

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: VA261-17-AP-6091

Purchase Request/2237 Number: 570-18-2-221-0050

1. **Contracting Activity:**

Department of Veterans Affairs, VISN 21, Network Contract Office (NCO) 21 for VA Central California Health Care System.

2. **Nature and/or Description of the Action Being Processed:**

The VA Central California Health Care System is in need of Community Nursing Home (CNH) services. The proposed Single Award five-year Indefinite Delivery Indefinite Quantity (IDIQ) Contract will be an open market sole source acquisition to solicitation to *Avalon Care Center – HyLond Health Care Center - Merced* DUNS: 147445709 in accordance with FAR 6.302-1 Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:**

The proposed action is to award an IDIQ Contract with a Nursing home facility capable of furnishing the total medical, nursing, and psychosocial needs of VA beneficiaries.

- All nursing home facilities must have current Center for Medicare and Medicaid Services (CMS) certification (Medicare and/or Medicaid) and a State nursing home license.
- The VA requires CNHs to have bed capacity to ensure their ability to take referrals when requested. The CNH also must be able to accept VA referrals in a timely fashion (ideally within 24 hours of request).
- Provider visits must be provided at the rate of one (1) visit per month. Laboratory, x-ray, and other special services will be available to VA patients as needed. In addition, the care provided will include room, meals, nursing care, and other services or supplies commensurate with the VA-authorized level of care, without extra charge.
- The per diem rate(s) established in this IDIQ will include the cost of primary medical care, one (1) provider visit per month and needed consultation, drugs and routine supplies, laboratory, x-ray, and other special services authorized by VA, unless otherwise specifically excepted.
- Full attention shall be given to motivating and educating patients to achieve and maintain independence in the activities of daily living. Every effort shall be made to keep patients ambulatory and to achieve an optimal level of self-care.

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The total estimated value of the proposed action is not to exceed (NTE) \$6,000,000 over the term of the IDIQ for Five (5) ordering periods. CNHs are \$0 dollar procurements as they are paid by 1358s.

Estimated Cost: Current AB1629 rate = \$187.61 x 365 x 5
There is an estimated 3% increase for each year.

Ordering Period 1:	\$342,388.25
Ordering Period 2:	\$352,658.90
Ordering Period 3:	\$363,239.69
Ordering Period 4:	\$374,136.89
Ordering Period 5:	\$385,360.99
	\$1,817,785.72

4. **Statutory Authority Permitting Other than Full and Open Competition:** *41 USC §3304(a)(1), as implemented by FAR 6.302-1.*

- (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):**

As prescribed in VHA Handbook 1143.2, for more than 35 years the CNH Program has maintained two cornerstones: some level of patient choice in choosing a nursing home close to the veteran’s home and family, and a unique approach to local oversight of CNHs.

The quality of care for the veteran is accomplished through placement in a nursing home that is in close proximity to where the veteran and his/her family resides. Notably, in the VA’s community nursing home program, the veteran’s placement decision is made by VA, the veteran, and the veteran’s family. The placement decision will be based on established VA contracts in the area. The geographic factor in these circumstances makes this requirement unique and, therefore, not subject to competition.

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Avalon Care Center – HyLond Health Care Center - Merced currently has 5 veterans being treated at their nursing home facility. The nursing home meets VA exclusion review quality of care standards. The nursing home has had a contract with the VA for five years and has consistently provided excellent care to our Veterans. It would cause medical hardship on the patients to move them, may disrupt treatment plans, and may be disruptive to family members if relocated to a different facility.

The current veterans require continued care at the nursing home facility beyond the current contract's expiration date and for an unknown period of time in the future. To avoid disruption to the patients, the VA must enter into a new contract with the current contractor.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:**

- a. A search was queried for CVE businesses under NAICS Code "623110" in California. Every business found using this search was emailed and none affirmed that they are capable of providing Nursing Home services.
- b. There are fragile, elderly veterans currently residing within the existing nursing home. Relocating them to another facility would negatively impact patient care and necessitates sole sourcing this procurement.
- c. In accordance with FAR 6.305(a), this action will be synopsisized at award on FBO and the justification will be made publicly available.

7. **Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:**

Fair and reasonable pricing will be determined in accordance with FAR 13.106-3(a). Pricing will be evaluated to be fair and reasonable based on a comparison to the Independent Government Cost Estimate (IGCE), and established Medicare Resource Utilization Group (RUG) rates and or Medicaid by the state of California for nursing home facilities and established VA nursing home rates. The Government estimate was prepared based on established Medicaid RUG rates for various levels of care and established VA nursing home rates based on VA national guidelines for determining cost for VA nursing home contracts.

In addition to discussing the history of choice for the patient and patient's family throughout the history of the nursing home program, according to the Veterans Access, Choice, and Accountability Act of 2014 ("The Choice Act," Public Law 113-146), medical services shall be furnished to an eligible veteran through agreements or contracts at the election of such veteran by a health care provider that is participating in the Medicare program and that such health care shall be closest to the residence of the veteran (within 40 miles).

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8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:**

The contract specialist conducted market research using Medicare's website for nursing homes, reviewed available acquisition history and searched through the VA's Veteran Information pages.

9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:**

VHA Handbook 1143.2 allows for a level of veteran choice in choosing a nursing home close to the veteran's home and family. The geographic factor in these circumstances makes this requirement unique and, therefore, not subject to competition. Since the Veterans are currently residing in the incumbent's facility, the VA does not intend on disrupting their care in order to place them at a different facility as it would not be in the Veteran's best interest.

Competition's effect on rates in California, rates are tied to the rates published through California Assembly Bill 1629. Therefore, competition is not expected to have a noticeable effect on rates, only on accessibility.

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

The incumbent contractor is willing to continue to provide services for the veterans in place. The incumbent has been providing these services for Veterans of the VACCHCS for more than 10 years, moving current Veterans would affect patient care.

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:**

Based on the inherent nature of the service and in line with VA policy where the veteran and his/her family plays a role in determining which nursing home facility will provide treatment for the veteran, the opportunity to increase competition is limited. Notwithstanding the foregoing limitations, the Government intends to post an open and continuous Request for Proposal (RFP) in fiscal year 2018 to increase the number of community nursing home providers, so that when new beneficiaries are brought into the program they will have more available choices thereby increasing competition. This RFP will further publicize the VA's need for nursing homes in certain geographic areas across the VISN. Through these efforts, NCO 21 anticipates it will increase the number of eligible nursing homes for its geographic regions.

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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Amy Butler, LCSW
CNH Coordinator

Date

13. **Approvals in accordance with the VHAPM, Volume 6, Chapter VI: 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.

Claire Ursino
Contracting Officer
Network Contract Office (NCO) 21

Date

- b. **Director of Contracting /Designee (Required over\$150K but not exceeding \$700K):** I certify the justification meets requirements for other than full and open competition.

Paul Griffin
Acting Director of Contracting
Network Contracting Office (NCO) 21

Date

- 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 (if over \$13.5 million) or approve (\$700K to 13.5 million) for other than full and open competition.

Delia A. Adams, MBA, CPCM
Executive Director, Service Area Office West
Head of Contracting Activity (HCA)

Date