

JUSTIFICATION AND APPROVAL
FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Technology Acquisition Center
260 Industrial Way West
Eatontown, New Jersey 07724
2. Description of Action: The proposed action is for a firm-fixed-price (FFP) Task Order (TO), issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) IV Government Wide Acquisition Contract (GWAC) for software maintenance and support for BMC software currently owned by VA. The period of performance for this effort shall consist of one 12-month base period with four 12-month option periods.
3. Description of Supplies or Services: The contractor shall provide ongoing maintenance and support services for the existing Enterprise Testing Services (ETS) installed BMC software products. This maintenance and support shall consist of any and all manufacturer-released software updates, patches and versions for the existing licenses. The maintenance and support shall also include access to the manufacturer's approved support resources such as help-desk and consultation services for the purposes of resolving problems, issues, and questions concerning the existing BMC software licenses.
4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by Federal Acquisition Regulation (FAR) Subpart 16.505(b)(2)(i)(B) entitled, "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."
5. Use of Authority Cited Above: The mission of ETS is to establish testing environments that are accurate representations of field-deployed production information technology (IT) systems. Therefore, ETS has taken the approach of replicating, to the maximum extent possible, actual field systems in its test center environments. In order to be sure that the field environments are equivalent to testing environments, it's imperative that the same tools are used in both; as such, BMC software was purchased and installed for the testing environment. The software code required to provide upgrades, patches and fixes is owned by BMC; this intellectual property is not made available for use third party vendors and is protected by contract, trade secret, copyright and patent laws. Due to the proprietary nature of the products, BMC Software maintenance and support is required and no other maintenance and support can meet the Government's requirement to ensure continuity of maintenance and support for the existing software licenses.
6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. Although the Government is limiting

competition as a result of specifying a brand name, limited competition is anticipated among Group B and C NASA SEWP contract holders for the required maintenance and support. Additionally, this Justification and Approval and the Request for Quotation (RFQ) will be submitted to all four NASA SEWP IV GWAC Groups in order to fully notify all interested parties. All SEWP IV orders are placed under existing indefinite delivery, indefinite quantity contracts, and thus are not required to be synopsisized pursuant to FAR subpart 16.505(a)(1); however, notice of the task order award and this justification shall be made publically available on FedBizOpps.gov within 14 days after award in accordance with FAR 16.505(b)(2)(ii)(D).

7. Actions to Increase Competition: In order to remove or overcome barriers to competition in the future, the program office will continue to perform market research on this software maintenance and support to determine if other solutions can be considered for future procurements.

8. Market Research: On June 15, 2012, the VA Technology Acquisition Center (TAC) issued a market research request through the NASA SEWP IV GWAC website to identify resellers who could provide the required BMC software maintenance and support. On June 19, 2012, the market research request closed with responses from four interested vendors: Four Points Technology, LLC (Group A Large Business), Iron Bow Technologies, LLC and PC Mall Gov, Inc. (Group D Value Added Resellers) and Intelligent Decisions (Group C Small Business). On June 21, 2012 an additional response was received via email from Three Wire Systems, LLC (Group B Service Disabled Veteran Owned Small Business (SDVOSB)). As such, there is reasonable expectation that two or more small businesses will submit a response to the solicitation; therefore, this solicitation will be released only to Group B (SDVOSB) and Group C (Small Business) contract holders in order to maximize opportunity to Small Business concerns.

9. Other Facts: On September 16, 2011, the Government awarded a delivery order for the original purchase of the above mentioned BMC software including installation and twelve months of maintenance and support under contract NNG07DA44B TO VA118-11-F-0302 in the amount of \$337,442.69.

In accordance with Public Law 100-656, all actions over \$25,000 must be entered into the Forecasting of Contracting Opportunities (FCO) database. This procurement has been entered into FCO via the electronic Contract Management System (eCMS).