

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID:** VA250-17-AP-11512

1. **Contracting Activity:** Department of Veterans Affairs, Network 10 Contracting Office, 8888 Keystone Crossing Blvd. Ste# 1100, Indianapolis, IN 46240.
2. **Description of Action:** The Northern Indiana Healthcare System, located at 2121 Lake Avenue, Fort Wayne, IN 46805 (Ft. Wayne Campus) & 1700 East 38<sup>th</sup> Street, Marion, IN 46953 (Marion Campus) is requesting a base +3 option year task order against National Acquisition Center (NAC) HTME Contract# VA797H-17-D-0024 with General Electric Company, GE Healthcare, 3000 North Grandview Boulevard W-443, Waukesha, WI 53188, for preventative maintenance and repair services for the General Electric Healthcare Portable X-Ray Equipment located at NIHCS.

The resulting task order will be a firm-fixed price task order effective October 1, 2017 through September 30, 2018 with three (3) option years. The Independent Government Estimate for this base plus three (3) option year contract is \$133,152.00 (\$33,288.00 base year).

3. **Description of Supplies or Services:** Preventative Maintenance and Repair Services task order for the General Electric Healthcare manufactured Portable X-Ray Equipment located at NIHCS. This maintenance and repair plan shall include regular preventative maintenance and emergency repairs during normal working hours in order to maintain the system at the Original Equipment Manufacturers (OEM) specifications and reduce equipment downtime. The task order will require the Contractor to perform routine quality assurance evaluations in order to assure optimum performance. The task order will also require the Contractor to provide software updates/upgrades and hardware upgrades to the system which are intended to reduce safety risks.
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.

VHAPM Part 816.5—Indefinite-Delivery Contracts  
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( ) 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:** The Portable X-Ray Equipment must be serviced by the OEM due to proprietary operating software, hardware, and parts that are only available from General Electric Healthcare. Services cannot be provided by a source other than General Electric Healthcare as they do not sell their proprietary information to 3<sup>rd</sup> party vendors. The VA NAC awarded this contract specifically for the maintenance and repair of high-technology medical equipment within the VA. This contract was competed and General Electric Healthcare was the only respondent awarded a contract for the repair of these specific machines.
6. **Efforts to Obtain Competition:** Market research was conducted, details of which are in the market research section of this document. 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 the Federal Business Opportunities Page (FBO) and the justification will be made publicly available. The original solicitation issued by the National Acquisition Center resulted in twenty-six awards. Each vendor was awarded a separate contract only for the portion of their equipment and its subsequent maintenance. There are no other sources available to provide these services.
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.
8. **Market Research:** Market research was conducted. VetBiz and DSBS were both queried for SDVOSB/VOSB and other Small Business types using NAICS Code 334517 and keyword "Ingenuity Core 128 & Brilliance 16 Slice;" the searches returned three results; however, those listed do not have the proprietary OEM Software Keys and replacement parts to conduct the services required. GE Healthcare is the only source capable to provide these services.

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9. **Other Facts:** None.

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.

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Katelyn Childs  
Chief, Biomedical Engineer  
Northern Indiana Healthcare System

09/26/2017  
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 based on comparing prices of previous contracts (VA251-15-F-2575) and the Independent Government Estimate.

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

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Lisa Frymier  
Contracting Officer  
Network Contracting Office 10

9/26/2017  
Date