

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA248-17-AP-13043

1. **Contracting Activity:** Department of Veterans Affairs, VISN 8, Bay Pines VA Healthcare System, 10,000 Bay Pines Blvd, Bay Pines, FL 33744.

Transaction #516-18-1-2071-0007

2. **Description of Action:** This proposed sole source task order against the joint Veteran Affairs (VA)/Defense Logistics Agency (DLA) Indefinite Delivery, Indefinite Quantity (IDIQ) SPE2D1-17-D-0023 with to Siemens Medical Solutions USA, Inc. (DBA: Nuclear Systems Group), 40 Liberty Blvd, Malvern, PA, 19355 is for software support and maintenance of the current Siemens Medical Solutions Biograph mCT-S(40) positron emission tomography-computed tomography (PET-CT) system and subsystems. The Period of Performance (POP) is 10/1/2017 – 9/30/2018, with four (4) option years.

3. **Description of Supplies or Services:** The contractor shall provide software support, preventative maintenance, emergency maintenance, and all repair parts (excluding glassware, ct tube) for the Siemens Medical Solutions Biograph mCT-S(40) positron emission tomography-computed tomography (PET-CT) system and subsystems located at the Bay Pines VA Healthcare System, Florida. The scanner is located on the second floor, building 100, in room # 2C119D-100BP. The system and subsystems include:

Siemens Medical Solutions Biograph MCT-S(40) 4R PET-CT Scanner, EE #98640, SN: 31062
Fujitsu Celsius M720, workstation EE #98641, SN: 4933
Fujitsu Celsius M720, workstation EE #98644, SN: 1409

The system maintenance plan shall cover all portions of the system, including the system control computer, monitors, cooling system, and the Model# PET-20C27/2 SN# K003 (BIV-R SOURCE KIT FOR SIEMENS BIOGRAPH) phantom. Additionally, per the Statement of Work (SOW), the maintenance plan shall include an uptime guarantee of 98% or greater, phone response under 30 minutes after request has been initiated, on-site response under four hours after request has been initiated, preventative maintenance that follows the original manufacturer guidelines and frequency, software updates for all equipment as they become available from the original manufacturer, technical phone support with certified Siemens Customer Service representatives for assistance in technical support, remote services and diagnostic services, application hotline phone support with certified Siemens Clinical Education Specialists to assist with application specific questions and virus protection. The contractor must be an authorized Siemens parts and service provider, have direct access to proprietary diagnostic software, and provide all software updates which have been validated by the Original Equipment Manufacturer (OEM). The Independent Government Cost Estimate (IGCE) is as follows:

<u>Timeframe</u>	<u>Amount (Est)</u>	<u>Due Date (Est)</u>
Base Year	\$ [REDACTED]	10/1/2017 thru 9/30/2018

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Option Year 1	\$ [REDACTED]	10/1/2018 thru 9/30/2019
Option Year 2	\$ [REDACTED]	10/1/2019 thru 9/30/2020
Option Year 3	\$ [REDACTED]	10/1/2020 thru 9/30/2021
Option Year 4	\$ [REDACTED]	10/1/2021 thru 9/30/2022

TOTAL: \$ [REDACTED]

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 is the original equipment manufacturer of the Siemens Medical Solutions Biograph mCT-S(40) PET-CT system and subsystems. Siemens parts, equipment, and software are proprietary. This system has proprietary software that is accessible for off-site troubleshooting through a VA National Site to Site VPN connection. These connections must be approved by national ISO's and the companies trying to make these connections must have certain levels of security clearance. There are also proprietary software keys used for troubleshooting that are only accessible to Siemens personnel. The responding field service engineer must be factory trained to service, calibrate, and complete repairs on Siemens Medical Solutions equipment and have direct access to all levels of

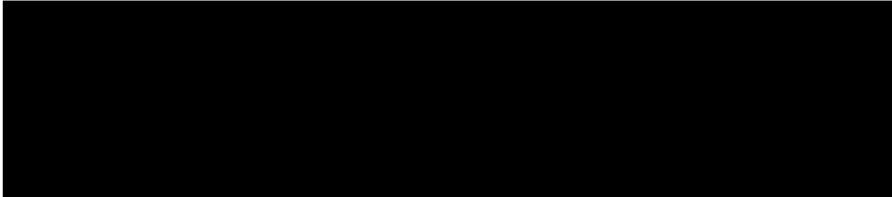
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proprietary diagnostic software, and OEM parts to ensure that the equipment functions at OEM specifications, Center for Devices and Radiological Health (CDRH) standards, and meets compliance testing criteria at all times. Software updates and upgrades to these systems are only available from Siemens on these systems as they are the OEM. These updates and upgrades are not available from any other source. Compliance with the specifics of the warranty and the service agreement is required. Services attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the systems currently in operation.

