

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA2161-18-AP-9834

1. **Contracting Activity:** Department of Veterans Affairs, VISN 21, Network Contracting Office (NCO) 21, San Francisco VA Medical Center. Justification for Other Than Full and Open Competition. Purchase request number: 662-18-3-851-0090
2. **Description of Action:** The proposed sole source firm fixed price Task Order (TO) against Multiple Award Contract vehicle SPE2D1-17-D-0023 is for preventative maintenance support of the Siemens Magnetom 7 Tesla Magnetic Resonance Imaging (MRI) located at the VA Medical Center, San Francisco CA. Approval is being sought for issue of a sole source TO for a base year with a one-year option period to the original equipment manufacturer (OEM) Siemens Medical Solutions USA Inc. of 40 Liberty Blvd, Malvern, PA 19355.
3. **Description of Supplies or Services:** The proposed action is to provide preventative maintenance support to include exclusive parts and labor, systems upgrades, and access to Siemens Customer Care Center for the Siemens manufactured Magnetom 7T MRI. The total estimated value of the proposed action is [REDACTED].
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.

(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),

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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:** The Siemens Magnetom 7T MRI is a highly technological medical equipment that can only be supported and maintained by the OEM and the preventative maintenance services provided by the Siemens highly trained technicians is necessary for the equipment to function in accordance with the manufacturer specifications and standards. The preventative maintenance services for the Siemens Magnetom 7T MRI can only be provided by the OEM, as the equipment and the systems upgrades that support it are proprietary to Siemens.
6. **Efforts to Obtain Competition:** In support of a joint effort by Defense Logistics Agency (DLA) Troop Support Medical and the VA National Acquisition Center (VA-NAC) a solicitation under solicitation number SPE2D1-15-R-0001 was issued in May 2015 under full and open competition for awarding Multiple Award Contracts in support of the radiology and imaging systems currently owned by the DLA and VA. This equipment support includes computed tomography (CT) scanners, magnetic resonance imaging systems, radiographic systems (X-Ray), nuclear medicine, ultrasounds, computed radiography, magnetoencephalography, Positron Emission Tomography (PET)-CT, PET MR scanners, cyclotrons, angiography, cardiac catheterization, mammography systems, upgrades, repair parts, software and accessories.

This type of equipment is classified as High Technological Medical Equipment, and the systems are proprietary to the OEM. Therefore, the maintenance and support of the equipment can only be provided by the manufacturer for maintaining the equipment in accordance with the OEM's specifications and standards. The Siemens Magnetom 7 T MRI is equipment that can only be supported and maintained by the manufacturer. Market research was conducted and there was no competition identified for this acquisition. In accordance with FAR 5.301 and 16.505(b)(2), this justification will be posted to Federal Business Opportunities Page (FBO) and made publicly available.

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 market research conducted is briefly summarized as follows:

VIP: Contacted the vendor, First Look Bioimmedical LLC, that resulted from the query and the company stated that they do service some Siemen equipment, but not High Tech MRI equipment like the Magnetom. Regardless, only one result does not satisfy the rule of two.

FAR 8.002: Negative findings.

FAR 8.003: Negative findings.

GSA: Negative findings.

INTERNET: Only support for Siemens Magnetom MRI equipment is Siemens Medical Solutions U.S.A as the system is proprietary to Siemens who have the trained technicians, system upgrades and parts for supporting the proprietary equipment.

DLA/VA NAC: IDIQ Multiple Award Contract SPE2D10-17-0023 was awarded to Siemens Medical Solutions U.S.A in order to streamline the ordering process for acquisition of High Tech Medical Equipment and support services. In some cases there may be third party sources that are authorized by the OEM to provide maintenance services, but for the highly specialized equipment Siemens Manufacturers it can only be supported by the OEM as the systems that operate the equipment are proprietary and require upgrades of which only the OEM can provide.

The Government's technical experts are continuously reviewing products within industry in an effort to be aware of all the choices within the marketplace that will result in having the best equipment in operation for satisfying the needs and mission at hand. Based on all of the market research efforts, the Government's technical experts have determined that only Siemens Medical Solutions U.S.A. can provide the preventative maintenance support for this equipment.

9. **Other Facts:** The joint DLA/VA NAC Radiology and Imaging Systems Program was established to support the requirements of both agencies for the strategic sourcing streamlined acquisition and management of radiology and imaging systems, subsystems, and components along with maintenance services, training, and incidental services related to the support of its customers located in the United States and worldwide. Having an unauthorized third party source provide these services of the Siemens manufactured Magnetom 7T MRI would risk degradation of the equipment, nullify the OEM equipment warranty, and possible introduction of grey market replacement parts, with the VA incurring significant costs to correct.

- 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.

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Name: An Vu Date
Title: Chief Physicist
Facility: VAMC San Francisco, Radiology Dept.

- 11. Determination that Anticipated Cost is Fair and Reasonable:** A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable: The price quote of [REDACTED] will be the same for the base and one-year option period, and is only 1.6% above the cost of [REDACTED] for last year's one year task order VA261-17-J-2341. The

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base contract [SPE2D1-17-D-0023] was negotiated, and determined to be fair and reasonable at the time of the award.



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

 
Date: 2018.06.27
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Name: _____ Date _____
Title: _____
Facility: _____

- 13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#).**

- 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.

 
Date: 2018.07.11
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Name _____
NCO/PCO XX Duty Title _____