

**U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)
Construction and Facilities Management (CFM)
Community Based Outpatient Clinic
Lowell, MA**

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

In support of the Department of Veterans Affairs (VA), this Succeeding Lease action is for a total of 35,163 net usable square feet (NUSF) for a Community Based Outpatient Clinic (CBOC) in Lowell, MA. The current clinic facility is located at 122 Marshall Road, Lowell, MA 96002. The existing Lease, Lease #0848-03-88, between the Lessor, JACO Lowell Realty, Inc. and Government (hereinafter, the "Parties") expired on March 18, 2013. The Parties have executed six (6) Standstill Extension Agreements since the original lease expiration date and the current Standstill Agreement will expire on November 30, 2017. Approval is requested to negotiate a succeeding lease with the incumbent Lessor, without full and open competition, for continued occupancy at this lease location. The term for the succeeding lease is for up to ten (10) years, including any option terms. This succeeding lease guarantees Veterans a continuation of medical services at this location in order to support a growing Veteran population in the Lowell, MA.

1. CONTRACTING ACTIVITY

VA proposes to negotiate a Succeeding Lease for a total of approximately 35,163 NUSF in Lowell, MA. The existing lease number for the project is #0848-03-88.

2. DESCRIPTION OF THE ACTION BEING PROCESSED

Sole Source Justification for Other Than Full and Open Competition due to only one responsible source and no other supplies or services will satisfy Agency requirements (Federal Acquisition Regulation ("FAR") 6.302-1), for a 35,163 NUSF CBOC leased space in Lowell, MA.

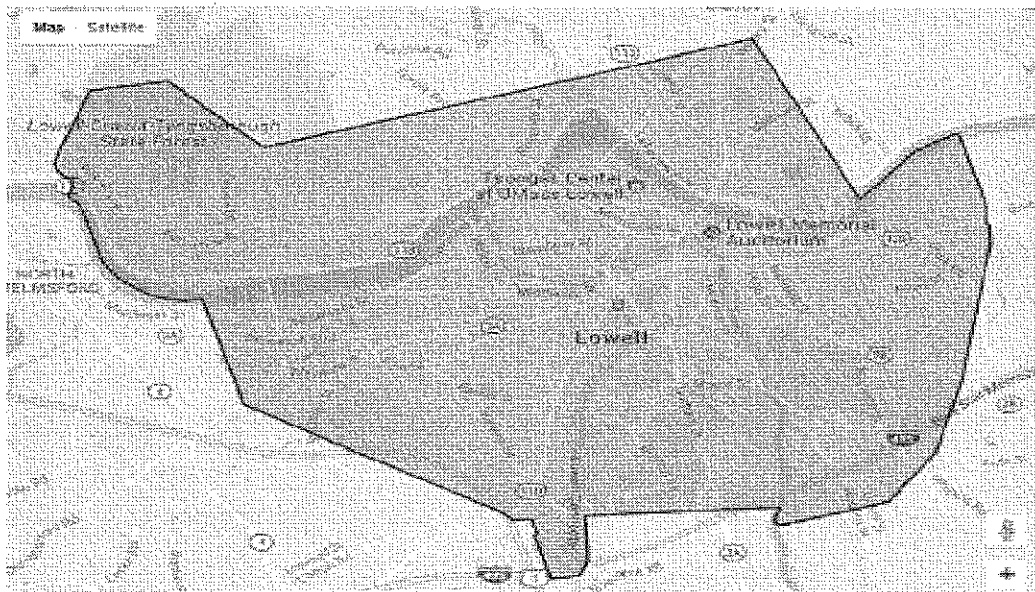
3. DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED

Space and Parking:

VA seeks to lease 35,163 NUSF of clinical space on one story with 95 parking spaces, of which 13 handicapped spaces are required.

Delineated Area:

To receive consideration the proposed space must be within the delineated area boundaries and located in the city limits of Lowell, MA (please see the boundary map below):



The delineated area was selected based on central location, and accessibility for the local Veteran population, including access to public transportation.

Lease Term:

The term for the succeeding lease is for up to ten (10) years, including seven (7) years firm, or seven (7) years with three (3), one (1) year options with VA termination rights. The space must be available for occupancy on or before December 1, 2017. All utilities will be paid by VA (electricity, gas, water, and sewage). Building equipment and maintenance cost requirements shall be included in the rental rate. Offeror will be responsible for the maintenance of medical tenant improvements and exterior cleaning.

4. IDENTIFICATION OF STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION

41 U.S.C. 3304(a)(1): Only one responsible source and no other supplies or services will satisfy VA requirements. (FAR 6.302-1(a)(2)).

5. DEMONSTRATION THAT ACQUISITION REQUIRES THE USE OF THE AUTHORITY CITED

Based upon 41 U.S.C. § 3304 (a)(1) and FAR 6.302-1(a), the location of this Lowell Outpatient Clinic space is critical to supporting the Veteran services in and around the surrounding area.