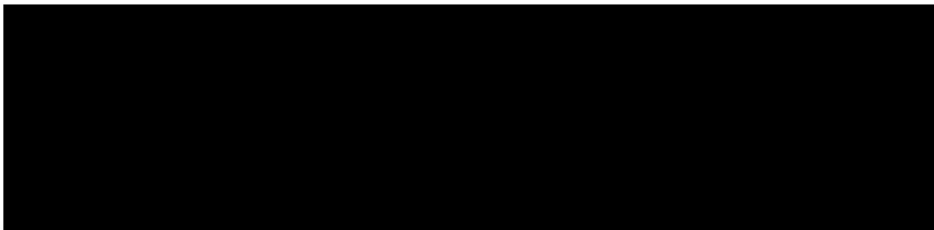
6. **Efforts to Obtain Competition:** Market research was conducted, details of which are in the market research section of this document. Additionally, on 7/11/2017, a Special Notice of Intent to Sole Source to Siemens Medical Solutions USA, Inc. was posted on Federal Business Opportunities Page (FBO) at FBO.gov under VA24817N1213, which closed on 7/18/2017 with only one (1) response from The Remi Group, LLC, a large business. After reviewing Remi Group's response, it was discovered that they were not an authorized Siemens parts/service provider, but were a pass-through service that wanted to subcontract 100% of the work to Siemens due to their proprietary parts, software, and IT support. This effort did not yield any additional sources that can meet the Government's requirements. There is no competition anticipated for this acquisition. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award on FBO.gov and the justification will be made publicly available. No other companies can offer off-site trouble shooting through a VA National Site-to-Site VPN connection, OEM trained and certified technicians, nor do they have the ability to provide timely and appropriate software and hardware upgrades as needed per the OEM.
7. **Actions to Increase Competition:** The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed. Additionally, when the system has reached its life expectancy the procurement action will be conducted competitively.
8. **Market Research:** Market research was conducted using NAICS code 811219 and the PSC of J065 via FBO, SBA's Dynamic Small Business website, SAM, NAC tools, GSA Advantage, NASA SEWP, and VETBIZ. A Special Notice of Intent to Sole Source to Siemens Medical Solutions USA, Inc. was posted on FBO under VA24817N1213, without responses from interested vendors who could provide the required services (see Section 6 above). Additionally, priority sources within the VA NAC Med/Surge catalog were also consulted to locate sellers of Siemens imaging systems maintenance services and it has been determined that Siemens is the only company capable of providing these services. Siemens is the original equipment manufacturer of these imaging systems and as the manufacturer it sells specific parts for use in the maintenance of these systems. Only Siemens' service technicians have access to the proprietary diagnostic software and other tools used in maintaining these imaging systems. No other software is validated for use on these systems. Market research has demonstrated that the only source for providing these services on this highly specialized, proprietary equipment is the manufacturer, Siemens.

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9. **Other Facts:** Siemens has proprietary rights on all software upgrades, parts, and services on their equipment.
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.

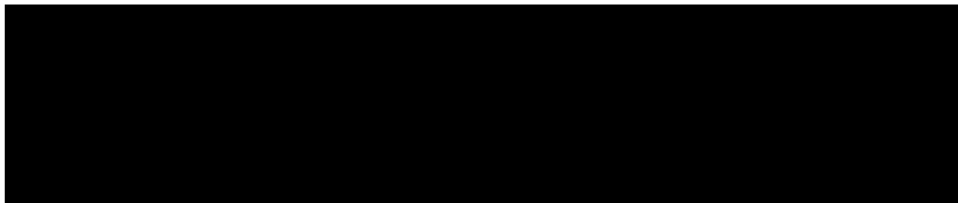


11. **Determination that Anticipated Cost is Fair and Reasonable:** This requirement will be awarded to Siemens Medical Solutions USA, Inc. utilizing their joint DLA/VA IDIQ SPE2D1-17-D-0023. Siemens is providing the Government with a 29% discount off their commercial price list saving the VA \$ [REDACTED] over the life of the 5-year contract. When comparing new annual pricing of \$ [REDACTED] with the current year's pricing of \$ [REDACTED] there is only a 3% cost increase for inflation. Note that the \$ [REDACTED] is a flat annual fee over the new 5-year contract period.
12. **Contracting Officer's Certification (required):** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.



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.



- b. **VHA SAO 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.

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Director SAOE, Head of Contracting Activity (HCA)