

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID:** VA242-17-AP-8043

1. **Contracting Activity:** Department of Veterans Affairs, VISN 02, Syracuse VA Medical Center, 800 Irving Avenue, Syracuse, NY 13210-2716  
Purchase request number: 528-18-1-7803-0010.
2. **Description of Action:** Biomedical engineering is requesting a service contract for the Philips Healthcare imaging equipment for Imaging at the Syracuse VA Medical Center 800 Irving Avenue, Syracuse, NY 13210. The service contract will be used for primary level service contract with onsite repairs, phone support, parts coverage, parts delivery, safety checks, preventative maintenance, quality assurance, device updates, labor, and travel for fiscal year 2018. Period of Performance: October 1<sup>st</sup>, 2017 – September 30, 2018 with a provision of four (4) option years to reduce service costs and improve equipment turn-around time and reliability. Currently Biomedical Engineering has a service contract on the Philips Healthcare through September 30, 2017. A firm-fixed price contract will be used. Request to purchase sole source from Philips Healthcare, 22100 Bothell Everett Highway, Bothell, WA 98041-8431. The annual cost is estimated to be \$40,000.08; the total estimated cost is \$200,000.40.
3. **Description of Supplies or Services:** The Syracuse VA Medical Center requires a service maintenance plan for Phillips Healthcare medical imaging equipment currently in use at the Syracuse VA Medical center 800 Irving Avenue, Syracuse, NY 13210-2716. The primary level service contract for the Imaging's Digital Diagnost will be used for the standard onsite repairs, phone support, parts coverage, parts delivery next day, safety checks, preventative maintenance, quality assurance, device updates, labor, and travel. Also, the service contract will include the optional coverage of the tube, 1FD, WPD, and battery coverage.

Covered equipment includes the following:

Manufacturer	Model	Serial #	Site #
Philips	Digital Diagnost	ORBI05-3571	60020533

The purpose of the service agreement is to reduce service costs and improve equipment turn-around time and reliability. This will be a firm-fixed price task order contract from contract VA797H-17-D-0022 / SPE-2D1-17-D-0014 at a cost of \$40,000.08 per year for the anticipated period of performance of October 1, 2017 to September 30, 2018 and the provision of four (4) option years.

Chapter VI: Other Than Full and Open Competition (OFOC) SOP  
Attachment 5: Request for Exception to Fair Opportunity Memo Format

Base year	10/1/2017 to 9/30/2018	\$40,000.08
Option yr #1	10/1/2018 to 9/30/2019	\$40,000.08
Option yr #2	10/1/2019 to 9/30/2020	\$40,000.08
Option yr #3	10/1/2020 to 9/30/2021	\$40,000.08
Option yr #4	10/1/2021 to 9/30/2022	\$40,000.08
Grand Total	Base + 5 option years	\$200,000.40

Option year pricing is consistent with the base period throughout the length of the contract with no increase in costs.

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.

( ) 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

Chapter VI: Other Than Full and Open Competition (OFOC) SOP  
Attachment 5: Request for Exception to Fair Opportunity Memo Format

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:** Philips Healthcare is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Philips Healthcare medical equipment described above due to patents and copyrights on the equipment. This prevents other possible contractors from accessing the diagnostic software, possessing necessary tooling and providing OEM parts to the Government. To ensure that services performed on the equipment meets OEM requirements as per Title 21 Part 820, Subpart N, Section 820.200, "Servicing in order to mitigate any liability as a result of equipment failure due to improper servicing of modification of equipment."

These maintenance services are considered "highly specialized" and thus there is only one responsible source.

