


JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Procurement, Acquisition, and Logistics
Technology Acquisition Center
23 Christopher Way
Eatontown, New Jersey 07724
2. Description of Action: The proposed acquisition is for a firm-fixed-price task order/delivery order to be issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for International Business Machines (IBM) software and hardware maintenance.
3. Description of Supplies or Services: The Department of Veterans Affairs (VA), Office of Information and Technology (OI&T), Information Technology Operations and Services (ITOPS), Infrastructure Operations (IO) has a requirement for IBM software and hardware maintenance coverage on VA owned IBM mainframes located at the Austin, TX and Philadelphia, PA data centers. The IBM maintenance coverage will consist of hardware and software maintenance to repair or replace systems equipment components in order to restore full operation and accessibility to the original redundant component configuration. IBM maintenance is required 24 hours a day x 7 days a week x 365/366 per year. Moreover, VA requires initial response to all requests for IBM maintenance within one hour of the initial notification from VA and response to all requests for on-site IBM maintenance service by sending a qualified technician/engineer to the affected site within four hours of the initial notification from VA. The IBM maintenance is necessary for EO to be able to operate successfully and to ensure the hardware remains operational. This proposed action is for services, no new items will be procured except for items required for any repairs. The period of performance is 12 months with three 12 month option periods. The total estimated price of the proposed action is

4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is Section 41 U.S.C 4106(c)(2) as implemented by Federal Acquisition Regulation (FAR) 16.505(b)(2)(i)(B) entitled, "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."
5. Rationale Supporting Use of Authority Cited: Based on extensive market research, as described in section 8 of this document, it was determined that limited competition is viable among authorized resellers for IBM maintenance. The current EO infrastructure is based on existing IBM mainframes and VA requires support that is compatible with the existing infrastructure protocols and functionality for continued operational availability. VA requires maintenance to include major releases, point releases, service releases of applicable hardware and software upgrades and

updates on a quarterly basis or within 48 hours in cases where a high risk vulnerability fix becomes available. VA also requires all parts and labor necessary to maintain the equipment. IBM certified replacement parts/components are required as the hardware runs proprietary firmware which is developed and supported by IBM. Non-OEM parts would not interoperate with the IBM hardware due to the proprietary firmware that runs on them. Therefore, only IBM, through an authorized reseller, can provide the necessary replacement hardware due to the propriety firmware. Additionally, only IBM can provide the software updates for the mainframes, which includes major releases, point releases, and service releases. This proprietary code is developed by IBM, and is installed on the mainframes for operation. Without this source code, the vendor would not have access to proprietary IBM software updates, upgrades, and technical support. This would result in the VA owned IBM hardware becoming inoperable as patches and updates are not pushed to the hardware. Since the software is proprietary, there is no ability for third party vendors to provide this maintenance. Only IBM through its authorized resellers has access to this proprietary source code which is necessary to develop and implement IBM maintenance support and to ensure all the services provided are properly configured. Therefore, IBM hardware and software maintenance is the only support that meets the Government's requirements.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. This effort did not yield any additional sources that can meet the Government's requirements. It was determined, however, that limited competition is viable among authorized resellers for this hardware and software maintenance. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), this action will be synopsisized and the justification will be made publicly available on the Federal Business Opportunities Page within 14 days of award of the order. In accordance with FAR 16.505(a)(4)(iii)(A)(2), this justification will be provided with the solicitation to all contract awardees on the NASA SEWP V GWAC.
7. Actions to Increase Competition: The Government will continue to conduct market research to ascertain if there are changes in the marketplace that would enable future actions to be fully competed.
8. Market Research: IBM offers a commercially available off-the-shelf maintenance package currently in use in VA. Government technical experts conducted market research during September 2017 by reviewing similar OEM hardware and software products and their associated support services to ascertain if these services could meet VA's requirements. Specifically, Government technical experts conducted web-based research, the General Services Administration, and NASA SEWP V GWAC web sites to review compatibility of other like hardware and software maintenance, [REDACTED]. As a result of the market research, the technical experts confirmed that no other contractor has the capability to develop and issue the maintenance coverage for the IBM hardware and software necessary to support existing EO requirements without access to IBM's proprietary

source code. Due to these proprietary constraints, these other hardware manufacturers only provide maintenance for their own product line. In order to utilize any other source, the Government would be required to procure a new hardware solution. If another hardware solution were to be procured it would require substantial support costs, which was previously estimated at \$1.8B of duplicative costs. These estimates were derived from a recent cost analysis effort conducted by Government experts in 2017. Additionally, re-purchase would result in significant down time of critical VA systems, impacting Veterans ability to receive care. Based on the above, only IBM hardware and software maintenance meets all of the Government's requirements.

Additional market research was conducted by the Contract Specialist in November 2017 by utilizing the NASA SEWP V Provider Lookup Tool to determine whether the brand name IBM maintenance is available from NASA SEWP V GWAC holders. It was determined that there are multiple authorized resellers available on the GWAC, including 20 Service-Disabled Veteran-Owned Small Businesses. There is reasonable expectation that limited competition exists on the NASA SEWP V GWAC for IBM maintenance.

9. Other Facts: None.