

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, New Jersey 07724
2. Description of Action: This proposed action is for a firm-fixed price delivery order issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for maintenance of brand name Commvault software currently in use at VA.
3. Description of Supplies or Services: VA, Office of Information and Technology, Service Delivery and Engineering, Enterprise Operations (EO) has a requirement for maintenance of brand name Commvault Software currently in use at the VA. Software maintenance is needed to manage the data which is stored in two Regional Datacenters consisting of 800 physical servers and 1,600 virtual servers. The software maintenance will consist of software upgrades and updates to include major releases, point releases, service releases and security releases of applicable software on a quarterly basis, and/or within 48 hours in cases in which a high risk vulnerability fix becomes available. These software licenses and updates are necessary for EO to be able to operate successfully. The maintenance is required to ensure the software remains operational. The period of performance is date of award through September 30, 2017 with two, 12-month option periods, to be exercised at the discretion of the Government. [REDACTED]
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: Based on market research, as described in section 8 of this document, the Government has determined that limited competition is available for this action among resellers for the required brand name Commvault Software maintenance support. No other source is capable of providing the required software maintenance of the existing licenses as only Commvault or its authorized resellers have access to the proprietary source code necessary to provide the required software upgrades and updates to include major releases, point releases, service releases of applicable software on a quarterly basis and maintenance support. Since the software is proprietary, a legal restriction is placed on access to the software code that is required in order to develop updates and patches to the software. Without this access it is impossible to modify the software

code as necessary to provide the required patches and updates. Access to this code is also required to ensure the services provided to the software are properly configured.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in section 8 of this justification. This effort did not yield any additional sources that can meet the Government's requirements. It was determined, however, that limited competition is viable among authorized resellers for this brand name Commvault software maintenance. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), notice of award of this action will not be synopsisized and this justification will be made publicly available within 14 days of award on the Federal Business Opportunities Page as the estimated value of this proposed acquisition is below the simplified acquisition threshold, this justification shall be posted with the solicitation on the NASA SEWP web site for review by prospective GWAC holders.
7. Actions to Increase Competition: The Government will continue to conduct market research to ascertain if there are changes in the marketplace that would enable future actions to be fully competed.
8. Market Research: The Government's technical experts conducted market research during May 2017 by reviewing other products/services that are similar to the Commvault products/services. Specifically, the Government's technical experts reviewed products/services from Symantec /Veritas NetBackup, and HP Data Protector to determine whether any other sources can provide software maintenance support on the existing Commvault software. Based on this review, it was determined that no other source could provide software maintenance support for the Commvault software as every other source, other than Commvault's resellers, lacked access to the proprietary source code necessary to provide the required support. Only Commvault or its authorized resellers can provide the required software maintenance support for the existing licenses as only those sources have the ability to access the proprietary code.

On June 9, 2017, additional market research was conducted using the Provider Lookup Tool on the NASA SEWP V GWAC website. It was determined that there are numerous NASA SEWP V GWAC holders that are authorized resellers of brand name Commvault Software maintenance that can provide the required software maintenance under North American Industry Classification System code 541519.

9. Other Facts: N/A