

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: VA259-18-AP-6712

1. **Contracting Activity:** Department of Veterans Affairs, VISN 19, Network Contracting Office 19. This acquisition utilizes 1358's, therefore no 2237 number exists.

2. **Nature and/or Description of the Action Being Processed:**

The Department of Veterans Affairs (VA) has a requirement for home oxygen services for VA beneficiaries throughout Veterans Integrated Service Network (VISN) 19. NCO 19 issued Solicitation No. VA259-17-R-0100 for a VISN-wide contract. This source selection was the competitive follow-on contract to the current contracts in place. We currently have two contracts that support VISN 19, VA259-16-D-0024 and 36C25918D0177. An interim contract was awarded to support Oklahoma City and Muskogee Medical Centers when these stations were moved under VISN 19. Both Oklahoma City and Muskogee were previously under a NCO-16 contract. A Government Accountability Office protest (B414506.4) was received for the award decisions of VA259-17-R-0100. The corrective action process resulting from the GAO protest will take a while to implement and will go beyond the period of performance of 30 June 2018 for the current contract that covers the OKC and Muskogee facilities. This action will be for an interim home oxygen services contract. This acquisition will be a firm-fixed price requirements contract that encompasses all of VISN 19, including the Oklahoma City and Muskogee facilities as well. Since home oxygen services is a critical service, and the new contract will not be awarded in time for a contractor to start performance on July 1, 2018, an interim contract is necessary. A lapse in service is not acceptable. The incumbent, a large business, is the only company able to provide the services necessary during this period.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:**

This interim contract will encompass the rental of home oxygen equipment, to include but not limited to, compressors, portable oxygen machines, tanks, racks, and liquid oxygen systems, delivery, set-up, and resupply of oxygen as necessary to meet the medical needs and prescriptions for our veterans, and repair, and pick-up of equipment, resupply of expendable supplies (nasal cannulas, hoses, etc.) and medical grade oxygen, and quarterly checks from a Certified Respiratory Therapist or a Registered Respiratory Therapist in accordance with the statement of work. The value of this contract will be approximately \$65,981,480.00 if all options are exercised to include FAR 52.217-8, Option to Extended Services. NCO - 19 is proposing a base period of 6-months with two (6) six-month option periods with the incumbent contractor, Rotech Healthcare. As stated before this will also include FAR 52.217-8, Option to Extend Services.

4. **Statutory Authority Permitting Other than Full and Open Competition:**

41 USC §3304(a)(1), as implemented by FAR 6.302-1

(X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy

Agency Requirements per FAR 6.302-1;

() (2) Unusual and Compelling Urgency per FAR 6.302-2;

() (3) Industrial Mobilization, Engineering, Developmental or Research Capability

- or Expert Services per FAR 6.302-3;
- () (4) International Agreement per FAR 6.302-4
- () (5) Authorized or Required by Statute FAR 6.302-5;
- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):

The incumbent contractor, Rotech Healthcare, is the only company that can reasonably perform in sufficient time and with reasonable cost to continue this service. Any other company, other than the incumbent, would be exposed to transitioning all patients immediately. This disruption to servicing veterans would not be in the best interest of the Government. The incumbent contractor already has equipment and personnel in place to provide this service for the additional time. Therefore, no additional mobilization resources are necessary for the incumbent contractor to continue performance. This puts the incumbent contractor in a unique position to be able to provide this service in a manner that no other competitor could. Accordingly, Rotech Healthcare Inc. is the only firm capable of providing the supplies and services described in Section III above without VISN 19 experiencing unacceptable delays in fulfilling its service requirements.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

Due to time constraints, an offer will only be sought from the incumbent contractor. However, the new contract for Home Oxygen services across VISN 19 (i.e. Solicitation No. VA259-17-R-0100) is being competed as a SB set-aside after appropriate market research was conducted.

7. Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:

The current pricing being paid to the contractor has already been verified to be fair and reasonable by a warranted Contracting Officer. The Contracting Officer for this action will review the pricing offered and will use the pricing from the current contract to verify those prices offered to be fair and reasonable.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

For this action, no market research was conducted. For the reasons stated above, it is not likely that any other offeror would be able to reasonably act immediately in order to transition patients without interrupted service. The incumbent contractor is the only source that would be able to continue services due to its unique position of already having the equipment and staffing in place.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition:

It would not be practical to switch out contractors without a properly planned transition period. The transition period would require an exchange of new and old equipment from the Veteran's home between the new contractor and replacement contractor. Therefore, until new contracts can be awarded and a properly managed transition between contractors and

government personnel occurs, it would be in the best interest to continue with the incumbent contractor so their is no interruption of service to the Veteran patients.

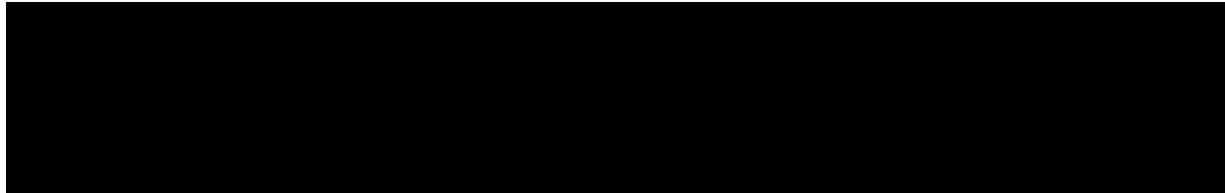
10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

The incumbent contractor has indicated that it is willing to continue service until the new contract is awarded and an orderly transition can occur. No other sources are in a position to take on this service for this period of time.

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:

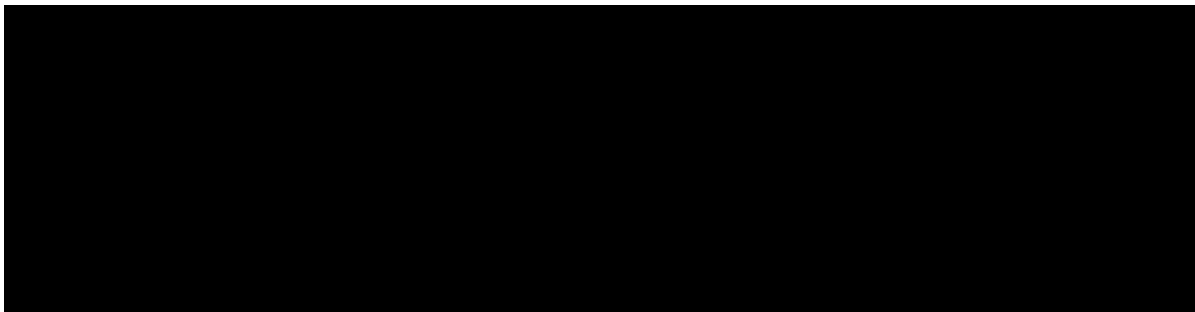
The Agency will continue to implement its corrective action strategy as conveyed to GAO in response to the protest. This approach requires a revised solicitation, source selection process, and award of new contracts. Only upon successful award and defense of any subsequent protests will interim contracts no longer be required.

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.



13. Approvals in accordance with the [VHAPM Part 806.3 OFOC SOP:](#)

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



- 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.



- c. **VHA SAO HCA Review and Approval:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval (if over \$68 million) or approve (\$700K to \$68 million) for other than full and open competition.

