

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID: VA263-17-AP-13204, 2237: 618-17-4-916-1684**

1. **Contracting Activity:** Department of Veterans Affairs, VISN 23, Minneapolis Medical Center with the Network Contracting Office (NCO) 23, Prosthetics Contracting Office has a requirement for Dreamstation CPAP devices.
2. **Description of Action:** The NCO23 contracting officer intends to issue a sole source firm-fixed price delivery order in the amount of \$474,374.80 under VA NAC Federal Supply Schedule contract V797-4297B to fulfill the Dreamstation CPAP requirement for the Minneapolis VAMC. This acquisition is Set-Aside as a SDVOSB Sole Source requirement since there is only one Small Business that has the manufacturer distributorship rights with the Veterans Affairs.
3. **Description of Supplies or Services:** CPAP devices are stocked as patient issued inventory at the facility to assist in sleep and airway respironics treatments as diagnosed by clinical staff. The Dreamstation CPAP device is manufactured solely by Phillips Respironics and distributed solely by First Nation Group DBA Jordan Reses (SDVOSB vendor) to the Department of Veterans Affairs. Previous technical evaluations and program management decisions have been made to standardize CPAP devices to a number of highly qualified CPAP devices. The Phillips Respironics Dreamstation CPAP is one of these approved CPAP devices for standardization, stock and issue for patient treatment.
4. **Statutory Authority:** The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by the Federal Acquisition Regulation (FAR) Subpart 16.505 Subpart 16.505(b)(2)(i):
  - ( ) FAR Subpart 16.505(b)(2)(i)(A): The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
  - ( X ) FAR Subpart 16.505(b)(2)(i)(B): 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.
  - ( ) FAR Subpart 16.505(b)(2)(i)(C): The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
  - ( ) FAR Subpart 16.505(b)(2)(i)(D): It is necessary to place an order to satisfy a minimum guarantee.

VHAPM Part 816.5—Indefinite-Delivery Contracts  
Attachment 1: Request for Exception to Fair Opportunity

( ) FAR Subpart 16.505(b)(2)(i)(E): For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source". The statutory authority permitting an exception to fair opportunity for this action is 38 U.S.C. 8127(c), known as the Veterans First Contracting Program which provides the authority to directly contract with a Service-Disabled Veteran-Owned Small Business (SDVOSB) or a Veteran-Owned Small Business (VOSB).

( ) FAR Subpart 16.505(b)(2)(i)(F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

5. **Rationale Supporting Use of Authority Cited Above:** CPAP devices are stocked as patient issued inventory at the facility to assist in sleep and airway respironics treatments as diagnosed by clinical staff. The Dreamstation CPAP device is manufactured solely by Phillips Respironics and distributed solely by First Nation Group DBA Jordan Reses (SDVOSB vendor) to the Department of Veterans Affairs. Previous technical evaluations and program management decisions have been made to standardize CPAP devices to a number of highly qualified CPAP devices. The Phillips Respironics Dreamstation CPAP is one of these approved CPAP devices for standardization, stock and issue for patient treatment. The requirement is to provide these medical stock items to Veterans in the VA Medical Center per determination of medical need as determined by a clinician.

6. **Efforts to Obtain Competition:** FPDS was data mined, vendors called on product line availability, and sole source distributor letter received from the manufacturer for Jordan Reses.

7. **Actions to Increase Competition:** The government will continue to work with industry and Small Business partners to develop more open innovative business agreements and product solutions that offer greater competition, capabilities and quality in future care and treatment solutions in sleep and respiratory treatments.

8. **Market Research:** FPDS was data mined, vendors called on product line availability, and sole source distributor letter received from the manufacturer for Jordan Reses. Past competition of Dreamstation CPAP devices resulted in no bid responses from industry.

9. **Other Facts:** The Manufacturer, Phillips Respironics, has restricted distributorship of its products to a single SDVOSB vendor, Jordan Reses, for sales and service to the VA. No other vendors are authorized to sell these products under existing distributorship agreements.

10. **Technical and Requirements Certification:** I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

VHAPM Part 816.5—Indefinite-Delivery Contracts  
Attachment 1: Request for Exception to Fair Opportunity

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Spencer Mion  
Prosthetics Manager  
Minneapolis VAMC

\_\_\_\_\_  
Date

11. Determination that Anticipated Cost is Fair and Reasonable: A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable: ***Prices have been determined fair and reasonable upon award of the base Federal Supply Schedule. Price analysis of past purchases verified prices are consistent with typical discount given for this product under the Contractor's FSS contract.***

12. Contracting Officer'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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Robert A. Johnson  
Contracting Officer  
Network Contracting Officer (NCO) 23

9/27/2017

\_\_\_\_\_  
Date

13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#).

- a. **One Level Above the Contracting Officer (Required over \$150K but not exceeding \$700K)**: I certify the justification meets requirements for other than full and open competition.

\_\_\_\_\_  
Adam J. Barnes  
Supervisory Contract Specialist, NCO 23

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Date