

**Justification and Approval (J&A)
For
Exception to Fair Opportunity Memo**

Acquisition Plan Action ID: 36C261-18-AP-3559

1. Contracting Activity:

The contracting activity for this “Justification for Other Than Full and Open Competition” requirement is the Department of Veterans Affairs, Veterans Health Administration (VHA) Program Contracting Activity Central (PCAC).

2. Description of the Action:

This justification is in support of a new, sole source, single award, Firm-Fixed-Price (FFP) task order against the existing Veterans Integrated Service Network (VISN) 21 Architectural-Engineering (A-E) Indefinite Delivery/Indefinite Quantity (IDIQ) Contract VA261-17-D-0102 with Apogee Consulting Group, P.A. to develop and provide a complete set of drawings and specification for bidding and construction contract purposes and to provide Construction Administration Services for the Expand Psychosocial Rehabilitation Recovery Center (PRRC) & Homeless Program, Building 27 Minor project at the Fresno VA Medical Center (VAMC).

3. Description of Supplies or Services:

This sole source design project will provide all of the Construction Documents, Construction Administration Services, Technical Specifications and Cost Estimates for the Expand PRRC & Homeless Program, Building 27 project at the Fresno VAMC. This project will add 10,000 Gross Square Feet (GSF) to the existing Independence Building (Building 27). Building 27, is an outpatient Mental Health treatment facility supporting a full range of treatment and support programs. This project is the second expansion to the original building activated in February of 2017. The first expansion is presently solicited for construction.

The design intent for this project is to enlarge the building while maintaining or enhancing the aesthetic features and concept of the original building structure. Patient, visitor and staff circulation must be evaluated and accommodated by the expansion design to limit travel distances, and maintain staff and public zones. A section of the existing Parking Lot A will be used for the building expansion. This project will design the modification to this parking lot to preserve and minimize deletion of parking stalls, while concurrently meeting physical security requirements, long range master plan objectives and to maintain a landscape/site design that enhances the environment of the facility.

The period of performance for the design is anticipated to be 265 calendar days from issuance of the notice of award. The anticipated award date is late September 2018. The estimated cost of this design is \$745,991.00 (inclusive of option items).

4. Statutory Authority:

VHAPM Part 816.5—Indefinite-Delivery Contracts

Attachment 1: Request for Exception to Fair Opportunity Memo Format

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.

() 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.

(X) 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:

FAR Subpart 16.505(b)(2)(i)(E) authorizes that 38 U.S.C. 8127(c), known as the Veterans First Contracting Program, may be permitted as an exemption to fair opportunity. 38 U.S.C. 8127(c) states, in part, "...a contracting officer at the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if -

- (1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;
- (2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; and
- (3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

The proposed source for this acquisition is Apogee Consulting Group, P.A. of 1151 Kildaire Farm Rd, Suite 120, Cary, NC 27511; a registered and verified SDVOSB by VA Center for Verification and

Attachment 1: Request for Exception to Fair Opportunity Memo Format Evaluation (CVE). Apogee is a VISN 21 A-E IDIQ Holder under contract VA261-17-D-0102 and was awarded the task order to perform the first expansion of the PRRC & Homeless Program, Building 27 design project. As a result of designing this project, they were able to develop a number of cost savings and design efficiencies. These efficiencies are described below:

Apogee was able to gain intimate knowledge of the physical site to include utility tie-in points, existing utility system capacities, structural composition and design criteria of the existing building, interior and exterior architectural design features that must be matched and constraints of the site. This knowledge would otherwise have to be replicated through many hours of detailed site investigation, review of existing drawings, calculations, evaluations and other documentation. Apogee would not have to include this significant time investment in their cost proposal. Apogee designed the original expansion and already established the basic 3D computer models for the second expansion. Whereas any other A-E firm would be required to develop the digital design model from scratch, Apogee will start from a much further developed point, thereby saving the VA significant costs in drafting and preliminary design fees. Beyond the building model, construction details have also already been developed by Apogee specific to the first expansion project. The scope of work requires identical construction materials to be used for the second expansion which will require the use of the same construction detailing. This will also save the VA significant drafting and design fees.

Apogee has extensive knowledge of the using services detailed operations, future needs and expectations. This knowledge will eliminate the need for excessive user meetings thereby allowing the clinicians more time to focus on clinical work and patient care than communicating detailed requirements to a new A-E that is unfamiliar with their operations. Design time will be minimized due to the availability of developed digital files, familiarity with the site and user operations. This will afford the A-E an opportunity to accelerate the design deliverables without added cost to the government and allow additional time for the government to review submissions and additional time to solicit construction

A review of the Past Performance Information Retrieval System (PPIRS) has confirmed Apogee's successful past performance on VA design projects. The VA's technical experts have determined that Apogee is capable of meeting all of the VA's requirements and standards for this design project, and is considered a responsible SDVOSB. Award will be made provided that a fair and reasonable price that offers best value to the Government can be obtained.

