

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID:** VA242-18-AP-3384

1. **Contracting Activity:** Department of Veterans Affairs, VISN 02, Syracuse VA Medical Center  
Department of Veterans Affairs, VISN 02, Syracuse VA Medical Center, 800 Irving Avenue, Syracuse,  
NY 13210-2716.

Purchase request number: 528-18-2-7803-0446

2. **Description of Action:** This is a request for approval of a task order under DSCP contract #SPE2D1-17-D-0023 for full service maintenance coverage on the Siemens Medical Solutions, USA imaging equipment currently in use at the Syracuse VA Medical Center. This procurement will be conducted in accordance with FAR Part 16.5. 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 DSCP contract #SPE2D1-17-D-0023. The anticipated period of performance is from March 2, 2018 to March 1, 2019 with a provision of three (3) option years. The annual cost is \$145,689.09 and the total estimated cost is \$582,756.36.
3. **Description of Supplies or Services:** The Syracuse VA Medical Center located at 800 Irving Avenue, Syracuse, NY 13210-2716 requires a service maintenance plan for the Siemens Medical Solutions, USA imaging equipment currently in use at the Syracuse 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.

The gold level service contracts for the Symbia T6 Scanning System, CT/PT.Net single-User will be used for the principle coverage period of 8AM – 6PM, 97% uptime guarantee, 30 minute phone response, 4 hour onsite response, parts, parts delivery same day if ordered prior to noon, Siemens remote services, Fixed FD coverage, Tube coverage, safety checks, planned maintenance, quality assurance, system updates, technical phone support, labor, travel, and access to Siemens Customer Care Center for technical telephone support (remote diagnostics to the site and the equipment).

The gold level service contract for the Interventional Radiology's Symbi S Gamma Camera will be used for the principle coverage period of 8AM – 6PM, 97% uptime guarantee, 30 minute phone response, 4 hour onsite response, parts, parts delivery same day if ordered prior to noon, Siemens remote services, safety checks, planned maintenance, quality assurance, system updates, technical

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phone support, labor, travel, access to Siemens Customer Care Center for technical telephone support (remote diagnostics to the site and the equipment).

The gold level service contract for the Symbia.Net Single-User will be used for the principle coverage period of 8AM – 6PM, 97% uptime guarantee, 30 minute phone response, 4 hour onsite response, parts, parts delivery same day if ordered prior to noon, safety checks, planned maintenance, quality assurance, system updates, technical phone support, labor, travel, access to Siemens Customer Care Center for technical telephone support (remote access to the site and the equipment).

Covered equipment includes the following:

Manufacturer	Model	EE#	Serial #	Site #
Siemens	Symbia T6	252885	2041	400-472175
Siemens	Symbia S	252881	2132	400-469185
Siemens	Symbia.Net Single-User			400-472176

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 DSCP contract #SPE2D1- 17-D-0023 for the anticipated period of performance of March 2, 2018 to March 1, 2019 with provision of three (3) options years at an annual cost of \$145,689.09 per year for a total contract value of \$582,756.36. Pricing was agreed upon to be an equal annual cost between Siemens Medical Solutions, USA and accepted by the VA NAC. There will not be any service cost increases for the base plus three (3) years per the DSCP contract #SPE2D1-17-D-0023 as well as the proposal #1-MJBBPQ submitted. Pricing will be as follows:

Base year: 03-02-2018 to 03-01-2019 \$145,689.09

Option yr. #1: 03-02-2019 to 03-01-2020 \$145,689.09

Option yr. #2: 03-02-2020 to 03-01-2021 \$145,689.09

Option yr. #3: 03-02-2021 to 03-01-2022 \$145,689.09

Grand Total \$582,756.36

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):

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( ) 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.

5. **Rationale Supporting Use of Authority Cited Above:** Siemens Medical Solutions, USA is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the Siemens Medical Solutions, USA HTME medical equipment 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:** Past procurement history indicates that this procurement was sole sourced to the joint DSCP/VA contract #SPE2D1-17-D-0023 due to patents and copyrights, precluding other contractors from being able to meet all of the service requirements. A search of

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GSA elibrary for Siemens Symbia resulted in no potential vendors that could provide the necessary services. A search under the VetBiz and the SBA websites under NAICS code 811219 with keyword “Symbia” produced zero matches.

Notice of Intent to Sole Source #36C24218Q0240 was posted to FedBIZOpps from February 6, 2018 to February 12, 2018 seeking information from contractors who could potentially provide the required maintenance service. No responses were received from any source.

7. Actions to Increase Competition: 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 equipment in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Siemens Medical equipment, the only alternative would be to replace the existing Siemens Medical equipment with a more generic brand. At this time, Syracuse VAMC is satisfied with the quality and operation of the installed equipment, its maintenance and repair. Syracuse VAMC currently does not have the sufficient budget to replace the Siemens Medical 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: Due to the proprietary nature, Siemens Medical Solutions, USA 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 the only company with access to manuals and design specs of its imaging equipment. Siemens Medical Solutions, USA is the only company that can access its systems remotely and offer certified parts that meet the original equipment manufacturer’s specifications. Siemens Medical technicians are the only OEM trained and certified personnel authorized to perform work 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 Medical equipment. Additionally, a Notice of Intent to Sole Source was posted to FBO (FedBizOpps) from February 6, 2018 to February 12, 2018 seeking information from contractors who may be capable of providing the required maintenance service. No responses were received from any source. It has been determined that Siemens Medical Solutions, USA 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 DSCP contract #SPE2D1-17-D-0023. The use of these consolidated HTME contracts after first considering mandatory sources is strongly encouraged by the NAC.

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- 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.

\_\_\_\_\_  
Earl Evans  
Engineer  
Syracuse VAMC

\_\_\_\_\_  
Date

- 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 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 Medical Solutions, USA, is identical to the pricing available under their VA NAC contract. The Contracting Officer sought additional discounts from Siemens Medical Solutions, USA on February 7, 2018. The Service Sales Executive, Darryl Harrison indicated that no further discounts were available. Additionally, the acceptable inflation factor for these services in the commercial marketplace is 10% annually.

Siemens T6 Cat Scan was purchased in August 2012 under purchase order 528B24047 \$609,751.27.

Siemens S Gamma Camera was purchased in August 2012 under purchase order 528B24046 \$344,631.09.

Siemens Net Single User – Software package was installed on the CT.

Manufacturer	Model	EE#	Current Age of Eq	Replacement Date	Lifecycle of Equipment	Estimate Replacement Cost
Siemens	T6 Cat Scan	252885	6 years	2022	10 years	\$675,000.00
Siemens	S Gamma Camera	252881	6 years	2022	10 years	\$345,000.00

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, Syracuse was scheduled to replace \$6 million in equipment during FY17; however only \$3 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.

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Kimberly Wiatrowski  
Contracting Officer  
VISN 2 NCO

\_\_\_\_\_  
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 - Services  
VISN 2 NCO

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Date