

JUSTIFICATION FOR AN EXEMPTION TO FAIR OPPORTUNITY (ORDERS < SIMPLIFIED ACQUISITION THRESHOLD \$150,000)

Background: All supplies/services acquired under Indefinite Delivery Indefinite Quantity (IDIQ) Multiple Award Contracts (MACs) are provided through award of Delivery Orders (DOs). MAC DOs are awarded under the authority of the FAR 16.505(b), which requires all prime awardees under multiple award IDIQ contracts be given a “**fair opportunity**” to be considered for each Delivery Order. The FAR identifies six authorized exemptions to fair opportunity, which are listed below.

Results of Market Surveys: Detail the results of any market survey conducted, which would support the decision to waive the requirement for fair opportunity under a multiple award contract (i.e., if only one contractor is capable of providing the services document how this was determined).

Identification/Justification for Exemption: If the requirement qualifies for one of the six exemptions to fair opportunity, check the appropriate exception and provide justification. Please note, currently, only four of the six are applicable to the HTME Program and are listed below:

☐ 1. **The agency need for services is of such urgency that providing fair opportunity would result in unacceptable delays.**

Justification should address the following:

- a. The date that the material/service is required
- b. The approximate length of the delay that would result if the competitive award were to occur
- c. Full explanation as to *WHY* the delay would occur as a result of competition and as to *WHY* award to the selected source would result in faster performance.
- d. Impact to the mission if the delay occurred.

☐ 2. **Only one such contractor is capable of providing such services required at the level of quality required because the services ordered are unique or highly specialized.**

Justification should address the following:

- a. Why the selected source is the *ONLY* one capable of providing these particular services, keeping in mind that *ALL* of the contractors selected for award under a multiple award contract were previously determined to be capable of providing these services. Also address why the other multiple award contract holders *NOT* recommended for award *CAN'T* perform the work.
- b. An estimated dollar value/length of time that it would take to bring the other multiple award contract holders up to speed in this particular area.
- c. The length of time that this work is expected to last in relation to the answer to letter b. For instance, if this is a one-time task then it doesn't make sense to foster the competition if doing so is expensive. However, if this tasking will occur over several years, then fostering competition may make sense. Address this issue fully.

☒ 3. **The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to a DO already issued under the IDIQ contract, provided that all the contractors were given fair opportunity to be considered for the original order.**

Justification should address the following:

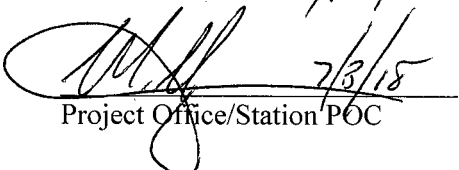
- a. This exception is used, "...provided that all awardees were given a fair opportunity to be considered for the original order." Include the number of the original order and a full description of the fair opportunity process utilized in placing the original order. Additionally, include a statement that the original order was placed under this multiple award contract.

Contract VA797H-17-D-0024, Delivery Order 797D87-034-S

- b. This upgrade is for a system that was awarded against the above mentioned contract and delivery order numbers from 2009. The awarded vendor, GE Healthcare, has the ability to perform the requested upgrade in a timelier manner than a third party vendor.
- c. Provide a full description of how circumventing the fair opportunity process meets the interest of economy and efficiency
- ☐ 4. It is necessary to place an order to satisfy a minimum guarantee.
Justification should address the following:
a. Address the minimum guarantee for the contractor (e.g., \$3,000), including the amount of orders awarded to date.
- ☐ 5. For orders exceeding the simplified acquisition threshold (SAT), a statute expressly authorizes or requires that the purchase be made from a specified source. (NA)
- ☐ 6. 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.

Once it is established that the work is either **urgent or unique** (exception #1 or #2), provide the impact. "**Schedule delays**" is not a valid impact. Below are some, but not all, the impacts which are acceptable:

1. Patient Care
2. Financial harm to the Government
3. Ability to carry out assigned missions

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Project Office/Station POC

Approve/Disapprove:

Contracting Officer