

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval (J&A)
For
Other Than Full and Open Competition (>\$150K)

Acquisition Plan Action ID: eCMS Action ID: VA259-18-AP-1812, Modification VA259-16-D-0024 P00005

1. **Contracting Activity:** Department of Veterans Affairs VISN 19 and Network Contracting Office (NCO) 19 request Justification and Approval for Other Than Full and Open Competition for a modification to the Indefinite Delivery Indefinite Quantity (IDIQ) contract for Home Oxygen/Respiratory Care Services. This contract is paid by 1358, and no 2237 number is applicable.
2. **Nature and/or Description of the Action Being Processed:** VISN 19 intends to issue a modification to firm-fixed-priced IDIQ contract VA259-16-D-0024 for VISN-wide Home Oxygen/Respiratory Care Services. The current contract VA259-16-D-0024 expires on December 31, 2017. The intent of this modification action is to raise the ceiling value of the current contract to support the exercise of FAR 52.217-8, Option to Extend Services. It is the Government's intent to raise the contract ceiling by \$14,400,000, from \$52,000,000 to \$66,400,000. This is to account for the value of the six-month extension of services. However, the current modification will only be for two months. At the Government's discretion, we will extend the term of the contract one month at a time thereafter. This will allow the medical centers and new contractors time to prepare for the transition period into the new multiple award Home Oxygen contract and maintain service to Veterans.

The primary purpose of this extension is to avoid a lapse in critical services. NCO19 has been working with the P&SAS departments of the VISN19 Medical Centers for the past year to establish a new contract for Home Oxygen Services. NCO19 and the VAMCs conducted thorough market research, developed an acquisition strategy, and redesigned the Performance Work Statement (PWS) for these services. NCO19 issued solicitation VA259-17-R-0100 on 10 February 2017. The solicitation was set aside for small businesses, and enabled the possibility for multiple awards. NCO19 envisioned that each site may have a different contractor. Furthermore, the evaluation approach of a Past Performance/Price tradeoff was nuanced and new to the VA. The contract type for the new contracts would be fixed-price Requirements contracts.

Rotech protested the solicitation, and VA took corrective action. The protest process, and multiple amendments to the solicitation, impacted the acquisition timeline. Solicitation VA259-17-R-0100 closed on 21 July 2017, and VA received proposals from eight (8) offerors. NCO19 has been conducting evaluations with support from the technical team for the past few weeks. Even though NCO19 intends to award the new contract(s) prior to December 31, 2017, when the current contract expires, NCO19 anticipates that one or more offerors will protest the award decision. As a result, VA will have to stay the award decision while VA defends the protest at GAO. If there are no protests or VA can resolve the protests quickly, then the utilization of 52.217-8 will be limited in duration. Even in the event of no protests, NCO19 must issue this modification in order to avoid a lapse in services to allow time for the new contractor(s) to prepare to perform and then transition services from the incumbent contractor to the new contractor(s)

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** The purpose of this requirement is to ensure continuity of care through the continuation of Home Oxygen/Respiratory Care Services for beneficiaries of VA facilities within VISN 19, which encompasses Colorado, Montana, Utah, and Wyoming. The Oklahoma City and Muskogee Medical centers are not included

in the current contract: However, they will be included under the new VISN 19 contracts. Currently Oklahoma City and Muskogee are being provided home oxygen services by the VISN 16 contract. This is why the period of performance for Oklahoma City and Muskogee will not begin until 1 April 2018. It is anticipated that performance period for the rest of the medical centers will begin 1 January 2018. The current contractor, Rotech Healthcare, Inc., will provide delivery, set-up, education, and maintenance of its own contractor-provided equipment as well as Government-owned equipment. Services include retrieval of equipment as necessary and conflict resolution related to equipment or patient care as outlined by the direction of Prosthetics and Sensory Aid Services (P&SAS) and the contract.

The transition period provisions in the current contract are necessary for phase-in and phase-out operations between the current contractor and those contractors being awarded contracts under the VISN 19 Multiple Award Requirements solicitation/contract. The new contractors will require a 60-90 day transition period per station to assume responsibilities for their respective locations.

