

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA241-18-AP-0071

1. **Contracting Activity:** Department of Veterans Affairs, Network Contracting Office 1, Togus
2. **Description of Action:** Full Maintenance Services on the multiple modality Philips products. The total estimated contract value is \$525,242.88. The equipment is located at the VA CT Health Care System, West Haven Campus, 950 Campbell Avenue, West Haven, CT 06516 (see attached list of equipment to be serviced). This contract is for maintaining equipment that has a direct effect on patient care. The request is being procured on a sole source basis directly with Philips Healthcare, as a firm fixed price task order under contract VA797H-17-D-0022. Philips Healthcare is currently providing full service maintenance on the Philips ultrasound and imaging equipment for the West Haven VA Medical Center, CT.
3. **Description of Supplies or Services:** The contract will cover the preventative and corrective maintenance for Philips ultrasound and imaging equipment. The procurement is for full service maintenance to support the ultrasound and imaging equipment used in the Surgery, Cardiology, and Nuclear Medicine departments at the Medical Center. See attached list of equipment to be serviced. The equipment is used on a daily basis to perform diagnostic procedures and needs to be fully operational to handle the case load. Due to its heavy use, the equipment requires calibration, service, and maintenance to keep it in its most efficient capacity. The software utilized by the equipment is proprietary to Philips Healthcare and requires software maintenance and any upgrades throughout the life of the equipment.
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.

VHAPM Part 816.5—Indefinite-Delivery Contracts
Attachment 1: Request for Exception to Fair Opportunity Memo Format

() 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 ability to service the equipment requires special software tools and codes that are proprietary to the OEM, Philips Healthcare. The proprietary knowledge necessary for proper performance of equipment is beyond the technology of any third party vendors. It is in the best interest for patient safety and liability of the federal government to have the original equipment manufacturer perform all maintenance on the equipment and for the software technology that is proprietary. To deviate from the original equipment manufacturer can damage the equipment valued over \$10 Million and incur potential addition expenses to the Government. Philips Healthcare has trained and certified technicians and facility service engineers specialized to work on the delicate and complex equipment. They also have the manpower available to meet the high percentage of uptime required by the departments. This equipment cannot be properly maintained without access to company’s proprietary software and licensed information which cannot be acquired through any other known source.

6. **Efforts to Obtain Competition:** Medical equipment manufactured by Philips Healthcare can only be serviced by the vendor due to their proprietary technology. If the equipment is replaced by other manufacturers’ equipment, preventative maintenance/service would need to be provided that that manufacturer.

7. **Actions to Increase Competition:** None. Medical equipment manufactured by Philips Healthcare can only be serviced by the vendor due to their proprietary technology. If the equipment is replaced by other manufacturers’ equipment, preventative maintenance/service would need to be provided that that manufacturer.

8. **Market Research:** Services are available on the NAC utilizing contract # VA797H-17-D-0022. Market Research indicated there is only source who can provide this service, Philips due to their proprietary technology as the manufacturer of the equipment.

9. **Other Facts:** The requirements for the software upgrades and maintenance of equipment will assist the VAMC CT to provide continuous quality care to patients for future diagnostic procedures. Using proprietary software and maintenance tools that the manufacturer offers will enhance the services provided to the cardiology, surgical, and imaging departments.

VHAPM Part 816.5—Indefinite-Delivery Contracts
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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.

John V. Klemenz

Name John V. Klemenz
Title Supervisor Clinical Engineering
Facility VACTHCS

Date Nov. 29, 2017

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 requirement has been considered fair and reasonable base on established pricing via NAC contract VA797H-17-D-0022.

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

Tammy A. Davis
1408639

Digitally signed by Tammy A. Davis 1408639
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0.9.2342.19200300.100.1.1=tammy.davis6@va.g
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Name
Title
Facility

Date

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.

Valerie J.
DeAngelis 908087

Digitally signed by Valerie J. DeAngelis
908087
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Name
Valerie DeAngelis

11/29/2017

Date

Model Name	Equipment Description	EE#	SER#	Model#	Bld,Room
ULTRASOUND					
IU22	ULTRASOUND SYSTEM	83312	B05P9H	IU22	1234-1-W
IU22	ULTRASOUND SYTEM	83314	B05P9G	IU22	1237-1-W
IU22	ULTRASOUND SYSTEM	83313	B05P9F	IU22	1237-1-W
IU22	ULTRASOUND SYSTEM	83315	B05PDC	IU22	202-1-N
IU22 W/INTEGRATED PERCUNAV	ULTRASOUND SYSTEM		60739273/BOMDOB	IU22	
IU22	ULTRASOUND SYSTEM		62305541/BOYL30	IU22	
IE33	ULTRASOUND SYSTEM	61058	02L6Y9	IE33	3220-1-W
EPIQ 7C	ULTRASOUND SYSTEM		64638615/US315B0188	EPIQ 7C	1237-1-W
EPIQ 7C	ULTRASOUND SYSTEM		64740191/US215B0682	EPIQ 7C	2106-2E-N
EPIQ 7C	ULTRASOUND PROBE		64742197/US315B0189	EPIQ 7C	
IU22	ULTRASOUND PROBE		45684801/02XDWJ	IU22	
IE33	ULTRASOUND PROB		56104910/B05PGL	IE33	
AFFINITY 70	ULTRASOUND		US616F0015	AFFINITY 70	
SPARQ	ULTRASOUND		US71510917	SPARQ	
SPARQ	ULTRASOUND		US81511071	SPARQ	
SPARQ	ULTRASOUND		US71510012	SPARQ	
S7-2 Omni TEE (2)	ULTRASOUND PROBE		46095410/02JQ97 47810077/039JWM	S7-2 Omni TEE	3220-1-W
X7-2T (2)	ULTRASOUND PROBE		68300115/B07N14 65506636/B18C02	X7-2T	G176-1-W
IMAGING					
EASY DIAGNOST ELEVA SYSTEM	RADIO FLUOROSCOPY SYSTEM	63690	543275	NNAH424	1114-1-W
(2)MOBILE DIAGNOSTwDR rel 2	PORTABLE X-RAY SYSTEM		52957800	MOBILE DIAGNOST	1110-1-W
DIGITAL DIAGNOST DUAL DETECTOR	DIGITAL READER/X-RAY UNIT	78760	11000606	NNAH193 OPTIMUS 80	1157-2-W
ALURA XPER FD10	CARDIOVASCULAR X-RAY SYSTEM	62773	538432	722003 ALURA FD10	1117-1-W
MRI AMBIENT	MRI AMBIENT		888200	AMBIENT	1107-1-W

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