

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-17-AP-7759

- Contracting Activity:** Department of Veterans Affairs, VISN 02, Syracuse VA Medical Center, 800 Irving Avenue, Syracuse, New York 13210.
Purchase request number: 528-18-1-7803-0008
- Description of Action:** This is a request for approval of a task order under VA NAC contract VA797H-17-D-0024 for full service maintenance coverage on the General Electric Healthcare, Inc. imaging equipment currently in use at the Syracuse VA Medical Center. This procurement will be conducted in accordance with FAR Part 16.5. 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-0024. The anticipated period of performance will be from October 1, 2017 to September 30, 2018 with the provision for 4 (four) option years. The annual cost is \$353,916.00, and the total estimated cost is \$1,769,580.00.
- Description of Supplies or Services:** The Syracuse VA Medical Center located at 800 Irving Avenue, Syracuse, NY 13210-2716 requires a service maintenance plan for the GE Healthcare imaging equipment currently in use at the Syracuse VA Medical Center to include replacement parts coverage, remote service support, telephone support, operating system software and hardware reliability reports, as well as, continuing education and support service. The contractor will be responsible for full maintenance coverage by providing all replacement parts, labor, travel expenses, tools, test equipment and other incidentals necessary to maintain or restore the listed equipment to operating specifications according to the manufacturer's recommendations throughout the term of the contract.

Covered equipment includes the following:

Manufacturer	Model	EE#	Serial #	Site #
GE	1.5T Signa	141869	MGS033	315425VAMR
GE	Magnet Matinenance and Cryogen	141869	N/A	315425VACRYO
GE	Lightspeed VCT 64 Slice	179281	406867CN2	315425VCT1
GE	Advantage Workstation	176407	2UA8300BH	315425GEAW1
GE	Ventri	184593	E3GT08091A	315425VENT
GE	Xeleris Workstation	157780	69109606YB	315425XEL2
GE	Xeleris Workstation	157781	6X109260YB	315425XEL3

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-0024 for the anticipated period of performance of October 1, 2017 to September 30, 2018 with provision of four (4) options years at an annual cost of \$353,916.00 per year for a total contract value of \$1,769,580.00. Pricing was agreed upon to be an equal annual cost between GE Healthcare, Inc. and accepted by the VA NAC. There will not be any service cost increases for the base plus four (4) years per the VA NAC contract VA797H-17-D-0024 as well as the proposal #E937792 submitted. Pricing will be as follows:

Base year	10/1/2017 to 9/30/2018	\$353,916.00
Option yr #1	10/1/2018 to 9/30/2019	\$353,916.00
Option yr #2	10/1/2019 to 9/30/2020	\$353,916.00
Option yr #3	10/1/2020 to 9/30/2021	\$353,916.00
Option yr #4	10/1/2021 to 9/30/2022	\$353,916.00
Grand Total		\$1,769,580.00

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 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:** General Electric Healthcare, Inc. is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the General Electric Healthcare, Inc. HTME 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 the joint DSCP/VA contract V797P-6019B due to patents and copyrights precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for GE Imaging resulted in no potential vendors that could provide the necessary services. A search in the VA MedSurg Catalog for a GE Imaging provided one (1) vendor, GE Healthcare. A search under the SBA website under NAICS code 811219 with keyword "GE Imaging" produced zero matches. A search of Vetbiz.gov was conducted under NAICS 811219 and keyword "Imaging" returning eight (8) potential vendors. Sources Sought #VA242-17-Q-0830 was posted to FedBizOpps from July 5, 2017 through July 19, 2017 seeking information from contractors who could potentially provide the required maintenance service. The eight (8) SDVOSBs, were sent an email notification of the FBO posting, none of which responded that they could perform the service. One company did respond, Southwest Medical, with a capability statement that they could perform and partner with an SDVOSB company. However, under further review it was discovered the key component on why they cannot perform as GE Healthcare has proprietary software, patents and other intellectual property rights. This prevents other possible contractors from accessing the diagnostic software. Furthermore, GE Healthcare does not license proprietary service materials (Class C) to 3rd parties.

