

## DEPARTMENT OF VETERANS AFFAIRS

### Justification and Approval (J&A) For Other Than Full and Open Competition (>SAT)

Acquisition Plan Action ID:36C24C-18-AP-0002

- 1. Contracting Activity:** Department of Veterans Affairs, SAO Central Region Contracting Office, 212 3<sup>rd</sup> Ave. South, Suite 29, Minneapolis, MN 55401.
- 2. Nature and/or Description of the Action Being Processed:** This procurement is for medical-grade bulk liquid oxygen in accordance with FAR 13.501(a) Simplified Procedures for Certain Commercial Items. Per the show cause notice dated 30 May 2018, and the lack of the response by the Contractor which ultimately led to the Termination Notice sent 11 June 2018, the Department of Veterans Affairs has determined the award of a sole source contract to ensure the continued availability of medical-grade bulk liquid oxygen is in the best interest of the Government. Contract VA240C-16-D-0007 was terminated for cause. The purpose of this justification is to request a sole source contract with Linde Gas North America LLC, who is the current tanks owner and manufacturer of the liquid bulk oxygen located at the facilities in VISN's 10 and 12. The sole-source contract will be awarded as a firm-fixed price, indefinite-delivery requirements contract.
- 3. Description of Supplies/Services Required to Meet the Agency's Needs:** Liquid Bulk Oxygen is a critical supply for the VA Medical Centers. Due to the Termination of the current contract, an emergency bridge contract is necessary to ensure continuous supply of bulk oxygen without interruption of the supply. The purpose of this contractual action is to maintain a continuous source of supply of medical-grade liquid bulk oxygen for the facilities in VISN's 10 and 12 impacted by the termination. At each of the facilities, the bulk liquid tank is owned by Linde Gas. Linde Gas also manufactures the liquid bulk oxygen. Liquid Oxygen is a pharmaceutical that is regulated by the FDA. Per industry standard, only the company who manufactures the gas is allowed to re-fill the liquid oxygen tank. This is due to Liquid Oxygen being a controlled substance regulated by the FDA. Any other product blended into the tank would cause cross contamination of the gas and therefore cannot be certified as medical grade. The requirement will be for Linde Gas to rent their tanks to the facilities in VISN 10 and 12, and deliver the liquid oxygen gas as needed. The total estimated award is \$621,229. The period of performance will be a base period of six months with a six-month option.
- 4. Statutory Authority Permitting Other than Full and Open Competition:** The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented for restricting competition on this procurement via FAR 13.106-1(b)(2).
- 5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** At each of the facilities, the bulk liquid tank is owned by Linde Gas. Linde Gas also manufactures the liquid bulk oxygen. Per industry standard, only the company who

manufactures the gas is allowed to re-fill the liquid oxygen tank due to potential cross contamination of the gas. The Government received notice on May 25, 2018 from its current contractor's sub-contractor stating that as of June 27, 2018 they will no longer deliver any supply for the contractor. As a result of this notice, the Government issued a show-cause notice which resulted in a termination letter. Liquid bulk oxygen is critical for the VA Medical centers for patient care as it is piped into the medical center and used for medical treatment and life support. Any interruption in supply has the potential to interrupt all aspects of patient care to the Veterans receiving care at the medical centers located within VISN's 10 and 12. The Government was not provided adequate notice to allow them to issue a competitive solicitation for this critical supply.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** As stated above, the lack of adequate notice does not allow time for the Government to solicit, negotiate and award a competitive contract. This emergency contract will allow for the critical supply to continue without interruption. The Government shall issue a competitive solicitation after award of the emergency sole-source.
7. **Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:** Price reasonableness will be established based on a comparison of current Government contracts, the terminated contract and the independent government estimate.
8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** Market research does support a competitive marketplace for this type of product, however, the urgent and compelling circumstances will not allow the Government to procure this product on a competitive basis. An emergency sole source bridge contract is required with the intention of competitively soliciting a new long-term contract Market research confirms the commerciality of the product being requested. The requirement is a supply contract, and thus NAICS code 325120, Industrial Gas Manufacturing with a size standard of 1,000 employees will be used. The resulting contract will be an Indefinite Delivery-Requirements contract vehicle; this will allow requesting facilities the ability to place immediate orders which will result in no stoppage of supply. This will also allow for the Government to competitively re-solicit for a new long-term contract. Price reasonableness will be established based on a comparison of current Government and the IGCE.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** NA
10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** NA
11. **A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:** An emergency sole source bridge contract is required with the intention of competitively soliciting a new long-term contract Market research confirms the commerciality of the product being requested.
12. **Requirements Certification:** I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my

cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

Scott B Royse  
\_\_\_\_\_  
Scott Royse  
Deputy Chief Supply Chain Officer  
VISN 10

6-11-18  
\_\_\_\_\_  
Date

**13. Approvals in accordance with the VHAPM Part 806.3 OFOC SOP:**

- a. **Contracting Officer** I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Jennifer Johnson  
Lead Contracting Officer  
SAO-Central Contracting

June 11, 2018  
\_\_\_\_\_  
Date

- b. **One Level Above the Contracting Officer (Required over SAT but not exceeding \$700K):** I certify the justification meets requirements for other than full and open competition.

\_\_\_\_\_  
\_\_\_\_\_  
Kimberly Hurt  
Chief, Regional Contracting  
SAO-Central Contracting

6/11/2018  
\_\_\_\_\_  
\_\_\_\_\_  
Date