

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA261-18-AP-10814

1. Contracting Activity:

Department of Veterans Affairs
Network Contracting Office (NCO) 21
VA Northern California HealthCare System
150 Muir Road, Bldg: AB7; Rm: AB701
Martinez, CA 94553-4668
VISN: 21

1. Description of Action:

VA Northern California HealthCare System (Mather Facility) requires an annual maintenance contract for Philips Medical Imaging Equipment and Systems. This contracting office seeks to issue a task order against the VA NAC Indefinite Delivery Contract # VA797H-17-D-0022. The estimated value of the proposed action for the Base Year is \$262,280.00. The proposed vendor information is listed below.

Name of Proposed Contractor:	Philips Healthcare, a division of POENAC
Street Address City, State, Zip:	22100 Bothell Everett Highway, PO Box 3003, Bothell WA, 98021
POC, Phone, Email:	Tina Lindell, 916 730 7841, tina.lindell@philips.com

2. Description of Supplies or Services:

VA Northern California HealthCare System (Mather Facility) requires an annual maintenance contract for Annual service contract for Philips Healthcare Medical Imaging Equipment and Systems. The Philips Healthcare Medical Imaging Equipment and Systems are complex proprietary imaging systems which require short notice on-call maintenance availability at all times due to patient-care requirements. This equipment is considered critical to the facilities overall ability to provide patient care. The Equipment is listed below:

1. *Philips Integris Allura EE#36190, site number: 102563, serial number: S01H015413*
2. *Philips Ingenia 3.0T MRI unit, Serial Number, 58312276, VA EE#76624*

3. **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.

() 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.

4. **Rationale Supporting Use of Authority Cited Above:**

The contractor, Philips Healthcare has intellectual property rights (copyright) and proprietary data restrictions (security features) that prevent other contractors from servicing Philips Healthcare equipment properly without subjecting equipment to potential damage. The Philips Healthcare equipment maintenance requirement is at the Mather Medical Facility and supports mission critical medical imaging equipment. Currently this equipment is under warranty as long as it is serviced by licensed Philips Healthcare contractors / technicians. Philips Healthcare currently deploys maintenance field technicians under the its contract agreement with the VA National Acquisition Center contract # VA797H-17-D-0022 which ensures equipment is kept is maintained in accordance with Original Equipment Manufacturer standards. Any services performed by non- Philips

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

Healthcare contractors would effectively void current warranties on the Philips Healthcare equipment and create unnecessary liability on behalf of the Department of VA as well as its employees.

6. Efforts to Obtain Competition: ***A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.***

Based on the current equipment warranty and proprietary rights issues associated with services from a Non-Original Equipment Manufacturer the decision was made to only consider the Original Equipment Manufacturer for the required maintenance.

7. Actions to Increase Competition: ***Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, and etc.***

The end using service has been urged to utilize equipment from manufacturers that provides for more flexibility for maintenance and still maintaining applicable warranties.

8. Market Research: ***Provide a description of the market research conducted among the contract holders and the results. If market research was not conducted, the reasons it was not conducted should be stated. When citing 16.505(b)(2)(i)(b) or 16.505(b)(2)(i)(e), the only possible way to state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here.***

This requirement is for a follow-on maintenance contract for Philips Healthcare equipment that is currently under maintenance warranty by Philips Healthcare. A search of the VA National Acquisition Center database resulted in finding Contract # VA797H-17-D-0022 which is a Multiple Award Indefinite Delivery Contract with Philips Healthcare for equipment maintenance. Based on the Original Equipment Manufacturer maintenance warranty with Philips Healthcare, no additional market research was conducted.

9. Other Facts:

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.

A large black rectangular redaction box covers the signature area. A faint red line is visible through the redaction.

Program POC, VAMC Biomedical Section
VANCHCS

12/18/2017

Date

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

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 VA NAC Contract # VA797H-17-D-0022 under which this task order will be issued was negotiated by the NAC and the prices were determined to be fair and reasonable. The services provided have been deemed to be technically sufficient therefore this procurement is the Best Value available to the Government.

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



CONTRACTING OFFICER/DESIGNEE'S SIGNATURE
Jason T. Hill, Contracting Officer

13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#). *This part if filled out by Contracting Staff as part of the Justification*

- 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.



SIGNATURE
Mark Mikus, Supervisory Contracting Officer