

JUSTIFICATION
FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Technology Acquisition Center
23 Christopher Way
Eatontown, NJ 07724
2. Description of Action: This proposed action is for the award of a firm-fixed-price Task Order issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) for the renewal of brand name EMC Software maintenance and support services.
3. Description of the Supplies or Services: The proposed action is for the renewal of maintenance support services for four (4) existing EMC Networker software licenses. VA Cooperative Studies Program Coordinating Center (CSPCC) has used this data and information backup software for over 10 years, accumulating 10 years of backup/archival tapes that allows for backup and restoration of collected clinical research data and derived data sets. The maintenance of the EMC software license ensures that the product remains operational, as well as provides product updates and support services, to include technical support. The period of performance for the Base Period will be from September 22, 2018 through September 21, 2019, and will include four (4) 12-month option periods. [REDACTED]
4. Statutory Authority: The statutory authority permitting this exception to fair opportunity is 41 U.S.C. 4106(c)(2) as implemented by the Federal Acquisition Regulation (FAR) 16.505(b)(2)(i)(B), entitled "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."
5. Rationale Supporting Use of Authority Cited Above: Based on market research, as described in section eight (8) of this document, the Government has determined that limited competition is available for this action among resellers for the required brand name EMC software maintenance and support. No other source is capable of providing the required software maintenance and support as only EMC or its authorized resellers have access to the proprietary source code necessary to provide the required software updates and technical support. Since the software is proprietary, a legal restriction is placed on access to the software code that is required in order to develop updates to the software. Without this access it is impossible to modify the software code as necessary to provide the required updates. Access to this code is also required to ensure the services provided to the software are properly configured.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in section eight (8) of this justification. This effort did not yield any additional sources that can meet the Government's requirements. It was determined that limited competition is viable among authorized resellers for the required brand name EMC Software maintenance and support services. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), notice of award of this action will not be synopsisized and this justification will not be made publicly available within 14 days of award on the Federal Business Opportunities Page as the estimated value of this proposed acquisition is below the simplified acquisition threshold, this justification shall be posted with the solicitation on the NASA SEWP web site for review by prospective GWAC holders.

7. Actions to Increase Competition: In order to remove or overcome barriers to competition in future acquisitions for this requirement, the Government will continue to perform market research to determine if there are developments that will enable future requirements to be competed.

8. Market Research: Market research was conducted by VA personnel in June of 2018 by reviewing other similar software brands such as Symantec NetBackup, International Business Machines, Tivoli Storage Manager, and CA Technologies ARCserve to determine whether any of these sources can provide software maintenance and support on the existing EMC software. Based on the review of these similar brand name software offerings, it was determined that no other source could provide software maintenance support for the EMC software as they lacked access to the proprietary source code necessary to provide the required support. Only EMC or its authorized resellers can provide the required software maintenance and support for the existing license as only those sources have the ability to access the proprietary code.

On July 2, 2018, additional market research was conducted using the Provider Lookup Tool on the NASA SEWP V GWAC website. It was determined that there are numerous NASA SEWP V GWAC holders that are authorized resellers of brand name EMC products that can provide the required software maintenance support services under North American Industry Classification System code 541519. Therefore limited competition is anticipated.

9. Other Facts: None