

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA242-18-AP-6021

1. **Contracting Activity:** Department of Veterans Affairs, VISN 02, VA New York Harbor Healthcare System, Brooklyn Campus . Purchase requests number: 630-18-4-4454-0081.
2. **Description of Action:** Network Contracting Office (NCO) 2 intends to award a sole-source contract for the procurement of on-site, full service and preventative maintenance and repairs to ensure that the Philips Diagnostic Equipment is operational and meets NFPA-99, OSHA, and CDRH specifications. The equipment is located at the New York Harbor Healthcare System Brooklyn campus. This service agreement will provide parts, labor, testing, and calibration to maintain the Philips Diagnostic equipment. The contractor shall provide all labor, personnel, equipment, tools, materials, and services necessary to maintain the Philips Diagnostic equipment listed. The contract will be a firm fixed-price (FFP) task order with an anticipated performance period of August 30, 2018 through August 29, 2019 for the base period. The proposed sole source task order against Indefinite-Delivery Contract VA797H-17-D-0022 is for a one-year firm-fixed price (FFP) effort and four (4) one (1) year option periods at the option of the Government with Philips Healthcare Systems, 22100 Bothell Everett Hwy, Bothell WA 98021.
3. **Description of Supplies or Services:** The proposed action is to provide on-site, full service preventive maintenance and repairs to ensure that the Philips Diagnostic Equipment is operational and meets NFPA-99, OSHA, and CDRH specifications. The equipment is located at the New York Harbor Healthcare System Brooklyn campus. The service agreement will include parts, labor, testing, and calibration to maintain the Philips Diagnostic Equipment. The total estimated value of the proposed action is \$1,260,751.85 (\$252,150.37 for the base period plus \$252,150.37 annually for four (4) option periods).
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.

VHAPM Part 816.5—Indefinite-Delivery Contracts
Attachment 1: Request for Exception to Fair Opportunity Memo Format

() 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), 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: This system can only be serviced by Philips Healthcare Systems which is the Original Equipment Manufacturer (OEM) of the Philips Diagnostic Equipment. In order to troubleshoot and repair the equipment, access to Philips Healthcare Systems diagnostic software is required. This diagnostic software is proprietary and available only through Philips Healthcare Systems. Philips Healthcare Systems maintains certain proprietary service technologies rights relating to the equipment. The manufacturer uses proprietary and patented software to test their equipment. Philips Healthcare Systems has immediate access to all parts and software. If another vendor is selected, additional risk would be incurred as other contractor's staff may not fully understand the intent and context of the complex requirements related to the patented diagnostic software. Furthermore, another source would require a steep learning curve in order to gain familiarity with Philips Healthcare Systems equipment patented technology which is required to accomplish full service and maintenance for the equipment.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. This effort did not yield any additional sources that can meet the Government's requirements. There is no competition anticipated for this acquisition. In accordance with FAR 5.301 and 16.505(b) (2), this action will be synopsisized at award at the Federal Business Opportunities website and the justification will be made publicly available. Any additional efforts to overcome barriers will require the Program Manager for the Biomedical Engineering department to identify alternatives that will meet the needs of the Agency on a national level. The local NCO has very little capability to overcome the barriers which exist as a result of a national procurement strategy. This parent contract is part of the DoD – VA Cost Sharing Program between Defense Supply Center Philadelphia (DSCP) and the National Acquisition Center (NAC).

7. Actions to Increase Competition: It is difficult, if not impossible, to remove barriers to competition for complex medical equipment. The proprietary software, specific diagnostics tools and specialized electronics are used to maintain the High Tech Medical Equipment (HTME) in accordance with OEM specifications. Consideration for new equipment will be made when the existing equipment reaches the end of its useful life. 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 Government's technical experts conducted market research by reviewing other similar vendor capabilities. Market research revealed that there are several small and large business contractors to include Philips Healthcare Systems that perform maintenance for similar equipment. Market research further indicated that Philips Healthcare Systems is the Original Equipment Manufacturer (OEM) and the only firm that can perform maintenance for the required equipment due to the proprietary nature of the technical manuals, software and schematics. Market research search was conducted using the VetBiz search engine and yielded one result using the filter NAICS 811219 and the keyword "philips magnetic". However, in following up with the vendor, they cannot provide software updates as required in the statement of work.

9. Other Facts: The proprietary nature of the equipment and use of any other manufacturers' or service providers would void the warranties in effect. The required preventive maintenance and software support services can only be obtained from the OEM, Philips Healthcare Systems, and there are no other options currently available for meeting the Agency needs. 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.

James N Mohr
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Digitally signed by James
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Date: 2018.06.22
13:03:06 -04'00'

James Mohr
Biomedical Engineer, COR
Brooklyn Campus Engineering Service

6/22/2018

Date

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 anticipated cost to the Government is considered fair and reasonable based upon adequate competition on the VA NAC contract requirements and negotiation of prices prior to contract award. The pricing for this annual service requirement direct from the manufacturer, Philips Healthcare, is identical to the pricing available under Philips Healthcare VA NAC contract for high tech medical equipment (HTME). The request for a task order against an already standing service contract, with pricing included. Each item is listed on the NAC pricing schedule

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

Lawrence Unger
Contracting Officer
NCO 2

Date

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.

Hope Freeman
DoC Designee/Division Chief NCO 2

Date

HIGHER LEVEL APPROVAL (Required for orders over \$700,000):

b. **VHA SAO HCA REVIEW AND APPROVAL (over \$700,000 to \$68 million):** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for restricting consideration of the Federal Supply Schedule contractors to fewer than the number required by FAR Subpart 8.4.

FOR:

Joseph P. Maletta
Executive Director, SAO East
Head of Contracting Activity, SAO East

Date