

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA261-18-AP-4918

1. **Contracting Activity:** Department of Veterans Affairs, VISN 21, Network Contracting Office (NCO) 21, San Francisco VA Medical Center. Justification for Other Than Full and Open Competition. Purchase request number: 662-18-2-851-0053
2. **Description of Action:** The proposed sole source firm fixed price Task Order (TO) against Multiple Award Contract vehicle SPE2D1-17-D-0023 is for preventative maintenance support of the Siemens Magnetom Skyra 3 Tesla (T) Magnetic Resonance Imaging (MRI) located at the VA Medical Center, San Francisco CA. Approval is being sought to issue a sole source TO for a base year with 4 one-year option periods to the original equipment manufacturer (OEM) Siemens Medical Solutions USA Inc. of 40 Liberty Blvd, Malvern, PA 19355.
3. **Description of Supplies or Services:** The proposed action is to provide preventative maintenance support to include exclusive parts and labor, systems upgrades, and access to Siemens Customer Care Center for the Siemens manufactured Magnetom Skyra 3T MRI. The total estimated value of the proposed action is [REDACTED]
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.
 - () 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),

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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:** The Siemens Magnetom Skyra 3T MRI is considered to be a highly technological medical equipment that can only be supported and maintained by the OEM. The preventative maintenance services provided by the Siemens highly trained technicians is necessary for the equipment to function in accordance with the manufacturer specifications and standards. The preventative maintenance services for the Siemens Magnetom 3T MRI can only be provided by the OEM, as the equipment and the systems upgrades that support it are proprietary to Siemens.
6. **Efforts to Obtain Competition:** In support of a joint effort by Defense Logistics Agency (DLA) Troop Support Medical and the VA National Acquisition Center (VA-NAC) a solicitation under solicitation number SPE2D1-15-R-0001 was issued in May 2015 under full and open competitive procedures for awarding Multiple Award Contracts in support of the radiology and imaging systems currently owned by the DLA and VA. This equipment support includes computed tomography (CT) scanners, magnetic resonance imaging systems, radiographic systems (X-Ray), nuclear medicine, ultrasounds, computed radiography, magnetoencephalography, Positron Emission Tomography (PET)-CT, PET MR scanners, cyclotrons, angiography, cardiac catheterization, mammography systems, upgrades, repair parts, software and accessories.

This type of equipment is classified as High Technological Medical Equipment, and the systems are proprietary to the OEM. Therefore, the maintenance and support of the equipment can only be provided by the manufacturer for maintaining the equipment in accordance with the OEM's specifications and standards. The Siemens Magnetom Skyra 3T MRI is equipment that can only be supported and maintained by the manufacturer. Market research was conducted and there was no competition identified for this acquisition. In accordance with FAR 5.301 and 16.505(b)(2), this justification will be posted to Federal Business Opportunities Page (FBO) and made publicly available.

7. **Actions to Increase Competition:** 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 market research conducted is briefly summarized as follows:

VIP: Contacted the vendor, First Look Biomedical LLC, that resulted from the query and the company stated that they do service some Siemen equipment, but not High-Tech MRI equipment like the Magnetom.

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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: Siemens Medical Solutions U.S.A.'s price schedule under the Multiple Award IDIQ contract SPE2D1-17-D-0023 was pre-negotiated by the Defense Logistics Agency and the VA National Acquisition Center and was determined to be fair and reasonable to the government at the time of the award. The price quote of \$173,667.14 for the base year and the 4 one-year option periods equally priced at \$142,667.14 was verified against the price schedule negotiated in the contract. The schedule prices for services under the IDIQ are 29% below the list price, with supply parts priced at 20% below list price.

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

[Redacted Signature]

Name: Mark Mikus Date
Title: Services I Branch Chief
Facility: NCO21

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.

[Redacted Signature]

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Name: Brooke C. Robison Date
Director of Contracting, Network Contracting Office 21

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

a. **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.

[Redacted Signature]

Name: Curtis M. Jordan Date
Acting Executive Director, Service Area Office West
Head of Contracting Activity (HCA)