

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, NJ 07724
2. Description of Action: This proposed action is for a brand name firm-fixed-price task order to be issued against the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for hardware and software maintenance support renewals for existing NetApp Storage Area Network (SAN) systems.
3. Description of Supplies or Services: The proposed action is to provide hardware and software maintenance support renewals for existing NetApp SAN systems previously acquired by VA Office of Information and Technology, Veterans Affairs Central Office (VACO), Information Technology Services and Support. The NetApp SAN systems store critical VA data from information systems, servers, personal employee drives, and organizational drives to multiple locations and hard drives to provide data replication and backups in the event hard drives fail to prevent critical data loss. VACO requires 24-hour, 7 days per week technical support for existing NetApp SAN hardware and software components, extended hardware warranty, onsite repair services and next-business-day parts replacement, software and firmware updates, and software license renewals. The NetApp SAN systems are installed at 810 Vermont Avenue NW, Washington, DC, 425 I Street Washington, DC and 511 Butler Avenue Martinsburg, WV. This effort is for services, no hardware or software will be procured. The period of performance shall be 12 months from the date of award, with three 12-month option periods. The total estimated value of the proposed action is [REDACTED] inclusive of options.
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 market research, as described in section 8 of this justification, it was determined that limited competition is available among authorized NetApp resellers. VACO currently utilizes NetApp SAN systems in its facilities to store and backup VACO critical business data, to include Personally Identifiable Information and Personal Health Information. As such, the current VACO data storage and backup operations is comprised of NetApp hardware and software that is currently expired or requires maintenance support renewal and it is critical that VA acquires brand name NetApp maintenance support to prevent data loss and a possible critical incident that could cripple VACO and VA's ability to access its data to support our Nation's Veterans. NetApp is the Original Equipment Manufacturer

of the NetApp SAN systems. The source code and proprietary data are necessary in order to provide the required maintenance support. Due to the proprietary nature of the source code, only NetApp or an authorized NetApp reseller can properly update, upgrade and maintain the currently fielded NetApp SAN systems, to include the hardware and software. VA does not possess the proprietary technical data required to update, upgrade, and maintain the NetApp SAN systems in use at VACO and failure to acquire the needed maintenance would leave VACO without the necessary technical support to ensure the system remains operational. Any other brand name maintenance provider would not be able to modify or patch the existing NetApp SAN system software or provide failed replacements parts. In addition the proprietary code is needed to ensure the services provided are properly configured. If the NetApp SAN systems are rendered non-operational, VACO would not be able to access critical data or retrieve backup data related to our Veterans that is stored on the NetApp SAN systems, putting this data at risk of being compromised. The Government contacted NetApp in May 2017 to ascertain if this proprietary source code is for sale and was advised that the code is not for sale. Only NetApp or an authorized NetApp reseller is certified to support NetApp branded SAN solutions by providing certified NetApp hardware maintenance services, software and firmware updates, and replacement parts.

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 anticipated among resellers for the required NetApp SAN hardware and software maintenance on the NASA SEWP V GWAC. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), this action will be synopsisized and the justification will be made publicly available within 14 days of award on the Federal Business Opportunities Page. Additionally, in accordance with FAR 16.505(a)(4)(iii)(A)(2), this justification will be posted with the request for quotation on the NASA SEWP V GWAC.

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 technical experts reviewed other hardware and software maintenance providers available on the NASA SEWP V GWAC in June 2017, including Nimble, EMC and HP, to ascertain the ability of any other source to provide the aforementioned maintenance and support. The research consisted of reviewing various software license maintenance plans offered. Although these sources may be able to provide general maintenance capabilities, they are only able to support their own equipment and do not offer support agreements for NetApp brand equipment. Unauthorized resellers cannot provide the required maintenance to sustain the existing NetApp hardware and software without access to the NetApp proprietary source code. Based upon this market research, only NetApp or its authorize resellers have access to the proprietary source code to meet all of VACO's needs.

Market research was also conducted in July 2017 through the use of the Provider Lookup Tool on the NASA SEWP V GWAC web site, which found a total of 46 authorized resellers that can fulfill the Government's requirements, six of which are contract holders in Group B(2) Service-Disabled Veteran-Owned Small Businesses. Furthermore, market research was conducted on the Vendor Information Pages (VIP) database which found that two or more VIP verified vendors are capable of meeting the Government's requirements. In addition, the NASA SEWP V GWAC is a dynamic GWAC in which products can be added to vendor catalogs based on customer requests on as frequent as a daily basis, as long as the required Information Technology item is within scope of the NASA SEWP V GWAC. Finally, the requirements discussed herein have been found to be within scope of the NASA SEWP V GWAC in a separate determination.

9. Other Facts: None





