

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-17-AP-8236

1. **Contracting Activity:** Department of Veterans Affairs, VISN 02, Albany Medical Center, 113 Holland Avenue, Albany, NY 12208-3410
Purchase Request Number: 528-18-1-8803-0030
2. **Description of Action:** This is a request for approval of a task order off VA NAC HTME Contract VA797H-17-D-0024 (GE Healthcare) for full service maintenance coverage on GE imaging equipment currently in use at the Albany VA Medical Center. This procurement will be conducted in accordance with FAR Part 16.5. The purpose of this service agreement is to reduce service costs and improve equipment turn-around time and reliability. The anticipated period of performance is October 1, 2017 to September 30, 2018 with a provision of four (4) option years. A firm-fixed-price task order off VA NAC HTME Contract VA797H-17-D-0024 is proposed. The base year cost is \$495,787, and the total estimated cost of the base plus four (4) options is \$2,963,491.00.
3. **Description of Supplies or Services:** The Albany VA Medical Center located at 113 Holland Avenue, Albany, NY 12208-3410 requires a service maintenance plan for the GE imaging equipment currently in use at the 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.

The following equipment coverage is required:

- Discovery PET/CT690 (VCT 64-slice). This coverage shall include full support for all components and software, including an associated Advantage Workstation 4.6, Pin Source Coverage, and System and Tube Coverage.
- 3 Optima XR220AMX Mobile X-ray Systems. This coverage shall include full support for all components and software, including three (3) Flashpad Digital Wireless Detectors, Tube Coverage, Auto Exposure Control, and Battery Replacement Coverage.
- Lightspeed VCT 64 slice. This coverage shall include full support for all components and software, including an associated Advantage Workstation 4.4, Pin Source Coverage, and System and Tube Coverage.

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- 2 Discovery XR656 Systems. This coverage shall include full support for all components and software, including three (3) Flashpad Digital Wireless Detectors, Tube Coverage, Auto Exposure Control, and Battery Replacement Coverage.
- Discovery CT750 HD (covered under warranty until 7/1/2018). This coverage shall include full support for all components and software, including an associated Advantage Workstation 4.7, Pin Source Coverage, and System and Tube Coverage.

The purpose of the service agreement is to reduce service costs and improve equipment turn-around time and reliability. Pricing established on NAC HTME Contract VA797H-17-D-0024 has been determined to be fair and reasonable by the NAC Contracting Officer. The base year is discounted due to the Discovery CT750 HD and associated Advantage Workstation 4.7 being covered under warranty until 7/1/18. The base year price is \$495,787.00 due to the prorated price for service on the Discovery CT750 HD and Advantage Workstation 4.7. The price for each of the 4 option years is \$616,926.00. GE Healthcare has submitted quote# 54639A7 for a full service maintenance agreement for the equipment listed above. Pricing will be as follows:

Base Year:	10/01/2017 to 09/30/2018	\$495,787.00
Option Year 1:	10/01/2018 to 09/30/2019	\$616,926.00
Option Year 2:	10/01/2019 to 09/30/2020	\$616,926.00
Option Year 3:	10/01/2020 to 09/30/2021	\$616,926.00
Option Year 4:	10/01/2021 to 09/30/2022	\$616,926.00
Grand Total:		\$2,963,491.00

Pricing in Option Year 1 through 4 is constant 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.

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() 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:** GE Healthcare is the only company that can provide all the necessary original equipment manufacturer (OEM) parts and perform all the necessary repairs for Ge 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. GE only allows their authorized representatives to install proprietary software and hardware updates/upgrades. To ensure that services performed on the equipment meet 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 awarded in accordance with the exception to fair opportunity authority cited at FAR Subpart 16.505(b)(2)(i)(B) 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 further search in VA MedSurg Catalog for "GE Imaging" failed to identify any potential sources that would satisfy the needs of the agency. A search under the VetBiz and the SBA websites under NAICS code 811219 with keyword "GE Imaging" produced zero matches.

A sources sought notice was posted to FedBizOpps from August 18, 2017 until August 25, 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:** 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

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license its software and authorize local service providers to maintain the GE equipment, the only alternative would be to replace the existing GE Healthcare equipment with a more generic brand. At this time, Albany VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Albany VAMC currently does not have the sufficient budget to replace the GE 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 of the equipment to be serviced, GE Healthcare is the only 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/ebuy, VetBiz, Google and the VA NAC MedSurg Catalog were used to determine if there were any other sources of providing service maintenance agreements on the GE equipment. It has been determined that GE Healthcare is the only company capable of providing these services on this highly specialized equipment to the agency.
9. **Other Facts:** The Joint DLA/VA Radiology and Imaging Systems Program solicitation SPE2D1-15-R-0001 resulted in multiple award IDIQ contracts for Radiologic and Imaging equipment and service. 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.

Aman Sharma
Supervisory Biomedical Engineer
Albany VAMC

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, GE Healthcare, verified against the pricing on their VA NAC contract. A request for additional discounts was emailed on August 30, 2017 to Tom Brooks of GE Healthcare. Mr. Brooks indicated that no further discounts can be applied to the submitted quotations. The acceptable inflation factor for these services in the commercial marketplace is 10% annually. The quoted provided by GE maintains a constant price for the base year (prorated on 2 items) and each option year, representing a cost savings in the absence of price escalation.

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

V797P-6019B/VA242-16-F-0886, GE Healthcare, October 1, 2016 to September 30, 2017, \$417,770.

This service maintenance agreement will cover additional equipment not previously covered under the task order above due to warranties expiring. The total asset value of the imaging and ultrasound equipment covered under this contract, and listed above in Section 3, is \$6,567,103.00

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
NCO 02

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
NCO 02 Director of Contracting

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.

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

9/5/2017

Date