

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: VA263-18-AP-0193

1. **Contracting Activity:** Department of Veterans Affairs, Network Contracting Office 23, 2501 W 22nd Street, Sioux Falls, SD 57105-5046. 2237# 438-18-1-723-0010

2. **Nature and/or Description of the Action Being Processed:** Firm fixed price, four option year service contract for the following service: Maintenance service contract for Biomerieux VITEK Mass Spectrometer Model 4702206, Serial Number S1035.

FAR13.5 Simplified Procedures for Certain Commercial Items: This procurement is for Maintenance service contract for Biomerieux VITEK Mass Spectrometer Model 4702206, Serial Number S1035 in accordance with FAR 13.5 Simplified Procedures for Certain Commercial Items and specifically FAR 13.501 Special Documentation Requirements, where acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** Four option year service contract for the following service: Maintenance service contract for Biomerieux VITEK Mass Spectrometer to cover preventive maintenance and emergenc repair of equipment. Anticipated start date is 01 January, 2018. Estimated cost breakdown:

Base year price: \$31,466.04

Option Year 1: \$31,466.04

Option Year 2: \$31,466.04

Option Year 3: \$31,466.04

Option Year 4: \$31,466.04

Aggregate value: \$157,330.20

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

(x) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy
Agency Requirements per FAR 6.302-1, statutory Authority 41 U.S.C 3304(a)(1)

FAR13.5 Simplified Procedures for Certain Commercial Items: *The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented by for restricting competition on this procurement via FAR 13.106-1(b)(2).*

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):**

Only Biomerieux Inc. has access to required proprietary software keys, parts, repair processes and factory trained and authorized maintenance personnel to perform required services on this highly specialized system. Only Biomerieux Inc. performs maintenance services on equipment produced by them. Biomerieux Inc. does not sponsor a maintenance distributorship program nor do they sell their products/ services through any other vendor. The VA does not allow reverse engineered or refurbished parts to be utilized in its medical equipment. Third party contractors do not have access to Biomerieux Inc. repair processes nor software systems currently installed in the subject VITEK equipment.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** The Government will post its notice of intent to sole source on FBO.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:** Market research efforts within Vendor Information Pages (VetBiz), GSAdvantage, Small Business Administration (SBA), System for Award Management (SAM) and past procurement data resulted in the determination that no other contractors are present or capable of performing this service. Only Biomerieux Inc. performs maintenance services on equipment produced by them. Biomerieux Inc. does not sponsor a maintenance distributorship program nor do they sell their products/ services through any other vendor. It has been determined that only the manufacturer, Biomerieux Inc., can provide the required maintenance/ repair services.

A price comparison between this procurement's IGE (\$157,330.20) and a four option year contract with the exact same service located at the Iowa City, IA Veterans Administration, VA263-15-P-0257, reveals similar pricing with an aggregate value of \$157,426.97. A difference of just \$96.77 has been determined to be reasonable. The anticipated cost is considered fair and reasonable.

8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** Market research efforts resulted in the determination that no other contractors are present or capable of performing this service. Only Biomerieux Inc. performs maintenance services on equipment produced by them. Biomerieux Inc. does not sponsor a maintenance distributorship program nor do they sell their products/ services through any other vendor.

9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** This equipment is highly sensitive and specialized for identifying microbial organisms and determining antibiotic susceptibility. A malfunction of this equipment will create patient mis-diagnosis and resulting improper treatment. The manufacturer holds parts and service information as proprietary. There is no third party service available for full coverage of the equipment, unless engineered or refurbished parts are used, which is unacceptable to VA medical equipment standards. Only Original Equipment Manufacturer (OEM) repair parts may be utilized. If services were performed via third party vendor, all liability would be the responsibility of the Sioux Falls, SD VA Health Care System.

10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:**

Biomerieux Inc.
100 Rodolphe St.
Durham, NC 27712-9402

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:** Market research conducted resulted in no contractor, other than the manufacturer, is available or qualified to perform the requested maintenance service. Four option years are requested for approval due to only Biomerieux Inc., the manufacturer, can perform this service.

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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VIGLIOTTI 930819

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Chasity Vigliotti
Lab Manager
Sioux Falls VA Health Care System

12.28.2017

Date

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.



Scott Morrison
Contracting Officer
Network Contracting Office 23 – Services Team

12-28-2017

Date

- 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.

Kelly E. Nussbaum
246222

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Nussbaum 246222
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Kelly Nussbaum
Branch Chief
Network Contracting Office 23 – Services Team

12/28/2017

Date