

**DEPARTMENT OF VETERANS AFFAIRS**

**Justification and Approval**

**For**

**Exception to Fair Opportunity Memo**

**Acquisition Plan Action ID:** VA242-18-AP-5142

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 2  
Network Contracting Activity (2-90NCA)  
Buffalo VA Medical Center, 3495 Bailey Avenue, Buffalo NY 14215  
2237# 528-18-1-4803-0019
- 2. Description of Action:** : This is a request for approval of a task order under VA NAC contract VA797H-17-D-0024 for full service maintenance coverage on the GE Healthcare PET/CT currently in use at the Buffalo 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 VA NAC contract #VA797H-17-D-0024. The anticipated period of performance of June 1, 2018 to May 31st, 2021 with a provision of two (2) option years. The annual cost is \_\_\_\_\_ for the base year and each of the two option years for a total estimated cost of \$576,195.00.
- 3. Description of Supplies or Services:** The Buffalo VA Medical Center, located at 3495 Bailey Avenue, Buffalo, NY 14215-1129, requires a service maintenance plan for the GE PET/CT. The maintenance plan includes: replacement parts coverage, remote service support, telephone support, operating system software and hardware reliability reports, continuing education for VA staff, 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 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 VA797H-17-D-0024 for the anticipated period of performance June 1st, 2018 to May 31, 2021 with the provision of two (2) options years at an annual cost of \_\_\_\_\_ for the base year and each of the two option years for a total contract value of \$576,195.00. Pricing was agreed upon to be an equal annual cost between GE Healthcare and accepted by the VA NAC. There will not be any service cost increases for the base plus two (2) years per the VA NAC contract VA797H-17-D-0024 as well as the proposal # 56D3D3C submitted. Pricing will be as follows:

Base year 10/1/2017 to 9/30/2018	
Option Year #1 10/1/2018 to 9/30/2019	
Option Year #2 10/1/2019 to 9/30/2020	
Grand Total	\$576,195.00

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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).

( ) 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:** GE Healthcare is the only company that can provide all the necessary OEM parts and perform all the necessary repairs for the GE PET/CT due to patents and copyrights on the equipment. This prevents other possible vendors from accessing the diagnostic software, possessing necessary tooling, and providing OEM parts to the Government. Utilizing the OEM vendor, ensures that services performed on the equipment meet 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 V797P-6019B due to patents and copyrights, which precluded other contractors from being able to meet all of the service requirements.

A search on VetBiz using NAICs code 811219 and keyword “GE” identified 166 potential SDVOSB or VOSB vendors that could possibly meet the requirements of this procurement. A sources sought notice, 36C24218Q9357 was posted on FBO from 04/25/2018 through 05/04/2018. One response was received from iMed Biomedical, Inc., a SDVOSB, however they are not able to meet all of the requirements of this procurement.

A search on GSA eLibrary using key words “GE Healthcare” identified that GE Healthcare does have an FSS contract (V797D-50507), however it does not include line items for service maintenance agreements. A search of CCST using keywords “Service agreement GE PET/CT” did not identify any FSS contracts that could meet the requirements of this procurement. A review of CCST did identify that GE does have a HTME contract (VA797H-17-0024) that can meet the requirements of this procurement.

A search of the SBA Quick market Search function using NAICs code “811219” and keyword “GE” identified five woman owned businesses, two VOSB and one SDVOSB. A review of their profiles did not identify any small businesses that could possibly meet the requirements of this procurement.

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 GE PET/CT, the only alternative would be to replace the existing GE Medical equipment with a more generic brand. At this time, Buffalo VAMC is satisfied with the quality and operation of the installed equipment. Buffalo VAMC currently does not have the sufficient budget to replace the Buffalo 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:** *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.*

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Due to the proprietary nature, GE Healthcare 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. GE Healthcare is the only company that can access its systems remotely and offer certified parts that meet the original equipment manufacturer's specifications. GE Healthcare 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 GE PET/CT. Additionally, a Sources Sought notice was posted to FBO (FedBizOpps) from April 25<sup>th</sup>, 2018 to May 4<sup>th</sup>, 2018 seeking information from contractors who may be capable of providing the required maintenance service. One response was received however the vendor was not able to meet all of the requirement of the procurement. It has been determined that GE Healthcare is the only company capable of providing these services on this highly specialized equipment to the agency.

9. **Other Facts:** 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.

Lisa M.  
Rummings  
326856

Digitally signed by Lisa  
M. Rummings 326856  
Date: 2018.05.07  
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Lisa Rummings  
Program Support Specialist  
Buffalo VA Medical Center

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

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

MICHAEL A.  
SPIVACK  
336645

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MICHAEL A. SPIVACK  
336645  
Date: 2018.05.07  
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\_\_\_\_\_  
Michael Spivack  
Contracting Officer  
NCO 2 Services Team I

\_\_\_\_\_  
Date

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

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- 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 M  
Brimmer 113171

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M Brimmer 113171  
Date: 2018.05.07 13:03:38  
-04'00'

Cheryl Brimmer  
Branch Chief  
NCO 2 Services Team I

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Date