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 equipment in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the GE Healthcare equipment, the only alternative would be to replace the existing GE Healthcare 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 GE Healthcare 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, General Electric Healthcare, Inc. is the only authorized company than can access its systems remotely and offer certified parts that meet the original equipment manufacturer's specifications. GE Healthcare technicians are the only OEM trained and certified personnel authorized to perform work on this HTME (High Tech Medical Equipment). However, GSA Advantage/e-buy, 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 GE Healthcare equipment. Additionally, a Notice of Intent to Sole Source was posted to FBO (FedBizOpps) from July 5, 2017 through July 19, 2017 seeking information from contractors who may be capable of providing the required maintenance service. One response was received however, it has been determined that General Electric Healthcare, Inc. is the only company capable of providing these services on this highly specialized equipment to the agency.

9. Other Facts: This contract is in support of the VA-DoD Direct Sharing Agreement with the DSCP in consolidation with four of the DoD's HTME contracts, namely SPE2D1-17-D-0015 per GE quote. The use of these consolidated HTME contracts after first considering mandatory sources is strongly encouraged by the NAC.

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 23rd, 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 Original Equipment Manufacturer (OEM); General Electric Healthcare, Inc. is identical to the pricing available under their VA NAC contract. The Contracting Officer sought additional discounts from General Electric Healthcare, Inc. on July 20, 2017. The Specialty Sales Representative, Bobby Ruiz, indicated that no further discounts were available. Additionally, the acceptable inflation factor for these services in the commercial marketplace is 10% annually.

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

- a. V797P-6019B/VA528-15-F-0750, General Electric Healthcare, Inc., Oct. 1, 2014 through Sept. 30, 2015, PO#528-C54210, \$358,088.00.
- b. V797P-6019B/VA528-15-F-750 P00001, General Electric Healthcare, Inc., Oct. 1 2015 through Sept. 30, 2016, PO #528-C64007, \$358,088.00.
*Both a and b above: Pricing included the Hawkeye Infinia & one Xceleris unit that have been removed from service late in FY2016.
- c. V797P-6019B/VA242-16-J-0566, General Electric Healthcare, Inc. October 1, 2016 through September 30, 2017. PO # 528-C74049, \$340,088.00.

Below is a chart depicting model, age of equipment and estimated replacement costs for GE equipment in Syracuse.

Manufacturer	Model	EE#	Current Age of Eq	Replacement Date	Lifecycle of Equipment	Estimate Replacement Cost
GE	1.5T Signa	141869	12 years	2019	12 years	\$3,000,000.00
GE	Magnet Maintenance and Cryogen	141869	Same as above	This is an accessory		\$0.00
GE	Lightspeed VCT 64 Slice	179281	8 years	2020	10 years	\$2,000,000.00
GE	Advantage Workstation	176407	8 years	2020	10 years	\$250,000.00
GE	Ventri	184593	8 years	2019	10 years	\$250,000.00
GE	Xeleris Workstation	157780	10 years	2019	10 years	\$25,000.00
GE	Xeleris Workstation	157781	10 years	2019	10 years	\$25,000.00
GE	XR Precision 500D	208275	5 years	2022	10 years	\$750,000.00

Please note there is no guarantee that this equipment will be replaced in the recommended year. This is due to the VA not having a consistent equipment budget. For example, in FY17 Syracuse was scheduled to replace \$6 million in equipment; however they only received \$3 million in funding. Also, some of the equipment dollars were used for new technology purchases and activations of new clinical spaces. As a result, necessary 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.

Cheryl Brimmer
Contracting Officer
VISN 2 NCO

Date

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.

Cherie Widger-Kresge
Director of Contracting
VISN 2 NCO

Date

- b. **VHA HCA Review and Approval:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval (if over \$13.5 million) or approve (\$700K to 13.5 million) for other than full and open competition.

8/23/2017

Joseph P. Maletta
Executive Director, SAO East
Head of Contracting Activity, SAO East

Date