

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: _VA242-18-AP-5092_____

1. **Contracting Activity:** Department of Veterans Affairs, VISN 2, New York Harbor Healthcare System, Brooklyn campus located at 800 Poly Place, Brooklyn, NY 11209 submitted Purchase Request number 630-18-3-4454-0062 to Network Contracting Office (NCO) 2 for a Full Service and Maintenance on Siemens Equipment Items.
2. **Description of Action:** Network Contracting Office (NCO) 2 intends to award a sole-source task order to Siemens Medical Solution USA, Inc., for a full service preventative maintenance and repairs contract on the equipment items listed below. The contract shall ensure that the Siemens equipment items are operational and meets NFPA-99, OSHA, and CDRH specifications. The proposed sole source task order against Indefinite-Delivery Contract SPE2D1-17-D-0023 is for a one-year firm-fixed price (FFP) with four (4) one (1) year option renewal periods at the decision of the Government. The task order anticipated performance period is June 01, 2018 or date of award, through May 31, 2019 for the base period.

Artis Zee Ceiling – FLN: 400-287020

Hours of Coverage: 8am – 10pm Monday – Friday

Oncor Expression Bundle – FLN: 400-208779

Hours of Coverage: 8am – 6pm Monday – Friday

MAGNETOM Symphony ATS – FLN: 400-156720

Hours of Coverage: 8am – 6pm Monday – Friday

Post-PCP Extension 4 Hours: 12am – 4am Monday - Friday

ECO Chiller – FLN: 400-282694

Hours of Coverage: 8am – 10pm Monday – Friday

Emergency Repair Coverage 24/7

MR Chiller Model KCC/KSC 215-2K – FLN: 400-190349

Hours of Coverage: 8am – 5pm Monday – Friday

OEM Preventative maintenance (PM) coverage only

3. **Description of Supplies or Services:** Full service contract to include all necessary labor, tools, equipment, transportation and parts required to perform repair and preventive maintenance (pm) on listed equipment. Oncor Expression Coverage Bundle for the Oncor Expression includes: High Vacuum Component Coverage, Waveguide Coverage, Coherence Therapist, Coherence Oncologist,

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OptiFocus (82 Leaf MLC) and OptiVue 1000 ST (AG9) Flat Panel Detector Replacement and Maintenance. All parts provided will be new or of equal quality incorporating the latest revision level. All equipment shall be maintained in proper operating condition as specified by the manufacturer. Full service does not apply to the MR Chiller.

SPECIFICATIONS FOR CHILLERS:

- Check all water pressures, supply and return for proper fluid levels and glycol concentration.
- Check supply and return chiller temperatures for acceptable operating limits.
- Check all electrical connections.
- Check all refrigerant pressures.
- Check relay operation.
- Check pumps averages and voltage.
- Clean condenser coils. Check condenser fan operation.
- Adjust compressor controls and evaluate system operation.

SPECIFICATIONS OF WORK:

Repair services will be provided at the request of the VA, to diagnose and correct equipment malfunctions on a routine basis. All repairs shall be performed by a manufacturer trained technician. Contractor will follow manufacturer's recommendations for PM repair, calibration.

PREVENTATIVE MAINTENANCE:

PM Service will be mutually scheduled in advance and conducted as per Original Equipment Manufacturers specifications. It is the contractor's responsibility to schedule preventative maintenance as listed. PM procedures subscribed to must follow manufacturer's specifications be documented and submitted in writing to biomedical engineering at inception of contract PM shall include at a minimum: electrical safety testing, lubrication, adjustment, calibration, testing and replacement of faulty parts and/or parts which are likely to fail at no additional charge. Upon completion of PM, the unit must be clearly labeled with a sticker stating the date last PM was completed and the due date of next PM, as well as name of technician that performed said PM.

The total estimated value of the proposed action is \$1,863,850.49 for base period plus four (4) one year option renewal periods.

Base Period:	\$385,743.09
Option Period One:	\$381,066.70
Option Period Two:	\$381,066.70
Option Period Three:	\$381,066.70
Option Period Four:	\$334,907.30

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.