4. Statutory Authority Permitting Other than Full and Open Competition:

- (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- (2) Unusual and Compelling Urgency per FAR 6.302-2;
- (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- (4) International Agreement per FAR 6.302-4
- (5) Authorized or Required by Statute FAR 6.302-5;
- (6) National Security per FAR 6.302-6;
- (7) Public Interest per FAR 6.302-7;

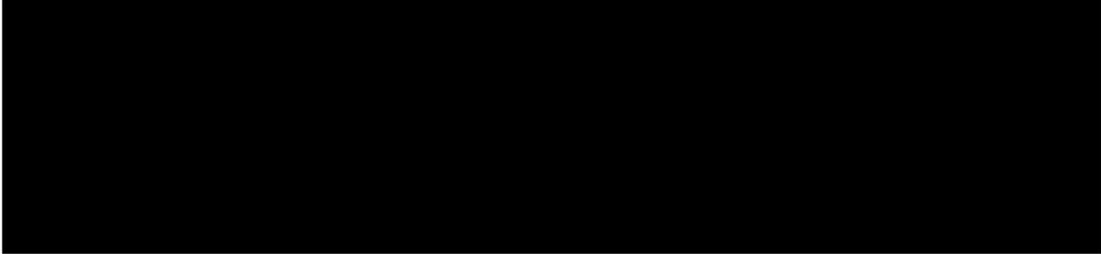
5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority): The requirement for Home Oxygen Services is a vital service to the VISN 19 Veteran population. There are approximately 10,000 veterans who use this service. An interruption in this service could potentially endanger the lives of Veterans. The current contract expires on December 31, 2017. Without a continuation to this contract to provide Home Oxygen/Respiratory Care Services, Veterans' healthcare will be in grave jeopardy and will create catastrophic consequences within the Veteran community. Any lapse in services at all will have a profound impact on the patients who receive Home Oxygen Services. This modification will provide for the potential to extend services for up to six (6) months, thereby ensuring that patients receive continuity of care and uninterrupted services during the time of transition to the new contractor(s). The contractor, Rotech Healthcare Inc., has the capacity, personnel, facilities, set-up and network in place to meet the continuing needs of the VISN 19 Medical Centers to service the Veteran population.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable: The current contract VA259-16-D-0024 was initially awarded on a sole-source basis to allow the Government more time to develop its requirements. The exercise of FAR 52.217-8, Option to Extend Services, ensures proper award and turnover of the new contracts from the incumbent contractor, Rotech Healthcare, Inc. The new home oxygen requirements contract was solicited competitively and set-aside for small businesses. Competition was received to the maximum extent possible. It is anticipated that the Multiple Award Requirements contracts will be awarded by the end of December 2017.

7. **Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:** The current contractor, Rotech Healthcare, Inc., has agreed to apply the same rates from the current contract throughout the six-month period exercised under FAR 52.217-8. The current option rates are 2.4% below the Independent Government Cost Estimate. Per FAR 15.404-1(b)(2)(v), the contract's fixed-price rates are determined fair and reasonable.
8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** The current contract was awarded as a sole source contract to Rotech Healthcare, Inc. The extension of the current contractor is to account for transition to a newly competitively awarded contractor and the need for uninterrupted services. There are Veterans currently receiving home oxygen services. Those services must continue until transition between contractors occurs. It is imperative that the Government receives the same level of service while also transitioning to new contractors. Furthermore, the Government expects that the new awards will be protested and needs to be able to continue providing services while responding to the protests. If VA is able to resolve the protests quickly or no companies protest, then the utilization of 52.217-8 will be limited in duration. Therefore, no market research was conducted for this period.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** The proposed modification of two (2) months is to provide for uninterrupted services to allow the award and proper notification of the new Multiple Award Requirements contracts.
10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** No sources have expressed in writing an interest in this extension. However, there are several small businesses that did submit proposals on the new Multiple Award Solicitation. Those companies cannot fulfill the Government's need at this time because those companies would need enough time to set up in order to perform a new contract and would be unable to perform services starting on January 1, 2018, in order to avoid an interruption in services to the VISN 19 Veteran population. Exercise of FAR Clause 52.217-8 on the current contract, or alternatively, an interim sole-source bridge contract to Rotech, are the only viable approaches to ensuring continuity of care for these critical services.
11. **A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:** A competitive solicitation, to acquire a long-term home oxygen and respiratory services received was competed and awards will be made within the next thirty days.
12. **Requirements Certification:** I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.
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13. **Approvals in accordance with the VHAPM Part 806.3 OFOC SOP:**
- a. **Contracting Officer or Designee's Certification (required):** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.



- b. 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.



- c. 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 for other than full and open competition.