6. **Efforts to Obtain Competition:** Past procurement history indicates that this procurement was sole sourced to V797P-6001B due to patents and copyrights precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for Phillips Imaging resulted in V797P-2238D Phillips Healthcare. A search in the VA MedSurg Catalog for a Phillips Imaging provided one (1) vendor Phillips Healthcare. A search under SBA website under NAICS code 811219 with keyword "Phillips Imaging" produced zero matches. A search of VetBiz NAICS code 811219 with keyword "Phillips Imaging" produced eight (8) potential matches, which after review are unable to meet the requirement due to the proprietary nature of the equipment.
7. **Actions to Increase Competition:** In situations involving complex medical equipment, it is difficult to remove barriers to competition because the OEM is the only qualified company capable to provide the repair and maintenance of its own specialized medical equipment. This is especially true where proprietary software, specific diagnostics tools, and specialized electronics are used to maintain the HTME (High tech Medical Equipment) in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Phillips Imaging equipment, the only alternative would be to replace the existing Phillips Imaging equipment with a more generic brand. At this time, Syracuse VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Syracuse VAMC currently does not have the sufficient budget to replace the Phillips Imaging equipment. Considerations for new equipment will be made when the existing equipment reaches the end of its life cycle span.
8. **Market Research:** Due to the proprietary nature, Phillips Healthcare is the only company than can access its systems and offer certified parts that meet the original equipment manufacturer's specifications. Phillips Healthcare technicians are the only OEM trained and certified personnel authorized to perform work on this HTME. However, GSA, VetBiz, SBA, and the VA NAC MedSurg websites were used to determine if there were any other sources of providing service maintenance agreements on the Phillips Imaging equipment. It has been determined that Phillips Healthcare is

Chapter VI: Other Than Full and Open Competition (OFOC) SOP  
Attachment 5: Request for Exception to Fair Opportunity Memo Format

the only company capable of providing these services on this highly specialized equipment to the agency.

9. Other Facts: The Digital Diagnost x-ray unit was originally ordered from the National Acquisition Center through Philips in 2006 as part of the equipment for Radiology. This system had a major upgrade completed in 2015. Due to the important and vital role of x-ray imaging at the medical center, fast response for repairs and maintenance are necessary. Per the contract with Philips Healthcare, the service agreement on the Philips Digital Diagnost would be \$40,000.08. This would include any number of repairs and maintenance during the one (1) year service agreement with the provision of four (4) option years at \$40,000.08 per year, which would improve equipment turn-around time. It is necessary for the OEM to offer the service agreement since it is their product.
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.

\_\_\_\_\_  
Keara Ruether  
Supervisory Biomedical Engineer  
Syracuse VAMC

\_\_\_\_\_  
August 9th, 2017  
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:

The anticipated cost to the government is considered fair and reasonable based upon adequate competition on the VA NAC contract requirements and negotiation of prices prior to contract award. The pricing for this annual service requirement comes directly from the manufacturer, Phillips Healthcare, is identical to the pricing available under their VA NAC contract. The Contracting Officer sought additional discounts from Phillips Healthcare on July 20, 2017. The Service Sales Specialist, Marc Goldman indicated that no further discounts were available.

The proposed pricing for this task order has been compared to the price of the previous procurement as follows:

Contract # V797P-6011B to Phillips Healthcare, Bothell, WA.

528C74047 \$247,520.00 October 1, 2016 to September 30, 2017  
Included pricing - Line #3: Philip Digital Diagnost #60020533 \$40,400.04.

Chapter VI: Other Than Full and Open Competition (OFOC) SOP  
Attachment 5: Request for Exception to Fair Opportunity Memo Format

Manufacturer	Model	EE#	Current Age of Equipment	Replacement Date	Lifecycle of Equipment	Estimate Replacement Cost
Philips	Digital Diagnost	148452	11 years	2020	9 years	\$500,000.00

As a facility note there is no guaranteeing that this equipment will be replaced in the recommended year. This is due to the VA not having a consistent equipment budget. In FY17 Syracuse was scheduled to replace \$6 million in equipment; however they only received \$3 million in funding. Also, so of the equipment dollars were used for new technology purchases and activations of new clinical spaces. So, equipment replacements get pushed from one year to the next due to funding availability.

12. Contracting Officer's Certification (required): I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

_____	August 9, 2017
Kimberly Wiatrowski	_____
Contracting Officer	Date
VISN 2 NCO	

13. Approvals in accordance with the [VHAPM, Volume 6, Chapter VI: OFOC SOP](#).

- a. **Director of Contracting /Designee (Required over \$150K but not exceeding \$700K)**: I certify the justification meets requirements for other than full and open competition.

_____	_____
Hope Freeman	Date
Division Chief, NCO 2	
Services, Specialized Teams	