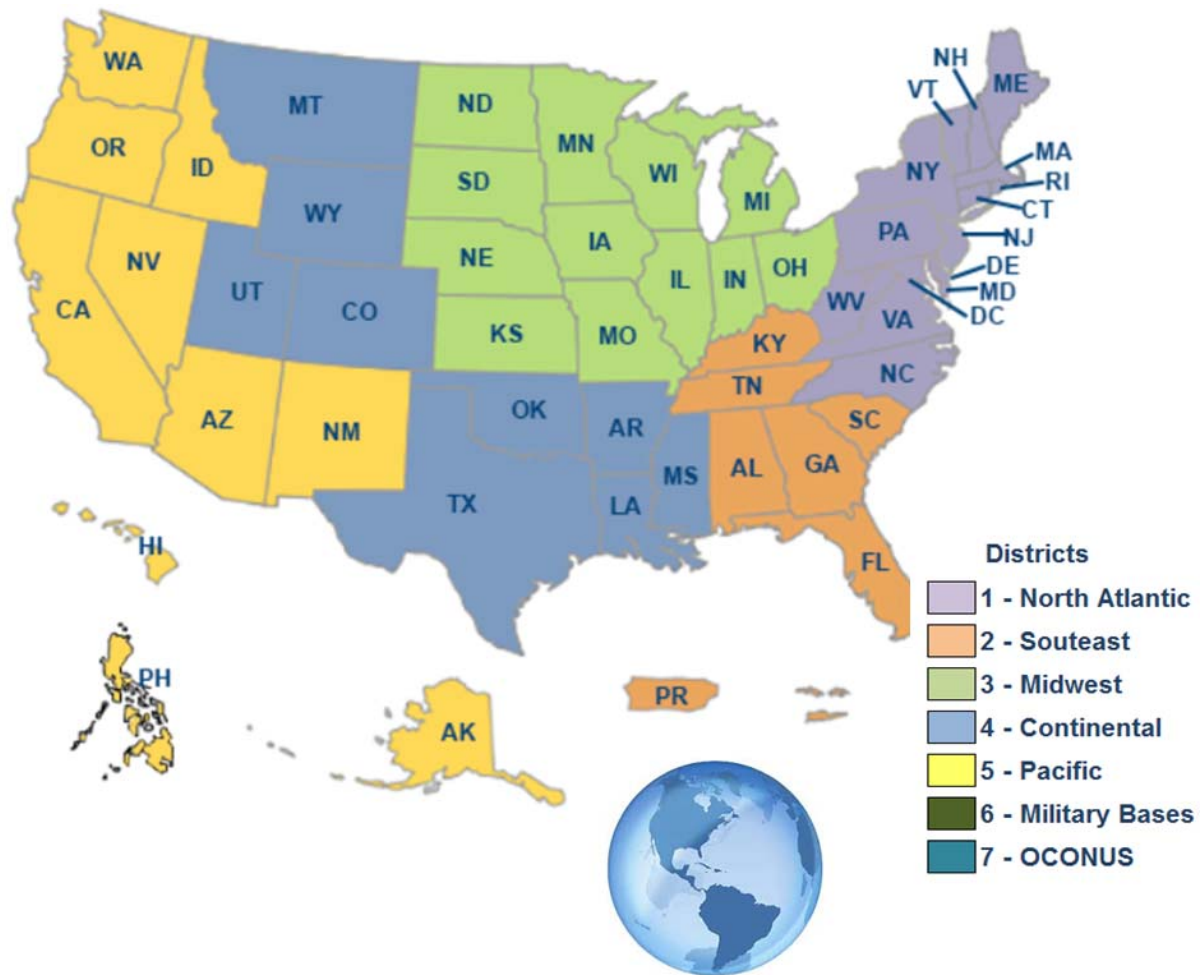


Class Justification for Other than Full and Open Competition

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Strategic Acquisition Center – Frederick (SAC-F)
321 Ballenger Center Drive, Suite 125
Frederick, MD 21704
2. Description of the Action: The proposed action is for two firm-fixed-price Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts and subsequent task orders to two incumbent contractors that are currently providing Medical Disability Examination (MDE) services for VA. The incumbent contractors are QTC Medical Services (QTC) and Veterans Evaluation Services (VES).
3. Description of Supplies/Services: The VA, through the Veterans Benefits Administration (VBA), administers the Compensation & Pension (C&P) Program for benefits to Veterans, their dependents, and their survivors. Entitlement determinations for disability compensation and pension claims are made by VBA Rating Veterans Service Representatives (RVSRs) and Decision Review Officers (DROs) working in VA Regional Offices (VAROs) across the country. Public Law 104-275 was enacted authorizing VA to contract for medical examinations. Medical Disability Examinations are a critical piece of the medical examination process by determining the percent of disability that the Veteran is awarded. Examinations are required for thousands of Veterans on an annual basis and internal VA personnel resources cannot support this workload without contract support services. The examination includes a physical and a report that provides essential medical and disability information which supports each claimed disability. It is not enough to simply state a diagnosis; the examination report also provides detailed medical information sufficient for RVSRs and DROs to arrive at a medical decision that can withstand the scrutiny of an appellate review.

