

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval (J&A)  
For  
Other Than Full and Open Competition (>\$150K)**

Acquisition Plan Action ID: VA256-18-AP-4470

1. **Contracting Activity:** Department of Veterans Affairs, NCO 19

2. **Nature and/or Description of the Action Being Processed:**

The Department of Veterans Affairs (VA) has a requirement for home oxygen services for VA beneficiaries throughout Veterans Integrated Service Network (VISN) 19 at the Oklahoma City and Muskogee Medical Centers. This requirement was previously through an Indefinite Delivery, Indefinite Quantity (IDIQ) type Fixed Price contract under NCO 16. NCO 16 excluded OKC & MUS from the renewal of the Home Oxygen contract. They did so without timely notifying NCO 19, the vendor or the affected facilities prior to 2-23-2018. That failure to timely notify everyone involved regarding an imminent stoppage of home oxygen care necessitated this emergency interim procurement. The new VISN 19 contract has not been awarded. We are currently seeking contract clearance from SAO West to complete the awards. The period of performance under the NCO-16 contract ends February 28, 2018. Since Home Oxygen services is a critical service, and the new contract will not be awarded in time for a contractor to start performance on March 1, 2018, an interim contract is anticipated. A lapse in service is not acceptable. The incumbent, a large business is the only company able to provide the services necessary during this two-month interim period. The estimated cost for a two-month interim contract is \$698,456.26. based on the estimated quantities and the current contract pricing.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** This interim contract will encompass the rental of home oxygen equipment, to include but not limited to, compressors, portable oxygen machines, tanks, racks, and liquid oxygen systems, delivery, set-up, and resupply of oxygen as necessary to meet the medical needs and prescriptions for our veterans, and repair, and pick-up of equipment, resupply of expendable supplies (nasal cannulas, hoses, etc.) and medical grade oxygen, and quarterly checks from a Certified Respiratory Therapist or a Registered Respiratory Therapist in accordance with the statement of work.

4. **Statutory Authority Permitting Other than Full and Open Competition:**

- (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- (2) Unusual and Compelling Urgency per FAR 6.302-2;
- (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- (4) International Agreement per FAR 6.302-4
- (5) Authorized or Required by Statute FAR 6.302-5;
- (6) National Security per FAR 6.302-6;
- (7) Public Interest per FAR 6.302-7;

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** The incumbent contractor, Rotech Healthcare is the only company that can reasonably act in sufficient time and with

reasonable cost to continue this service for the estimated two months that are needed for this contract. Any other company, other than the incumbent, would be exposed to a large initial start-up cost for equipment. Potentially another company, other than the incumbent, would charge a significantly higher price. This would not be in the best interest of the Government. The incumbent contractor already has equipment and personnel in place to provide this service for the additional time. Therefore, no additional resources are necessary for the incumbent contractor to continue performance. This puts the incumbent contractor in a unique position to be able to provide this service in a manner that no other competitor could.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** Due to time constraints, an offer will only be sought from the incumbent contractor. However, the new contract for Home Oxygen services across VISN 19 was competed as an SB set-aside after appropriate market research.
7. **Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:** The current pricing being paid to the contractor has already been verified to be fair and reasonable by a warranted Contracting Officer. The Contracting Officer for this action will review the pricing offered and will use the pricing from the current contract and pricing received in conjunction with the ongoing solicitation to verify those prices offered to be fair and reasonable.
8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** For this action, no market research was conducted. For the reasons stated above, it is not likely that any other offeror would be able to reasonably act in that two-month window at a reasonable price. The incumbent contractor is the only source that would be able to offer the services at a fair and reasonable price due to its unique position of already having the equipment and staffing in place.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** In addition to the budgetary arguments above, and the inability of any contractor to successfully complete a transition of services in time. It would not be practical to switch out contractors without a properly planned transition period. To properly transfer this service, a new contractor would replace equipment in the Veteran's home and the old equipment must be picked up by the outgoing contractor. Therefore, for this reason as well, it is in the best interest of the Veterans, and therefore the Government, to continue with the incumbent contractor.
10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** The Incumbent contractor has indicated that they are willing to continue service until the new contract is awarded and an orderly transition has occurred. No other sources are in a position to take on this service for this period of time.
11. **A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:** The Agency will continue to seek clearance on the award of the new contract to ensure these interim contracts of this type contracts are not required.

12. **Requirements Certification:** I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

[Redacted]

[Redacted]

13. **Approvals in accordance with the [VHAPM Part 806.3 OFOC SOP:](#)**

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

[Redacted]

[Redacted]

b. **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.

[Redacted]

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