

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-17-AP-7180

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 02, Buffalo VA Medical Center, 3495 Bailey Ave, Buffalo, NY 14215.
Purchase Request number: 528-18-1-4803-0021
- 2. Description of Action:** This is a request for approval of a task order under VA NAC contract SPED1-17-D-0023 for full service maintenance coverage on the Siemens Medical Solutions, USA Endovascular equipment currently in use at the Buffalo VA Medical Center. This procurement will be conducted in accordance with FAR Part 16. 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 SPE2D1-17-D-0023 with National Acquisition Center at a cost of \$162,727.74 for the anticipated period of performance of October 1, 2017 – September 30, 2019, base plus one option year.
- 3. Description of Supplies or Services:** The Buffalo VA Medical Center requires a service maintenance plan for the Siemens Medical Solutions, USA HTME (High Tech Medical Equipment) currently in use at the Buffalo 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	Site #
Siemens	AXIOM Artis dTA	400-279723
Siemens	Syngo X Workplace	400-279726

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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:** Siemens Medical Solutions, USA is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Siemens Medical Solutions, USA 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:** Past procurement history indicates that this procurement was sole sourced to the joint DSCP/VA contract V797P-6029B, updated contract number SPE2D1-17-D-0023,

due to patents and copyrights precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for Siemens Medical Solutions, USA in Schedule 65 II A resulted in no potential vendors that could provide the necessary services. A search in the VA MedSurg Catalog for a Siemens Imaging maintenance plan produced several potential vendors; however, further research showed that these vendors could not provide a service maintenance plan and only offered minor replacement parts not required for the endovascular equipment in use at the Buffalo VA Medical Center. A search of the Ability One and UNICOR websites under keyword "Siemens Medical" failed to produce any results. A search under the VetBiz website under NAICS code 811219 with keyword "Siemens" produced zero matches. A search under the SBA website under NAICS code 811219 with keyword "Siemens Medical" produced zero matches.

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 in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Siemens Medical equipment, the only alternative would be to replace the existing Siemens Medical equipment with a more generic brand. At this time, Buffalo VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Buffalo VAMC currently does not have the sufficient budget to replace the Siemens Medical 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, Siemens Medical Solutions, USA is the only company than can access its systems remotely and offer certified parts that meet the original equipment manufacturer's specifications. Siemens Medical 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, Ability One, UNICOR and the VA NAC MedSurg websites were used to determine if there were any other sources of providing service maintenance agreements on the Siemens Medical equipment. It has been determined that Siemens Medical Solutions, USA 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-0023. The use of these consolidated HTME contracts after first considering mandatory sources is strongly encouraged by the NAC.

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- 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.

Lisa Rummings
Program Support Assistant
Biomedical Engineering
Buffalo 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:

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, Siemens Medical Solutions, USA, is identical to the pricing available under their VA NAC contract.

The proposed pricing for this task order has been compared to the price of the previous contract, V797P-6029B/VA528-16-J-1665. The base year, no options, of contract was for the same service in the amount of \$79,251.00, which is a 1% increase. This is considered to be fair and reasonable as the current procurement is listed at \$81,363.87 per year. Additionally, contract costs with Siemens Medical Solutions USA, Inc. are already part of a NAC contract, which have been validated.

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

Janine Childs
Contracting Officer
NCO 2 Buffalo VA Medical Center

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.

Hope Freeman
NCO 2, Division Chief, Division 1

Date