

DEPARTMENT OF VETERANS AFFAIRS

**Justification and Approval (J&A)
For
Other Than Full and Open Competition (>\$150K)**

Acquisition Plan Action ID: VA260-17-AP-2788

1. **Contracting Activity:** Department of Veterans Affairs, NCO20 for Portland VA Medical Center Pathology & Laboratory Department. 2237: 648-17-1-066-0095
2. **Nature and/or Description of the Action Being Processed:** The services required are Laboratory testing and interpretation for patients of the Kidney Transplant program. The proposed award is for a bulk funded Firm Fixed Price estimated quantities purchase order to provide these services until a long term contract can be awarded.

FAR13.5 Simplified Procedures for Certain Commercial Items: This procurement is for Laboratory Testing and interpretation in support of the Kidney Transplant program, a commercial service in accordance with FAR 13.5 Simplified Procedures for Certain Commercial Items and specifically FAR 13.501 Special Documentation Requirements, where acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** The Department of Veterans Affairs Portland Oregon requires Laboratory Testing and interpretation services in support of the Kidney Transplant program. This is an estimated quantity requirement based on the needs of each transplant case as well as the total number of transplants which is impossible to predict in advance and will only be determined as the availability of organs is identified at which time the providers need to move quickly to complete the procedure. The estimated value of these services is \$475,000 for 4 ½ months. These tests are required to be completed by a Lab certified for transplant testing and must be completed STAT due to the extremely perishable nature of donated organs. The period of performance is 12/16/2016 through 4/30/2017. The clause 52.217-8 will be included to provide additional time to process the award if needed.

4. **Statutory Authority Permitting Other than Full and Open Competition:**

FAR13.5 Simplified Procedures for Certain Commercial Items: The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented by for restricting competition on this procurement via FAR 13.106-1(b)(2).

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** These services are required to be performed by a laboratory certified for transplant testing, and must be completed quickly – at times within 1 hour. OHSU is the only transplant certified laboratory in the state of Oregon. The closest certified laboratory is the University of Washington in Seattle, which is not close enough to provide the turn-around times required for these extremely time-sensitive procedures. Accordingly, OHSU is

the only entity capable of providing these services without unacceptable delays in lab results and failing to adhere to the standards of care required for the transplant program.

The urgency of this purchase order was due to a staff turnover that did not provide adequate training and status briefing to the incoming responsible person. This training has now been provided to prevent lapses in services from occurring. The contract expired and a new contract was not requested in advance, leaving the medical center with no way to obtain these critical life-saving services for transplant patients. Due to the time-critical nature of these procedures, as well as the potential impact to patient life and safety, and the inability to predict when an organ will become available, a verbal notice to proceed was issued on 12/16/2016 to allow for services to be performed while a contract was awarded. The purchase order was awarded as an emergency to prevent disruption to patient care for 4 ½ months to allow for the negotiation and award of a Base and option year contract. The clause at 52.217-8 will be included to provide additional time for award if needed.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** Due to the urgent nature of this requirement, no sources sought notice was posted. Based on the procurement history and recent market research for these services, in which it is well-established that OHSU is the only responsible source, due to the licensing and certification requirements specific to transplant laboratory testing, it is not expected that soliciting offers would have resulted in additional sources. However, a notice will be posted to identify potential sources in preparation of the base and option year contract anticipated to be awarded to follow this emergency purchase order.
7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** Pricing has been determined fair and reasonable on a per-test basis by comparing the unit prices with prices found reasonable on previous purchases for these same services, as well as a comparison with the Medicaid rates for the tests performed.
8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** Market research was limited to a review of the purchase history for these services due to the urgent nature of the requirement. The market research documentation for the previous purchase orders was adequate to determine that only one responsible source could provide these services.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** None.
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:** A follow on contract is expected to be awarded on or about 5/1/2017. This will be synopsised in advance to provide the opportunity for responses from interested parties. This is not expected to result in a competitive acquisition due to the market conditions and barriers to entry, however if another laboratory was able to obtain the necessary licensing and certification to perform transplant testing, the Department of Veterans Affairs would pursue a competitive acquisition for these services.

Chapter VI: Other Than Full and Open Competition (OFOC) SOP
Attachment 3: Request for Sole Source Justification Format >\$150K

- 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.

Suzanne Denker
Administrative Officer, COR
VAPORHCS/PLMS

2/23/2017

Date

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

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

Bethany Ireton
Contracting Officer
NCO 20 Contracting

2/23/2017

Date

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

Mary Accomando
Acting Chief, Division 1
NCO 20 Contracting

Date