In order for VA to meet its mission and continue medical services to Veterans in the Lowell, MA, it requires uninterrupted access to CBOC space. The required occupancy of the CBOC lease space is December 1, 2017. Interruption to medical services provided to the Veteran population currently served by the CBOC lease in Lowell, MA would significantly increase the burden on both the Veteran's need to travel, seek medical services, and other area VA Medical Centers in the area to support the additional workload with limited resources.

After conducting market research and advertising on the FedBizOps website (www.fbo.gov), VA has determined that the current Lessor at 122 Marshall Road is the only responsible source that can meet VA's mission requirements for the CBOC's leased health space, and ensure uninterrupted medical services to the Lowell, MA Veteran population.

6. DESCRIPTION OF EFFORTS TO SOLICIT AS MANY OFFERS AS PRACTICAL

An advertisement was originally posted on May 19, 2015 on the FedBizOps website (www.fbo.gov). The advertisement was also circulated directly to all the major commercial real estate brokerage firms within the Lowell, MA area. The advertisement requested the minimum space requirement (35,163 NUSF) for Existing Buildings to accommodate an outpatient clinic and a parking requirement minimum of ninety-five (95) spaces.

Due to internal policy changes, staff and organizational realignment, and the Supreme Court's decision in *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969 (June 16, 2016), the project was delayed to allow VA Office of Real Property (ORP) to establish and comply with new internal policies. The Lowell, MA CBOC project received approval to move forward with a Sources Sought advertisement on the FedBizOps website (www.fbo.gov), which was posted on April 3, 2017 and the 21-day advertisement period ended on April 24, 2017.

The posting described the requirements in terms of type and quantity of space, and indicated that the Government would consider relocation if alternative space could satisfy the Government's requirements and costs including, but not limited to, rent, tenant improvements, physical move, above-standard/specialized alterations/equipment, furniture relocation, telecommunications, and other related costs were considered. The costs for improvements are at the expense of the offeror.

A total of two (2) Expressions of Interest were received in response to the government's pre-solicitation advertisement on FedBizOps (www.fbo.gov) for the VA Lowell CBOC. One submittal was provided by the Incumbent Lessor and the other submittal by RB Lowell Meadow Brook LLC, for the property located at 211 Plain Street, Lowell MA 01852. The existing building located at 211 Plain Street, Lowell MA only has 29,600 square feet available. Therefore, the Contracting Officer eliminated the 211 Plain Street submittal because it did not meet the minimum square footage required. As a result, the Incumbent lessor was the only offeror.

Based on the responses to the Sources Sought notification, only one (1) responsible offer was able to satisfy VA's requirement, and ensure the clinic services to the local Veterans population would not be interrupted. The Incumbent Lessor was the only offeror adequate source.

Additionally, VA published the Request for Lease Proposal (RLP) for the Succeeding Lease in FBO.gov, in order to continue to promote competition, as well as this justification and approval. In an effort to ensure the advertisement conformed to General Services Administration Acquisition Manual (GSAM) 570.402-2 and met the FAR requirements for a Succeeding Lease acquisition, a final Expression of Interest advertisement was posted to on FedBizOps (www.fbo.gov) for the VA Lowell CBOC on October 1, 2017 with a response date of October 19, 2017. Pursuant to GSAM 570.402-2, the advertisement included, among other information, the following: (a) an indication that the Government's lease was expiring, (b) a description of the requirements in terms of type and quantity of space, (c) an indication that the Government was interested in considering alternative space if economically advantageous, and that otherwise the Government intended to pursue a sole source acquisition, (d) an advisement to prospective offerors that the Government would consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (e) the information for a contact person for those interested in providing space to the Government.

The only response to the advertisement received was from the incumbent lessor. In this regard, the contracting officer did not identify any potential acceptable locations through the advertisement, and this written justification to negotiate directly with the present lessor was prepared pursuant to GSAM 570.402-4 and FAR 6.3.

7. DEMONSTRATION THAT THE ANTICIPATED COST WILL BE FAIR AND REASONABLE

In accordance with FAR 6.303-2(a)(7), the Contracting Officer determined by certifying this document that the anticipated annual full service rent will be fair and reasonable. The Contracting Officer validated the annual full service rent through the FMVLP Appraisal provided by American Appraisers Corporation. Additionally, the Lease Rate Market Survey attached hereto was used to validate office market lease rates in Lowell, MA.

The Contracting Officer also determined the anticipated retrofitting cost to be fair and reasonable based on FAR 15.404-1(c)(2)(iii) comparison of proposed cost elements with Independent Government Cost estimates ("IGCE"). The IGCE includes relocation and tenant improvement cost elements that VA would pay if relocating to an alternative space.

