

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-18-AP-2663

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 02, Canandaigua VA Medical Center, 400 Fort Hill Ave, Canandaigua, NY 14424.
Purchase Request number: 528-18-2-5803-0097
- 2. Description of Action:** This is a request for approval of a sole source task order under VA NAC contract SPED1-17-D-0023 for full service maintenance coverage on the Siemens Medical Solutions, USA (Siemens) X-Ray CT Scanner equipment currently in use at the Canandaigua VA Medical Center. This procurement will be conducted in accordance with FAR Part 16.505(b)(2)(i)(B). The purpose of the service agreement is to reduce service costs and improve equipment turn-around time and reliability. This will be a firm-fixed price task order contract from contract # SPED1-17-D-0023. The anticipated period of performance is from February 17, 2018 to February 16, 2019 with a provision of three (3) option years. The annual cost is \$122,864.66, and the total estimated cost is \$491,458.64.
- 3. Description of Supplies or Services:** The Canandaigua VA Medical Center located at 400 Fort Hill Ave, Canandaigua, NY 14424 requires a service maintenance plan for the Siemens HTME (High Tech Medical Equipment) currently in use at the Canandaigua VA Medical Center to include replacement parts coverage, remote service support, telephone support, operating system software and hardware reliability reports, as well as, continuing education and support service. The contractor will be responsible for full maintenance coverage by providing all replacement parts, labor, travel expenses, tools, test equipment and other incidentals necessary to maintain or restore the listed equipment to operating specifications according to the manufacturer's recommendations throughout the term of the contract.

Covered equipment includes the following:

Manufacturer	Model	Site #	EE#
Siemens	SOMATOM AS64	400-497513	247339
Siemens	Medrad Stellant D	400-497514	258506

The purpose of the service agreement is to reduce the costs and improve equipment turn-around time and reliability. This will be a firm-fixed price task order contract from contract # SPED1-17-D-

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0023 for the anticipated period of performance of February 17, 2018 to February 16, 2019 with a provision of three (3) option years at an annual cost of \$122,864.66 per year for a total contract value of \$491,458.64. Pricing was agreed upon to be an equal annual cost between Siemens and accepted by the VA NAC. There will not be any service cost increases for the base plus three (3) years per the VA NAC contract SPED1-17-D-0023 as well as the proposal 1-M66XV5 submitted.

Pricing will be as follows:

Base year	02/17/2018 to 02/16/2018	\$122,864.66
Option year #1	02/17/2019 to 02/16/2020	\$122,864.66
Option year #2	02/17/2020 to 02/16/2021	\$122,864.66
Option year #3	02/17/2021 to 02/16/2022	\$122,864.66
Grand Total		\$491,458.64

Option year pricing is consistent with the base period throughout the length of the contract with no increase in costs.

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):

() 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).

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() 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:** Siemens is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Siemens HTME described above due to patents and copyrights on the equipment. This prevents other possible contractors from accessing the diagnostic software, possessing necessary tooling and providing OEM parts to the Government. To ensure that services performed on the equipment meets OEM requirements as per Title 21 Part 820, Subpart N, Section 820.200, “Servicing in order to mitigate any liability as a result of equipment failure due to improper servicing of modification of equipment.”

These maintenance services are considered “highly specialized” and thus there is only one responsible source.

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

Past procurement history indicates that this procurement was sole sourced to the joint DSCP/VA contract SPED1-17-D-0023 due to patents and copyrights, precluding other contractors from being able to meet all of the service requirements. A search of GSA elibrary for Siemens in Schedule 65 II A resulted in no potential vendors that could provide the necessary services. A search in the VA MedSurg Catalog for a Siemens Imaging provided one (1) vendor, Siemens. A search under the SBA website under NAICS code 811219 with keywords “Siemens imaging” produced zero matches. A search in VetBiz under NAICS code 811219 with keywords “Siemens” produced one match, First Look Biomedical LLC; however, the vendor’s service area is South Carolina only, not New York.