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(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 is the sole manufacturer of the Artis Zee Ceiling, Oncor Expression, Magnetom Symphony MRI, ECO Chiller, and MR Chiller as well as all software and accessories. Siemens Field Service Engineers are highly trained and are subject matter experts on the repair and maintenance of their systems. Siemens equipment is highly specialized and requires an extreme level of expertise to be repaired and maintained correctly. The company also owns the proprietary software and licenses to maintain/repair/upgrade the software. Siemens has the sole ownership of Original Equipment Manufacturer's repair parts, without which the equipment will not function. Siemens software as well as the Coherence Therapist found on the Oncor unit are proprietary to Siemens and cannot be repaired, maintained or upgraded by any 3rd party. The equipment CANNOT and WILL NOT function without this proprietary software. Patients Requiring Radiation therapy treatment will not be receiving necessary therapy without this support contract. The Oncor & Chiller equipment is crucial in the proper, most cost-effective diagnosis and treatment of Veterans suffering from various cancerous diseases. The equipment will not function without the service contract requested and patient care will be gravely compromised at the Brooklyn VA as far as resulting in death of patients that could have been spared by Radiation Therapy & Treatment.

6. **Efforts to Obtain Competition:** Market research was conducted, details of which are in the market research section of this document. This effort did not yield any additional sources that can meet the

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Government's requirements. There is no competition anticipated for this acquisition. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award at the Federal Business Opportunities website and the justification will be made publicly available. Any additional efforts to overcome barriers will require the Program Manager for the Biomedical Engineering department to identify alternatives that will meet the needs of the Agency on a national level. The local NCO has very little capability to overcome the barriers which exist as a result of a national procurement strategy. This parent contract is part of the DoD – VA Cost Sharing Program between Defense Supply Center Philadelphia (DSCP) and the National Acquisition Center (NAC).

7. Actions to Increase Competition: It is difficult, if not impossible, to remove barriers to competition for complex medical equipment. The proprietary software, specific diagnostics tools and specialized electronics are used to maintain the High Tech Medical Equipment (HTME) in accordance with OEM specifications. Consideration for new equipment will be made when the existing equipment reaches the end of its useful life. 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.
8. Market Research: Market research was performed on www.vip.vetbiz.gov using NAICS 811219. The search revealed that there are approximately 42 SDVOSB/VOSB capable of providing the required services. Request for Information (RFI) was emailed to all 42 SDVOSB/VOSB, unfortunately, no responses were received. In addition to the email RFI, an RFI was posted on www.fbo.gov. However, no responses were received. Market research further indicated that Siemens Medical Solution USA, Inc., is the Original Equipment Manufacturer (OEM) and the only firm that can perform maintenance for the required equipment due to the proprietary nature of the technical manuals, software and schematics.
9. Other Facts: Siemens owns the proprietary rights to their software and highly specialized hardware components for all aforementioned system. Siemens does not certify 3rd party vendors to maintain their equipment.
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.

[REDACTED]
[REDACTED]
[REDACTED]

Brooklyn VA Medical Center

[REDACTED]
[REDACTED]

11. Determination that Anticipated Cost is Fair and Reasonable: The anticipated cost to the Government is considered fair and reasonable based upon adequate competition on the VA NAC
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contract requirements and negotiation of prices prior to contract award. The pricing for this annual service requirement direct from the manufacturer, Siemens Medical Solution USA, Inc., is identical to the pricing available under Siemens Medical Solution USA, Inc., VA NAC contract for high tech medical equipment (HTME). The request for a task order against an already standing service contract, with pricing included. Each item is listed on the NAC pricing schedule.

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



NCO 2

13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#). *This part if filled out by Contracting Staff as part of the Justification*

- 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.



HIGHER LEVEL APPROVAL (Required for orders over \$700,000):

- b. VHA SAO HCA REVIEW AND APPROVAL (over \$700,000 to \$68 million): I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for restricting consideration of the Federal Supply Schedule contractors to fewer than the number required by FAR Subpart 8.4.


