

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval (J&A)**

**For**

**Other Than Full and Open Competition (>\$150K)**

**Acquisition Plan Action ID: VA242-17-AP-2015**

1. **Contracting Activity:** Department of Veterans Affairs, VISN 2  
Network Contracting Activity (2-90NCA)  
Albany VA Medical Center, 113 Holland Avenue; Albany, NY 12208  
VA2237 Purchase Requisition #528-17-3-8803-0139
2. **Nature and/or Description of the Action Being Processed:** This is a request for other than full and open competition for the procurement of the Emerald Service Agreement for Accuray Tomotherapy equipment in order to provide full service and maintenance including all parts, material and labor for a government-owned Tomotherapy Hi-Art System and associated components listed below located at the Stratton VA Medical Center, 113 Holland Ave., Albany NY 12208. All maintenance and repairs for equipment shall be done at the direction of VA Medical Center personnel per manufacturer's specification in accordance with the service agreement. This coverage shall include full support for all components, and software. The proposed contract action shall be provided by Accuray, Inc. of 1310 Chesapeake Ter, Sunnyvale, CA 94089-1100 for a base year and two renewal option years from May 1, 2017 through April 30, 2020. Should the equipment be replaced remaining option years will not be exercised.

**FAR13.5 Simplified Procedures for Certain Commercial Items:** This procurement is for 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 Albany VA Medical Center Radiation Oncology Department requires a Preventive Service and Maintenance Contract for the Accuray Tomotherapy Hi-Art System Linear Accelerator and associated components. Scheduled preventive maintenance, installing and maintaining all software updates/upgrades, testing, and replacement of parts which would normally be replaced during the course of a standard PM (as recommended/required by manufacturer procedures), or parts found in the manufacturers "PM Kit" are required. On-site and telephonic support, as well as, remote diagnostic capability is required. The customer provided a quote from Accuray. A firm fixed-price contract with a total cost estimated to be \$825,000.00 (\$275,000/year) is proposed.
4. **Statutory Authority Permitting Other than Full and Open Competition:**  
  
( X ) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy  
Agency Requirements per FAR 6.302-1;  
( ) (2) Unusual and Compelling Urgency per FAR 6.302-2;

- ( ) (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- ( ) (4) International Agreement per FAR 6.302-4
- ( ) (5) Authorized or Required by Statute FAR 6.302-5;
- ( ) (6) National Security per FAR 6.302-6;
- ( ) (7) Public Interest per FAR 6.302-7;

**FAR13.5 Simplified Procedures for Certain Commercial Items:** FAR 13.5 procedures apply to this acquisition.

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** This critical medical system is used in Radiation Oncology Department to implement radiation treatment plans and utilizes proprietary software. Due to copyrights and patents, only Accuray, Inc. can provide required parts and trained technicians to service both the hardware and software components of the Accuray Tomotherapy system. Accuray provided the following statement, "the only persons authorized by Accuray to service an Accuray System are certain of Accuray's authorized distributors and sales agents."

Accuray further clarified that due to the proprietary nature of the Accuray Tomotherapy system, only Accuray, or its distributors, can access the following:

- a. Accuray Service Tools on FSEs laptops
- b. Service Logins on the equipment computers
- c. Access to proprietary Service documents
- d. Uniqueness of our system relative to others in the industry. Conventional linacs are more like each other and make "general linac" knowledge more cross-platform applicable
- e. Access to certain parts which Accuray does not sell without Accuray labor due to the need for Service tools (point a.) in order to ensure the parts are correctly installed.

The Accuray Tomotherapy system cannot be properly serviced without access to the above.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** Searches of GSA eLibrary using the key words "accuracy" and "tomotherapy" did not identify any FSS contracts that could meet the requirements of this procurement.

A search of the National Acquisition Center (CCST) under SIN "RAD" revealed Accuray Contract# VA797H-14-D-0007. However, it does not include the service required. Two additional searches using the NAC MedSurg Catalog Search with key words "accuracy" and "tomotherapy" did not identify any contracts that could meet the requirements of this procurement.

Searches of Vetbiz using NAICS code 811219 and keywords "Accuray" and "Tomotherapy" did not identify any SDVOSB or VOSB contractors that could provide services that could meet the

requirements of this procurement.

Searches of SBA's dynamic small business search tool using NAICS code 811219 and keywords "Accuray" and "Tomotherapy" did not identify and Small Business contractors that could provide services that could meet the requirements of this procurement.

A google search using the keywords "Accuray tomotherapy service maintenance" did not identify any contractors other than Accuray that could meet the requirement of this procurement.

A sources sought notice, VA242-17-N-0173, was posted to FBO for 30 days. No responses were received.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** A fair and reasonable price determination will be based on comparison of proposed prices with prices found reasonable on previous purchases. Albany VA Medical Center currently has a service maintenance agreement in place for this same equipment with Accuray, Inc. (VA528-15-C-0067, PO# 528C73119, 05/01/2016 to 04/30/2017) which is for \$275,000.00/year. A quote dated 12/23/2016 was provided for this requirement. The quoted price was \$275,000.00 for the base year and \$275,000.00 for each option year. The price has not increased or decreased since the previous procurement and therefore is considered fair and reasonable.
8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** As described in Section VI above, market research, in accordance with FAR Part 10, was conducted by synopsis of the proposed acquisition, advising industry of the pending acquisition and soliciting inquiries from interested parties.
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:** None, the main barrier to competition is the proprietary nature of servicing this equipment.

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.

PHILIP-JOHN W  
DENUE 1364665

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john.denue@va.gov, cn=PHILIP-JOHN W DENUE  
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3/8/2017

Date

Phillip-John Denue  
Biomedical Engineer  
Albany VAMC

- 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. **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.

MICHAEL A.  
SPIVACK  
336645

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ael.spivack@va.gov,  
cn=MICHAEL A. SPIVACK 336645  
Date: 2017.03.08 11:46:36 -05'00'

Date

Michael Spivack  
Contracting Officer  
NCO 02 – Services Team 1

- 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.

Cherie Widger-Kresge 336226

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kresge@va.gov, cn=Cherie Widger-Kresge 336226  
Date: 2017.03.08 12:26:28 -05'00'

Date

Cherie Widger-Kresge  
NCO 02 Director of Contracting

- c. **VHA SAO 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.

JOSEPH MALETTA  
1347841

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Date

Joseph P. Maletta  
SAOE Director  
VHA Head of Contracting Activity (HCA)