

JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Procurement Acquisition and Logistics
Technology Acquisition Center
23 Christopher Way
Eatontown, NJ 07724
2. Description of Action: The proposed action is for a firm-fixed priced delivery order, issued under the National Aeronautics and Space Administration (NASA), Solutions for Enterprise-Wide Procurement (SEWP) V, Governmentwide Acquisition Contract (GWAC) for brand name Veritas eDiscovery software licenses and software maintenance support.
3. Description of the Supplies or Services: The VA Office of Information & Technology (OIT), Infrastructure Operations, Austin Information Technology Center (AITC) has a requirement to purchase one (1) Veritas eDiscovery PreProcessing Processing Analysis Review (PPAR) 2 Terabyte (TB) onpremise standard perpetual license and one (1) Essential 12-months Initial for eDiscovery Platform PPAR 2 TB onpremise standard perpetual license maintenance for use by VA's Office of General Council (OGC). The Veritas eDiscovery license allows users to perform preservation, processing (such as decryption and de-duplication), searching, review, analysis, and production of electronically stored information including email. This assists attorneys, custodians of relevant information, and other OIT personnel in accomplishing their required discovery and auditing tasks more efficiently. OIT personnel use Veritas eDiscovery in the event they need to assist in litigation and criminal cases where email users attempt to circumvent controls and try to prevent VA investigators and OGC from accessing their email and associated document archives. The required maintenance ensures the software remains operational. The required software maintenance and support includes security patches, software updates and standard 24 hours per day, 7 days per week commercial telephone and web technical support. The base period of performance shall be July 16, 2018 through July 15, 2019, plus one (1) 12-month option period, and one (1) optional task for Veritas eDiscovery System software license and maintenance support. One license will be initially procured with an optional task to procure up to four if needed based on OGC workload. The total estimated value of the proposed action is [REDACTED] inclusive of the option and optional task.
4. Statutory Authority: The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c)(2) as implemented by the Federal Acquisition Regulation (FAR) 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. Rationale Supporting Use of Authority Cited Above: Based on the market research, as described in section 8 of this document, it was determined that limited competition is available among resellers of the required brand name Veritas eDiscovery software and maintenance. The purpose of this acquisition is to provide additional eDiscovery licenses and associated maintenance. Market research further demonstrated that

other manufacturer's products would cause unnecessary integration and communication issues. Specifically, this means that VA would have to re-architecture the entire platform to make another brand name software function. This would result in extensive delivery delays and duplicated costs that would not be recovered through competition. Using other manufacturer products would create the need to completely replace current eDiscovery software already in place within AITC. This is due to the proprietary design, source code and protocols used by each manufacturer to implement proprietary technology for their products. Replacing this currently fielded software that is not being renewed or procured under this action will result in additional delivery delays and duplicated costs that would not be recovered through competition. Veritas eDiscovery PPAR license is the only eDiscovery software license that can expend capacity of the VA's existing Veritas eDiscovery platform located at the AITC. The current system has the ability to accommodate up to 8 Terabytes (TB) of processing capability. The Veritas eDiscovery Platform is the only eDiscovery software on the market that has Public Key Infrastructure (PKI) decryption capability and Predictive Coding capability that supports VA OGC eDiscovery process. With close to 50% of VA email being encrypted, the PKI decryption capability of the Veritas software is a crucial VA requirement that grants VA the ability to decrypt data in expedited manner in order for platform users to process, search, analyze, and review digitally encrypted emails. Predictive coding allows review of the electronically stored and processed data in a very quick manner, reducing the number of attorneys required and the amount of time spent on discovery document research for various legal cases. Licensing increase and renewal will allow users to perform preservation, processing (such as decryption and de-duplication), searching, reviewing, analysis, and production of electronically stored information.

Further, increasing the licenses and providing the additional terabytes (TB) of application work space will allow VA OGC staff the capability to increase their case load and will enable VA to better meet its discovery obligations to the congressional inquiries, various courts and litigations by allowing the Veritas eDiscovery system to process more data than it can today and to complete case investigation and research in a timelier manner. No other brand name software can meet the essential VA functional requirements and is interoperable with the existing Veritas eDiscovery platform at AITC. The use of the existing platform and licensing model is critical to fully integrate OGC users into the existing platform located at the AITC. Any other brand name software would be unable to interoperate with the currently fielded Veritas eDiscovery System software. Since the required Veritas software is proprietary, only an authorized Veritas reseller can provide the aforementioned software licensing, software updates and technical support services.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in section 8 of this justification. This effort did not yield any additional sources that could meet the Government's requirements. It was determined however that limited competition is viable as there are multiple authorized resellers that hold NASA SEWP V GWACs for the required brand name Veritas products. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), the award notice for this action will be synopsized on the Federal Business Opportunities Page (FBO) and the

justification will be made publicly available within 14 days of award. In addition, in accordance with 16.505(a)(4)(iii)(A)(1), this Justification for an Exception to Fair Opportunity will be posted on the NASA SEWP V website with the solicitation.

