

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity

Acquisition Plan Action ID: VA261-18-AP-1336

1. **Contracting Activity:** Department of Veterans Affairs, VISN 21, NCO 21, VA Sierra Nevada Health Care System (VAPAHCS) 975 Kirman Avenue, Reno, Nevada 89502. This document is a “Justification for an Exception to Fair Opportunity.”
2. **Description of Action:** NCO 21 proposes to issue a Request for Proposal (RFP) to one Indefinite Delivery Indefinite Quantity (IDIQ) Architect/Engineering (AE) Firm which will result in a firm-fixed price task order issued under VA261-17-D-0087. AE firm is: Spur Design, LLC, 320 NW 10th Street, Oklahoma City, Oklahoma 73103. Spur Design is Service Disable Veteran Owned Small Business (SDVOSB) and was last verified as an SDVOSB certified company on June 6, 2016 with an expiration date of June 6, 2019.
3. **Description of Supplies or Services:** The Department of Veteran Affairs, NCO 21, is tasked with supporting the acquisition of master planning Architect and Engineer Services for the VA Sierra Nevada Healthcare System Campus. The Independent Government Estimate (IGE) for this project is [REDACTED]
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):

(X) 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.

() 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.

() 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).

(X) 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:

On 16 June 2016, the U.S. Supreme Court reversed a lower court decision (Kingdomware Technologies, Inc. v. United States) impacting the implementation of the Veterans First Contracting Program. This decision had a direct impact on the IDIQ suites for Architect and Engineering (AE) Services. At that time, NCO 21 utilized a suite of AE IDIQ contracts to issue task orders for both construction design and master planning/study projects. It was determined NCO 21's IDIQ suites did not meet the 'Rule of Two' in regards to SDVOSB and the Kingdomware case.

NCO 21 awarded a new suite of 14 AE contracts for design and master planning to meet VISN 21 requirements, late in fiscal year 2017. During the gap of time between the Kingdomware decision and award on the new IDIQ suite, customer requirements have exceeded our ability to meet their needs. Clearly the Kingdomware decision is an unusual event, and further delay in award of this task order could negatively impact critical patient safety and privacy at the VA Sierra Nevada Healthcare System. FAR 16.505 (b)(1) requires each awardee selected in the suite of 14 AE Firms be given fair opportunity for each order exceeding \$3,500 except as noted above. Ordering procedures require requesting competitive proposals from all firms holding contracts, receiving SF330's for evaluation, and convening a Technical Evaluation Board (TEB) in accordance with FAR 36.602-3. The Source Selection Process, which includes convening a TEB, evaluating each SF330, and conducting negotiations per FAR 36.606 is estimated to take approximately 105 days for a project of this complexity and magnitude.

Additionally, due to the lateness of the IDIQ contracts in FY 2017, not all requirements were able to be negotiated and awarded in that fiscal year. This requirement is now being re-addressed in FY 2018 with current year funds.

- 6. Efforts to Obtain Competition:** Under the statutory exception to fair opportunity, as specified above, this unusual and compelling urgency authorizes the Government to limit full and open competition.
- 7. Actions to Increase Competition:** A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable: The IGE has been developed by a well-qualified electrical engineer, and reviewed by the VAPAHCS Senior Engineering Staff. IGE will be used to substantiate pricing techniques described in FAR 15.404-1(b)(2)(v) and (vi) and will be used to establish the cost to the Government will fair and reasonable.

8. **Market Research:** The exception to fair opportunity stated above does not require market research.
9. **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 IGE has been developed by a well-qualified electrical engineer, and reviewed by the VAPAHCS Senior Engineering Staff. IGE will be used to substantiate pricing techniques described in FAR 15.404-1(b)(2)(v) and (vi) and will be used to establish the cost to the Government will fair and reasonable.
10. **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.

01/09/2018

Charee Harris
Contract Specialist, NCO 21

Date

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

Megan Barr
Contracting Officer, NCO 21

11. **Approved by:**

- a. **NCO 21, Director of Contracting:** I certify the justification meets requirements for other than full and open competition.

Brett Vegeto
Chief Construction I
Contracting, NCO 21