

**DEPARTMENT OF VETERANS AFFAIRS**

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

**Acquisition Plan Action ID: VA242-17-AP-2293 – Consolidate Surgical Suites – Buffalo VAMC**

- 1. Contracting Activity:** Department of Veterans Affairs, Veterans Health Administration (VHA), Service Area Office (SAO) East, VISN 2, Western New York Healthcare System, Buffalo, NY.
- 2. Nature and/or Description of the Action Being Processed:**  
This brand name procurement is part of a larger construction project for Consolidate Surgical Programs that will be awarded as a firm-fixed price contract. The brand name specification is for devices, equipment, components, and programming which will work in conjunction with the Medical Center's existing nurse call, building automation, fire alarm, security camera and door security systems.

The VA has determined that the following equipment, devices and related components must be the following brand name:

Rauland (Nurse Call), Andover Controls (HVAC), Simplex (Fire Alarm System), and Stanley (Security components).

- 3. Description of Supplies/Services Required to Meet the Agency's Needs:**  
The Rauland Nurse Call, Andover Controls HVAC, Simplex Fire system, and Stanley Security components required for this procurement are all additions to existing systems that require the usage of hardware and software that is proprietary to the manufacturer of those systems' components. The total estimated project cost is \$8,750,000 with completion within 730 days.
- 4. Statutory Authority Permitting Other than Full and Open Competition:**  
 (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;
- 5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):**  
Under FAR 6.302-1(b)(1), "when there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by-(i) Unique supplies or services available from only one source or on only one supplier with unique capabilities," then the government can procure that specific, unique item or its equal.

In this case, the systems are an addition to much larger major systems already in use throughout the facility. Using any other brand would result in a substantial duplication of cost to the Government that could not be expected to be recovered through competition. This duplication would include training, maintenance, equipment costs. The use of non-brand name parts for these systems will result in a voiding of the existing warranties for these systems. These systems utilize proprietary software that is not maintainable by anyone other than the manufacturer due to patent protections.

Non-brand name items from other manufacturers would require re-programming and need to be re-written in order for the software to work with the systems currently in place. The alternate non-brand name products would not work seamlessly with the systems and would require additional cost in order to make them work. These products would affect the warranties due to the proprietary nature of the systems in place, and also affect maintenance agreements currently in place. Interruptions could occur that significantly affect the operability of the systems.

**6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:**

Any of the SDVOSB prime contractors working under NAICS code 236220 being solicited are able to purchase the requested brand name items as commercially available off the shelf items (COTS). The SDVOSB prime contractors will procure these items on a competitive basis from third party vendors. None of the brand names requested are from businesses that could be considered for award as a prime contractor, as none are SDVOSB concerns under NAICS code 236220, according to SAM and FedBiz, thus preventing any barrier to fair and open competition amongst the prime contractors being solicited.

**7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:**

The cost of the brand name items will be fair and reasonable to the government. The equipment needed is part of a larger procurement that will be competed amongst all SDVOSB concerns under NAICS code 236220. The final cost will be compared to the professionally developed IGE to ensure price reasonableness.

**8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:**

The contract specialist contacted the A/E design firm to ensure that adequate market research was conducted to support the necessity of the brand name items. Additional information was provided by the A/E design firm to support the brand name items.

In preparing the requirements of the construction work, the A/E design firm researched the market to ascertain if the project could be successfully completed with non-brand name parts. Mr. Anthony Gorski (Kideney Architects) of the A/E firm stated that,

“...the nurse call, fire alarm and security are all extensions of existing systems. Extension of these existing systems requires pieces from the same manufacturer, therefore they are specified as proprietary. The DDC controls are currently specified as an extension of the existing Andover system and therefore currently proprietary.”

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

The A/E design firm's market research found that there are other manufacturers of nurse calls, building HVAC automation systems, fire alarms, and security systems with many of the salient characteristics required by the VA, that could potentially be made compatible through additional software and graphics development. However the additional time and cost would result in a substantial increase in the life-cycle costs to the Government that could not be expected to be recovered through competition. This would include the additional time and cost to make the items compatible, additional time and cost to train VA staff if the non-brand name items had an operability effect on the systems, and additional maintenance cost if the current service agreements are voided or outside of the current manufacturer agreements. The required brand names are additions to major building systems that are already in use at the facility and that are covered by proprietary maintenance agreements that would continue to provide coverage with the brand name additions. Capturing regular software updates from non-brand name products working within proprietary systems would also present significant issues that could affect the operations of these important systems at the VAMCs.

**9. Any Other Facts Supporting the Use of Other than Full and Open Competition:**

It is a common practice throughout NCO 2 to use brand name products for building systems that utilize proprietary technology where the brand name products are an expansion of a pre-existing building system, to ensure system integrity and minimize life-cycle costs. The site's maintenance agreements for the existing systems were sole sourced to the manufacturer of their respective system, citing the proprietary nature of their software updates. Use of non-name brand parts would create a need for second maintenance agreements for the expanded portions of these systems.

**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:**

Currently, no actions are planned to remove the barrier to competition in restricting the Medical Center's systems to the above named equipment. If an alternative becomes available that meets compatibility with the systems installed in this Medical Center, this barrier to competition will be removed.

**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.

\_\_\_\_\_  
Jeffrey Reberholt, P.E.  
Operations and Planning Supervisor  
VAWNYHCS

\_\_\_\_\_  
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.

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Edward Kostolansky  
Contracting Officer, Branch Chief of Facilities  
NCO 2

\_\_\_\_\_  
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.

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Cherie Widger-Kresge  
Director of Contracting, NCO2

\_\_\_\_\_  
Date

- 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.

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Joseph P. Maletta  
Executive Director, SAO East  
Head of Contracting Activity, SAO East

5/17/2017

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Date