8. DESCRIPTION OF MARKET SURVEY CONDUCTED

Market research conducted in accordance with FAR Part 10, resulted in identification of only one responsible source available and no other supplies or services will satisfy the Agency's requirement through:

- Posted an Expression of Interest and Sources Sought Notification to FedBizOpps ("FBO.gov")
- Veteran Owned Small Business ("VOSB") and Service Disabled Veteran Owned Small Business ("SDVOSB") sources notifications were posted in an effort to ensure that VOSBs and SDVOSBs were given the opportunity to participate per the Mandatory Application of the VA's "Rule of Two," which is the process described in 38 U.S.C. § 8127(d).
- Additionally, the provision at issue in *Kingdomware* was 38 U.S.C. § 8127(d), which states: "for purposes of meeting the goals under subsection (a), . . . a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the United States."
- In accordance with the *Kingdomware* ruling, the contracting officer sought to identify two or more small business concerns owned and controlled by veterans. More specifically to determine whether the award could be set aside for qualified SDVOSBs or VOSBs.
- Therefore, a Sources Sought notification was posted to FedBizOpps ("FBO.gov"). The Sources Sought notification soliciting expressions of interest for the CBOC was posted on April 03, 2017 and the 21-day advertisement period ended on April 24, 2017.
- Reviewed the results of recent market research undertaken to meet similar requirements, including the market survey report for other replacement leases.
- Reviewed industry real estate market websites, including Costar, LoopNet, CityFeet and etc., for available spaces that would meet, and
- Contacted knowledgeable individuals in industry regarding market capabilities through VA's contracted Real Estate Broker Services.

In an effort to ensure proper advertisement of the Sources Sought notification, *Kingdomware* "Rule of Two" compliance for this procurement, and certain Lease Term, Rental Rate and Tax discrepancies, the following additional market research was conducted in an effort to identify potential sources.

- A Final Expressions of Interest advertisement was revised per GSAM 570.402-2 and issued on October 1, 2017, which included the language required under GSAM 570.402-2 for publicizing and advertising a Succeeding Lease procurement and sought Expression of Interest from VOSBs and SDVOSBs pursuant to 38 U.S.C. § 8127(d).
- Only one Expression of Interest was received, which was provided by the present lessor.
- On October 3, 2017, the Contracting Officer and the Acting Director for VA Real Property Policy and Programs conducted market research by using the VIP database as the initial source to identify verified SDVOSBs or VOSBs that may meet VA eligibility requirements, listed under NAICS code 531120. It was determined that two or more firms existed under NAICS code 531120; however, it was not determined two or more firms were capable of performing the work and likely to submit an offer at a fair and reasonable price that offers best value to the Government. The identified firms were provided with the Expressions of Interest and given the opportunity to respond. No responses were received aside from the present lessor.
- This Justification for other than Full and Open Competition was subsequently prepared to negotiate directly with the present lessor per GSAM 570.402.4 and approval to award the lease was obtained per FAR 6.3 and 506.3

As indicated above and in paragraph 6 of this document, the Expression of Interest and Sources Sought notices published to FBO.gov provided only one responsible source, the incumbent lessor, able to meet VA's requirement.

A thorough market survey for medical lease space in Lowell, MA was conducted by the VA Broker on October 1, 2017. The market survey was performed to identify additional buildings within the delineated area

that met the minimum requirements of that procurement and expressed interest. The market survey produced no additional spaces that would meet the requirement in the required timeframe.

Market research through CoStar and LoopNet, industry leaders in commercial real estate listings, as well as communication with local real estate firms, assisted in determining both the lack availability of medical clinic lease space in the market and cost estimate for alternative space.

All market research indicated there is only one responsible source, the incumbent lessor, that can satisfy VA's requirement.

9. OTHER FACTORS SUPPORTING JUSTIFICATION

(i). VA will use this succeeding lease in order continue the VA mission of providing medical services to the Veteran population of Lowell, MA.

(ii). GSAM 570.402-5 and 570.402-6. Although no potential acceptable locations were identified through the advertisement or market survey, the cost elements for relocation and tenant improvement would result in significant interruptions to VA's mission to provide medical services to the Veteran population in Lowell, MA.

10. LIST OF SOURCES THAT EXPRESSED INTEREST IN PROCUREMENT

Locations offered in response to the VA's requirements in the Final Expression of Interest and Sources Sought notices published to FBO.gov, include:

122 Marshall Road

11. STATEMENT OF FUTURE ACTION TO OVERCOME BARRIERS OF COMPETITION

VA will take the following actions to remove or overcome any barriers to competition:

- The Contracting Officer will post this Justification and Approval to FBO.gov for at least 30 days in accordance with FAR 6.305 to inform any interested parties of the solicitation.

12. CERTIFICATIONS

Program Office Certification:

FAR 6.303-2(c): this justification for other than full and open competition includes evidence that any supporting data that is the responsibility of technical or requirements personnel, including verifying the Government's minimum needs, schedule requirements, and other rationale for other than full and open competition. This rationale forms a basis for the justification and is certified as complete and accurate by the technical personnel.

Prepared by: Eboni Thornhill Date: 1/18/2018

Eboni Thornhill, Project Manager (003C1E)

Contracting Officer Certification:

The Contracting officer certifies that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Concurred by: *Hong Hitchings* Date: 1/18/2018

Hong Hitchings, Contracting Officer (003C4A)

Concurred by: Darren Blue Digitally signed by
Darren Blue 1113385
Date: 2018.02.02
14:10:53 -05'00' Date: _____
Darren Blue, Accountable Official (003C4A)