

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-17-AP-10144

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 02, Bath VA Medical Center, 76 Veterans Ave, Bath, NY 14810-0810.
Purchase Request number: 528-18-1-6803-0004
- 2. Description of Action:** This is a request for approval of a sole source task order under VA NAC contract VA797H-17-D-0022 for full service maintenance coverage on the Philips imaging equipment currently in use at the Bath VA Medical Center. This procurement will be conducted in accordance with FAR Part 16.505(b)(2)(i)(B). 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. The anticipated period of performance is from October 1, 2017 to September 30, 2018 with a provision of four (4) option years. The annual cost is \$212,548.08, and the total estimated cost is \$1,062,740.40.
- 3. Description of Supplies or Services:** The Bath VA Medical Center located at 76 Veterans Ave, Bath, NY 14810 requires a service maintenance plan for the Philips HTME (High Tech Medical Equipment) currently in use at the Bath 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 #	Site #	Serial #
Philips	DigitalDiagnost VM to include X-Ray tube and Flat detector	154503	549742	N/A
Philips	DigitalDiagnost Single-Detect to include X-Ray tube and Flat detector	188830	41723090	427616/SNO 902145
Philips	Brilliance CT 64 Channel to include unlimited Tube and	187454	47599721	10179

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151kVa UPS coverage				
Philips	Ultrasound IU22 with 4 standard probes and 1 specialty probe	225057	59869756	B0MRHRB
Philips	Ultrasound IU22 with 4 standard probes and 1 specialty probe	145754	47113592	034LG1
Philips	Extended Brilliance Workspace	N/A	N/A	N/A

The purpose of the service agreement is to reduce the 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 for the anticipated period of performance of October 1, 2017 to September 30, 2018 with a provision of four (4) option years at an annual cost of \$212,548.08 per year for a total contract value of \$1,062,740.40. Pricing was agreed upon to be an equal annual cost between Philips 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-0022 as well as the proposal 070617 TK R3 submitted. Additionally, there was discussion with the Senior Contracting Officer, Timothy Richards, for the HTME contract VA797H-17-D-0022. Mr. Richards has confirmed that any task order for preventative maintenance can last for up to one year past the expiration date of the parent contract. Therefore, option year four, 10/01/2021 – 09/30/2022, can be included in this procurement for award. Pricing will be as follows:

Base year	10/01/2017 to 09/30/2018	\$212,548.08
Option year #1	10/01/2018 to 09/30/2019	\$212,548.08
Option year #2	10/01/2019 to 09/30/2020	\$212,548.08
Option year #3	10/01/2020 to 09/30/2021	\$212,548.08
Option year #4	10/01/2021 to 09/30/2022	\$212,548.08
Grand Total		\$1,062,740.40

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):

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() 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:** Philips is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Philips HTME 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:** *A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.*

Past procurement history indicates that this procurement was sole sourced to the joint DSCP/VA contract V797P-6011B due to patents and copyrights, precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for Philips in Schedule 65 II A resulted in no potential vendors that could provide the necessary services. A search in the VA MedSurg Catalog using key words "Philips imaging" provided one (1) vendor, Philips. A search under

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the SBA website under NAICS code 811219 with keywords “Philips imaging” produced zero matches. A search in VetBiz under NAICS code 811219 with keywords “Philips imaging” produced eight possible matches.

Sources Sought Notice #VA242-17-N-1174 was posted to FedBizOpps from September 12, 2017 through September 19, 2017 seeking information from contractors who could potentially provide the required maintenance service. No responses were received from any source.

7. Actions to Increase Competition: ***Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, and etc.***

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 in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Philips equipment, the only alternative would be to replace the existing Philips equipment with a more generic brand. At this time, the Bath VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Bath VAMC currently does not have the sufficient budget to replace the Philips equipment thus the reason to have equipment properly maintained through the life of the contract. Considerations for new equipment will be made when the existing equipment reaches the end of its life cycle span.

8. Market Research: ***Provide a description of the market research conducted among the contract holders and the results. If market research was not conducted, the reasons it was not conducted should be stated. When citing 16.505(b)(2)(i)(b) or 16.505(b)(2)(i)(e), the only possible way to state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here.***

Due to the proprietary nature, Philips is the only authorized company able to perform maintenance on its imaging equipment. They have the technical expertise to provide maintenance and service, as well as being the only company with access to manuals and design specifications of its imaging equipment. Philips is the only company that can access its systems remotely and offer certified parts that meet the original manufacturer's specifications. Philips technicians are the only OEM trained and certified personnel authorized to perform service on this HTME (High Tech Medical Equipment). However, GSA, VetBiz, SBA, and the VA NAC MedSurg websites were used to determine if there were any other vendors capable of providing service and/or maintenance on the Philips equipment. Additionally, a Sources Sought Notice was posted to FBO (FedBizOpps) from September 12, 2017 to September 19, 2017 seeking information from contractors who may be capable of providing the required maintenance service. No responses were received from any source. It has been determined that Philips is the only company capable of providing these services on this highly specialized equipment to the agency.

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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 VA797H-17-D-0022. 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.

Timothy Mortensen
Facilities Management
Bath VA Medical Center

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: ***(insert the methods that will be used to determine a fair and reasonable price)***.

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, Philips, is identical to the pricing available under their VA NAC contract. The Contracting Officer sought additional discounts from Philips on September 12, 2017. The Service Sales Specialist, Thomas Krivan, indicated that no further discounts were available.

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

- a. V797-6011B/VA528-15-F-0393, Philips, April 1, 2015 – September 30, 2015, PO#528-C55093, \$100,000.02
- b. V797-6011B/VA528-15-F-0393, Philips, October 1, 2015 – September 30, 2016, PO#528-C65022, \$200,000.04
- c. V797-6011B/VA528-15-F-0393, Philips, October 1, 2016 – September 30, 2017, PO#528-C75084, \$200,000.04

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Manufacturer	Model	EE #	Current Age of Eq	Replacement Date	Lifecycle of Equipment	Estimate Replacement Cost
Philips	DigitalDiagnost VM to include X-Ray tube and Flat detector	154503	10 years	2017	10 years	\$336,000
Philips	DigitalDiagnost Single-Detect to include X-Ray tube and Flat detector	188830	8 years	2019	10 years	\$300,000
Philips	Brilliance CT 64 Channel to include unlimited Tube and 151kVa UPS coverage	187454	8 years	2019	10 years	\$900,000
Philips	Ultrasound IU22 with 6 standard probes	225057	4 years	2023	10 years	\$200,000
Philips	Ultrasound IU22 with 4 standard probes and 1 specialty probe	145754	11 years	2014	8 years	\$125,000
Philips	Extended Brilliance Workspace	N/A	8 years	2019	10 years	\$0 (part of Brilliance CT 64)

Please note that 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, Bath VAMC was scheduled to replace \$4 million in equipment during FY17; however, only \$2 million in funding was received. 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
Brach Chief, Services Team 1
NCO 2 Bath VA Medical Center

Date

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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.

Cherie Widger-Kresge
Director of Contracting
VISN 2 NCO

Date

HIGHER LEVEL APPROVAL (Required *for orders over \$700,000*):

- b. **VHA SAO HCA REVIEW AND APPROVAL (over \$700,000 to \$68 million):** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for restricting consideration of the Federal Supply Schedule contractors to fewer than the number required by FAR Subpart 8.4.

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

Date