Notice of Intent to Sole Source/Sources Sought #36C24218I9293 was posted to FedBizOpps from January 10, 2018 through January 17, 2018 seeking information from contractors who could potentially provide the required maintenance service. One response was received from Siemens providing their capability to perform the service.

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.*

In situations involving complex medical equipment, it is difficult to remove barriers to competition because the OEM is the only qualified company capable to provide the repair and maintenance of its own specialized medical equipment. This is especially true where proprietary software, specific diagnostics tools, and specialized electronics are used to maintain the HTME in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Siemens equipment, the only alternative

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would be to replace the existing Siemens equipment with a more generic brand. At this time, the Canandaigua VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Canandaigua VAMC currently does not have the sufficient budget to replace the Siemens equipment thus the reason to have equipment properly maintained through the life of the contract. Considerations for new equipment will be made when the existing equipment reaches the end of its life cycle span.

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.***

Due to the proprietary nature, Siemens is the only authorized company able to perform maintenance on its imaging equipment. They have the technical expertise to provide maintenance and service, as well as being the only company with access to manuals and design specifications of its imaging equipment. Siemens is the only company that can access its systems remotely and offer certified parts that meet the original manufacturer's specifications. Siemens technicians are the only OEM trained and certified personnel authorized to perform service on this HTME (High Tech Medical Equipment). However, GSA, VetBiz, SBA, and the VA NAC MedSurg websites were used to determine if there were any other vendors capable of providing service and/or maintenance on the Siemens equipment. Additionally, a Notice of Intent to Sole Source/Sources Sought was posted to FBO (FedBizOpps) from January 10, 2018 to January 17, 2018 seeking information from contractors who may be capable of providing the required maintenance service. One response was received from Siemens providing their capability to perform the service. It has been determined that Siemens is the only company capable of providing these services on this highly specialized equipment to the agency.

9. Other Facts: This contract is in support of the VA-DoD Direct Sharing Agreement with the DSCP in consolidation with four of the DOD's HTME contracts, namely SPED1-17-D-0023. The use of these consolidated HTME contracts after first considering mandatory sources is strongly encouraged by the NAC.

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.

Thomas Hadley
Maintenance Control Manager
Canandaigua VA Medical Center

Date

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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: ***(insert the methods that will be used to determine a fair and reasonable price)***.

6. A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

The anticipated cost to the government is considered fair and reasonable based upon adequate competition on the VA NAC contract requirements and negotiation of prices prior to contract award. The pricing for this annual service requirement comes directly from the manufacturer, Siemens, is identical to the pricing available under their VA NAC contract. The Contracting Officer sought additional discounts from Siemens on January 11, 2018. The Inside Sales Specialist, Angela Clemmons, indicated that no further discounts were available.

The proposed pricing for this task order has been compared to the price of the previous procurements as follows:

- a. SPED1-17-D-0023/VA797P-6029B/VA242-17-J-1277, Siemens, February 17, 2017 – February 16, 2018, PO#528-C72106 and 528-C82071, \$120,660.36

Manufacturer	Model	EE #	Current Age of Eq	Replacement Date	Lifecycle of Equipment	Estimate Replacement Cost
Siemens	SOMATOM AS64	247339	2 years	2025	10 years	\$645,659
Siemens	Medrad Stellant D	258506	2 years	2022	7 years	\$4,636.41

Please note that there is no guarantee that this equipment will be replaced in the recommended year. This is due to the VA not having a consistent equipment budget. For example, Canandaigua was scheduled to replace \$5 million in equipment during FY17; however, only \$2 million in funding was received. Also, some of the equipment dollars were used for new technology purchases and activations of new clinical spaces. As a result, necessary equipment replacements get pushed from one year to the next due to funding availability.

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

Janine Childs
Contracting Officer
NCO 2 Buffalo VA Medical Center

Date

13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#).

- 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.

Cheryl Brimmer
Branch Chief, Service Team I
VISN 2 NCO

Date