

JUSTIFICATION  
FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)  
Office of Acquisition Operations  
Technology Acquisition Center  
1701 Directors Blvd, Suite 600  
Austin, TX 78744
2. Description of Action: The proposed action is for a firm-fixed-price Delivery Order to be issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Government Wide Acquisition Contract (GWAC) for the procurement of a renewed support agreement for the existing For The Record (FTR) Gold software. All services and support shall be delivered within 5 days of award.
3. Description of the Supplies or Services: The Department of Veterans Affairs (VA), Office of Information & Technology (OI&T), Information Technology Operation Services (ITOPS), VACO ITSS has a requirement for a software upgrade. Board of Veterans Appeals' (BVA) and Veterans Affairs Central Office (VACO) currently uses 198 perpetual software licenses of For The Record (FTR) Gold software as their audio recording and archiving application that is used in BVA hearings rooms that are used to host Veterans appeals to their disability claims. BVA is currently using a risk based decision related to FTR's earlier version of software not being able to encrypt the data, and the new upgrade to version 5.7 alleviates that security concern as the new version has the capability to encrypt the data. BVA FTR's software maintenance support expired September 23, 2016 and has been without support for that approximately ten months causing the Government to assume the risk of a system failure that could possibly cause data loss or a data breach. ITOPS is urgently requesting the procurement of FTR software to version 5.7 with 90 days support and two 12-month option periods of standard FTR software maintenance support with the right to upgrade when a new software version is released beyond 5.7. The FTR Gold software maintenance support services include: first response time within 8 business hours, right to minor and major upgrades, software patches, self-service: knowledge base, tech support Monday through Friday 8:00 AM to 5:PM EST via: e-mail, phone, live chat, and remote desktop support. The total estimated value of the proposed action is [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 Above: Based on extensive market research, as described in section 8 of this justification, it was determined that limited competition is viable among authorized resellers for FTR maintenance and technical support. Given that BVA currently uses FTR Gold software to record and archive the Veterans disability appeals hearings and the Government does not possess the

## FTR Gold Software

ability to upgrade the software to version 5.7 without the developers proprietary source code. Government requirements to upgrade the software to version 5.7 and renew the software maintenance support agreement can only be fulfilled by FTR or an authorized reseller of their software and service plans. Only a software upgrade and renewed support agreement with For the Record Limited is capable of meeting the Government's requirements. No other court room video and audio recording and archiving software vendor can provide the required FTR upgrade and software support agreement plan. VA is not seeking to replace the existing system, which would cause significant schedule, cost, and technical interoperability risk. Lastly the deployment of a new solution would cause additional delays to the already large backlog of Veterans waiting to get their disability compensation appeals processed.

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. It was determined however that limited competition is viable among authorized resellers for this brand name item. In accordance with FAR 5.301 and 16.505(b)(2), this action will not be synopsized at award on the Federal Business Opportunities Page (FBO) and the justification will be made publicly available with the solicitation on the NASA SEWP webpage.

7. Actions to Increase Competition: The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.

8. Market Research: The Government's technical experts conducted market research by reviewing other similar products during January 2017 to July 2017. Based on research which included previous use of these products, and technical research of similar products such as Justice Audio Visuals Solutions (JAVS) Suite 7, CourtAudio, and VIQ Continuum, the Government's technical experts determined that no other court room video and audio recording and archiving software vendor provides technical support or software assurance FTR Gold software. Additionally, VA System Administration subject matter experts regularly review industry trade publications and conduct internet research to ascertain if any other equipment is available. Based on all of these market research efforts, the Government's technical experts have determined that only For The Record Limited or an authorized reseller can provide the support services required by the BVA and ITOPS System Administration team.

The contract specialist (CS) conducted market research in August 2017 using the SEWP product lookup by part number. Based on this market research, the CS found several resellers under SEWP capable of meeting the full requirement for brand name products.

9. Other Facts: None

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Signature:

[Redacted]

[Redacted]

Date:

[Redacted]

[Redacted]

Signature:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]