

**JUSTIFICATION FOR AN EXEMPTION TO FAIR OPPORTUNITY  
(ORDERS > SIMPLIFIED ACQUISITION THRESHOLD \$150,000)**

**Background:** All supplies/services acquired under Indefinite Delivery Indefinite Quantity (IDIQ) Multiple Award Contracts (MACs) are provided through award of Delivery Orders (DOs). MAC DOs are awarded under the authority of the FAR 16.505(b) which requires all prime awardees under multiple award IDIQ contracts be given a “fair opportunity” to be considered for each Delivery Order. The FAR identifies six authorized exemptions to fair opportunity, which are listed below.

**Results of Market Surveys:** Detail the results of any market survey conducted, which would support the decision to waive the requirement for fair opportunity under a multiple award contract (i.e., if only one contractor is capable of providing the services document how this was determined).

**Identification/Justification for Exemption:** If the requirement qualifies for one of the six exemptions to fair opportunity, check the appropriate exception and provide justification. Please note, currently, only four of the six are applicable to the HTME Program and are listed below:

- ☐ 1. The agency need for the supplies or services is of such urgency that providing fair opportunity would result in unacceptable delays.
- ☐ 2. Only one such 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.
- ☒ 3. The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to a DO already issued under the IDIQ contract, provided that all the awardees were given fair opportunity to be considered for the original order.

Contract: V797P-6003b

Delivery Order: 797D65795

- ☐ 4. It is necessary to place an order to satisfy a minimum guarantee.
- ☐ 5. For orders exceeding the simplified acquisition threshold (SAT), a statute expressly authorizes or requires that the purchase be made from a specified source.
- ☐ 6. 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.

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for an Exception to Fair Opportunity.”

(2) Nature and/or description of the action being approved.

***Upgrade to the existing Varian ARIA record and verify system, EE95140. The upgrade is for the server as well as the software version.***

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

***Varian ARIA record and verify system hardware and software upgrade, \$337,441.***

(4) Identification of the exception to fair opportunity (see 16.505(b)(2)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

***Only one such awardee can provide the supplies or services. The original equipment manufacturer (OEM), Varian, is the only contractor who can provide the upgrade and as such is a logical follow-on to the original contract, due to the proprietary nature of the software upgrade. The OEM is the only organization capable of owning trade information about the system and as such is the only one qualified to provide and perform the upgrade, with the expectation that the systems continues operating as expected in a safe manner. The hardware is included in the purchase price from the OEM.***

(5) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(6) Any other facts supporting the justification.

***The current version of ARIA software is more than four iterations behind the requested upgrade version, V15. The service line has experienced multiple and increasing hardware failures. Currently, the service line has two non-functioning workstations.***

(7) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

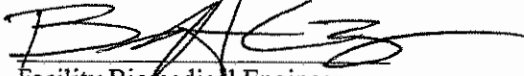
(8) The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(9) Evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

***The technical information contained in the proposal was reviewed and certified by the facility Biomedical Engineering and end user (Radiology) staff.***

(10) A written determination by the approving official that one of the circumstances in (b)(2)(i)(A) through (E) of this section applies to the order.

Prepared by: Benjamin Chang

  
Facility Biomedical Engineer

Approve/Disapprove:

\_\_\_\_\_  
Competition Advocate  
Per 16.505(b)(2)(ii)(C))  
(Required for orders > \$700,000  
up to \$13,500,000)

Approve/Disapprove:

\_\_\_\_\_  
Contracting Officer (orders less than \$700,000)

Approve/Disapprove:

\_\_\_\_\_  
Head of the Contracting Activity (orders  
>\$13,500,000 up to \$62,500,000)

The Contracting Officer agrees with the statements above and approves this justification.