare System. This single factor precludes modification to enhance competition. Thus, acquiring a service contract with a potential contractor other than the suggested source can potentially prove too costly and injurious to the Government. If VA were not to obtain this particular service, we would not be able to safely and effectively treat patients. There will be a substantial duplication of cost to the government due to the purchasing of additional equipment or out-sourcing this service, if the VASNHS equipment is not adequately maintained for use.

If this is a Brand Name Justification: Not Applicable

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 additional sources that can meet the Government's requirements. There is no competition anticipated for this acquisition. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsized at award on the Federal Business Opportunities Page (FBO) and the justification will be made publicly available. No other companies have the OEM trained and certified technicians and can also provide timely and appropriate software and hardware upgrades as needed per the OEM.

7. Actions to Increase Competition:

Currently Siemens is the only vendor authorized to provide this service. If Siemens authorizes other vendor to provide these services other vendors will be considered on future preventive maintenance services on this equipment. The contracting office may survey the market again and solicit sources as necessary. In order to overcome barriers to competition, more sources supplying equivalent equipment/services must be available. Since Siemens Medical has the proprietary knowledge, parts, and licensed software, overcoming the barriers for competition cannot be realized at this time.

8. Market Research:

Based on market research, it was determined that only Siemens can meet the VA's requirement. Siemens is the original equipment manufacturer and the only authorized contractor who is capable of

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providing the services. Siemens will provide manufactured parts and labor necessary to service and maintain the equipment according to Siemens's published operating specifications. Only Siemens can install the modification in the equipment as soon as practical due to being proprietary and perform preventive maintenance requirements include software updates that only Siemens has access to perform. Siemens is the only vendor that can perform the preventative maintenance service; therefore, Contracting Officer does have a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offer best value to the Department of Veterans Affairs. The preventative maintenance services are found on an existing VA NAC NCS contract for high tech medical equipment, SPM2D1-09-D-8314/V797P-6029P (a DLA contract jointly shared with the VA). The anticipated cost is fair and reasonable to the Government based on the using service estimate and a breakdown of expenditures from the contractor. The Contracting Officer and Contracting Officer Representative will take appropriate steps to monitor cost by requiring and reviewing monthly summaries of research conducted.

9. Other Facts:

Siemens has proprietary rights on all software upgrades, parts and services on their equipment.

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.

Cliff Enquist
Imaging Lead BESS
VASNHS

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:

Based on historical prices paid for similar items and on catalog pricing, the Contracting Officer has determined that the anticipated cost to the Government will be fair and reasonable. The anticipated cost is fair and reasonable to the Government based on the using service estimate and a breakdown of expenditures from the contractor. In addition, Contracting Officer plans on getting the agreed to contracting pricing from the VA NAC and ensuring that the pricing is consistent with the rates previously determined to be 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.

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Mark Mikus
Branch Chief
NCO 21

Date

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

- 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.

Samuel M. Harbin
NCO 21 Director of Contracting

1/26/2017

Date

- 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.

Delia A. Adams, MBA, CPCM
Director, SAO West
Head of Contracting Activity

Feb, 01, 2017

Date