7. Actions to Increase Competition: 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: The Government's technical experts conducted market research in June 2018 by reviewing other similar brand name eDiscovery software applications, specifically from Hewlett Packard/Autonomy, International Business Machines, Enterprise Content Management, and AccessData. Of the software applications researched, only the Veritas eDiscovery software is able to meet VA's predictive coding and PKI decryption requirements. Additionally, based on the review of similar brand name software, specifically from Hewlett Packard/Autonomy, International Business Machines, Enterprise Content Management, and AccessData, it was determined that none are able to interoperate with the existing Veritas eDiscovery System software and architecture. Each brand software product is proprietary and is therefore incompatible with software from other vendors. Different architectures cannot communicate with each other. Each brand eDiscovery application uses a different proprietary software code which makes communication between different brand names impossible. As a result, the Government's technical experts have determined that only the Veritas eDiscovery software and licenses can meet all of the Government's requirements.

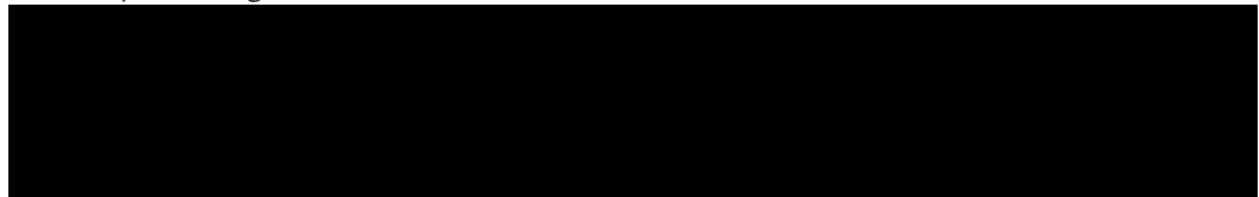
Additional market research was conducted in June 2018 by utilizing the NASA SEWP V GWAC Provider Look-up Tool to determine whether the brand name Veritas eDiscovery is available from resellers that hold NASA SEWP V contracts. It was determined that there are at least 106 resellers, inclusive of 20 service-disabled Veteran-owned small businesses, that hold current NASA SEWP V contracts. Therefore, limited competition is expected among NASA SEWP V GWAC resellers of Veritas products and services.

9. Other Facts: None

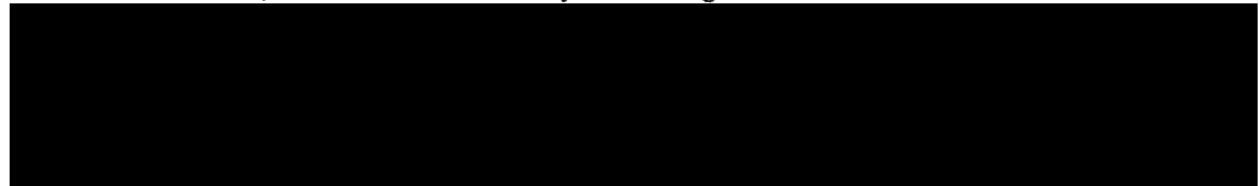
10. Technical and Requirements Certification: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.



11. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable based on anticipation of competition and discounts among NASA SEWP V GWAC resellers of the required brand name Veritas eDiscovery software license and software maintenance support services. Additionally, catalog pricing for SEWP V GWAC holders has already been determined by NASA to be fair and reasonable. Finally, price analysis shall be conducted by comparing the successful quotation with the independent government cost estimate.



12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief.



Approval

In my role as procuring activity Advocate for Competition, based on the foregoing justification, I hereby approve the acquisition of Veritas eDiscovery software licenses and software maintenance support on an other than fair opportunity basis pursuant to the authority cited in paragraph 4 above, subject to availability of funds, and provided that the property and services herein described have otherwise been authorized for acquisition.