There are currently fourteen active MDE contracts in place that serve various geographic locations within, both, domestic and foreign locations. These contracts are serviced by a total of five contractors, including Logistics Health, Inc. (LHI), Medical Support Los Angeles (MSLA), QTC Medical Services, Inc. (QTC), Veterans Evaluation Services, Inc. (VES), and VetFed Resources, Inc. (VetFed). Of the fourteen active contracts, twelve were awarded through full and open competition. The twelve contracts are divided among seven geographical districts (Districts 1-7). For districts 1-5, performance was significantly delayed due to two consecutive protests to the Government Accountability Office and litigation in the U.S. Court of Federal Claims. As a result of the protests and litigation, two temporary, sole source “bridge” contracts were awarded to incumbent contractors, to avoid a lapse in service. The justification supporting the sole source contracts was the urgent and compelling threat of a lapse in service to Veterans due to the inability of any contractors (other than then incumbents) to deliver the required services in the affected locations without significant start-up delay. Districts 6-7 were never protested, and have been in performance since April 1, 2106. The following map and table detail the existing fourteen active MDE contracts:

Class Justification for Other Than Full & Open Competition
 Medical Disability Examinations – Sole Source Bridge Contracts
 QTC Medical Services, Inc./Veterans Evaluation Services, Inc.



Contractor	Contract #	Performance Location	Contract Expiration
QTC	VA119A-17-D-0011	Bridge Contract (Various Locations)	Dec 12, 2017
VES	VA119A-17-D-0012	Bridge Contract (Various Locations)	Dec 12, 2017
LHI	VA119A-16-D-0072	District 1 (North Atlantic)	Jun 27, 2022
MSLA	VA119A-16-D-0073	District 1 (North Atlantic)	Jun 27, 2022
LHI	VA119A-16-D-0074	District 2 (Southeast)	Jun 27, 2022
MSLA	VA119A-16-D-0075	District 2 (Southeast)	Jun 27, 2022
QTC	VA119A-16-D-0032	District 3 (Midwest)	Jun 27, 2022

Contractor	Contract #	Performance Location	Contract Expiration
LHI	VA119A-16-D-0076	District 3 (Midwest)	Jun 27, 2022
LHI	VA119A-16-D-0077	District 4 (Continental)	Jun 27, 2022
MSLA	VA119A-16-D-0078	District 4 (Continental)	Jun 27, 2022
MSLA	VA119A-16-D-0079	District 5 (Pacific)	Jun 27, 2022
VetFed	VA119A-16-D-0037	District 5 (Pacific)	Jun 27, 2022
QTC	VA119A-16-D-0038	District 6 (Military Bases)	Mar 31, 2021
VES	VA119A-16-D-0039	District 7 (OCONUS)	Mar 31, 2021

4. Statutory Authority: The statutory authority permitting other than full and open competition is 41 U.S.C. § 3304(a)(2) and implemented by the FAR 6.302-2, Unusual and Compelling Urgency.
5. Rationale Supporting the use of the Authority Cited Above: VA awarded multiple contracts that were intended to provide disability exam services. However, 10 of the newly awarded 12 contracts were under a stop-work order due to post-award protests to GAO and litigation in Federal court. While VA ultimately prevailed on all protested issues, performance under the previously protested contracts was significantly delayed. Additionally, one of the new contractors (MSLA) has, thus far, failed to meet the required ramp-up period for beginning performance in all locations. While VA resolves the performance issues with MSLA, bridge contracts are needed to prevent a lapse in service to Veterans in various locations. Due to MSLA's inability to reach 100% capacity to perform exams in numerous geographic locations within the first quarter of FY18, VA needs to award two additional short-term bridge contracts to avoid a lapse in service to Veterans located in the areas where MSLA is not, yet, prepared to provide disability exams. The two bridge contracts that are currently in operation expire on December 12, 2017, and replacement contracts must be in place to avoid a lapse in service to Veterans.

