

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID:36C24C-18-AP-0007

1. **Contracting Activity:** Department of Veterans Affairs, SAO Central Region Contracting Office, 212 3rd Ave. South, Suite 29, Minneapolis, MN 55401.
2. **Nature and/or Description of the Action Being Processed:** This procurement is for medical gases and specialty gases in accordance with FAR 13.501(a) Simplified Procedures for Certain Commercial Items. Per the cure notice dated 30 May 2018 that was not accepted by the Contracting Officer, which ultimately led to the Termination Notice sent 14 June 2018, the Department of Veterans Affairs has determined the award of a sole source contract to ensure the continued availability of medical gases and specialty gases is in the best interest of the Government. Contracts VA240C-17-D-0007 and VA240C-17-D-0009 were terminated for cause. The purpose of this justification is to request a sole source contract with Praxair LLC, the owner of the medical gas cylinders and medical gas manufacturers located at the facilities in VISN's 15, 16 and 23. The sole-source contract will be awarded as a firm-fixed price, indefinite-delivery indefinite quantity contract.
3. **Description of Supplies/Services Required to Meet the Agency's Needs:** Medical Gases and Specialty gas are 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 medical gases and specialty gases without interruption of the supply. The purpose of this contractual action is to maintain a continuous source of supply of medical gases and specialty gases for the facilities in VISN's 12 impacted by the termination. At each of the facilities, most of the medical gas and specialty gas cylinders are owned by Praxair LLC. Praxair LLC also manufactures the medical gases and specialty gases. The requirement will be for Praxair LLC to deliver medical gas and specialty gas cylinders, refill the larger medical and specialty gas tanks and the rental of cylinders in the facilities in VISN 15, 16 and 23. The total estimated award is \$425,000.00 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, most of the medical gas and specialty gas cylinders are owned by Praxair LLC. Praxair LLC also manufactures the medical gases and specialty gases. 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 cure notice that was not accepted by the

Contracting Officer which resulted in a termination letter. Due to the termination of the current contracts with Irish Oxygen, re-solicitation time, and the time it takes to transition over to a new contractor, the incumbent subcontractor/supplier is the only source that can provide the required medical gases without a disrupting this critical supply. During the transition if there is a change of supplier, the medical gas cylinders are removed from the facility and the new contractor's cylinders are delivered and dispersed throughout the medical centers campus. Some of these medical gases are currently installed in crash carts, surgical suites, patients beds and in the operation of surgical and laboratory equipment. 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 15, 16 and 23. 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-Indefinite Quantity 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.

Derrek F. Aniconi

Derrek Aniconi
Chief Supply Chain Officer
VISN 15

6/15/18

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 15, 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

Date