6. Efforts to Obtain Competition:

In accordance with FAR Subpart 16.505(b)(2)(i)(E) and specifically 38 U.S.C. 8127(c)s, the Contracting Officer's determination whether to make a sole source award is a business decision. For the reasons stated herein, and specifically, in response to Paragraph 5, the undersigned Contracting Officer, has determined Apogee is a qualified, responsible SDVOSB.

A special notice announcing the proposed contract action will be posted to www.fbo.gov, the government's point of entry. The Justification and Approval (J&A) document will be posted within fourteen (14) days after award in accordance with FAR Subpart 6.305. The award synopsis will be posted to FEDBIZOPPs in accordance with FAR Subpart 5.301(a)(1).

7. Actions to Increase Competition:

The Fresno VAMC will solicit future design projects competitively against the existing A-E IDIQ Contracts in VISN 21.

8. Market Research:

Market research techniques used to identify potential sources for this requirement include (1) contacting knowledgeable individuals in the Government regarding market capabilities to meet requirements and (2) querying the Vendor Information Pages (VIP) at <https://www.vip.vetbiz.gov>.

Through the aforementioned efforts, a number of contractors were identified that were potentially able to perform the required services, including the fourteen (14) VISN 21 A-E IDIQ Holders. Below is the list of VISN 21 A-E IDIQ Contract Holders:

- a. VA261-17-D-0090 – AES Group, Inc.
- b. VA261-17-D-0101 – AESUS Design Group, LLC.
- c. VA261-17-D-0102 - Apogee Consulting Group, P.A.
- d. VA261-17-D-0104 – Concourse Federal Group, LLC.
- e. VA261-17-D-0103 – DAV Energy Solutions, Inc.
- f. VA261-17-D-0105 – MA Architects, Inc.
- g. VA261-17-D-0109 – Northeast Infrastructure, LLC.
- h. VA261-17-D-0089 – Paradigm Engineers, Inc.
- j. VA261-17-D-0110 – Pierce Cooley Architects, Inc.
- k. VA261-17-D-0111 – Romanyk Consulting
- l. VA261-17-D-0112 – Schwab Engineering, Inc.
- m. VA261-17-D-0113 – Spees, LLC.
- n. VA261-17-D-0114 – Spur Design, LLC.
- o. VA261-17-D-0088 – Triple C – The A-E Group, LLC

However, the original expansion of the PRRC & Homeless Program, Building 27 at the Fresno VAMC was competed amongst the fourteen (14) VISN 21 A-E IDIQ Holders and Apogee Consulting Group, P.A. was selected as the most qualified IDIQ Holder for that project. Their work on the prior project will reduce the costs of this new project and minimize the impact on clinical operations based on their extensive knowledge of the building.

9. Other Facts:

It is recommended that a sole source task order award be made to Apogee Consulting Group, P.A. Apogee is an SDVOSB that has completed the design for the first expansion of the PRRC & Homeless Program, Building 27 at the Fresno VAMC which has enabled them to obtain a number of cost savings and design efficiencies that would be a major benefit to the Government. A sole source award to Apogee is in the government's best interest to successfully complete this design project.

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.

Travis A.

Horn 119169

Digitally signed by Travis A. Horn
119169
Date: 2018.09.11 09:39:15 -07'00'

9/11/2018

TRAVIS HORN
Chief of Engineering
Fresno VAMC

Date

11. Determination that Anticipated Cost is Fair and Reasonable:

Based on the authorities cited in this justification, a sole source award under the Veterans Benefits Act of 2006 to Apogee is proposed pending negotiation of a fair and reasonable price for the work to be performed. It is expected negotiations will result in a price which compares favorably to the Independent Government Estimate and follows the pricing from Apogee's VISN 21 A-E IDIQ Contract VA261-17-D-0102. The Contracting Officer may need to conduct additional analysis before making a fair and reasonable price determination.

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

Donald A. Marsh 1489406

Digitally signed by Donald A. Marsh 1489406
Date: 2018.09.11 13:44:24 -04'00'

DONALD A. MARSH III
Contracting Officer
VHA Program Contracting Activity Central

Date

13. Approvals in accordance with [VHAPM Part 806.3 Other Than Full and Open Competition SOP](#).

a. **VHA PCAC Director of Contracting Review and Recommended Approval:** I have reviewed the foregoing justification and find it to be completed and accurate to the best of my knowledge and belief and recommend approval for other than full and open competition.

Richard C. Dahmen
199197

Digitally signed by Richard C.
Dahmen 199197
Date: 2018.09.17 12:32:54 -04'00'

RICHARD C. DAHMEN
Director of Contracting
VHA Program Contracting Activity Central

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 exception to fair opportunity.

TERRY L.
SPITZMILLER 394683

Digitally signed by TERRY L.
SPITZMILLER 394683
Date: 2018.09.18 16:56:25
-05'00'

09/18/2018

TERRY L. SPITZMILLER

Date

Acting Executive Director, Service Area Organization Central
SAO Central Head of Contracting (HCA)