The basis for the sole source justification of the previous bridge contracts is separate and distinct from the need for the proposed bridge contracts supported by the current justification. Specifically, the previous bridge contracts were awarded based on an urgent and compelling need caused by the stop work orders related to the pending protests and litigation. No other contractors (other than the incumbents) had the ability to provide the required exam services without significant start-up delays in both developing a subcontracted network of exam providers in the relevant locations and developing the necessary IT interfaces with VA. While the

current need is also urgent and compelling, the basis of this need stems from performance issues of one of the contractors. MSLA has failed to meet the contractual ramp-up period by which it was to begin receiving 100% of its contracted exam volume. This is different than the previous delay, which was caused by the stop work order related to the pending protests and litigation, not due to performance issues. The performance issues of MSLA were unexpected at the time the previous bridge contracts were awarded, but have only become apparent at this time. Because of the separate and distinct cause of the urgent and compelling need to sole source the work to the incumbents, this is not considered a continuation of the previous justification; but, rather, is a brand new basis that justifies the need to temporarily sole source bridge contracts to the incumbent contractors.

Awarding bridge contracts to QTC and VES is the most appropriate method to continue uninterrupted MDE services, because these two vendors have been supporting the affected geographic locations over the past year, and are the only vendors prepared to begin performance following expiration of the current bridge contracts on December 12, 2017 without significant start-up delay. The ordering period for these actions will be a base period of three months beginning December 13, 2017, with three option periods of one-month, each, plus an option for up to six months of extended service, if necessary, under Federal Acquisition Regulation (FAR) 52.217-8 (Option to Extend Services). This will enable continued exams to be provided to Veterans in areas where MSLA is not, yet, prepared to perform. The total estimated value of this acquisition, including both proposed sole source contracts, is \$200 Million, including the base and all option periods. This cost estimate is based on pricing from the prior year period of performance for the affected locations.

If this action is not approved, VA and Veterans will suffer severe injury if there is a lapse in service. Significant delay in adjudicating thousands of Veterans benefit claims will occur, depriving qualifying Veterans of medical care and other earned VA benefits. Award of these urgent and compelling contracts will provide continued disability exams across all VBA locations.

6. Efforts to Obtain Competition: As required by Subpart FAR 5.203, these actions may be synopsisized on or around December 13, 2017, through FedBizOpps; however, the proposed contract action is made under the conditions described in 6.302-2 and the Government may be seriously injured if the agency complies with the time periods specified in 5.203. Further, the contracts and subsequent task orders supported by this justification are merely a short-term bridge effort to ensure continued service while VA addresses the performance issues of MSLA.
7. Determination of Fair and Reasonable Cost: As the Contracting Officer, I hereby determine that the anticipated cost to the Government will be fair and reasonable. The quoted prices will be compared to historical pricing of the previous contract actions and comparable prices on the commercial price list that was previously negotiated. Further pricing discounts will be sought on the sole-source bridge contracts.

8. Market Research: The Government performed extensive market research in preparation of the previously awarded contracts (which were competed under VA solicitation number VA119A-15-R-0150) and is aware that numerous sources could potentially provide this short-term requirement. Thirteen vendors submitted proposals under the aforementioned solicitation. However, insufficient time is available for the Government to hold a new competition among the available vendors prior to the expiration of the existing bridge contracts on December 12, 2017. Furthermore, it is highly probable that none of the potential vendors would be able to begin performance without significant start-up delays, due to, both, the complexity of standing up an IT system capable of interfacing with VA networks, and the time-consuming challenge of subcontracting with a network of qualified exam providers across significant geographic areas. As a result, no additional market research was conducted beyond what was recently prepared under solicitation number VA119A-15-R-0150.
9. Any Other Facts Supporting this Justification: Veterans Benefits Administration (VBA), who administers the Compensation Services Program, has an immediate requirement for MDE services to continue uninterrupted. On March 28, 2016, 12 new contracts were awarded for MDE services. The contracts are intended to provide continued MDE services following the expiration of previously awarded contracts. The contracts were protested to GAO on April 4, 2016, and a stop work order was issued April 7, 2016, as a result of the protest. VA took corrective action to remedy three issues found deficient by the Government Accountability Office (GAO) in its decision on the protest. Following the corrective actions, new awards were made on September 16, 2016. Immediately following these awards, three new protests were filed with GAO November 4, 2016, and a decision on this subsequent protest was issued on January 5, 2017 in favor of the Government on all protested issues. Immediately following the decision in the second GAO protest, two contractors filed post award bid protests with the US Court of Federal Claims. The awarded contracts remained on a stop work order until June 28, 2017, at which time the Government prevailed on all protested issues at the Court of Federal Claims. While one of the protestors filed an appeal with the US Court of Appeals for the Federal Circuit, that appeal was ultimately dismissed, and VA was finally free to proceed with performance under the awarded contracts.

