

DEPARTMENT OF VETERANS AFFAIRS

**Justification and Approval (J&A)
For
Other Than Full and Open Competition (>\$150K to \$700K)**

Acquisition Plan Action ID: VA260-18-AP-1676

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 20 Network Contracting Office, Portland Health Care System (HCS) Station 648, requesting office: Portland VA Medical Center (PVAMC) Biomedical Engineering (P2FMS). Purchase request number 648-18-1-105-0009.
- 2. Nature and/or Description of the Action Being Processed:** This is a request for Other Than Full and Open Competition for a Firm Fixed Price contract with Stryker Corporation. The procurement request is for a Full-Service Contract to maintain Stryker Neptune II Surgical Waste Collection Systems currently in use at the PVAMC. This is the initial request funded via PR # 648-18-1-105-0009.

This procurement is in accordance with FAR 13.5 Simplified Procedures for Certain Commercial Items and specifically FAR 13.501 Special Documentation Requirements, where acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2.

3. Description of Supplies/Services Required to Meet the Agency's Needs:

This Full-Service Maintenance contract is to support the PVAMC's current inventory of Stryker Neptune II Rovers and Dockers. The Period of Performance (POP) is a Base Period + 4 Option Periods beginning on 3/1/2018 - 2/30/2023. This contract is a Firm Fixed Price procurement with an estimated annual cost of \$31,350.00 per year. The total cost for the Base Period + 4 Option Periods is estimated to be \$156,750.00.

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

The Authority permitting Other than Full and Open Competition is 41 USC §3304(a), as implemented by FAR 6.302-1.

- (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;

The authority for applying the Simplified Procedures for Commercial Items exceeding the Simplified Acquisition Threshold (SAT) of FAR 13.5 is 41 U.S.C. 1901 (a)(2) and is implemented by restricting competition on this procurement via FAR 13.106-1(b)(2) only one source available.

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 Stryker Neptune line of surgical waste collection medical equipment is classified as a High Tech Medical Equipment (HTME) and, as such, is technologically complex. Given the nature of the equipment and the need for reliability in providing patient care in a surgical procedure environment it is necessary to utilize only OEM certified technicians to test, calibrate, maintain and repair this line of HTME. Stryker Corporation has submitted documentation stating that Stryker does not provide any certifications to third-party companies or technicians. In addition, OEM replacement parts required as part of this maintenance agreement are not made available to third party companies and Stryker will not provide any certification that the systems operational integrity has been maintained when Non-OEM replacement parts or service are utilized in Stryker equipment.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

This action is exempt from solicitation as outlined in FAR 6.302-1 (b)(2) due to patent rights and control of basic raw materials and secret processes. Stryker Corporation has provided a proprietary letter stating that only their Certified Technicians can work on the HTME and only their technicians have access to OEM replacement parts.

FAR6.302-1 (b)(2) "The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source."

In addition, due to the proprietary letter received from Stryker Corporation and information received from the VA Chief of Biomedical engineering the exemption found in FAR 6.302-1 (b)(4) also applies to this proposed action.

FAR 6.302-1 (b)(4) "When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available"

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:

The contracting officer anticipates price will be considered fair and reasonable in accordance with FAR 13.106-1(b) and based on FAR 13.106-3(a)(2), using market research and comparison to the proposed prices listed in the Independent Government Cost Estimate (IGCE). The price will be determined to be fair and reasonable prior to award and documented in accordance with FAR requirements.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

Market research was conducted to satisfy the requirements of the FAR 10.002(a) and is included in the briefcase for this requested action. As part of the market research the Vendor Information Page (VIP) database looking for SDVOSBs/VOSBs capable of providing the requested service. Due to the proprietary nature of the service being purchased there was no reasonable expectation that any capable contractors under VHAPM Part 810.001 Veterans First Contracting Program would be available. The results of the VIP Database queries are recorded in the briefcase as required by VAAR 810.002.

As described in Section 6 above, this procurement is exempt from synopsis under FAR 6.302-1 because the services are confirmed to be only available from Stryker Corporation. Through the market research process, it was determined that the services required can only be supplied by Stryker Corporation. As such Stryker is the Sole Source provider for this service contract.

The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: N/A

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: N/A

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:

In an effort to encourage competition in the future, the VA will review the requirements periodically to ensure that all the requirements of the contract reflect the minimum requirements to perform the services covered in this contract. This contract includes option years to avoid a potential break in service as there is a continuous need for this type of service.

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.

X

Gordon Hosoda
Chief, Biomedical Engineering

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

- a. **Contracting Officer's Certification (Required for All – Approval Less Than \$150K):** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

Name: Lisa Spiral O'Neil
Contracting Officer
VISN 20 (NCO20) Acquisitions Team

Date:

- b. **One Level Above the Contracting Officer (Required over \$150K – Approval to \$700K):** I certify the justification meets requirements for other than full and open competition.

Name: Karen Dailey
Branch Chief, Services 2 Branch
Network Contracting Office 20 (NCO 20)

2/12/2018

Date: