

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: The 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 Government Wide Acquisition Contract (GWAC) for RiverBed (OpNet) software maintenance.
3. Description of Supplies or Services: VA, Office of Information and Technology (OI&T), and Infrastructure Operations (IO) has a requirement for RiverBed software maintenance which will consist of software upgrades and updates to include major releases, point releases, service releases and security releases of RiverBed software. There are currently 220 licenses installed in the IO architecture, which will be kept current via this acquisition. The software maintenance is necessary to ensure the software remains operational for VA Wide-Area-Network (WAN) optimization. This effort is only for services, no software will be procured. The period of performance will consist of a 12-month base period and one 12-month option period; the total estimated value of the proposed action is [REDACTED]
4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is Section 41 U.S.C 4106(c)(2) as implemented by Federal Acquisition Regulation (FAR) 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 the market research, as described in section 8, it was determined that limited competition is available. RiverBed owns the proprietary intellectual property rights to the RiverBed software and it is not available or supported by third parties, therefore, only RiverBed or an authorized reseller can provide the maintenance for this software. In addition, RiverBed software updates, maintenance, and technical support are only available through authorized resellers. This is due to the nature of RiverBed's proprietary source code required to develop and implement software updates, which only RiverBed or an authorized reseller can provide. Specifically, without access to this code, the required services performed on the software could not be properly configured and implemented. There are currently 220 licenses installed in the IO architecture, which will be kept current via this acquisition. Without

this maintenance, the currently fielded software would no longer function and would require a complete replacement of the infrastructure. If VA were to migrate from the RiverBed software to a different brand name product, additional infrastructure and resources would be required to test and implement a different solution, which would place the VA data centers at risk. Data center functionality is essential in order to ensure the storage environment across the IO and VA enterprise is fully operational at all times. Maintenance of RiverBed, which optimizes the secure communication between the data centers and VA sites, is necessary given that this storage environment is essential not just to VA but to other agencies that have data stored in VA's infrastructure, including the Department of Defense and Department of Health and Human Services. New software would require proof of concept and internal and user acceptance testing before it could be placed into production. VA cannot stop using the existing RiverBed software to test another product for two reasons: first, running two software applications concurrently with similar functionality will cause interoperability issues and would expose VA to great risks resulting from ceasing the use of the current software to test another product, the same risks that exist if the software maintenance was not procured. Second, it would represent duplicated costs and delivery delays that would not be recovered through competition.

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 other companies' products that can meet or be modified to meet the Government's requirements. It was determined, however, that limited competition is available among authorized resellers for this brand name software maintenance. 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 on the Federal Business Opportunities Page within 14 days of award of the order. In accordance with FAR 16.505(a)(4)(iii)(A)(2) this Justification will be posted along with the solicitation on the NASA SEWP website.
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: In May 2017, web-based market research was conducted by OI&T technical experts who reviewed similar WAN optimization software companies, to include software and services proprietary to Cisco and Silver Peak. This market research, using information gathered from Cisco and Silver Peak's websites, revealed that maintenance from Cisco and Silver Peak does not currently possess the requisite capability of developing and issuing software updates and fixes in a manner that is interoperable with the existing WAN infrastructure.

Additionally, although these other brands possess similar capabilities to provide maintenance on similar WAN optimization software, only RiverBed or an authorized reseller has access to the proprietary source code specific to the maintenance for this particular software.

Additional market research was conducted in May 2017 utilizing the NASA SEWP V GWAC Market Research Tool. Results of this search indicated that nine authorized resellers could provide the aforementioned RiverBed software maintenance. Given there are several authorized resellers of RiverBed products, and that NASA SEWP's dynamic catalog allows for line items to be added based on customer requests provided the required item or service is within scope of the NASA SEWP V GWAC, limited competition is anticipated on NASA SEWP.

9. Other Facts: N/A

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.

[REDACTED]

[REDACTED]

11. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable. The contract prices on SEWP have already been determined to be fair and reasonable and further price competition is anticipated. Additionally, the successful quote will be compared to the Independent Government Cost Estimate.

[REDACTED]

[REDACTED]

12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief.

[REDACTED]

[REDACTED]

Approval

In my role as procuring activity Advocate for Competition, based on the foregoing justification, I hereby approve the acquisition of RiverBed software maintenance on an other than fair opportunity basis pursuant to the authority cited in paragraph 4 above, subject to availability of funds, and provided that the services herein described have otherwise been authorized for acquisition.