The new contractors were scheduled to complete a 90-day ramp-up period, during which time they established all necessary IT network connections with VA, and were expected to reach 100% capacity to begin performing disability exams in all contracted locations. However, MSLA failed to reach 100% capacity by the end of the 90-day ramp-up period (September 26, 2017). As a result, the Contracting Officer extended the ramp-up period from 90-days to 150-days (November 25, 2017), in order to take advantage of the remaining performance period under the previously awarded bridge contracts with QTC and VES, and to allow MSLA and other vendors to finalize their ramp-up processes. Unfortunately, as the November 25th deadline approached, MSLA notified VA that it, still, was not at 100% capacity to begin performance in all locations; specifically, in more rural locations where it can be difficult to locate and subcontract with various specialists needed to provide

certain exam types to Veterans. As a result, MSLA has indicated it will likely be February 2018 before it is fully prepared to begin accepting exam requests in all locations. Renewed bridge contracts with the incumbent contractors (QTC and VES) are required as a bridge effort until MSLA is fully prepared to begin receiving exam requests. The authority to act under this class justification for other than full and open competition will cover the award of the IDIQ contracts as well as the subsequent task orders needed from December 13, 2017 – March 13, 2017, or until the performance issues with MSLA are resolved.

In accordance with FAR 6.303-2(b)(9)(iii), the following information is provided regarding the extent and nature of the harm to the Government. A significant reason Congress authorized contracted exam providers to perform MDEs on behalf of VA, under Public Law 104-275, was to streamline VA's ability to address Veterans' requirement for disability exams. A lapse in service would significantly hinder VA's ability to satisfy this Congressional intent for a significant period of time. As previously mentioned, the services under this proposed contract must begin on December 13, 2017, presenting an unusual and compelling need to meet VA requirements. The VA does not have the capacity to handle the unexpected volume of disability exams on such short notice, and would incur significant additional costs to its medical centers and physicians if it were to consider handling the required MDEs through VA internal resources.

The statutory requirement to comply with 38 U.S.C. §§ 8127 – 8128 and implemented under VA Acquisition Regulation (VAAR), Subpart 819.70, as a result of the June 16, 2016, a decision of the U.S. Supreme Court in *Kingdomware Technologies, Inc. v. United States*, 136 Sup. Ct. 1969 (2016) has been addressed. Due to the unusual and compelling urgency, the Contracting Officer has no reasonable expectation that two or more SDVOSBs can meet the Government's requirements without resulting in serious injury, financial or other to the Government.

10. A Listing of the Sources, if any that Expressed, in Writing, an Interest in the Acquisition: No other sources expressed, in writing, an interest in the acquisition. In accordance with FAR 6.302-2(b)(1), and due to the urgent and compelling nature of this requirement, the Government does not have sufficient time to compete the requirement among all interested firms. Based on recent market research, other known sources could potentially provide services at some of the locations; however, no other vendors would be able to begin performance by the December 13, 2017 deadline.
11. Actions to Increase Competition: At this time, there are no other actions that can be taken to increase competition. The requirement for MDE bridge service contracts subsequent task orders are based on unusual and compelling urgency caused by the award protests and the expiration of the existing contracts.

12. 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.

Program Manager
Veterans Benefit Administration (VBA)

Date

13. Determination of Best Value/Contracting Officer Certification: I hereby determine that the proposed contract actions will represent the best value to the Government and certify that this justification is accurate and complete to the best of my knowledge and belief.

Contracting Officer
Strategic Acquisition Center - Frederick
Office of Acquisition Operations

Date

14. Legal Sufficiency Certification: I have reviewed this justification and find it legally sufficient as to formalities and compliance with the requirement set forth in FAR 6.302-2.

Legal Counsel

Date

Concurrence

Based on the foregoing justification, I concur with the class justification for the acquisition of Medical Disability Examination Services in the estimated total amount of \$200 million, on an other than fair opportunity basis, pursuant to the authority cited in Section 41 U.S.C. 3304(a)(2) and implemented by the FAR 6.302-2, Unusual and Compelling Urgency, subject to availability of funds, and provided that the services herein described have otherwise been authorized for acquisition.

Head of Contracting Activity (003B)
Office of Acquisition Operations

Date